

Freedom of Information

Section 38 Secrecy provisions

Secrecy provisions:

Section 38 states: *“a document is an exempt document if there is an enactment in force applying specifically to information of a kind contained in the document and prohibiting persons referred to in the enactment from disclosing information of that kind, whether the prohibition is absolute or is subject to exceptions or qualifications.”*

Essentially section 38 upholds prohibitions set out in other legislation such as the *Judicial Proceedings Reports Act 1958* (‘JPRA’)

Judicial Proceedings Reports Act 1958

Section 4(1) JPRA states:

*“A person who **publishes** or **causes to be published** any matter that contains any **particulars likely to lead to the identification of a person against whom a sexual offence**, or an offence where the conduct constituting it consists wholly or partly of taking part, or attempting to take part, in an act of sexual penetration as defined in section 35 of the Crimes Act 1958, is alleged to have been committed is guilty of an offence, **whether or not a proceeding in respect of the alleged offence is pending in a court.**”*

1. Publishes or causes to be published

- Section 4(1) states that ‘publish’ means:
“disseminate or provide access to the public or a section of the public by any means...”
- This definition is broad enough to capture documents being release under FOI.

2. Identification of a person

- The material must be likely to lead to the identification of the person against whom the offence is alleged to have been committed.

3. The offence

- Section 4(1) defines “sexual offence” as:
“an offence under subdivision (8A), (8B), (8C), (8D) or (8E) of Division 1 of Part I of the Crimes Act 1958 or under any corresponding previous enactment or an attempt to commit any such offence or an assault with intent to commit any such offence.”
- This section captures offences, and attempts to commit offences, listed in these subdivisions of the *Crimes Act*.

Sexual offences listed in subdivisions (8A), (8B), (8C), (8D) or (8E) of Division 1 of Part I of the *Crimes Act 1958*

Subdivision (8A) Rape and indecent assault

- s38 Rape
- s38A Compelling sexual penetration
- s39 Indecent assault
- s40 Assault with intent to rape

Subdivision (8B) Incest

- s44 Incest

Subdivision (8C) Sexual offences against children

- s45 Sexual penetration of child under the age of 16
- s47 Indecent act with child under the age of 16
- s47A Persistent sexual abuse of child under the age of 16
- s48 Sexual penetration of 16 or 17 year old child
- s49 Indecent act with 16 or 17 year old child
- s49A Facilitating sexual offences against children
- s49B Grooming for sexual conduct with child under the age of 16 years

Subdivision (8D) Sexual offences against persons with a cognitive impairment

- s51 Sexual offences against persons with a cognitive impairment by providers of medical or therapeutic services
- s52 Sexual offences against persons with a cognitive impairment by workers

Subdivision (8E) Other sexual offences

- 53 Administration of drugs etc.
- 54 Occupier etc. permitting unlawful sexual penetration
- 55 Abduction or detention
- 56 Abduction of child under the age of 16
- 57 Procuring sexual penetration by threats or fraud
- 58 Procuring sexual penetration of a child
- 59 Bestiality
- 60A Sexual offence while armed with an offensive weapon

4. Whether or not a proceeding in respect of the alleged offence is pending in a court

- The prohibition is absolute and is not contingent upon proceedings having been initiated regarding the offence or attempted offence.