

Queensland



# **FREEDOM OF INFORMATION ACT 1992**

**Reprinted as in force on 4 February 1997  
(includes amendments up to Act No. 79 of 1996)**

**Warning—see last endnote for uncommenced amendments**

**Reprint No. 5B**

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# Information about this reprint

This Act is reprinted as at 4 February 1997. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in earlier reprints.**

Queensland



# FREEDOM OF INFORMATION ACT 1992

## TABLE OF PROVISIONS

Section		Page
<b>PART 1—PRELIMINARY</b>		
<i>Division 1—Introductory</i>		
1	Short title .....	7
2	Commencement .....	7
3	Deferred application to local governments .....	7
<i>Division 2—Object of Act and matters relevant to its administration and interpretation</i>		
4	Object of Act .....	8
5	Reasons for enactment of Act .....	8
6	Matter relating to personal affairs of applicant .....	9
<i>Division 3—Interpretation</i>		
7	Definitions .....	9
8	Meaning of “agency” .....	12
9	Meaning of “public authority” .....	13
<i>Division 4—Operation and application of Act</i>		
10	Act applies to document whenever it came into existence .....	14
11	Act not to apply to certain bodies etc. ....	14
11A	Application of Act to GOCs .....	16
12	Application of Act to Information Commissioner .....	16
13	Act binds Crown .....	16
<i>Division 5—Relationship with other laws</i>		
14	Act not intended to prevent other publication of information etc. ....	16
15	Relationship with other enactments requiring publication of information etc. ....	16

16	Operation of provisions of other enactments providing for non-disclosure . . . . .	17
17	Operation of Libraries and Archives Act . . . . .	17

**PART 2—PUBLICATION OF CERTAIN DOCUMENTS AND INFORMATION**

18	Publication of information concerning affairs of agencies . . . . .	17
19	Availability of certain documents . . . . .	19
20	Notices to require specification of documents in statements . . . . .	20

**PART 3—ACCESS TO DOCUMENTS**

*Division 1—Access*

21	Right of access . . . . .	21
22	Documents to which access may be refused . . . . .	21
23	Non-official documents in Queensland State Archives etc. . . . .	21
24	Official documents in Queensland State Archives . . . . .	22
25	How applications for access are made . . . . .	22
26	Transfer of applications . . . . .	23
27	How applications are dealt with . . . . .	24
28	Access may be refused in certain cases . . . . .	26
29	Fees and charges for access to documents . . . . .	27
30	Forms of access . . . . .	29
31	Access may be deferred in certain cases . . . . .	30
32	Deletion of exempt matter . . . . .	31
33	Persons who are to make decisions for agencies and Ministers . . . . .	31
34	Notification of decisions and reasons . . . . .	31
35	Information as to existence of certain documents . . . . .	33

*Division 2—Exempt matter*

36	Cabinet matter . . . . .	33
37	Executive Council matter . . . . .	35
38	Matter affecting relations with other governments . . . . .	36
39	Matter relating to investigations by parliamentary commissioner or audits by Auditor-General etc. . . . .	36
40	Matter concerning certain operations of agencies . . . . .	36
41	Matter relating to deliberative processes . . . . .	37

42	Matter relating to law enforcement or public safety . . . . .	38
43	Matter affecting legal proceedings . . . . .	39
44	Matter affecting personal affairs . . . . .	40
45	Matter relating to trade secrets, business affairs and research . . . . .	40
46	Matter communicated in confidence . . . . .	41
47	Matter affecting the economy of State . . . . .	42
48	Matter to which secrecy provisions of enactments apply . . . . .	42
49	Matter affecting financial or property interests . . . . .	43
50	Matter disclosure of which would be contempt of Parliament or contempt of court . . . . .	43

*Division 3—Consultation*

51	Disclosure that may reasonably be expected to be of substantial concern . . . . .	43
----	--	----

*Division 4—Internal review*

52	Internal review . . . . .	44
----	---------------------------	----

**PART 4—AMENDMENT OF INFORMATION**

*Division 1—Application for amendment of information*

53	Person may request amendment of information . . . . .	46
54	Form of application for amendment of information . . . . .	47
55	Agency or Minister may amend information . . . . .	47
56	Notation to information . . . . .	47
57	Time within which agency or Minister must notify applicant . . . . .	47
58	Decision to be made by authorised person and reasons given . . . . .	48
59	Certain notations required to be added . . . . .	48

*Division 2—Internal review*

60	Internal review . . . . .	49
----	---------------------------	----

**PART 5—EXTERNAL REVIEW OF DECISIONS**

*Division 1—Information Commissioner*

61	Information Commissioner . . . . .	50
62	Terms and conditions of appointment . . . . .	50
63	Remuneration of commissioner . . . . .	51
64	Leave of absence . . . . .	51
65	Outside employment . . . . .	51

*Freedom of Information Act 1992*


---

66	Resignation . . . . .	52
67	Suspension and removal of the commissioner . . . . .	52
68	Acting commissioner . . . . .	53
69	Oath of office . . . . .	54
	<b><i>Division 2—Staff of Information Commissioner</i></b>	
70	Staff of commissioner . . . . .	54
	<b><i>Division 3—Functions of Information Commissioner</i></b>	
71	Functions of commissioner . . . . .	55
	<b><i>Division 4—Conduct of review</i></b>	
72	Procedure on review . . . . .	56
73	Applications for review . . . . .	56
74	Commissioner to notify . . . . .	57
75	Preliminary inquiries . . . . .	58
76	Inspection of exempt documents by commissioner . . . . .	58
77	Commissioner may decide not to review . . . . .	58
78	Participants in review . . . . .	59
79	Applications where decisions delayed . . . . .	59
80	Mediation . . . . .	60
81	Onus to lie with agencies and Ministers . . . . .	60
82	Requirement to provide better reasons . . . . .	60
83	Conduct of reviews . . . . .	61
84	Review of Minister's certificates . . . . .	62
85	Power to obtain information and documents and compel attendance . . . . .	62
86	Power to examine witnesses . . . . .	63
87	Commissioner to ensure non-disclosure of certain matter . . . . .	63
88	Powers of commissioner on review . . . . .	64
89	Decisions of commissioner . . . . .	64
	<b><i>Division 5—Miscellaneous</i></b>	
90	Delegation . . . . .	65
91	Protection of commissioner etc. from personal liability . . . . .	65
92	Restrictions under other laws not applicable . . . . .	65
93	Secrecy . . . . .	66

*Freedom of Information Act 1992*


---

94	Failure to produce documents or attend proceedings . . . . .	66
95	Costs of review . . . . .	66
96	Disciplinary action . . . . .	66
97	Reference of questions of law to Supreme Court . . . . .	67
98	Costs in proceedings . . . . .	67
99	Commissioner may appear in proceedings . . . . .	67
100	Intervention by Attorney-General . . . . .	67
101	Reports of commissioner . . . . .	68

**PART 6—MISCELLANEOUS**

102	Protection against actions for defamation or breach of confidence . . . . .	68
103	Protection in respect of offences . . . . .	69
104	Protection of agency etc. from personal liability . . . . .	69
105	Precautions . . . . .	70
106	Offence of unlawful access . . . . .	70
107	Application of Parliamentary Commissioner Act . . . . .	70
108	Report to Legislative Assembly by agencies and Ministers . . . . .	71
109	Regulations . . . . .	72

**SCHEDULE 1 . . . . . 73****SECURITY PROVISIONS GIVING EXEMPTION****SCHEDULE 2 . . . . . 74****APPLICATION OF ACT TO GOCs****ENDNOTES**

1	Index to endnotes . . . . .	75
2	Date to which amendments incorporated . . . . .	75
3	Key . . . . .	76
4	Table of earlier reprints . . . . .	76
5	Tables in earlier reprints . . . . .	77
6	List of legislation . . . . .	77
7	List of annotations . . . . .	78
8	Provisions that have not commenced and are not incorporated into reprint . . . . .	80
9	Preambles from amending legislation . . . . .	81





# **FREEDOM OF INFORMATION ACT 1992**

[as amended by all amendments that commenced on or before 4 February 1997]

**An Act to require information concerning documents held by government to be made available to members of the community, to enable members of the community to obtain access to documents held by government and to enable members of the community to ensure that documents held by the government concerning their personal affairs are accurate, complete, up-to-date and not misleading, and for related purposes**

## **PART 1—PRELIMINARY**

### *Division 1—Introductory*

#### **Short title**

1. This Act may be cited as the *Freedom of Information Act 1992*.

#### **Commencement**

2. Parts 3 to 6 commence 3 months after the date of assent.

#### **Deferred application to local governments**

**3.(1)** Part 2 does not apply to local governments until 6 months after the date of assent.

**(2)** Despite section 2, parts 3 to 6 do not apply to local governments until 9 months after the date of assent.

***Division 2—Object of Act and matters relevant to its administration and interpretation***

**Object of Act**

4. The object of this Act is to extend as far as possible the right of the community to have access to information held by Queensland government.

**Reasons for enactment of Act**

5.(1) Parliament recognises that, in a free and democratic society—

- (a) the public interest is served by promoting open discussion of public affairs and enhancing government's accountability; and
- (b) the community should be kept informed of government's operations, including, in particular, the rules and practices followed by government in its dealings with members of the community; and
- (c) members of the community should have access to information held by government in relation to their personal affairs and should be given the ways to ensure that information of that kind is accurate, complete, up-to-date and not misleading.

(2) Parliament also recognises that there are competing interests in that the disclosure of particular information could be contrary to the public interest because its disclosure in some instances would have a prejudicial effect on—

- (a) essential public interests; or
- (b) the private or business affairs of members of the community in respect of whom information is collected and held by government.

(3) This Act is intended to strike a balance between those competing interests by giving members of the community a right of access to information held by government to the greatest extent possible with limited exceptions for the purpose of preventing a prejudicial effect to the public interest of a kind mentioned in subsection (2).

**Matter relating to personal affairs of applicant**

6. If an application for access to a document is made under this Act, the fact that the document contains matter relating to the personal affairs of the applicant is an element to be taken into account in deciding—

- (a) whether it is in the public interest to grant access to the applicant; and
- (b) the effect that the disclosure of the matter might have.

***Division 3—Interpretation*****Definitions**

7. In this Act—

**“agency”** has the meaning given by section 8.

**“commissioner”** means the Information Commissioner.

**“competitive commercial activity”** means an activity carried on, on a commercial basis, in competition with a person, other than—

- (a) the Commonwealth or a State or Territory; or
- (b) a State authority; or
- (c) a local government authority.

**“court”** includes a justice and a coroner.

**“document”** includes—

- (a) a copy of a document; and
- (b) a part of, or extract from, a document; and
- (c) a copy of a part of, or extract from, a document.

**“document of an agency”** or **“document of the agency”** means a document in the possession or under the control of an agency, or the agency concerned, whether created or received in the agency, and includes—

- (a) a document to which the agency is entitled to access; and
- (b) a document in the possession or under the control of an officer of

*Freedom of Information Act 1992*

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the agency in the officer's official capacity.

**“enactment”** means an Act or a statutory instrument.

**“exempt document”** means a document that contains exempt matter, but to which access cannot be given under section 32.

**“exempt matter”** means matter that is exempt under part 3, division 2.

**“function”** includes a power.

**“government”** includes an agency and a Minister.

**“holds”**, in relation to an office, includes performs the duties of the office.

**“officer”**, in relation to an agency, includes—

- (a) the agency's principal officer; and
- (b) a member of the agency; and
- (c) a member of the agency's staff; and
- (d) a person employed by or for the agency.

**“official document of a Minister”** or **“official document of the Minister”** means a document in the possession or under the control of a Minister, or the Minister concerned, that relates to the affairs of an agency, and includes—

- (a) a document to which the Minister is entitled to access; and
- (b) a document in the possession or under the control of a member of the staff of, or a consultant to, the Minister in the person's capacity as such a member or consultant.

**“parliamentary commissioner”** means the Parliamentary Commissioner for Administrative Investigations appointed under the *Parliamentary Commissioner Act 1974*.

**“parliamentary committee”** means the Legal, Constitutional and Administrative Review Committee of the Legislative Assembly.

**“policy document”**, in relation to an agency, means—

- (a) a document containing interpretations, rules, guidelines, statements of policy, practices or precedents; or
- (b) a document containing particulars of an administrative scheme; or

*Freedom of Information Act 1992*

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- (c) a document containing a statement of the way, or intended way, of administration of an enactment or administrative scheme; or
- (d) a document describing the procedures to be followed in investigating a contravention or possible contravention of an enactment or administrative scheme; or
- (e) another document of a similar kind;

that is used by the agency in connection with the performance of such of its functions as affect or are likely to affect rights, privileges or other benefits, or obligations, penalties or other detriments, to which members of the community are or may become entitled, eligible, liable or subject, but does not include an enactment that has already been published.

**“principal officer”** means—

- (a) in relation to a department—the chief executive of the department; or
- (b) in relation to a local government—the chief executive officer (however described) of the government; or
- (c) in relation to a public authority for which a regulation declares an office to be the principal office—the holder of the office; or
- (d) in relation to another public authority—
  - (i) if it is an incorporated body that has no members—the person who manages the body’s affairs; or
  - (ii) if it is a body (whether or not incorporated) that is constituted by 1 person—the person; or
  - (iii) if it is a body (whether or not incorporated) that is constituted by 2 or more persons—the person who is entitled to preside at a meeting of the body at which the person is present.

**“public authority”** has the meaning given by section 9.

**“public library”** includes—

- (a) the State library; and
- (b) a local government library; and

- (c) a library in the State that forms part of a public tertiary educational institution.

**“responsible Minister”** means—

- (a) in relation to a department—the Minister administering the department; or
- (b) in relation to the town commission constituted under the *Alcan Queensland Pty. Limited Agreement Act 1965*—the Minister administering that Act; or
- (c) in relation to a council constituted under the *Local Government (Aboriginal Lands) Act 1978*, the *Community Services (Aborigines) Act 1984* or the *Community Services (Torres Strait) Act 1984*—the Minister administering those Acts; or
- (d) in relation to another local government—the Minister administering the *Local Government Act 1993*; or
- (e) in relation to a public authority mentioned in paragraph (a) of the definition of “public authority”—the Minister administering the Act by or under which the public authority is established; or
- (f) in relation to a public authority mentioned in paragraph (d) of that definition—the Minister administering the Act by which the office is established; or
- (g) in relation to any other public authority—the Minister declared by regulation to be the responsible Minister in relation to the public authority.

### **Meaning of “agency”**

**8.(1)** In this Act—

**“agency”** means a department, local government or public authority.

**(2)** In this Act, a reference to an agency includes a reference to a body that—

- (a) forms part of the agency; or
- (b) exists mainly for the purpose of enabling the agency to perform its functions.

**Meaning of “public authority”**

**9.(1)** In this Act—

**“public authority”** means—

- (a) a body (whether or not incorporated) that—
  - (i) is established for a public purpose by an enactment; or
  - (ii) is established by government for a public purpose under an enactment; or
- (b) a body (whether or not incorporated) that is created by the Governor in Council or a Minister; or
- (c) another body (whether or not incorporated)—
  - (i) that is—
    - (A) supported directly or indirectly by government funds or other assistance or over which government is in a position to exercise control; or
    - (B) a body established by or under an enactment; and
  - (ii) that is declared by regulation to be a public authority for the purposes of this Act; or
- (d) subject to subsection (3), a person holding an office established by or under an enactment; or
- (e) a person holding an appointment—
  - (i) made by the Governor in Council or Minister otherwise than by or under an enactment; and
  - (ii) that is declared by regulation to be an appointment the holder of which is a public authority for the purposes of this Act;but does not include a body that, under subsection (2), is not a public authority for the purposes of this Act.

**(2)** For the purposes of this Act, an unincorporated body that is a board, council, committee, subcommittee or other body established by or under an enactment for the purpose of assisting, or performing functions connected with, a public authority is not a separate public authority, but is taken to be comprised within the public authority.

- (3)** A person is not a public authority merely because the person holds—
- (a) an office the duties of which are performed as duties of employment as an agency's officer; or
  - (b) an office of member of a body; or
  - (c) an office established by or under an enactment for the purposes of an agency.

***Division 4—Operation and application of Act***

**Act applies to document whenever it came into existence**

**10.** A person is entitled to apply under this Act for access to a document regardless of when the document came into existence.

**Act not to apply to certain bodies etc.**

- 11.(1)** This Act does not apply to—
- (a) the Governor; or
  - (b) the Legislative Assembly, a member of the Legislative Assembly, a committee of the Legislative Assembly, a member of a committee of the Legislative Assembly, a parliamentary commission of inquiry or a member of a parliamentary commission of inquiry; or
  - (c) the Parliamentary Judges Commission of Inquiry appointed under the *Parliamentary (Judges) Commission of Inquiry Act 1988*; or
  - (d) the Parliamentary Service established by the *Parliamentary Service Act 1988*; or
  - (e) the judicial functions of—
    - (i) a court; or
    - (ii) the holder of a judicial office or other office connected with a court; or
  - (f) a registry or other office of a court, or the staff of a registry or



*Freedom of Information Act 1992*

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other office of a court in their official capacity, so far as its or their functions relate to the court's judicial functions; or

- (g) the Litigation Reform Commission established by the *Supreme Court of Queensland Act 1991*; or
- (h) the Fitzgerald commission of inquiry, that is, the commission of inquiry that is "the Commission" within the meaning of the *Commission of Inquiry Continuation Act 1989*; or
- (i) another commission of inquiry issued by the Governor in Council; or
- (j) an agency in relation to a document that has originated with, or has been received from, the Australian Secret Intelligence Service, the Australian Security Intelligence Organisation, the Inspector-General of Intelligence and Security or the Office of National Assessments, or the Defence Signals Directorate or the Defence Intelligence Organisation of the Commonwealth Department of Defence; or
- (m) Queensland Treasury Corporation in relation to its borrowing, liability and asset management related functions; or
- (n) Queensland Treasury Holdings Pty Ltd, its wholly owned subsidiaries (within the meaning of the Corporations Law), and the entities in which the subsidiaries have a controlling interest (within the meaning of the Corporations Law), in relation to their commercially competitive activities; or
- (p) the Health Rights Commissioner, or a person appointed as a conciliator under *Health Rights Commission Act 1991*, section 75, in relation to the conciliation of health service complaints under part 6 of that Act; or
- (q) an agency, part of an agency or function of an agency prescribed by regulation for the purposes of this paragraph.

**(2)** In subsection (1), a reference to documents in relation to a particular function or activity is a reference to documents received or brought into existence in performing the function or carrying on the activity.

**Application of Act to GOCs**

**11A.** This Act does not apply to documents received, or brought into existence, in carrying out activities of a GOC mentioned in schedule 2 to the extent provided under the application provision mentioned for the GOC in the schedule.

**Application of Act to Information Commissioner**

**12.** Section 20 and parts 3 and 4 do not apply to the commissioner or documents of the commissioner.

**Act binds Crown**

**13.** This Act binds the Crown.

*Division 5—Relationship with other laws***Act not intended to prevent other publication of information etc.**

**14.** This Act is not intended to prevent or discourage—

- (a) the publication of information; or
- (b) the giving of access to documents (including documents containing exempt matter and exempt documents); or
- (c) the amendment of documents relating to the personal affairs of persons;

otherwise than under this Act if that can properly be done or is permitted or required to be done by law.

**Relationship with other enactments requiring publication of information etc.**

**15.** Without limiting section 14, this Act does not affect the operation of another enactment that—

- (a) requires information concerning documents held by government to be made available to members of the community; or

- (b) enables a member of the community to obtain access to documents held by government; or
- (c) enables a member of the community to ensure that documents held by government concerning the person's personal affairs are accurate, complete, up-to-date and not misleading; or
- (d) requires the publication of information concerning government operations.

### **Operation of provisions of other enactments providing for non-disclosure**

**16.(1)** This Act is intended to operate to the exclusion of the provisions of other enactments relating to non-disclosure of information.

**(2)** Subsection (1) has effect subject to section 48 (Matter to which secrecy provisions of enactments apply).

### **Operation of Libraries and Archives Act**

**17.(1)** Without limiting section 14, this Act does not affect the provisions of the *Libraries and Archives Act 1988* relating to the giving of access to documents by the Queensland State Archives.

**(2)** Without limiting section 16, the *Libraries and Archives Act 1988* does not prevent a person obtaining access to a document in the custody of Queensland State Archives to which a person may obtain access under this Act.

## **PART 2—PUBLICATION OF CERTAIN DOCUMENTS AND INFORMATION**

### **Publication of information concerning affairs of agencies**

**18.(1)** An agency must, within 1 year after the commencement of this section and at subsequent intervals of not more than 1 year, publish an up-to-date statement of the affairs of the agency.

*Freedom of Information Act 1992*

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**(2)** The statement must contain—

- (a) a description of the agency's structure and functions; and
- (b) a description of the ways in which the agency's functions (including, in particular, its decision-making functions) affect members of the community; and
- (c) a description of any arrangements that exist to enable members of the community to participate in the formulation of the agency's policy and the exercise of the agency's functions; and
- (d) a description of the various kinds of documents that are usually held by the agency, including—
  - (i) the kinds of documents that are available for inspection at the agency (whether or not as part of a public register) under an enactment other than this Act, whether or not inspection of any such document is subject to a fee or charge; and
  - (ii) the kinds of documents that are available for purchase from the agency; and
  - (iii) the kinds of documents that are available from the agency free of charge; and
- (e) a description of the literature available from the agency by way of subscription services or free mailing lists; and
- (f) a list of all boards, councils, committees and other bodies constituted by 2 or more persons that—
  - (i) are a part of, or that have been established for the purpose of advising, the agency; and
  - (ii) whose meetings are open to the public or the minutes of whose meetings are available for public inspection; and
- (g) a description of the arrangements that exist to enable a member of the community to obtain access to the agency's documents and to seek amendment of the agency's documents concerning the person's personal affairs; and
- (h) a description of the agency's procedures in relation to the giving of access to the agency's documents and to the amendment of the agency's documents concerning the personal affairs of a member

*Freedom of Information Act 1992*

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of the community, including—

- (i) the designation of officers to whom inquiries should be made; and
- (ii) the addresses at which applications under this Act should be lodged.

**(3)** The statement must be published in a way approved by the Minister.

**(4)** Nothing in this section requires the publication of exempt matter.

**Availability of certain documents**

**19.(1)** An agency must make copies of—

- (a) its most recent statement of affairs; and
- (b) each of its policy documents;

available for inspection and purchase by members of the community.

**(2)** Nothing in this section prevents an agency from deleting exempt matter from a copy of a policy document.

**(3)** A person must not be subjected to any prejudice because of the application of the provisions of an agency's policy document (other than provisions the agency is permitted to delete from the copies of the document) to any act or omission of the person if, at the time of the act or omission—

- (a) the policy document was not available for inspection and purchase; and
- (b) the person was not aware of the provisions; and
- (c) the person could lawfully have avoided the prejudice had the person been aware of the provisions.

**(4)** During the first year of the application of this section to an agency—

- (a) the agency is required to comply with subsection (1) only to the extent that is reasonably practicable; and
- (b) subsection (3) does not have effect.

**Notices to require specification of documents in statements**

**20.(1)** A person may serve on an agency's principal officer a written notice stating that, in the person's opinion—

- (a) the agency has failed to publish a statement of affairs as required by this part; or
- (b) a statement of affairs published by the agency under this part does not comply with the part.

**(2)** The principal officer must within 21 days of receiving the notice—

- (a) decide whether or not the person's opinion is correct and, if so, whether to—
  - (i) publish a statement of affairs, or further statement of affairs, as required by this part; or
  - (ii) ensure that the next statement of affairs published under this part complies with the part; and
- (b) notify the person, in writing, of the decision.

**(3)** If the principal officer decides that the person's opinion is incorrect, the notice is to—

- (a) give the reasons for the decision; and
- (b) inform the person of—
  - (i) the person's right to apply to the commissioner for a review of the decision under part 5; and
  - (ii) the time within which the application for review must be made.

## **PART 3—ACCESS TO DOCUMENTS**

### *Division 1—Access*

#### **Right of access**

**21.** Subject to this Act, a person has a legally enforceable right to be given access under this Act to—

- (a) documents of an agency; and
- (b) official documents of a Minister.

#### **Documents to which access may be refused**

**22.** An agency or Minister may refuse access under this Act to—

- (a) a document that is reasonably open to public access (whether or not as part of a public register) under another enactment, whether or not the access is subject to a fee or charge; or
- (b) a document that is reasonably available for purchase by members of the community under arrangements made by an agency; or
- (c) a document that is reasonably available for public inspection in the Queensland State Archives or a public library; or
- (d) a document that—
  - (i) is stored for preservation or safe custody in the Queensland State Archives; and
  - (ii) is a copy of a document of an agency; or
- (e) adoption records maintained under the *Adoption of Children Act 1964*.

#### **Non-official documents in Queensland State Archives etc.**

**23.(1)** A document that—

- (a) has been placed in the custody of Queensland State Archives or a public library by a person; and

- (b) was not, immediately before being placed in that custody, a document of an agency or an official document of a Minister;

is available for access to members of the community under this Act, subject to any restrictions or conditions imposed by the person at the time the document was placed in the custody of the Queensland State Archives or public library.

(2) Subsection (1) applies to a document that was placed in the custody of the Queensland State Archives or a public library by a person before the commencement of this part and, for the purposes of that application, any restrictions or conditions imposed by the person within 1 year after that commencement are taken to have been imposed by the person at the time mentioned in that subsection.

### **Official documents in Queensland State Archives**

**24.(1)** For the purposes of this Act, a document that—

- (a) has been placed in the custody of the Queensland State Archives by an agency (whether before or after the commencement of this part); and
- (b) is not reasonably available for inspection in the Queensland State Archives;

is taken to be in the agency's possession, or, if the agency no longer exists, the agency whose functions are most closely related to the document, if the agency is entitled to access to the document.

(2) For the purposes of this Act, a document that has been placed by an agency (including the Queensland State Archives) in a place of deposit under the *Libraries and Archives Act 1988* (whether before or after the commencement of this part) is taken to be in the agency's possession, or, if the agency no longer exists, the agency whose functions are most closely related to the document, if the agency is entitled to access to the document.

### **How applications for access are made**

**25.(1)** A person who wishes to obtain access to a document of an agency or an official document of a Minister under this Act is entitled to apply to the agency or Minister for access to the document.



(2) The application must—

- (a) be in writing; and
- (b) provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency or the Minister to identify the document.

(3) If a person—

- (a) wishes to make an application under this Act to an agency or Minister for access to a document; or
- (b) has made such an application but it does not comply with this section; or
- (c) has directed such an application to the wrong agency or Minister;

it is the duty of the agency or Minister to assist the person to make the application in a way that complies with this section or to direct the application to the appropriate agency or Minister, as the case may be.

(4) An agency or Minister must not refuse access to a document because the application does not comply with this section without first giving the applicant a reasonable opportunity of consultation with a view to making an application in a form that complies with this section.

### **Transfer of applications**

**26.(1)** In this section—

“**agency**” includes a Minister.

(2) An agency to which an application has been made (the “**receiving agency**”) may transfer the application to another agency if—

- (a) the document to which the application relates—
  - (i) is not held by the receiving agency but is, to the receiving agency’s knowledge, held by the other agency; or
  - (ii) is held by the receiving agency but is more closely related to the functions of the other agency; and
- (b) the other agency consents to the transfer.

(3) An agency that transfers an application to another agency must—

*Freedom of Information Act 1992*

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- (a) if it holds the document to which the application relates—give a copy of the document (whether or not in the form of a written document) to the other agency with the application; and
- (b) immediately give the applicant written notice of the transfer, specifying in the notice the day on which, and the agency to which, the application has been transferred.

(4) An agency is not required to include exempt matter in a notice.

(5) An application that is transferred from 1 agency to another is taken to have been received by the other agency—

- (a) on the day on which it is transferred; or
- (b) 14 days after the day on which it was received by the agency to which it was originally made;

whichever is the earlier.

(6) If—

- (a) an application is made to an agency for access to more than 1 document; and
- (b) 1 or more of the documents is a document to which subsection (2) applies;

this section applies to each of the documents as if separate applications had been made to the agency for each of the documents.

### **How applications are dealt with**

**27.(1)** If an application for access to a document is made to an agency or Minister under this Act, the agency or Minister must take all reasonable steps to ensure that the applicant is notified that the application has been received as soon as practicable, but in any case not later than 14 days, after the application is received.

(2) After considering the application, the agency or Minister must decide—

- (a) whether access is to be given to the document; and
- (b) if access is to be given—any charge that must be paid before access is granted; and

*Freedom of Information Act 1992*

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(c) any charge payable for dealing with the application.

(3) If it is apparent from the terms of the application that the applicant seeks information of a certain kind contained in documents of the agency or official documents of the Minister, the agency or Minister may, with the agreement of the applicant, deal with the application as if it were an application relating only to those parts of the documents that contain information of that kind.

(4) If the agency or Minister fails to decide an application and notify the applicant under section 34 within—

(a) the appropriate period; or

(b) if action is required under section 51 in relation to the application—a period equal to the appropriate period plus 15 days;

the agency or Minister is taken to have refused access to the document to which the application relates at the end of the period.

(5) If the agency or Minister decides that the applicant is liable to pay a charge in relation to the application or the provision of access to a document, the agency or Minister must notify the applicant in writing of the amount of the charge and of the basis on which the amount of the charge was calculated.

(6) This section does not require an agency to determine an application that has been transferred to another agency under section 26.

(7) In this section—

**“appropriate period”** means—

(a) in relation to an application to an agency or Minister for a document that—

(i) came into existence more than 5 years before the commencement of this part; and

(ii) does not concern the personal affairs of the applicant;

60 days after the application is received by the agency or Minister;  
or

(b) in relation to any other application—45 days after the application is received by the agency or Minister.

**Access may be refused in certain cases**

**28.(1)** An agency or Minister may refuse access to exempt matter or an exempt document.

**(2)** If—

- (a) an application is expressed to relate to all documents, or to all documents of a specified class, that contain information of a specified kind or relate to a specified subject matter; and
- (b) it appears to the agency or Minister dealing with the application that the work involved in dealing with the application would, if carried out—
  - (i) substantially and unreasonably divert the resources of the agency from their use by the agency in the performance of its functions; or
  - (ii) interfere substantially and unreasonably with the performance by the Minister of the Minister's functions;

having regard only to the number and volume of the documents and to any difficulty that would exist in identifying, locating or collating the documents within the filing system of the agency or the office of the Minister;

the agency or Minister may refuse to deal with the application.

**(3)** If—

- (a) an application is expressed in the way mentioned in subsection (2)(a); and
- (b) it appears to the agency or Minister concerned that all of the documents to which the application relates are exempt documents;

the agency or Minister may refuse access to all of the documents without having identified any or all of the documents and without specifying the reason that any matter in the documents is claimed to be exempt matter.

**(4)** An agency or Minister must not refuse access to a document under subsection (2) or (3) without first giving the applicant a reasonable opportunity of consultation with a view to making an application in a form that would remove the ground for refusal.

**Fees and charges for access to documents**

**29.(1)** In this section—

“**agency**” includes a Minister.

(2) An applicant applying for access to a document that does not concern the applicant’s personal affairs may be required, by regulation, to pay an application fee at the time the application is made.

(3) Any charge that is, by regulation, required to be paid by an applicant before access to a document is given is to be calculated in accordance with the following principles—

- (a) no charge is to be made for the time spent by the agency in conducting a search for the document to which access is requested;
- (b) no charge is to be made for supervising the inspection by the applicant of the matter to which access is granted;
- (c) a charge may be made for the reasonable costs incurred by an agency in—
  - (i) supplying copies of documents; or
  - (ii) making arrangements for hearing or viewing documents of a kind mentioned in section 30(1)(c); or
  - (iii) providing a written transcript of the words recorded or contained in documents; or
  - (iv) providing a written document under section 30(1)(e);
- (d) no charge is to be made for the time spent by an agency in—
  - (i) examining a document to determine whether it contains exempt matter; or
  - (ii) deleting exempt matter from a document;
- (e) no charge is to be made for producing for inspection a document mentioned in section 19(1), whether or not the document has been specified in a statement published under section 18;
- (f) no charge is to be made for the time spent in meeting the requirements of section 51.

(4) Subject to subsections (5) and (6), payment of a charge must not be

*Freedom of Information Act 1992*

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required before the agency has notified the applicant of its decision on access to a document.

(5) If in an agency's opinion a charge might be more than \$25 or such greater amount as is prescribed, the agency must notify the applicant of its opinion and ask whether the applicant wishes to proceed with the application.

(6) A notice under subsection (5) requiring an applicant to pay a deposit must—

- (a) specify the name and designation of the person who calculated the charge; and
- (b) inform the applicant of—
  - (i) the applicant's right to apply for a review of the charge; and
  - (ii) the procedures to be followed for exercising the right; and
  - (iii) the time within which the application for review must be made.

(7) An agency may, in a notice given to an applicant under subsection (5), require the applicant to pay a deposit of a prescribed amount, or at a prescribed rate, on account of the charge.

(8) If an agency requires an applicant to pay a deposit on account of a charge, the period beginning on the day on which the applicant is notified of the requirement and ending on the day on which the deposit is paid is to be disregarded for the purposes of section 27(4).

(9) If an agency requires an applicant to pay a deposit on account of a charge, the agency must, if requested to do so by the applicant, discuss with the applicant practicable alternatives for altering the application or reducing the anticipated charge, including reducing the charge if the applicant waives, either conditionally or unconditionally, the need for the agency to comply with section 27(4).

(10) Subject to this section, the prescribed charges must be uniform for all agencies, and there must be no variation of charges between different applicants in relation to like services.

**Forms of access**

**30.(1)** Access to a document may be given to a person in 1 or more of the following forms—

- (a) a reasonable opportunity to inspect the document;
- (b) providing a copy of the document;
- (c) if the document is an article or material from which sounds or visual images are capable of being reproduced—making arrangements for the person to hear the sounds or view the images;
- (d) if the document is one—
  - (i) by which words are recorded in a way in which they are capable of being reproduced in the form of sound; or
  - (ii) in which words are contained in the form of shorthand writing or in codified form;providing a written transcript of the words recorded or contained in the document;
- (e) if—
  - (i) the application relates to information that is not contained in a written document held by the agency; and
  - (ii) the agency could create a written document containing the information using equipment that is usually available to it for retrieving or collating stored information;providing a written document so created.

**(2)** Subject to this section and section 32, if an applicant has requested access in a particular form, access must be given in that form.

**(3)** If giving access in the form requested by the applicant—

- (a) would interfere unreasonably with the operations of the agency, or the performance by the Minister of the Minister's functions; or
- (b) would be detrimental to the preservation of the document or, having regard to the physical nature of the document, would be inappropriate; or
- (c) would involve an infringement of the copyright of a person other

than the State;

access in that form may be refused and given in another form.

(4) If an applicant is given access to a document in a form different to the form of access requested by the applicant, the applicant must not be required to pay a charge that is more than the charge that would have been payable if access had been given in the form requested by the applicant.

(5) Access under subsection (1)(a) to a document to which section 23 or 24 applies must be given by affording the applicant a reasonable opportunity to inspect the document on the premises of the Queensland State Archives or public library or in an office of an agency.

(6) If a document is more than 20 years old or in the custody of the Queensland State Archives, the State Archivist may direct that access not be given in 1 or more, but not all, of the forms mentioned in subsection (1) if, in the State Archivist's opinion, giving access in that form would be detrimental to the document's preservation or, having regard to the physical nature of the document, would be inappropriate.

(7) This section does not prevent an agency or Minister giving access to a document in another form agreed to by the applicant.

### **Access may be deferred in certain cases**

**31.** An agency or Minister may defer providing access to a document for a reasonable period if the document was prepared—

- (a) for presentation to the Legislative Assembly or a committee of the Legislative Assembly; or
- (b) for release to the media; or
- (c) solely for inclusion, in the same or an amended form, in a document to be prepared for a purpose mentioned in paragraph (a) or (b);

and the document is yet to be presented or released, or included in a document to be presented or released, as the case may be.



**Deletion of exempt matter**

**32.** Subject to section 35, if—

- (a) an application is made for access to a document containing exempt matter (including a document that is the subject of a certificate under section 36, 37 or 42); and
- (b) it is practicable to give access to a copy of the document from which the exempt matter has been deleted; and
- (c) it appears to the agency or Minister concerned (whether from the terms of the application or after consultation with the applicant) that the applicant would wish to be given access to such a copy;

the agency or Minister is to give access accordingly.

**Persons who are to make decisions for agencies and Ministers**

**33.(1)** An application is to be dealt with on behalf of an agency (other than a local government)—

- (a) by the agency's principal officer; or
- (b) by such other officer of the agency as the principal officer directs, either generally or in a particular case.

**(2)** An application for access to a local government's document is to be dealt with on behalf of the government—

- (a) by the government's principal officer; or
- (b) by such other officer of the government as the government, by resolution, directs, either generally or in a particular case.

**(3)** An application for access to an official document of a Minister may be dealt with by such person as the Minister directs, either generally or in a particular case.

**Notification of decisions and reasons**

**34.(1)** An agency or Minister is to give written notice to an applicant for access of—

- (a) the decision on the application; and

*Freedom of Information Act 1992*

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- (b) if the application relates to a document that is not held by the agency or Minister—the fact that the document is not so held.
- (2) The notice must specify—
- (a) the day on which the decision was made; and
  - (b) the amount of any charge that was payable for making the application; and
  - (c) if access is to be given to the document the subject of the application (whether immediately or subject to deferral)—the amount of any charge payable for giving access; and
  - (d) if access is to be given to a copy of the document subject to the deletion of exempt matter—
    - (i) the fact that the document is such a copy; and
    - (ii) the provision of this Act under which the matter is exempt matter; and
    - (iii) the reasons for the decision classifying the matter as exempt matter; and
  - (e) if access to the document is to be given subject to deferral—
    - (i) the reason for the deferral; and
    - (ii) the day on which the agency or Minister expects the document to be presented or released as mentioned in section 31; and
  - (f) if access to the document is refused—the reasons for the refusal; and
  - (g) details of any public interest considerations on which the decision was based; and
  - (h) the name and designation of the officer who made the decision; and
  - (i) the rights of review conferred by this Act in relation to the decision, the procedures to be followed for exercising the rights and the time within which an application for review must be made.

(3) An agency or Minister is not required to include any exempt matter in the notice.

### **Information as to existence of certain documents**

**35.(1)** Nothing in this Act requires an agency or Minister to give information as to the existence or non-existence of a document containing matter that would be exempt matter under section 36, 37 or 42.

(2) If an application relates to a document that includes exempt matter under section 36, 37 or 42, the agency or Minister concerned may give written notice to the applicant—

- (a) that the agency or Minister neither confirms nor denies the existence of that type of document as a document of the agency or an official document of the Minister; but
- (b) that, assuming the existence of the document, it would be an exempt document.

(3) If a notice is given under subsection (2)—

- (a) section 34 applies as if the decision to give the notice were the decision on the application mentioned in that section; and
- (b) the decision to give the notice were a decision refusing access to the document because the document would, if it existed, be exempt.

### ***Division 2—Exempt matter***

#### **Cabinet matter**

**36.(1)** Matter is exempt matter if—

- (a) it has been submitted to Cabinet; or
- (b) it was prepared for submission to Cabinet and is proposed, or has at any time been proposed, by a Minister to be submitted to Cabinet; or
- (c) it was prepared for briefing, or the use of, a Minister or chief executive in relation to a matter—

*Freedom of Information Act 1992*

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- (i) submitted to Cabinet; or
- (ii) that is proposed, or has at any time been proposed, to be submitted to Cabinet by a Minister; or
- (d) it is, or forms part of, an official record of Cabinet; or
- (e) its disclosure would involve the disclosure of any consideration of Cabinet or could otherwise prejudice the confidentiality of Cabinet considerations or operations; or
- (f) it is a draft of matter mentioned in paragraphs (a) to (e); or
- (g) it is a copy of or extract from, or part of a copy of or extract from, matter mentioned in paragraphs (a) to (f).

(2) Subsection (1) does not apply to matter officially published by decision of Cabinet.

(3) A certificate signed by the Minister stating that specified matter would, if it existed, be exempt matter mentioned in subsection (1), but not matter mentioned in subsection (2), establishes, subject to part 5,<sup>1</sup> that, if the matter exists, it is exempt matter under this section.

(4) In this section—

“**Cabinet**” includes a Cabinet committee or subcommittee.

“**chief executive**” means a chief executive of a unit of the public sector.

“**consideration**” includes—

- (a) discussion, deliberation, noting (with or without discussion) or decision; and
- (b) consideration for any purpose, including, for example, for information or to make a decision.

“**draft**” includes a preliminary or working draft.

“**official record**”, of Cabinet, includes an official record of matters submitted to Cabinet.

“**submit**” matter to Cabinet includes bring the matter to Cabinet, irrespective of the purpose of submitting the matter to Cabinet, the nature of the matter or the way in which Cabinet deals with the matter.

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<sup>1</sup> Part 5 deals with the external review of decisions.

**Executive Council matter**

**37.(1)** Matter is exempt matter if—

- (a) it has been submitted to Executive Council; or
- (b) it was prepared for submission to Executive Council and is proposed, or has at any time been proposed, by a Minister to be submitted to Executive Council; or
- (c) it was prepared for briefing, or the use of, the Governor, a Minister or a chief executive in relation to a matter—
  - (i) submitted to Executive Council; or
  - (ii) that is proposed, or has at any time been proposed, to be submitted to Executive Council by a Minister; or
- (d) it is, or forms part of, an official record of Executive Council; or
- (e) its disclosure would involve the disclosure of any consideration of Executive Council or could otherwise prejudice the confidentiality of Executive Council considerations or operations; or
- (f) it is a draft of matter mentioned in paragraphs (a) to (e); or
- (g) it is a copy of or extract from, or part of a copy of or extract from, matter mentioned in paragraphs (a) to (f).

**(2)** Subsection (1) does not apply to matter officially published by decision of the Governor in Council.

**(3)** A certificate signed by the Minister stating that specified matter would, if it existed, be exempt matter mentioned in subsection (1), but not matter mentioned in subsection (2), establishes, subject to part 5, that, if the matter exists, it is exempt matter under this section.

**(4)** In this section—

**“chief executive”** means a chief executive of a unit of the public sector.

**“consideration”** includes—

- (a) discussion, deliberation, noting (with or without discussion) or decision; and
- (b) consideration for any purpose, including, for example, for information or to make a decision.

“**draft**” includes a preliminary or working draft.

“**official record**”, of Executive Council, includes an official record of matters submitted to Executive Council.

“**submit**” matter to Executive Council includes bring the matter to Executive Council, irrespective of the purpose of submitting the matter to Executive Council, the nature of the matter or the way in which Executive Council deals with the matter.

### **Matter affecting relations with other governments**

**38.** Matter is exempt matter if its disclosure could reasonably be expected to—

- (a) cause damage to relations between the State and another government; or
- (b) divulge information of a confidential nature that was communicated in confidence by or on behalf of another government;

unless its disclosure would, on balance, be in the public interest.

### **Matter relating to investigations by parliamentary commissioner or audits by Auditor-General etc.**

**39.** Matter is exempt matter if its disclosure could reasonably be expected to prejudice the conduct of—

- (a) an investigation by the parliamentary commissioner; or
- (b) an audit by the Auditor-General;

unless its disclosure would, on balance, be in the public interest.

(2) Matter is also exempt matter if its disclosure is prohibited by the *Financial Administration and Audit Act 1977*, section 92 unless disclosure is required by a compelling reason in the public interest.

### **Matter concerning certain operations of agencies**

**40.** Matter is exempt matter if its disclosure could reasonably be expected to—

*Freedom of Information Act 1992*

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- (a) prejudice the effectiveness of a method or procedure for the conduct of tests, examinations or audits by an agency; or
- (b) prejudice the attainment of the objects of a test, examination or audit conducted by an agency; or
- (c) have a substantial adverse effect on the management or assessment by an agency of the agency's personnel; or
- (d) have a substantial adverse effect on the conduct of industrial relations by an agency;

unless its disclosure would, on balance, be in the public interest.

**Matter relating to deliberative processes**

**41.(1)** Matter is exempt matter if its disclosure—

- (a) would disclose—
  - (i) an opinion, advice or recommendation that has been obtained, prepared or recorded; or
  - (ii) a consultation or deliberation that has taken place; in the course of, or for the purposes of, the deliberative processes involved in the functions of government; and
- (b) would, on balance, be contrary to the public interest.

**(2)** Matter is not exempt under subsection (1) if it merely consists of—

- (a) matter that appears in an agency's policy document; or
- (b) factual or statistical matter; or
- (c) expert opinion or analysis by a person recognised as an expert in the field of knowledge to which the opinion or analysis relates.

**(3)** Matter is not exempt under subsection (1) if it consists of—

- (a) a report of a prescribed body or organisation established within an agency; or
- (b) the record of, as a formal statement of the reasons for, a final decision, order or ruling given in the exercise of—
  - (i) a power; or

- (ii) an adjudicative function; or
- (iii) a statutory function; or
- (iv) the administration of a publicly funded scheme.

**Matter relating to law enforcement or public safety**

**42.(1)** Matter is exempt matter if its disclosure could reasonably be expected to—

- (a) prejudice the investigation of a contravention or possible contravention of the law (including revenue law) in a particular case; or
- (b) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; or
- (c) endanger a person's life or physical safety; or
- (d) prejudice a person's fair trial or the impartial adjudication of a case; or
- (e) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law (including revenue law); or
- (f) prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety; or
- (g) endanger the security of a building, structure or vehicle; or
- (h) prejudice a system or procedure for the protection of persons, property or environment; or
- (i) facilitate a person's escape from lawful custody; or
- (j) prejudice the wellbeing of a cultural or natural resource or the habitat of animals or plants.

**(2)** Matter is not exempt under subsection (1) if—

- (a) it consists of—
  - (i) matter revealing that the scope of a law enforcement



*Freedom of Information Act 1992*

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investigation has exceeded the limits imposed by law; or

- (ii) matter containing a general outline of the structure of a program adopted by an agency for dealing with a contravention or possible contravention of the law; or
- (iii) a report on the degree of success achieved in a program adopted by an agency for dealing with a contravention or possible contravention of the law; or
- (iv) a report prepared in the course of a routine law enforcement inspection or investigation by an agency whose functions include that of enforcing the law (other than the criminal law or the law relating to misconduct or official misconduct within the meaning of the *Criminal Justice Act 1989*); or
- (v) a report on a law enforcement investigation that has already been disclosed to the person or body the subject of the investigation; and

(b) its disclosure would, on balance, be in the public interest.

(3) A certificate signed by the Minister stating that a specified matter would, if it existed, be exempt matter mentioned in subsection (1), but not matter mentioned in subsection (2), establishes, subject to part 5, that, if the matter exists, it is exempt matter under this section.

(4) A reference in this section to a contravention or possible contravention of the law includes a reference to misconduct or official misconduct, or possible misconduct or official misconduct, within the meaning of the *Criminal Justice Act 1989*.

(5) In this section—

“law” includes law of the Commonwealth, another State, a Territory or a foreign country.

### **Matter affecting legal proceedings**

**43.(1)** Matter is exempt matter if it would be privileged from production in a legal proceeding on the ground of legal professional privilege.

(2) Matter is not exempt under subsection (1) merely because it appears in an agency’s policy document.

**Matter affecting personal affairs**

**44.(1)** Matter is exempt matter if its disclosure would disclose information concerning the personal affairs of a person, whether living or dead, unless its disclosure would, on balance, be in the public interest.

(2) Matter is not exempt under subsection (1) merely because it relates to information concerning the personal affairs of the person by whom, or on whose behalf, an application for access to a document containing the matter is being made.

(3) If—

- (a) an application is made to an agency or Minister for access to a document of the agency or an official document of the Minister that contains information of a medical or psychiatric nature concerning the person making the application; and
- (b) it appears to the principal officer of the agency or the Minister that the disclosure of the information to the person might be prejudicial to the physical or mental health or wellbeing of the person;

the principal officer or Minister may direct that access to the document is not to be given to the person but is to be given instead to a qualified medical practitioner nominated by the person and approved by the principal officer or Minister.

(4) An agency or Minister may appoint a qualified medical practitioner to make a decision under subsection (3) on behalf of the agency or Minister.

**Matter relating to trade secrets, business affairs and research**

**45.(1)** Matter is exempt matter if—

- (a) its disclosure would disclose trade secrets of an agency or another person; or
- (b) its disclosure—
  - (i) would disclose information (other than trade secrets) that has a commercial value to an agency or another person; and
  - (ii) could reasonably be expected to destroy or diminish the commercial value of the information; or

(c) its disclosure—

- (i) would disclose information (other than trade secrets or information mentioned in paragraph (b)) concerning the business, professional, commercial or financial affairs of an agency or another person; and
- (ii) could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of such information to government;

unless its disclosure would, on balance, be in the public interest.

(2) Matter is not exempt under subsection (1) merely because it concerns the business, professional, commercial or financial affairs of the person by, or on whose behalf, an application for access to the document containing the matter is being made.

(3) Matter is exempt matter if—

- (a) it would disclose the purpose or results of research (including research that is yet to be started or finished); and
- (b) its disclosure could reasonably be expected to have an adverse effect on the agency or other person by or on whose behalf the research is being, or is intended to be, carried out.

(4) Matter is not exempt under subsection (3) merely because it concerns research that is being, or is intended to be, carried out by the agency or other person by, or on whose behalf, an application for access to the document containing the matter is being made.

### **Matter communicated in confidence**

**46.(1)** Matter is exempt if—

- (a) its disclosure would found an action for breach of confidence; or
- (b) it consists of information of a confidential nature that was communicated in confidence, the disclosure of which could reasonably be expected to prejudice the future supply of such information, unless its disclosure would, on balance, be in the public interest.

(2) Subsection (1) does not apply to matter of a kind mentioned in

section 41(1)(a) unless its disclosure would found an action for breach of confidence owed to a person or body other than—

- (a) a person in the capacity of—
  - (i) a Minister; or
  - (ii) a member of the staff of, or a consultant to, a Minister; or
  - (iii) an officer of an agency; or
- (b) the State or an agency.

### **Matter affecting the economy of State**

**47.(1)** Matter is exempt matter if its disclosure could reasonably be expected—

- (a) to have a substantial adverse effect on the ability of government to manage the economy of the State; or
- (b) to expose any person or class of persons to an unfair advantage or disadvantage because of the premature disclosure of information concerning proposed action or inaction of the Legislative Assembly or government in the course of, or for the purpose of, managing the economy of the State;

unless its disclosure would, on balance, be in the public interest.

**(2)** Without limiting subsection (1)(a), that paragraph applies to matter the disclosure of which would reveal—

- (a) the consideration of a contemplated movement in government taxes, fees or charges; or
- (b) the imposition of credit controls.

### **Matter to which secrecy provisions of enactments apply**

**48.(1)** Matter is exempt matter if its disclosure is prohibited by an enactment mentioned in the schedule 1 unless disclosure is required by a compelling reason in the public interest.

**(2)** Matter is not exempt under subsection (1) if it relates to information concerning the personal affairs of the person by whom, or on whose behalf,

an application for access to the document containing the matter is being made.

### **Matter affecting financial or property interests**

**49.** Matter is exempt matter if its disclosure could reasonably be expected to have a substantial adverse effect on the financial or property interests of the State or an agency unless its disclosure would, on balance, be in the public interest.

### **Matter disclosure of which would be contempt of Parliament or contempt of court**

**50.** Matter is exempt matter if its public disclosure would, apart from this Act and any immunity of the Crown—

- (a) be in contempt of court; or
- (b) be contrary to an order made or direction given by—
  - (i) a royal commission or commission of inquiry; or
  - (ii) a person or body having power to take evidence on oath; or
- (c) infringe the privileges of—
  - (i) Parliament; or
  - (ii) the Parliament of the Commonwealth or a State or a House of such a Parliament; or
  - (iii) the Legislative Assembly of the Australian Capital Territory, the Northern Territory or Norfolk Island.

### *Division 3—Consultation*

### **Disclosure that may reasonably be expected to be of substantial concern**

**51.(1)** An agency or Minister may give access to a document that contains matter the disclosure of which may reasonably be expected to be of substantial concern to a government, agency or person only if the agency or

*Freedom of Information Act 1992*

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Minister has taken such steps as are reasonably practicable to obtain the views of the government, agency or person concerned about whether or not the matter is exempt matter.

(2) If—

- (a) the agency or Minister decides, after having sought the views of the government, agency or person concerned, that the matter is not exempt matter; and
- (b) that government, agency or person believes that the matter is exempt matter;

the agency or Minister must—

- (c) give written notice to the government, agency or person concerned of—
  - (i) the decision of the agency or Minister; and
  - (ii) the reasons for the decision; and
  - (iii) the rights of review conferred by this Act in relation to the decision; and
  - (iv) the procedures to be followed in exercising those rights; and
- (d) give written notice to the applicant of the decision; and
- (e) defer giving access to the document until after the end of the period within which any application for review under this Act may be made or, if such an application is made, until after the application is finally disposed of.

(3) In this section—

“**person concerned**”, in relation to a person who has died, means the person’s closest relative.

*Division 4—Internal review***Internal review**

**52.(1)** A person who is aggrieved by a decision under this part is entitled to a review of the decision.

**(2)** An application for review of a decision must—

- (a) be in writing; and
- (b) specify an address in Australia to which notices under this Act may be sent to the applicant; and
- (c) be lodged at an office of the agency within 28 days after the day on which notice of the decision was given to the applicant or within such further time as the agency's principal officer allows (whether before or after the end of that period).

**(3)** A person is not entitled to a review under this section of a decision made—

- (a) on an application made under this section; or
- (b) by an agency's principal officer; or
- (c) by a Minister.

**(4)** An application under this section is to be dealt with as if it were an application for access to a document under section 25.

**(5)** An application under this section must not be dealt with by—

- (a) the person who dealt with the original application; or
- (b) a person who is less senior than that person.

**(6)** If an agency or a delegate of the Minister does not decide an application and notify the applicant of the decision within 14 days after receiving it, the agency or the delegate is taken to have made a decision at the end of the period affirming the original decision.

**(7)** A person is aggrieved by a decision—

- (a) if the decision relates to an application made by the person under section 25 and is to the effect that—
  - (i) the agency or a delegate of the Minister refuses to give the applicant access to a document; or
  - (ii) access to a document is to be given to the applicant subject to deferral; or
  - (iii) access to a document is to be given to the applicant subject to the deletion of exempt matter; or

- (iv) access to a document is to be given to the applicant subject to a charge for making the application, or for giving access to a document, that the applicant considers to be unreasonable; or
  - (v) a charge for making the application, or for giving access to a document, that the applicant considers to have been unreasonably incurred is payable by the applicant; or
- (b) if the decision relates to an application by another person under section 25 for access to a document and—
- (i) the agency should have taken, but has not taken, such steps as are reasonably practicable to obtain the views of the person as to whether or not the document contained matter that is exempt matter; or
  - (ii) the agency has obtained the views of the person but the decision is not in accordance with the views.

## **PART 4—AMENDMENT OF INFORMATION**

### *Division 1—Application for amendment of information*

#### **Person may request amendment of information**

**53.** If a person has had access to a document from an agency or Minister (whether or not under this Act) containing information relating to—

- (a) the person's personal affairs; or
- (b) the personal affairs of a deceased person to whom the person is next of kin;

the person is entitled to apply to the agency or Minister for correction or amendment of any part of the information if it is inaccurate, incomplete, out-of-date or misleading.



**Form of application for amendment of information**

**54.** An application under section 53 must—

- (a) be in writing; and
- (b) specify an address to which a notice under section 57 may be sent to the applicant; and
- (c) give particulars of the matters in relation to which the applicant believes the information kept by the agency or Minister is inaccurate, incomplete, out-of-date or misleading; and
- (d) specify the amendments that the applicant wishes to be made.

**Agency or Minister may amend information**

**55.** If an agency or Minister to whom an application is made under section 53 decides to amend the information to which the application relates, the agency or Minister may make the amendment by—

- (a) altering the information; or
- (b) adding an appropriate notation to the information.

**Notation to information**

**56.** If an agency or Minister adds a notation to information, the notation must—

- (a) specify the respects in which the information is inaccurate, incomplete, out-of-date or misleading; and
- (b) if the information is claimed to be incomplete or out-of-date—set out such information as is required to complete the information or bring it up-to-date.

**Time within which agency or Minister must notify applicant**

**57.** If an application is made to an agency or Minister under section 53, the agency or Minister must take all reasonable steps to enable the applicant to be notified of a decision on the application as soon as practicable after, but in any case not later than 30 days after, the day on which the application is received.

**Decision to be made by authorised person and reasons given**

**58.(1)** Section 33 applies to an application made under section 53.

(2) Section 34(1)(a) and (2)(a), (f), (h) and (i) applies to a decision made under this part refusing to amend information in like way as it applies to a decision refusing to give access to a document.

**Certain notations required to be added**

**59.(1)** In this section—

“agency” includes a Minister.

(2) If an agency has refused to amend information, the applicant may, whether or not the applicant has applied to the commissioner for review of the decision, by written notice, require the agency to add to the information a notation—

- (a) specifying the respects in which the applicant claims the information to be inaccurate, incomplete, out-of-date or misleading; and
- (b) if the applicant claims the information to be incomplete or out-of-date—setting out such information as the applicant claims is necessary to complete the information or to bring it up-to-date.

(3) An agency must comply with the requirements of a notice under this section, and must cause written notice of the nature of the notation to be given to the applicant.

(4) If an agency discloses to a person (including another agency and a Minister) any information contained in the part of its documents to which a notice under this section relates, the agency—

- (a) must ensure that there is given to the person, when the information is disclosed, a statement—
  - (i) stating that the person, or next of kin of the person, to whom the information relates claims that the information is inaccurate, incomplete, out-of-date or misleading; and
  - (ii) setting out particulars of the notation added under this section; and
- (b) may include in the statement the reason for the agency’s refusal to

amend the information as requested.

(5) This section is not intended to prevent or discourage agencies from giving particulars of a notation added to its documents under this section to a person (including another agency and a Minister) to whom information contained in the documents was given before the commencement of this section.

### *Division 2—Internal review*

#### **Internal review**

**60.(1)** A person who is aggrieved by a decision of an agency under this part is entitled to a review of the decision.

(2) An application for review of a decision must—

- (a) be in writing; and
- (b) specify an address in Australia to which notices under this Act may be sent to the applicant; and
- (c) be lodged at an office of the agency within 28 days after the day on which notice of the decision was given to the applicant or within such further time as the agency's principal officer allows (whether before or after the end of that period).

(3) A person is not entitled to a review under this section of a decision made—

- (a) on an application made under this section; or
- (b) by an agency's principal officer.

(4) An application under this section is to be dealt with as if it were an application under section 53.

(5) An application under this section must not be dealt with by—

- (a) the person who dealt with the original application; or
- (b) a person who is less senior than that person.

(6) If an agency does not decide an application under this section within 14 days after receiving it, the agency is taken to have made a decision at the

end of the period refusing to amend the information to which the application relates.

- (7) A person is aggrieved by a decision if the decision—
- (a) relates to an application made by the person under section 53; and
  - (b) is to the effect that the agency refuses to amend information under the application.

## **PART 5—EXTERNAL REVIEW OF DECISIONS**

### *Division 1—Information Commissioner*

#### **Information Commissioner**

**61.(1)** An office of Information Commissioner is established.

(2) The parliamentary commissioner is to be the Information Commissioner unless another person is appointed as the Information Commissioner by the Governor in Council on an address from the Legislative Assembly.

(3) The *Public Service Act 1996* does not apply to the appointment of a person as the Information Commissioner.

(4) The appointment of a person as Information Commissioner is not invalid merely because of a defect or irregularity in or in relation to the appointment.

(5) Sections 62 to 69 do not apply to the parliamentary commissioner if the parliamentary commissioner is the Information Commissioner.

#### **Terms and conditions of appointment**

**62.(1)** Subject to this division, the commissioner holds office for such term (not longer than 3 years) as is specified in the instrument of appointment.

(2) The commissioner holds office on such terms and conditions in

relation to matters not provided for by this Act as are determined by the Governor in Council.

(3) If an officer of the public service is appointed as the Information Commissioner, the person retains, and is entitled to, all rights that have accrued to the person because of employment as an officer of the public service, or that would accrue in the future to the person because of that employment, as if service as the Information Commissioner were a continuation of service as an officer of the public service.

(4) If the person has not attained 65 years at the time of the end of the person's term of office or resignation—

- (a) the person is entitled to be appointed to an office in the public service at a salary level not less than the salary level, at that time, of an office equivalent to the one the person held before being appointed as the Information Commissioner; and
- (b) the person's service as the Information Commissioner is to be regarded as service as an officer in the public service for the purpose of determining the person's rights as an officer of the public service.

### **Remuneration of commissioner**

63.(1) The commissioner is to be paid such remuneration and allowances as are determined by the Governor in Council.

(2) The commissioner's remuneration must not, without the written consent of the commissioner, be reduced during the commissioner's term of office.

### **Leave of absence**

64. The commissioner is entitled to such leave of absence as the Governor in Council determines.

### **Outside employment**

65. The commissioner must not engage in paid employment outside the duties of the office except with the approval of the Minister.

**Resignation**

**66.** The commissioner may resign by signed notice given to the Governor.

**Suspension and removal of the commissioner**

**67.(1)** The Governor may, on an address from the Legislative Assembly, remove the commissioner from office—

- (a) on the ground of proved incapacity, incompetence or misconduct; or
- (b) if the commissioner is convicted of an indictable offence.

**(2)** The motion for the address may be moved only by the Premier.

**(3)** The Premier may move the motion only if—

- (a) the Premier has given the commissioner a statement setting out the reasons for the motion; and
- (b) the statement and any written response by the commissioner have been tabled in the Legislative Assembly; and
- (c) the Premier has consulted with the parliamentary committee about the motion; and
- (d) agreement to the motion has been obtained from—
  - (i) all members of the parliamentary committee; or
  - (ii) a majority of members of the parliamentary committee (other than a majority consisting solely of the members of the political party or parties in government in the Assembly).

**(4)** The Governor in Council may suspend the commissioner from office—

- (a) on the ground of incapacity, incompetence or misconduct; or
- (b) if the commissioner is convicted of an indictable offence.

**(5)** When the Legislative Assembly is in session, the Governor in Council may suspend the commissioner only on an address from the Legislative Assembly.

**(6)** The motion for the address must comply with subsections (2)

and (3).

(7) When the Legislative Assembly is not in session, the Governor in Council may suspend the commissioner only if—

- (a) the Premier has given the commissioner a statement setting out the reasons for the suspension; and
- (b) the Premier has considered any response by the commissioner to the statement.

(8) The Premier must table the statement and any written response by the commissioner in the Legislative Assembly within 3 sitting days after the day the suspension begins.

(9) A suspension made when the Legislative Assembly is not in session ceases to have effect—

- (a) subject to paragraph (b), at the end of 7 sitting days after the day the suspension begins; or
- (b) if the commissioner is earlier suspended or removed from office on an address from the Legislative Assembly—at that earlier time.

(10) If the suspension ceases to have effect under subsection (9)(a), the commissioner is entitled to be paid salary and allowances for the period of the suspension.

(11) Except as provided in subsection (10), the commissioner is entitled to be paid salary and allowances for the period of a suspension only if—

- (a) the Legislative Assembly resolves that salary and allowances be paid for the period; or
- (b) the Governor in Council approves the payment of salary and allowances for the period.

### **Acting commissioner**

**68.** The Governor in Council may appoint a person to act as commissioner—

- (a) during a vacancy in the office; or
- (b) during any period, or all periods, when the commissioner is

absent from duty or from Australia, or is, for any other reason, unable to perform the functions of the office.

### **Oath of office**

**69.(1)** A person appointed as commissioner or acting commissioner must, before starting to perform the duties of the office, take an oath or affirmation that the person will faithfully and impartially perform the duties of the office, and that the person will not, except in accordance with this Act, divulge any information the person receives under this Act.

**(2)** The oath or affirmation is to be administered by the Speaker of the Legislative Assembly.

### ***Division 2—Staff of Information Commissioner***

#### **Staff of commissioner**

**70.(1)** The Governor in Council may appoint persons to be members of the staff of the Information Commissioner.

**(2)** The *Public Service Act 1996* does not apply to the staff of the Information Commissioner.

**(3)** The terms and conditions of service of members of the staff of the Information Commissioner are such as the Governor in Council determines.

**(4)** A member of the staff of the commissioner must, before commencing to perform duties, take an oath or affirmation, to be administered by the Information Commissioner, that the person will faithfully and impartially perform the duties of the office, and that the person will not, except in accordance with this Act, divulge any information the person receives under this Act.

**(5)** If an officer of the public service is appointed as a member of the staff of the Information Commissioner, the person retains, and is entitled to, all rights that have accrued to the person because of employment as an officer of the public service, or that would accrue in the future to the person because of that employment, as if service as a member of the staff of the Information Commissioner were a continuation of service as an officer of



the public service.

(6) If the person has not attained 65 years when the person resigns or otherwise ceases to be a member of the staff of the Information Commissioner (other than by death)—

- (a) the person is entitled to be appointed to an office in the public service at a salary level not less than the salary level, at that time, of an office equivalent to the one the person held before being appointed as a member of the staff of the Information Commissioner; and
- (b) the person's service as a member of the staff of the Information Commissioner is to be regarded as service as an officer in the public service for the purpose of determining the person's rights as an officer of the public service.

(7) If the parliamentary commissioner is the Information Commissioner, each member of the staff of the parliamentary commissioner is taken to be a member of the staff of the Information Commissioner.

### *Division 3—Functions of Information Commissioner*

#### **Functions of commissioner**

**71.(1)** The functions of the commissioner are to investigate and review decisions of agencies and Ministers of the following kinds—

- (a) decisions under section 20 not to publish statements of affairs or as to whether a statement of affairs complies with part 2;
- (b) decisions refusing to grant access to documents in accordance with applications under section 25;
- (c) decisions deferring providing access to documents;
- (d) decisions giving access to documents subject to the deletion of exempt matter;
- (e) decisions as to the amount of charges required to be paid before access to documents is granted, whether or not the charge has already been paid;
- (f) decisions—

*Freedom of Information Act 1992*

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- (i) to disclose documents contrary to the views of a person obtained under section 51; and
- (ii) to disclose documents if an agency or Minister should have taken, but has not taken, steps to obtain the views of a person under section 51; and
- (iii) not to amend information in accordance with applications under section 53.

(2) The functions of the commissioner also include investigating and reviewing the grounds for a decision to issue a certificate under section 36, 37 or 42.

(3) The commissioner has power to do all things that are necessary or convenient to be done for or in connection with the performance of the commissioner's functions.

*Division 4—Conduct of review***Procedure on review**

**72.(1)** On a review under this part—

- (a) the procedure to be followed is, subject to this Act, within the discretion of the commissioner; and
- (b) proceedings are to be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act and a proper consideration of the matters before the commissioner permits; and
- (c) the commissioner is not bound by the rules of evidence and may inform himself or herself on any matter in any way the commissioner considers appropriate.

(2) The commissioner may, during a review, give directions as to the procedure to be followed on the review.

**Applications for review**

**73.(1)** An application for review must—

- (a) be in writing; and
- (b) specify an address of the applicant to which notices may be sent under this Act; and
- (c) give particulars of the decision for review; and
- (d) be made—
  - (i) within 60 days; or
  - (ii) if the application is for review of a decision referred to in section 71(1)(f)(i)—within 28 days;

from the day on which written notice of the decision is given to the applicant, or within such longer period as the commissioner allows (whether before or after the end of that period).

(2) The application may contain particulars of the basis on which the applicant disputes the decision under review.

(3) A person is not entitled to apply to the commissioner for review of a decision (other than a decision of a Minister or the principal officer of an agency) unless—

- (a) an application has been made (whether by the person or another person) under section 52 or 60 in relation to the decision; and
- (b) the person has been informed of the result of that review or the period of 14 days mentioned in section 52(6) or 60(6) has ended.

### **Commissioner to notify**

**74.(1)** Before starting a review, the commissioner must—

- (a) inform the applicant and the agency or Minister concerned; and
- (b) take such steps as are practicable to inform another person who the commissioner considers would be affected by the decision the subject of the review;

that the decision is to be reviewed.

(2) The commissioner is not obliged to inform a person mentioned in subsection (1)(b) if, in the commissioner's opinion, informing the person may cause the person undue distress or otherwise adversely affect the physical or mental wellbeing of the person.

**Preliminary inquiries**

**75.** If an application has been made to the commissioner, the commissioner may, for the purpose of determining—

- (a) whether the commissioner has power to review the matter to which the application relates; or
- (b) whether the commissioner may decide not to review the matter;

make inquiries of the applicant or the agency or Minister concerned.

**Inspection of exempt documents by commissioner**

**76.(1)** The commissioner may require the production of a document or matter for inspection for the purpose of enabling the commissioner to determine—

- (a) whether the document or matter is exempt; or
- (b) if a document in the possession of a Minister is claimed by the Minister not to be an official document of the Minister—whether the document is an official document of the Minister.

**(2)** The commissioner must do all things necessary to ensure—

- (a) that a document or matter produced to the commissioner under subsection (1) is not disclosed to a person other than a member of the staff of the commissioner in the course of performing duties as a member of the staff; and
- (b) the return of the document or matter to the person who produced it at the end of the review.

**Commissioner may decide not to review**

**77.(1)** The commissioner may decide not to review, or not to review further, a decision in relation to which an application has been made under section 73 if the commissioner is satisfied that the application is frivolous, vexatious, misconceived or lacking in substance.

**(2)** If the commissioner decides not to review, or not to review further, a matter to which an application relates, the commissioner must, as soon as practicable and in such way as the commissioner considers appropriate,

inform—

- (a) the applicant; and
- (b) the agency or Minister concerned; and
- (c) any other person informed under section 74(1)(b);

in writing, of the decision and of the reasons for the decision.

### **Participants in review**

**78.(1)** The applicant and the agency or Minister concerned are participants in a review.

**(2)** Any person affected by the decision the subject of the review (including, if the review concerns matter that is claimed to be exempt matter, a person whose views must be sought under section 51 in relation to the matter) may apply to the commissioner to participate in the review.

**(3)** The commissioner may allow such a person to participate in the review in such way as the commissioner directs.

### **Applications where decisions delayed**

**79.(1)** Subject to this section, if—

- (a) an application has been made to an agency or Minister under this Act; and
- (b) the time period provided in section 20(2), 27(4) or 57 has ended; and
- (c) notice of a decision on the application has not been received by the applicant;

the principal officer of the agency or the Minister is, for the purpose of enabling an application to be made to the commissioner under section 73, taken to have made a decision on the last day of the relevant time period refusing—

- (d) to publish a statement of affairs under section 20, or to ensure that a statement of affairs complies with part 2; or
- (e) to grant access to the document; or

(f) to amend the information.

(2) If an application is made under this section, the commissioner may, on the application of the agency or Minister concerned, allow further time to the agency or Minister to deal with the application.

(3) A decision under subsection (2) may be made subject to such conditions as the commissioner considers appropriate, including a condition that, if a decision is made during the further time to grant access to a document, any charge that was required to be paid before access is granted must be reduced or waived.

(4) A reference in this section to an application made to an agency or Minister under this Act includes a reference to a notice served on a principal officer under section 20(1).

### **Mediation**

**80.(1)** The commissioner may, at any time during a review, try to effect a settlement between the participants.

(2) The commissioner may suspend a review at any time to allow the participants in the review to negotiate a settlement.

### **Onus to lie with agencies and Ministers**

**81.** On a review by the commissioner, the agency which or Minister who made the decision under review has the onus of establishing that the decision was justified or that the commissioner should give a decision adverse to the applicant.

### **Requirement to provide better reasons**

**82.** If—

- (a) an application under section 73 is made for review of a decision of an agency or a Minister; and
- (b) the agency or Minister was required to provide a statement to the applicant of the reasons for the decision; and
- (c) the commissioner considers that the statement is not adequate;

the commissioner may require the agency or Minister to provide to the applicant and the commissioner an additional statement, as soon as practicable, but in any case within 28 days, containing further and better particulars in relation to the matters set out in the first statement.

### **Conduct of reviews**

**83.(1)** Subject to subsection (2), if, during a review, the commissioner proposes to—

- (a) allow a participant to make oral submissions; or
- (b) take evidence on oath or affirmation;

that part of the review is to be conducted in public unless the commissioner otherwise determines.

**(2)** The commissioner may, for the purposes of a review, obtain information from such persons, and make such inquiries, as the commissioner considers appropriate.

**(3)** In conducting a review, the commissioner must—

- (a) adopt procedures that are fair, having regard to the obligations of the commissioner under this Act; and
- (b) ensure that each participant has an opportunity to present the participant's views to the commissioner;

but, subject to paragraph (a), it is not necessary for a participant to be given an opportunity to appear before the commissioner.

**(4)** If the commissioner gives a participant an opportunity to appear before the commissioner, the participant may, with the approval of the commissioner, be represented by another person.

**(5)** If—

- (a) the commissioner has decided under section 74(2) not to notify a person of the review; and
- (b) it later becomes apparent to the commissioner that documents in which the person has an interest are likely to be released;

the commissioner must take reasonable steps to notify the person of the

likely release if the release may reasonably be expected to be of substantial concern to the person.

### **Review of Minister's certificates**

**84.(1)** If a certificate has been given in respect of matter under section 36, 37 or 42, the commissioner may, on the application of an applicant for review, consider the grounds on which the certificate was given.

**(2)** If, after considering the matter, the commissioner is satisfied that there were no reasonable grounds for the issue of the certificate, the commissioner must—

- (a) make a written decision to that effect; and
- (b) include in the decision the reasons for the decision.

**(3)** A certificate the subject of a decision under subsection (2) ceases to have effect at the end of 28 days after the decision was made unless, before that time, the Minister notifies the commissioner in writing that the certificate is confirmed.

**(4)** The Minister must cause a copy of a notice given under subsection (3) to be—

- (a) tabled in the Legislative Assembly within 5 sitting days after it was given; and
- (b) given to the applicant.

**(5)** A notice under subsection (3) must specify the reasons for the decision to confirm the certificate.

**(6)** If the Minister withdraws a certificate the subject of a decision under subsection (2) before the end of the period of 28 days mentioned in subsection (3), the Minister must, as soon as practicable, notify the commissioner and each participant.

### **Power to obtain information and documents and compel attendance**

**85.(1)** If the commissioner has reason to believe that a person has information or a document relevant to a review under this division, the commissioner may give to the person a written notice requiring the person—



- (a) to give the information to the commissioner in writing signed by the person or, in the case of a body corporate, by an officer of the body corporate; or
- (b) to produce the document to the commissioner.

(2) The notice must state—

- (a) the place at which the information or document is to be given or produced to the commissioner; and
- (b) a reasonable time at which, or a reasonable period within which, the information or document is to be given or produced.

(3) If the commissioner has reason to believe that a person has information relevant to a review under this division, the commissioner may give to the person a written notice requiring the person to attend before the commissioner at a reasonable time and place specified in the notice to answer questions relevant to the review.

### **Power to examine witnesses**

**86.(1)** The commissioner may administer an oath or affirmation to a person required under section 85 to attend before the commissioner and may examine such a person on oath or affirmation.

(2) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the answers the person will give will be true.

### **Commissioner to ensure non-disclosure of certain matter**

**87.(1)** On a review, the commissioner may give such directions as the commissioner considers necessary in order to avoid the disclosure to the applicant or the applicant's representative of exempt matter or information of the kind mentioned in section 35.

(2) The commissioner—

- (a) must not, in a decision on a review or in reasons for such a decision, include matter or information of a kind mentioned in subsection (1); and
- (b) may receive evidence, or hear argument, in the absence of a

participant or a representative of a participant if it is necessary to do so to prevent disclosure to that person of matter or information of that kind.

(3) If an application under section 73 relates to a document or part of a document access to which has been refused under section 36, 37 or 42, the commissioner may give findings in terms that neither confirm nor deny the existence of the document.

### **Powers of commissioner on review**

**88.(1)** In the conduct of a review, the commissioner has, in addition to any other power, power to—

- (a) review any decision that has been made by an agency or Minister in relation to the application concerned; and
- (b) decide any matter in relation to the application that could, under this Act, have been decided by an agency or Minister;

and any decision of the commissioner under this section has the same effect as a decision of the agency or Minister.

(2) If it is established that a document is an exempt document, the commissioner does not have power to direct that access to the document is to be granted.

### **Decisions of commissioner**

**89.(1)** The commissioner, after conducting a review of a decision (other than a review under section 84), must make a written decision—

- (a) affirming the decision; or
- (b) varying the decision; or
- (c) setting aside the decision and making a decision in substitution for the decision.

(2) The commissioner must include in the decision the reasons for the decision.

(3) The commissioner must give a copy of the decision to each participant.

**(4) If—**

- (a) a document is to be released because of the review; and
- (b) the commissioner has notified a person under section 83(5) and the person did not become a participant in the review;

the commissioner must take reasonable steps to notify the person of the release.

- (5) The commissioner may arrange to have decisions published.

***Division 5—Miscellaneous*****Delegation**

**90.** The commissioner may delegate to a member of the commissioner's staff all or any of the commissioner's powers under this Act, other than the power to compel the production of matter that is the subject of a certificate under section 36, 37 or 42.

**Protection of commissioner etc. from personal liability**

**91.(1)** The commissioner, or a member of the commissioner's staff, incurs no civil liability for an act or omission done or omitted to be done, honestly and without negligence under, or for the purposes of, this Act.

**(2)** A liability that would, but for this section, attach to the commissioner or a member of the commissioner's staff attaches to the State.

**Restrictions under other laws not applicable**

**92.(1)** No obligation to maintain secrecy or other restriction on the disclosure of information obtained by or given to agencies or Ministers, whether imposed under an enactment or a rule of law, applies to the disclosure of information to the commissioner for the purposes of a review under this part.

**(2)** Legal professional privilege does not apply to the production of documents or the giving of evidence by a member of an agency or a Minister for the purposes of a review under this part.

(3) Subject to subsections (1) and (2), every participant in a review has the same privileges in relation to the giving of evidence and producing documents and things that the person would have as a witness in a proceeding before a court.

### **Secrecy**

**93.** If a person who is or has been the commissioner or a member of the staff of the commissioner, otherwise than for the purposes of this Act or a proceeding arising under this Act, discloses any information that the person obtained in the course of the performance of functions under this Act or takes advantage of that information to benefit himself or herself or another person, the person commits an offence.

Maximum penalty—20 penalty units.

### **Failure to produce documents or attend proceedings**

**94.** A person given notice under section 85 to—

- (a) give information; or
- (b) produce a document; or
- (c) attend before the commissioner;

must not, without reasonable excuse, fail to do so.

Maximum penalty—20 penalty units.

### **Costs of review**

**95.** The costs incurred by a participant to a review are payable by the participant.

### **Disciplinary action**

**96.** If the commissioner, at the completion of a review, is of the opinion that—

- (a) there is evidence that an agency's officer has committed a breach of duty or misconduct in the administration of this Act; and

- (b) the evidence is, in all the circumstances, of sufficient force to justify doing so;

the commissioner must bring the evidence to the notice of—

- (c) if the person is the principal officer of an agency—the responsible Minister of the agency; or
- (d) in any other case—the principal officer of the agency.

### **Reference of questions of law to Supreme Court**

**97.(1)** The commissioner may, at the request of a participant in the review or on the commissioner's own initiative, refer a question of law arising on a review to the Supreme Court for decision.

**(2)** The Supreme Court has jurisdiction to hear and determine a question of law referred to it under this section.

**(3)** If a question of law is referred to the Supreme Court under this section, the commissioner must not—

- (a) make a decision on the review to which the question is relevant while the reference is pending; or
- (b) proceed in a way, or make a decision, that is inconsistent with the Supreme Court's opinion on the question.

### **Costs in proceedings**

**98.** If a proceeding arising out of the performance of the functions of the commissioner is instituted by the State, the reasonable costs of a party to the proceeding are to be paid by the State.

### **Commissioner may appear in proceedings**

**99.** The commissioner is entitled to appear and be heard in a proceeding arising out of the performance of the functions of the commissioner.

### **Intervention by Attorney-General**

**100.(1)** The Attorney-General may, on behalf of the State, intervene in a

proceeding before a court arising out of the performance of the functions of the commissioner under this Act.

- (2) If the Attorney-General intervenes—
- (a) the court may make such order as to costs against the State as the court considers appropriate; and
  - (b) the Attorney-General becomes a party to the proceeding.

### **Reports of commissioner**

**101.(1)** The commissioner may make a report to the Speaker on matters relating to a particular review.

(2) The commissioner must, as soon as practicable after the end of each financial year, submit to the Speaker and parliamentary committee a report of the operations of the commissioner during that year.

(3) The parliamentary committee may require the commissioner to prepare and submit to the committee a report on a particular aspect of the performance of the commissioner's functions.

(4) If a report of the commissioner is submitted to the Speaker or the parliamentary committee, the Speaker or the chairperson of the committee must cause the report to be tabled in the Legislative Assembly on the next sitting day after it is submitted.

## **PART 6—MISCELLANEOUS**

### **Protection against actions for defamation or breach of confidence**

- 102.(1)** If access has been given to a document and—
- (a) the access was required or permitted by this Act to be given; or
  - (b) the access was authorised by a Minister, or by an officer having authority under section 33 to make decisions in relation to applications, in the genuine belief that the access was required or permitted to be given by this Act;

then—

- (c) no action for defamation or breach of confidence lies against the State, an agency, a Minister or an officer because of the authorising or giving of the access; and
- (d) no action for defamation or breach of confidence in relation to any publication involved in, or resulting from, the giving of the access lies against the author of the document or another person because of the author or another person having supplied the document to an agency or Minister.

(2) The giving of access to a document (including an exempt document) because of an application must not be taken for the purposes of the law relating to defamation or breach of confidence to constitute an authorisation or approval of the publication of the document or its contents by the person to whom access is given.

### **Protection in respect of offences**

**103.** If access has been given to a document and—

- (a) the access was required or permitted by this Act to be given; or
- (b) the access was authorised by a Minister, or by an officer having authority under section 33 to make decisions in relation to applications, in the genuine belief that the access was required or permitted to be given by this Act;

neither the person authorising the access nor any other person concerned in the giving of the access commits a criminal offence merely because of authorising or giving of the access.

### **Protection of agency etc. from personal liability**

**104.(1)** Neither—

- (a) an agency, an agency's principal officer or a Minister; nor
- (b) a person acting under the direction of an agency, an agency's principal officer or a Minister;

incurs civil liability for an act or omission done or omitted to be done honestly and without negligence under, or for the purposes of, this Act.

(2) A liability that would, but for this section, attach to a body or person mentioned in subsection (1) attaches instead to the State.

### **Precautions**

**105.** If an application is made under section 25 for documents that relate to the personal affairs of a person, and the documents contain matter that would be exempt matter if the application was made by a person other than the first person or the person's agent, an agency or Minister—

- (a) must not give access to the information unless the agency or the Minister is satisfied of the identity of the applicant; and
- (b) must ensure, by the adoption of appropriate procedures, that any information intended for the applicant is received—
  - (i) if the applicant is an agent of a person—only by the person or the agent; or
  - (ii) in any other case—only by the applicant; and
- (c) must ensure that, if the applicant is an agent of a person, the agent has the written authority of the person to obtain the information or is otherwise properly authorised by the person to obtain the information.

### **Offence of unlawful access**

**106.** A person who, in order to gain access to a document containing matter relating to the personal affairs of another person, knowingly deceives or misleads a person exercising powers under this Act, commits an offence.

Maximum penalty—20 penalty units.

### **Application of Parliamentary Commissioner Act**

**107.** The *Parliamentary Commissioner Act 1974* does not apply to—

- (a) the Information Commissioner; or
- (b) decisions that could be the subject of review by the Information Commissioner under this Act.



**Report to Legislative Assembly by agencies and Ministers**

**108.(1)** The Minister administering this Act shall, as soon as practicable after the end of each financial year, prepare a report on the operation of this Act during that year and cause a copy of the report to be tabled in the Legislative Assembly.

(2) The report is to include details of the difficulties (if any) encountered during the year by agencies and Ministers in the administration of this Act.

(3) Each responsible Minister must, in relation to the agencies within the Minister's portfolio and in relation to the Minister's official documents, comply with any prescribed requirements concerning that information and the keeping of records for the purposes of this section.

(4) A report under subsection (1) must include, in relation to the financial year to which it relates, particulars of the operations of each agency and Minister under this Act including, in relation to each agency and Minister—

- (a) the number of applications made to each agency and to each Minister; and
- (b) the number of decisions not to give access to a document, the provisions of this Act under which matter was classified as exempt and the number of times each provision was invoked; and
- (c) the name and designation of each officer with authority to make a decision in relation to an application, and the number of decisions made by each officer that an applicant was not entitled to access to a document on an application; and
- (d) the number of applications under sections 52 and 60 for review of a decision, and in relation to each application for review—
  - (i) the name of the officer who made the decision under review; and
  - (ii) the name and designation of the officer who conducted the review and the decision of the officer; and
  - (iii) if the officer conducting the review confirmed (in whole or part) a decision classifying matter as exempt matter—the provision of this Act under which that decision was made; and
- (e) the number of applications to the commissioner under section 73

and in relation to each application—

- (i) the decision of the commissioner; and
  - (ii) the details of any other decision made by the commissioner; and
  - (iii) if the decision in respect of which the application was made was a decision that an applicant is not entitled to access to a document in accordance with an application—the provision of this Act under which the matter was classified as exempt matter; and
- (f) the number of notices served upon the principal officer of the agency under section 20(1) and the number of decisions by the principal officer which were adverse to the person's claim; and
  - (g) particulars of any disciplinary action taken against an officer in relation to the administration of this Act; and
  - (h) the amount of charges collected by the agency or Minister; and
  - (i) particulars of any reading room or other facility provided by the agency or Minister for use by applicants or members of the community, and the publications, documents or other information regularly on display in that reading room or other facility; and
  - (j) any other facts that indicate an effort by the agency or Minister to implement and administer this Act.

## **Regulations**

**109.(1)** The Governor in Council may make regulations for the purposes of this Act.

**(2)** A regulation may make provision with respect to—

- (a) the application fee for an application for access to a document that does not concern the applicant's personal affairs; and
- (b) the making of charges of amounts, or the fixing of rates, for access to documents (including providing copies or transcripts) under this Act; and
- (c) the officers who may give decisions on behalf of an agency.

**SCHEDULE 1****SECURITY PROVISIONS GIVING EXEMPTION**

section 48 of the Act

*Adoption of Children Act 1964*, section 59(3)*Children's Services Act 1965*, section 144*Criminal Justice Act 1989*, section 83*Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987*, section 31(1)*Debits Tax Act 1990*, section 3.2 (to the extent it applies section 7(2) of the *Debits Tax Administration Act 1982* (Cwlth))

Financial Institutions Code, section 410

*Juvenile Justice Act 1992*, section 226*Maintenance Act 1965*, section 129*National Crime Authority (State Provisions) Act 1985*, sections 17 and 18 (so far as they apply to a summons or notice given under section 17 or 18 that includes a nondisclosure statement mentioned in section 18A)*Whistleblowers Protection Act 1994*, section 55(1).

**SCHEDULE 2****APPLICATION OF ACT TO GOCs**

section 11A of the Act

<b>GOC</b>	<b>Application provision</b>
1. Queensland Rail, or a port authority (within the meaning of the <i>Transport Infrastructure Act 1994</i> ), that is a GOC	<i>Transport Infrastructure Act 1994</i> , s 110A
1. A port authority, within the meaning of the <i>Transport Infrastructure Act 1994</i> , that is a GOC	<i>Transport Infrastructure Act 1994</i> , s 99
2. Queensland Investment Corporation	<i>Queensland Investment Corporation Act 1991</i> , s 37
4. State electricity entity, within the meaning of the <i>Electricity Act 1994</i>	<i>Electricity Act 1994</i> , s 256

**ENDNOTES****1 Index to endnotes**

	Page
2 Date to which amendments incorporated . . . . .	75
3 Key . . . . .	76
4 Table of earlier reprints . . . . .	76
5 Tables in earlier reprints . . . . .	77
6 List of legislation . . . . .	77
7 List of annotations . . . . .	78
8 Provisions that have not commenced and are not incorporated into reprint . .	80
9 Preambles from amending legislation . . . . .	81

**2 Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 4 February 1997. Future amendments of the Freedom of Information Act 1992 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

### 4 Table of earlier reprints

#### TABLE OF EARLIER REPRINTS

[If a reprint number includes an arabic letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	none	1 December 1992
2	to Act No. 32 of 1993	11 June 1993
3	to Act No. 59 of 1993	20 December 1993
4	to Act No. 68 of 1994	25 January 1995
5	to Act No. 19 of 1995	26 April 1995
5A	to Act No. 38 of 1995	7 August 1996

## 5 Tables in earlier reprints

### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed citations and remade laws	4
Changed names and titles	4
Corrected minor errors	1, 2, 5
Renumbered provisions	3

## 6 List of legislation

### **Freedom of Information Act 1992 No. 42**

date of assent 19 August 1992

pts 3–6 commenced 19 November 1992 (see s 2)

remaining provisions commenced on date of assent

as amended by—

### **Statute Law (Miscellaneous Provisions) Act 1993 No. 32 ss 1–3 sch 1**

date of assent 3 June 1993

commenced on date of assent

### **Freedom of Information Amendment Act 1993 No. 59**

date of assent 20 November 1993

commenced on date of assent

### **Freedom of Information (Review of Secrecy Provision Exemption) Amendment Act 1994 No. 34**

date of assent 12 August 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 20 August 1994 (see s 2)

### **Queensland Investment Corporation Amendment Act 1994 No. 38 pts 1, 3**

date of assent 14 September 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 1 October 1994 (see s 2 and 1994 SL No. 341 ss 2, 8)

### **Electricity Act 1994 No. 64 ss 1–2, 293 sch 4**

date of assent 1 December 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 1995 (1994 SL No. 467)

### **Whistleblowers Protection Act 1994 No. 68 ss 1–2, 62 sch 4**

date of assent 1 December 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 16 December 1994 (1994 SL No. 441)

**Freedom of Information Amendment Act 1995 No. 5**

date of assent 23 March 1995  
 commenced on date of assent

**National Crime Authority (State Provisions) Amendment Act 1995 No. 19  
 pts 1, 3**

date of assent 11 April 1995  
 commenced on date of assent

**Transport Infrastructure Amendment (Rail) Act 1995 No. 32 pt 1, s 23 sch**

date of assent 14 June 1995  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 1 July 1995 (see s 2(2), 1995 SL No. 162  
 ss 2(3), 19)

**Parliamentary Committees Act 1995 No. 38 ss 1, 35 sch 1**

date of assent 15 September 1995  
 commenced on date of assent

**State Financial Institutions and Metway Merger Facilitation Act 1996 No. 29 ss  
 1–2, 97 sch 2**

date of assent 10 September 1966  
 ss 1–2 commenced on date of assent  
 s 97 sch 2 commenced 1 December 1996 (see s 2(2), s 3 sch 3 and notice publ  
 gaz 29 November 1996 p 1257)

**Public Service Act 1996 No. 37 ss 1–2, 147 sch 2**

date of assent 22 October 1996  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 1 December 1996 (1996 SL No. 361)

**Justice Legislation (Miscellaneous Provisions) Act 1996 No. 79 pts 1, 14**

date of assent 12 December 1996  
 pt 1 commenced on date of assent  
 remaining provisions not yet proclaimed into force

**7 List of annotations****Definitions**

**s 7** def “**document**” sub 1995 No. 5 s 2 sch  
 def “**GOC**” ins 1994 No. 38 s 14  
 om 1995 No. 5 s 2 sch  
 def “**parliamentary committee**” ins 1995 No. 38 s 35 sch 1

**Act not to apply to certain bodies etc.**

**s 11** amd 1993 No. 32 s 3 sch 1; 1994 No. 38 s 15; 1995 No. 38 s 35 sch 1;  
 1996 No. 29 s 97 sch 2

**Application of Act to GOCs**

**s 11A** ins 1994 No. 38 s 16



**Notices to require specification of documents in statements**

**s 20** amd 1993 No. 32 s 3 sch 1

**Transfer of applications**

**s 26** amd 1993 No. 59 s 3

**How applications are dealt with**

**s 27** amd 1993 No. 32 s 3 sch 1

**Information as to existence of certain documents**

**s 35** amd 1995 No. 5 s 2 sch

**Cabinet matter**

**s 36** amd 1993 No. 59 s 4  
sub 1995 No. 5 s 3

**Executive Council matter**

**s 37** amd 1993 No. 59 s 5  
sub 1995 No. 5 s 3

**Matter relating to investigations by parliamentary commissioner or audits by Auditor-General etc.**

**prov hdg** amd 1994 No. 34 s 4(1)

**s 39** amd 1994 No. 34 s 4(2)

**Matter relating to law enforcement or public safety**

**s 42** amd 1995 No. 5 s 2 sch

**Matter to which secrecy provisions of enactments apply**

**s 48** sub 1994 No. 34 s 5

**Internal review**

**s 52** amd 1993 No. 32 s 3 sch 1; 1993 No. 59 s 6

**Information Commissioner**

**s 61** amd 1996 No. 37 s 147 sch 2

**Suspension and removal of the commissioner**

**s 67** sub 1995 No. 38 s 35 sch 1

**Staff of commissioner**

**s 70** amd 1996 No. 37 s 147 sch 2

**Functions of commissioner**

**s 71** amd 1993 No. 32 s 3 sch 1

**Applications for review**

**s 73** amd 1993 No. 32 s 3 sch 1

**Commissioner to notify**

**s 74** amd 1993 No. 59 s 7

**Applications where decisions delayed**

**s 79** amd 1993 No. 32 s 3 sch 1

**Conduct of reviews**

**s 83** amd 1993 No. 59 s 8

**Decisions of commissioner**

s 89 amd 1993 No. 59 s 9

**Reports of commissioner**

s 101 amd 1995 No. 38 s 35 sch 1

**Report to Legislative Assembly by agencies and Ministers**s 108 amd 1996 No. 79 s 44**PART 7—TRANSITIONAL PROVISIONS**pt hdg ins 1995 No. 5 s 4  
exp 23 March 1996 (see s 111)**Application of amendments made by Freedom of Information Amendment Act 1995 to earlier applications**s 110 ins 1995 No. 5 s 4  
exp 23 March 1996 (see s 111)  
AIA s 20A applies (see s 110(4))**Expiry of part**s 111 ins 1995 No. 5 s 4  
exp 23 March 1996 (see s 111)**SCHEDULE 1—SECURITY PROVISIONS GIVING EXEMPTION**ins 1994 No. 34 s 6  
amd 1994 No. 68 s 62 sch 4; 1995 No. 19 s 23**SCHEDULE 2—APPLICATION OF ACT TO GOCs**ins 1994 No. 38 s 17  
amd 1994 No. 64 s 293 sch 4; 1995 No. 32 s 23 sch; 1996 No. 29 s 97  
sch 2

## **8 Provisions that have not commenced and are not incorporated into reprint**

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992, s 5(c)).

**Justice Legislation (Miscellaneous Provisions) Act 1996, s 44 reads as follows—**

**Amendment of s 108 (Report to Legislative Assembly by agencies and Ministers)**

**44.** Section 108—

*insert—*

‘(5) It is sufficient compliance with subsection (1) if the department’s annual report for a financial year includes a report about the matters mentioned in this section.’.

## **9 Preambles from amending legislation**

**Freedom of Information Amendment Act 1993 No. 59 reads, in part, as follows—**

**Whereas—**

(1) The Westminster system of government is based on the responsibility of Cabinet to Parliament and Parliament to the electorate;

(2) The purpose of the convention of Ministerial responsibility under the Westminster system is to secure the collective responsibility of Ministers to Parliament;

(3) The collective responsibility of Ministers is only possible if Cabinet debate is candid and unrestricted;

(4) An object of Parliament in enacting the *Freedom of Information Act 1992* was to ensure that the convention of Ministerial responsibility was preserved;

(5) It is, therefore, the intention of Parliament to make provision, by amendments included in the amendments made by this Act, to remove any doubt that Cabinet documents and discussions are to receive a level of confidentiality appropriate to preserving the convention of Ministerial responsibility intended by Parliament;

**Freedom of Information (Review of Secrecy Provision Exemption) Amendment Act 1994 No. 34 reads, in part, as follows—**

**Parliament's reasons for enacting this Act are—**

1. In order to balance openness against legitimate claims for secrecy in the interest of people about whom the Government holds information and in the public interest, the *Freedom of Information Act 1992* (the “**FOI Act**”) allows exemptions from access to certain matters.

2. Section 48 of the FOI Act makes matter exempt if it falls within the terms of a specified type of secrecy provision (a “**section 48 secrecy**”

**provision”)** and its disclosure would, on balance, be contrary to public interest.

**3.** The exemption in section 48 operates only for 2 years from the FOI Act’s date of assent on 19 August 1992.

**4.** On a reference from the Government, the Queensland Law Reform Commission has reviewed existing secrecy provisions in Queensland legislation identified by Government departments.

**5.** The purpose of the review was to—

- (a) identify section 48 secrecy provisions; and
- (b) recommend whether the exemption from access given by each section 48 secrecy provision should continue.

**6.** As a result of its review, the Commission recommended that the exemption from access given by the section 48 secrecy provision in certain Acts should continue.

**7.** The Parliament of Queensland accepts the recommendation.

**8.** The Parliament of Queensland also considers the exemption from access given by the section 48 secrecy provision in section 83 of the *Criminal Justice Act 1989* should continue.