



Service Delivery and Performance Commission Act 2005

Reprinted as in force on 10 November 2005

Reprint No. 1

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the Office of the Queensland Parliamentary Counsel
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NOT FURTHER AMENDED
LAST REPRINT BEFORE REPEAL
See 2008 Act No. 38 s 223

Information about this reprint

This Act is reprinted as at 10 November 2005.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have been made to—

- omit provisions that are no longer required (s 40)
- omit the enacting words (s 42A)
- make all necessary consequential amendments (s 7(1)(k)).

This page is specific to this reprint. A table of reprints is included in the endnotes.

Also see endnotes for information about when provisions commenced.

Dates shown on reprints

Reprints dated at last amendment All reprints produced on or after 1 July 2002, hard copy and electronic, are dated as at the last date of amendment. Previously reprints were dated as at the date of publication. If a hard copy reprint is dated earlier than an electronic version published before 1 July 2002, it means the legislation was not further amended and the reprint date is the commencement of the last amendment.

If the date of a hard copy reprint is the same as the date shown for an electronic version previously published, it merely means that the electronic version was published before the hard copy version. Also, any revised edition of the previously published electronic version will have the same date as that version.

Replacement reprint date If the date of a hard copy reprint is the same as the date shown on another hard copy reprint it means that one is the replacement of the other.



Queensland

Service Delivery and Performance Commission Act 2005

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Service Delivery and Performance Commission Act 2005

[reprinted as in force on 10 November 2005]

An Act to provide for the establishment and operation of a Service Delivery and Performance Commission, and for other purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Service Delivery and Performance Commission Act 2005*.

2 Dictionary

The dictionary in the schedule defines particular words used in this Act.

3 Meaning of *agency*

- (1) Each of the following entities is an ***agency***—
 - (a) a public sector unit other than an excluded entity;
 - (b) any other government entity, other than an excluded entity, prescribed under a regulation for this section;
 - (c) the Queensland Police Service.
- (2) In this section—

excluded entity means any of the following—

 - (a) the Crime and Misconduct Commission;

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- (b) a government owned corporation;
- (c) the integrity commissioner;
- (d) the Office of the Information Commissioner;
- (e) the Office of the Ombudsman;
- (f) the parliamentary crime and misconduct commissioner;
- (g) the Queensland Audit Office.

4 Act binds all persons

- (1) This Act binds all persons including the State.
- (2) Subsection (1) does not make the State liable for an offence.

5 Object of Act

The object of this Act is to help the government of the State—

- (a) to meet the expectations of the community about the delivery of government services; and
- (b) to reduce inefficiencies, duplication and wastage in the delivery of government services; and
- (c) to improve the accountability of agencies for their delivery of services; and
- (d) to improve the delivery of government services by ensuring agencies use resources effectively and efficiently and adopt best practices; and
- (e) to encourage agencies to be proactive about establishing effective and appropriate performance frameworks, including planning and reporting practices; and
- (f) to promote in agencies a culture of continuous improvement and performance management, including risk management.

Part 2 Establishment of commission and related matters

6 Establishment of commission

The Service Delivery and Performance Commission is established.

7 Commission represents the State

- (1) The commission represents the State.
- (2) Without limiting subsection (1), the commission has the status, privileges and immunities of the State.

8 Commissioners

The commission consists of the following members—

- (a) the chairperson;
- (b) the chief executive of the treasury department;
- (c) the public service commissioner;
- (d) at least 2 other members.

Part 3 Commission's role

9 Meaning of *information* for pt 3

In this part—

information includes a document.

10 Undertaking reviews

The commission's main function is to undertake reviews under part 4 and report to the Minister on the outcome of each review.

11 Other functions

The commission also has the following functions—

- (a) to prepare annual service delivery and performance reports and give them to the Minister;
- (b) to develop enhanced performance targets for particular agencies or particular services;
- (c) to educate agencies about managing and monitoring their own performance;
- (d) to establish standards for internal government planning and reporting practices about service delivery across the public sector.

12 Functions performed in furtherance of object

The commission must have regard to the object of this Act in performing its functions.

13 How functions may be performed

- (1) The commission may make enquiries, gather information and otherwise engage in activities necessary to perform its functions.
- (2) In performing its functions, the commission—
 - (a) need not act in a formal way; and
 - (b) may inform itself in the way it considers appropriate; and
 - (c) may consult with anyone it considers appropriate; and
 - (d) may receive written or oral submissions and other information.
- (3) This section applies to the commission's conduct of a review subject to the terms of the Minister's referral for the review.

14 Annual work program

- (1) Before the start of each financial year, the commission must prepare a draft annual work program for the financial year and give it to the Minister.
- (2) After considering the draft, the Minister must establish the commission's work program for the financial year.
- (3) The Minister may vary a work program for a financial year before or during the financial year.
- (4) In this section—
work program, for a financial year, means—
 - (a) all the activities the commission will undertake during the financial year to perform its functions; and
 - (b) the times the activities will be undertaken.

15 Agencies to co-operate

The functions of each agency include co-operating with the commission in the performance by the commission of its functions.

16 Requirement to give information for annual report

- (1) For the purpose of preparing an annual service delivery and performance report, the commission may give a written notice to the chief executive of a department requiring that chief executive to give stated information to the commission by a stated day each year.
- (2) This section does not limit section 17.

17 Production requirement

- (1) The commission may give a written notice to an agency chief executive requiring the agency chief executive to give to the commission, by a stated time, stated information in the agency's possession or control relating to the activities of an agency.

- (2) The notice may be given only if it is reasonably necessary for the commission to have the information to perform its functions.
- (3) The notice must state that it is given under this section.

18 Protection from liability for complying with requirement

- (1) This section applies to the giving of information to the commission in compliance with a requirement under this part.
- (2) A person may give the information despite any other law that would otherwise prohibit or restrict the giving of the information.
- (3) If a person, acting honestly, gives the information to the commission, the person is not liable, civilly, criminally or under an administrative process, for giving the information.
- (4) Also, merely because the person gives the information, the person can not be held to have—
 - (a) breached any code of professional etiquette or ethics; or
 - (b) departed from accepted standards of professional conduct.
- (5) Without limiting subsections (3) and (4)—
 - (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and
 - (b) if the person would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice, the person—
 - (i) does not contravene the Act, oath or rule of law or practice by giving the information; and
 - (ii) is not liable to disciplinary action for giving the information.

19 Claims of privilege preserved

In response to a requirement under this part, a person is not required to give information that is protected by privilege.

20 Other excepted information

In response to a requirement under this part, a person is not required to give information in an agency's possession or control if the agency chief executive reasonably considers that—

- (a) giving the information would not be in the public interest because it could be expected to—
 - (i) prejudice the conduct of a proceeding before a court or tribunal; or
 - (ii) prejudice the investigation of a contravention or possible contravention of a law in a particular case; or
 - (iii) prejudice an investigation under the *Coroners Act 2003* or an inquiry or inquest into a death under the *Coroners Act 1958*; or
 - (iv) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of a law, to be ascertained; or
 - (v) endanger a person's life or physical safety; or
 - (vi) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of a law; or
 - (vii) have another effect prescribed under a regulation for this section; or
- (b) it would otherwise not be in the public interest to give the information.

Part 4 Reviews

Division 1 Starting or ending a review

21 Referral from Minister

- (1) The Minister may refer a matter to the commission for review.
- (2) The Minister may amend a referral at any time.

22 Matters that may be included in referral

To ensure a review is conducted appropriately, the Minister may, when referring a matter for review, do any of the following—

- (a) ask the commission to consider, and advise the Minister, whether a review is warranted;
- (b) give terms of reference for the review;
- (c) state the entities with whom the commission must consult for the review;
- (d) state a period within which the commission must give the Minister its report on the review;
- (e) ask the commission to give a draft report to the Minister, another Minister, a chief executive or another stated entity for comment before finalising the review;
- (f) ask the commission to make recommendations about a stated matter.

23 Review on commission's initiative

The commission may also conduct a review, with the Minister's approval, on its own initiative.

24 Minister may end review

The Minister may withdraw a referral or revoke an approval for a particular review if the Minister considers it appropriate for any reason including, for example, that—

- (a) the review should be undertaken in another way; or
- (b) the review is not a justifiable use of resources.

25 Matters to be in writing

A referral, amendment, approval, withdrawal or revocation of the Minister under this division must be in writing.

Division 2 Conduct and scope of reviews

26 Purpose

The purpose of a review is to help the Minister to further the object of this Act.

27 Types of review

- (1) A review may relate to—
 - (a) the delivery of services by a particular agency or agencies; or
 - (b) initiatives of a particular agency or agencies; or
 - (c) a particular aspect of the delivery of services by the whole or part of the public sector.
- (2) A review may be a single review of matters stated in subsection (1) or a periodic review of the matters.

28 What a review may involve

Without limiting what a review may involve, it may—

- (a) measure the delivery of services; or
- (b) develop benchmarks for the delivery of services and compare service delivery against the benchmarks; or

- (c) identify opportunities to improve the delivery of services; or
- (d) identify ways of reducing waste and duplication; or
- (e) assess appropriate funding adjustments to achieve optimal service delivery; or
- (f) assess the priorities on the basis of which resources are allocated or should be allocated; or
- (g) identify areas of excellence; or
- (h) identify areas for further improvement; or
- (i) deal with anything else decided by the Minister in a referral under division 1.

29 Notice of proposed review

Before conducting a review relating to the delivery of services by, or initiatives of, a particular agency or agencies, the commission must give written notice to the agency or agencies and to the Minister responsible for the agency or agencies.

Division 3 Report following a review

30 Report to be prepared and tabled

- (1) The commission must prepare a report for each review it completes and give the report to the Minister.
- (2) After receiving the report, the Minister must table it in the Legislative Assembly.

31 Affected agencies to be given a draft report

- (1) This section applies if the commission conducts a review relating to the delivery of services by, or initiatives of, a particular agency or agencies.
- (2) The commission must—
 - (a) prepare a draft report for the review; and

- (b) give copies of the draft report to the agency or agencies; and
 - (c) give the agency or agencies a reasonable opportunity to respond to the draft report; and
 - (d) have regard to any response before preparing a final report for the review and giving it to the Minister.
- (3) In its response, an agency may ask the commission to include a particular statement in the commission's final report.

32 Content

A report must include—

- (a) a variety of viewpoints and options representing alternative ways of addressing the issues covered by the report; and
- (b) the commission's recommendations relating to the issues; and
- (c) details of the consultation undertaken in the course of the review; and
- (d) any statement the commission is asked to include under section 31(3).

33 Procedure for reporting sensitive information

- (1) This section applies if the commission considers that information that, apart from this section, would be included in a draft report or final report for a review is sensitive information.
- (2) The commission need not include the information in the report.
- (3) If the report is a final report, the commission may include the information in a separate document given to the Minister.
- (4) In this section—

sensitive information means information—

Part 6 Commission's operation

Division 1 Chairperson

36 Role of chairperson

- (1) The chairperson is the commission's chief executive officer.
- (2) The chairperson is responsible for the administration of the commission, including the management of the staff members of the commission, and the proper performance of the commission's functions.
- (3) A document of the commission that is required to be authenticated is sufficiently authenticated if it is signed by the chairperson.
- (4) The chairperson may delegate the chairperson's powers relating to the administration of the commission to an appropriately qualified staff member of the commission.
- (5) In this section—
appropriately qualified includes having qualifications or experience appropriate to exercise the power.

37 Acting chairperson

- (1) The Governor in Council may appoint an eligible person to act as the chairperson—
 - (a) during a vacancy in the office; or
 - (b) during any period, or all periods, when the chairperson is absent from duty or from the State or, for another reason, can not perform the duties of the office.
- (2) In this section—
eligible person means an appointed commissioner or another person eligible to be an appointed commissioner.

Division 2 Meetings and other business

38 Delegation by commission

The commission may delegate its powers under this Act to a commissioner.

39 Conduct of business

Subject to this division, the commission may conduct its business, including its meetings, in the way it considers appropriate.

40 Times and places of meetings

- (1) Commission meetings are to be held at the times and places the chairperson decides.
- (2) However, the chairperson must call a meeting if asked, in writing, to do so by at least 4 commissioners.
- (3) Also, the chairperson must call a meeting at least once in each quarter.

41 Quorum

A quorum for a commission meeting is any 4 commissioners.

42 Deputies for certain commissioners

- (1) This section applies to a commissioner who is the chief executive of the treasury department or the public service commissioner.
- (2) The commissioner may, by signed writing, appoint a public service officer as his or her deputy.
- (3) The commissioner's deputy may attend a commission meeting in the commissioner's absence and exercise the commissioner's powers under this Act at the meeting.
- (4) A deputy attending a commission meeting is to be counted in deciding if there is a quorum for the meeting.

43 Presiding at meetings

- (1) The chairperson is to preside at all commission meetings at which the chairperson is present.
- (2) If the chairperson is absent from a commission meeting, the acting chairperson (if any) is to preside.
- (3) If the chairperson and any acting chairperson are absent from a commission meeting, the commissioner chosen by the commissioners present is to preside.

44 Conduct of meetings

- (1) The commission may hold meetings, or allow commissioners to take part in its meetings, by using any technology allowing reasonably contemporaneous and continuous communication between persons taking part in the meeting.
- (2) A person who takes part in a commission meeting under subsection (1) is taken to be present at the meeting.
- (3) A decision at a commission meeting must be a unanimous decision of the commissioners present.

45 Decisions outside meetings

A decision of the commission, other than a decision at a commission meeting, is validly made if—

- (a) the decision is made with the written agreement of at least 4 commissioners; and
- (b) notice of the proposed decision is given under procedures approved by the commission.

46 Minutes and record of decisions

The commission must keep—

- (a) minutes of its meetings; and
- (b) a record of any decisions under section 45.

Division 3 Commission staff and agents

47 Staff members of the commission

- (1) The commission may employ the officers and employees the commission considers necessary for the commission.
- (2) The staff members of the commission are to be employed under the *Public Service Act 1996*.

48 Staff subject to direction by chairperson

The staff members of the commission are subject to the direction of the chairperson in relation to the performance of the commission's functions.

49 Agents

- (1) To meet temporary circumstances, the commission may engage suitably qualified persons to provide it with services, information or advice.
- (2) A person engaged under subsection (1) is engaged on the terms and conditions decided by the commission and not under the *Public Service Act 1996*.

Part 7 Appointed commissioners

50 Appointment

- (1) The chairperson and the other appointed commissioners are to be appointed by the Governor in Council.
- (2) The appointment must state the period of the appointment.
- (3) The appointment is to be made under this Act and not under the *Public Service Act 1996*.

51 Contract of employment

- (1) Each appointed commissioner must enter into a written contract of employment with the Minister.
- (2) The contract of employment must include the conditions of employment including the remuneration and allowances to which the commissioner is entitled.

52 Appointment full-time or part-time

- (1) The chairperson is to be appointed on a full-time basis.
- (2) The other appointed commissioners are to be appointed on a part-time basis.

53 Leave of absence

An appointed commissioner may take leave of absence as authorised under his or her contract of employment.

54 Eligibility

A person is ineligible for appointment as an appointed commissioner if the person—

- (a) has a conviction for an indictable offence; or
- (b) is an insolvent under administration; or
- (c) holds office as any of the following—
 - (i) the auditor-general;
 - (ii) the information commissioner;
 - (iii) the integrity commissioner;
 - (iv) an officer of the Crime and Misconduct Commission;
 - (v) the ombudsman.

55 Criminal history checks to confirm eligibility

- (1) To help decide whether a person is suitable for nomination for appointment as an appointed commissioner, the Minister may

ask the police commissioner for a written report about the person's criminal history.

- (2) However, the Minister may only make a request under subsection (1) if the person has given the Minister written consent for the request.
- (3) If asked by the Minister, the police commissioner must give the Minister a written report about the criminal history of the person.
- (4) The duty imposed on the police commissioner applies only to information in the police commissioner's possession or to which the police commissioner has access.
- (5) The Minister must destroy a report given to the Minister under this section as soon as practicable after it is no longer needed for the purpose for which it was requested.

56 Resignation

An appointed commissioner may resign by giving a signed notice of resignation to the Minister.

57 Preservation of rights

- (1) This section applies if a public service officer is appointed as an appointed commissioner.
- (2) The person retains all rights that have accrued to the person because of employment as a public service officer, or that would accrue in the future to the person because of that employment, as if service as an appointed commissioner were a continuation of service as a public service officer.
- (3) If the person stops being an appointed commissioner and again becomes a public service officer, the person's service as an appointed commissioner is to be regarded as service of a similar kind in the public service for the purpose of determining the person's rights as a public service officer.

Part 8 Miscellaneous

58 Quarterly reports

As soon as practicable after the end of each quarter, the commission must give the Minister a report on its operations for the quarter.

59 Application of other Acts to the commission

The commission is—

- (a) a unit of public administration under the *Crime and Misconduct Act 2001*; and
- (b) a statutory body under the *Financial Administration and Audit Act 1977*; and
- (c) a statutory body under the *Statutory Bodies Financial Arrangements Act 1982*.

60 No liability for defamation if statement or report made in good faith

- (1) It is a lawful excuse for the publication of any defamatory statement made to the commission or in a report of the commission that the publication is made in good faith and is, or purports to be, made for this Act.
- (2) In this section—
report of the commission—
 - (a) means any report of the commission under this Act; and
 - (b) includes a separate document mentioned in section 33(3).

61 Protection from liability

- (1) An official is not civilly liable to someone for an act done, or omission made, honestly and without negligence under this Act.

- (2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.
- (3) In this section—
official means a commissioner, a staff member of the commission, an agent of the commission or another employee of the State.

62 Confidentiality

- (1) This section applies to a person who—
 - (a) is or has been a commissioner, a staff member of the commission, an agent of the commission or another employee of the State; and
 - (b) in that capacity acquired protected information or has access to, or custody of, a document containing protected information.
- (2) The person must not make a record of the information, or disclose the information or give access to the document to anyone else, except—
 - (a) to the extent necessary to perform the person's functions under or relating to this Act; or
 - (b) if the making of the record, disclosure or giving of access is otherwise required or permitted by law.
- (3) In this section—
protected information means information that—
 - (a) is obtained by a person to whom this section applies in relation to a review under this Act or an annual service delivery and performance report; and
 - (b) is not publicly available.

63 Enforcement provisions

- (1) A person who contravenes section 62 commits an offence.
Maximum penalty—200 penalty units or 1 years imprisonment.

- (2) A person must comply with a production requirement unless the person has a reasonable excuse.
Maximum penalty—30 penalty units.
- (3) A person must not state anything to the commission, in response to a production requirement, that the person knows is false or misleading in a material particular.
Maximum penalty—30 penalty units.
- (4) A person must not give to the commission, in response to a production requirement, a document containing information the person knows is false or misleading in a material particular.
Maximum penalty—30 penalty units.
- (5) Subsection (4) does not apply to a person who, when giving the document—
- (a) informs the commission, to the best of the person's ability, how it is false or misleading; and
 - (b) gives the correct information to the commission, if the person has, or can reasonably obtain, the correct information.
- (6) For a proceeding for an offence against subsection (3) or (4)—
- (a) it is enough for the complaint starting the proceeding to state the relevant statement or document was 'false or misleading' to the defendant's knowledge, without specifying which; and
 - (b) in the proceeding, evidence that the statement or document was made or given recklessly is evidence that it was made or given so as to be false or misleading.
- (7) An offence against this Act is a summary offence.

64 Approved forms

The chairperson may approve forms for use under this Act.

65 Regulation-making power

The Governor in Council may make regulations under this Act.

66 Review of commission's performance

During the third year of the commission's establishment, the Minister must—

- (a) review the commission's performance of its functions; and
- (b) table in the Legislative Assembly a report on the outcome of the review.

67 Expiry of Act

This Act expires on the day that is 5 years after this section commences.

Part 9 Transitional

68 First annual work program

- (1) The commission's first annual work program established under section 14 must relate to the period starting on the day that section commences and ending on 30 June 2007.
- (2) Section 14(1) does not apply to the first annual work program.

69 First annual service delivery and performance report

The first annual service delivery and performance report is due by 31 October 2007 and must relate to the period starting on the day section 35 commences and ending on 30 June 2007.

70 First quarterly report

The first report under section 58 is due after the end of the first full quarter after the day section 58 commences and must relate to the period from the day section 58 commences to the end of the full quarter.

Schedule Dictionary

section 2

agency see section 3.

agency chief executive means the chief executive (by whatever name called) of an agency.

agent, of the commission, means a person engaged by the commission under section 49.

annual service delivery and performance report means a report prepared under section 35.

appointed commissioner means a member of the commission mentioned in section 8(a) or (d).

auditor-general means the Queensland Auditor-General under the *Financial Administration and Audit Act 1977*.

chairperson means the commissioner holding an appointment as chairperson under section 50.

commission means the Service Delivery and Performance Commission.

commissioner means a member of the commission.

conviction means a conviction other than a spent conviction.

criminal history, of a person, means the convictions for indictable offences recorded against the person for offences, in Queensland or elsewhere, whether before or after the commencement of this Act.

delivery of services includes integration of services.

government entity see the *Public Service Act 1996*, section 21.

indictable offence includes an indictable offence dealt with summarily, whether or not the Criminal Code, section 659,¹ applies to the indictable offence.

¹ Criminal Code, section 659 (Effect of summary conviction for indictable offences)

Schedule (continued)

information, for part 3, see section 9.

information commissioner means the Information Commissioner under the *Freedom of Information Act 1992*.

insolvent under administration means an insolvent under administration under the Corporations Act, section 9.

integrity commissioner means the Queensland Integrity Commissioner under the *Public Sector Ethics Act 1994*.

parliamentary crime and misconduct commissioner means the Parliamentary Crime and Misconduct Commissioner under the *Crime and Misconduct Act 2001*.

police commissioner means the commissioner of the Queensland Police Service.

production requirement means a requirement under section 17.

public service commissioner means the Public Service Commissioner under the *Public Service Act 1996*.

quarter means a 3 month period starting on 1 January, 1 April, 1 July or 1 October of any year.

spent conviction means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.

staff member, of the commission, means an officer or employee employed under section 47.

treasury department means the department in which the *Financial Administration and Audit Act 1977* is administered.

Endnotes

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). However, no amendments have commenced operation on or before that day. Future amendments of the Service Delivery and Performance Commission Act 2005 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

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments included	Effective	Notes
1	none	10 November 2005	

5 List of legislation

Service Delivery and Performance Commission Act 2005 No. 52
 date of assent 10 November 2005
 commenced on date of assent
exp 10 November 2010 (see s 67)

6 List of annotations

PART 10—AMENDMENT OF FREEDOM OF INFORMATION ACT 1992
pt 10 (ss 71–72) om R1 (see RA ss 7(1)(k) and 40)