



Queensland

Freedom of Information and Other Legislation Amendment Act 2005

Act No. 28 of 2005



Queensland

Freedom of Information and Other Legislation Amendment Act 2005

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Queensland

Freedom of Information and Other Legislation Amendment Act 2005

Act No. 28 of 2005

An Act to amend the *Freedom of Information Act 1992* and
other legislation

[Assented to 31 May 2005]

The Parliament of Queensland enacts—

Chapter 1 Preliminary

1 Short title

This Act may be cited as the *Freedom of Information and Other Legislation Amendment Act 2005*.

2 Commencement

(1) The following provisions commence on 1 July 2005—

- section 36(1);¹
- section 51, other than to the extent it inserts new section 101C;²
- section 57 to the extent it inserts new sections 117 and 118;³
- chapter 2, parts 6 and 7.⁴

(2) Chapter 3, part 3⁵ commences on 1 September 2005.

(3) The remaining provisions, other than the prescribed provisions, commence on a day to be fixed by proclamation.

Note—

The prescribed provisions commence on assent—see the *Acts Interpretation Act 1954*, section 15A.

(4) In this section—

-
- 1 Section 36 (Omission of pt 5, divs 1–3)
- 2 Section 51 (Insertion of new pt 5A), new section 101C (Functions of commissioner)
- 3 Section 57 (Insertion of new pt 10), new sections 117 (Continuation of appointment as commissioner) and 118 (Continuation of current staff member's employment under Public Service Act 1996)
- 4 Chapter 2 (Freedom of information amendments), parts 6 (Amendment of Public Service Act 1996) and 7 (Amendment of Public Service Regulation 1997)
- 5 Chapter 3 (Other amendments), part 3 (Amendment of Standard Time Act 1894)

prescribed provisions means the following provisions—

- section 3⁶
- section 5(1)⁷ to the extent it inserts the definition *backup system*
- sections 8, 9 and 10⁸
- sections 13 and 14⁹
- section 18¹⁰
- sections 24, 25, 26 and 27¹¹
- section 57 to the extent it inserts the new part 10 heading and sections 113, 114 and 115¹²
- sections 58, 59, 60, 62 and 63¹³
- chapter 2, parts 3 to 5¹⁴
- chapter 3, parts 1 and 2.¹⁵

6 Section 3 (Act amended in pt 1)

7 Section 5 (Amendment of s 7 (Definitions))

8 Sections 8 (Insertion of new s 9A), 9 (Amendment of s 11 (Act not to apply to certain bodies etc.)) and 10 (Insertion of new ss 11D–11E)

9 Sections 13 (Amendment of s 22 (Documents to which access may be refused)) and 14 (Amendment of s 25 (How applications for access are made))

10 Section 18 (Insertion of new s 28B)

11 Sections 24 (Amendment of s 42 (Matter relating to law enforcement or public safety)), 25 (Amendment of s 44 (Matter affecting personal affairs)), 26 (Amendment of s 45 (Matter relating to trade secrets, business affairs and research)) and 27 (Amendment of s 46 (Matter communicated in confidence))

12 Section 57 (Insertion of new pt 10), new sections 113 (Definition for pt 10), 114 (Application of amendments to existing applications) and 115 (Application of particular amendments to reviews etc.)

13 Sections 58 (Amendment of sch 1 (Secrecy provisions giving exemption)), 59 (Amendment of sch 2 (Application of Act to GOCs)), 60 (Insertion of new sch 3), 62 (Regulation amended in pt 2) and 63 (Omission of ss 5 and 5A)

14 Chapter 2 (Freedom of information amendments), parts 3 (Amendment of Lotteries Act 1997), 4 (Amendment of Public Records Act 2002) and 5 (Amendment of Public Sector Ethics Act 1994)

Chapter 2 Freedom of information amendments

Part 1 Amendment of Freedom of Information Act 1992

3 Act amended in pt 1

This part amends the *Freedom of Information Act 1992*.

4 Replacement of ss 4 and 5

Sections 4 and 5—

omit, insert—

‘4 Object of Act and its achievement

- ‘(1) 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.
- ‘(2) 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 a way to ensure the

information is accurate, complete, up-to-date and not misleading.

- ‘(3) Parliament also recognises 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 about whom information is collected and held by government.
- ‘(4) This Act is intended to strike a balance between those competing interests.
- ‘(5) The object of this Act is achieved by—
- (a) 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 on the public interest of a kind mentioned in subsection (3); and
 - (b) requiring particular information and documents concerning government operations to be made available to the public; and
 - (c) giving members of the community a right to bring about the amendment of documents held by government containing information in relation to their personal affairs to ensure the information is accurate, complete, up-to-date and not misleading.
- ‘(6) It is Parliament’s intention that this Act be interpreted to further the object stated in subsection (1) in the context of the matters stated in subsections (2) to (5).’.

5 Amendment of s 7 (Definitions)

- (1) Section 7—
insert—

‘access charge, in relation to an application for access to a document, means the charge prescribed under a regulation in relation to the provision of access to the document.

agent, in relation to an application, means a person who makes the application on behalf of another person.

applicant, in relation to an application, means—

- (a) if the application is made on behalf of a person—the person; or
- (b) otherwise—the person making the application.

application fee, in relation to an application for access to a document, means the application fee prescribed under a regulation.

backup system means a system that has, for disaster recovery purposes, copied electronic data onto a separate data storage medium, for example, onto a backup tape.

concession card means a health care card or pensioner concession card under the *Social Security Act 1991* (Cwlth) or a pensioner concession card issued by the department of the Commonwealth in which the *Veterans’ Entitlements Act 1986* (Cwlth) is administered.

final assessment notice see schedule 4, section 11(1).

financial hardship see section 35A.

objection notice see schedule 4, section 3(2).

office means the Office of the Information Commissioner.

original charge, in relation to an application for access to a document, means an agency’s or Minister’s preliminary assessment of the total amount of the processing charge and access charge payable by the applicant.

original deposit, in relation to an application for access to a document, means, if the agency or Minister concerned considers it appropriate that an applicant pay a deposit on account of the original charge, a deposit of the amount provided for under a regulation.

preliminary assessment notice, see schedule 4, section 1(2).

processing charge, in relation to an application for access to a document, means the charge prescribed under a regulation for searching for or retrieving the document, or making, or doing things related to making, a decision on the application.’.

(2) Section 7, definition *charge*, ‘under section 29(1)’—
omit.

(3) Section 7, definition *document*, after paragraph (c)—
insert—

‘Note—

Under the *Acts Interpretation Act 1954*, section 36, ***document*** includes—

- (a) any paper or other material on which there is writing; and
- (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for a person qualified to interpret them; and
- (c) any disc, tape or other article or any material from which sounds, images, writings or messages are capable of being produced or reproduced (with or without the aid of another article or device).’.

(4) Section 7, definition *official document of a Minister* or *official document of the Minister*, after ‘means a document’—
insert—

‘, other than a document of an agency.’.

6 Amendment of s 8 (Meaning of *agency*)

Section 8(2)—

omit, insert—

‘(2) For this Act—

- (a) a board, council, committee, subcommittee or other body established by government to help, or to perform functions connected with, an agency is not a separate agency, but is taken to be comprised within the agency; and
- (b) a reference to an agency includes a reference to a body that is taken to be comprised within the agency.’.

7 Amendment of s 9 (Meaning of *public authority*)

- (1) Section 9(1), definition *public authority*, paragraph (a)(ii)—

omit, insert—

‘(ii) is established by government under an enactment for a public purpose, whether or not the public purpose is stated in the enactment; or’.

- (2) Section 9(1), definition *public authority*, ‘; but does not include’ to ‘of this Act’—

omit.

- (3) Section 9(2)—

omit.

- (4) Section 9(3)—

renumber as section 9(2).

8 Insertion of new s 9A

Part 1, division 3, after section 9—

insert—

‘9A Notes in text

‘A note in the text of this Act is part of the Act.’.

9 Amendment of s 11 (Act not to apply to certain bodies etc.)

- (1) Section 11(1)(e)—

omit, insert—

‘(e) a court, or the holder of a judicial office or other office connected with a court, in relation to the court’s judicial functions; or’.

- (2) Section 11(1)—

insert—

- '(fa) a tribunal, a tribunal member or the holder of an office connected with a tribunal, in relation to the tribunal's judicial or quasi-judicial functions; or
 - (fb) a registry of a tribunal, or the staff of a registry of a tribunal in their official capacity, so far as its or their functions relate to the tribunal's judicial or quasi-judicial functions; or'.
- (3) Section 11(1)(n)—
omit, insert—
- '(n) Queensland Treasury Holdings Pty Ltd ACN 011 027 295, its wholly owned subsidiaries, and the entities controlled by the subsidiaries, in relation to their competitive commercial activities; or'.
- (4) Section 11(1)(q)—
omit, insert—
- '(r) Queensland Events Corporation Pty Ltd ACN 010 814 310, its wholly owned subsidiaries, and the entities controlled by the subsidiaries, in relation to their competitive commercial activities; or
 - (s) Gold Coast Events Co Pty Ltd ACN 010 949 649, its wholly owned subsidiaries, and the entities controlled by the subsidiaries, in relation to their competitive commercial activities; or
 - (t) Gold Coast Motor Events Co in relation to its competitive commercial activities; or
 - (u) the chief executive officer of a local government in relation to keeping a register of interests under the *Local Government Act 1993*, sections 247(1)(b) and 1139(2); or
 - (v) the mayor of a local government in relation to keeping a register of interests under the *Local Government Act 1993*, section 1139(1); or
 - (w) a parents and citizens association formed under the *Education (General Provisions) Act 1989*; or

- (x) a grammar school to which the *Grammar Schools Act 1975* applies; or
 - (y) education agencies in relation to the following information—
 - (i) information contained in a certificate of achievement;
 - (ii) individual or systemic information about the performance of students in a test developed or revised under the repealed *Education (School Curriculum P-10) Act 1996*, section 13 or the *Education (Queensland Studies Authority) Act 2002*, section 19;
 - (iii) individual or systemic information about the performance of students in a core skills test prepared under the repealed *Education (Senior Secondary School Studies) Act 1988*, section 6(1)(g);
 - (iv) individual or systemic student information in relation to a year 2 diagnostic net assessment;
 - (v) individual or systemic student information in relation to another type of assessment prescribed under the *Education (Queensland Studies Authority) Act 2002*, section 11(2);
 - (vi) information in relation to the ranking of a person for tertiary entrance under the repealed *Education (Tertiary Entrance Procedures Authority) Act 1990* or the *Education (Queensland Studies Authority) Act 2002*;
 - (vii) assessment data as defined under the *Education (Queensland Studies Authority) Act 2002*.
- (5) Section 11(1)(pa)—
renumber as section 11(1)(q).
- (6) Section 11(2)—
omit, insert—

- ‘(2) In subsection (1), a reference to an entity in relation to a particular function or activity means that this Act does not apply to the entity in relation to documents received, or brought into existence, by it in performing the function or carrying on the activity.
- ‘(3) In this section, a reference to a repealed Act includes a reference to the repealed Act as originally enacted and as in force from time to time.
- ‘(4) In this section—

certificate of achievement means a certificate, issued under the repealed *Education (Senior Secondary School Studies) Act 1988* or the *Education (Queensland Studies Authority) Act 2002*, recording details of a person’s achievement in the study of an area of learning.

control has the meaning given by the Corporations Act.

education agencies means—

- (a) the Queensland Studies Authority; and
- (b) the department in which the *Education (Queensland Studies Authority) Act 2002* is administered.

tribunal means—

- (a) the Anti-Discrimination Tribunal; or
- (b) the Children Services Tribunal; or
- (c) the Commercial and Consumer Tribunal; or
- (d) the Guardianship and Administration Tribunal; or
- (e) the Land and Resources Tribunal; or
- (f) the Land Tribunal; or
- (g) the Mental Health Tribunal.

wholly owned subsidiary has the meaning given by the Corporations Act.

year 2 diagnostic net assessment means the process for the assessment of the literacy and numeracy development of students in the years of schooling up to and including the year 3 year of schooling.’

10 Insertion of new ss 11D–11E

After section 11C—

insert—

‘11D Application of Act to other Acts

- ‘(1) Schedule 3 lists provisions of other Acts that exclude or limit the operation of this Act.
- ‘(2) Schedule 3 is included for information purposes.

‘11E Application of Act to offenders

- ‘(1) An offender is not entitled to obtain access to a risk assessment document received, or brought into existence, by—
 - (a) the department in which the *Corrective Services Act 2000* is administered; or
 - (b) a corrections board as defined under that Act.
- ‘(2) In this section—

offender means an offender as defined under the *Corrective Services Act 2000* who is serving a term of imprisonment for a prescribed offence, or serving a period of imprisonment that includes a term of imprisonment for a prescribed offence, whether the person was sentenced to the term or period of imprisonment before or after the commencement of this section.

Note—

Under the *Corrective Services Act 2000*, schedule 3, ***offender*** means—

- (a) a prisoner; or
- (b) a person who is subject to—
 - (i) a community based order; or
 - (ii) a conditional release order; or
 - (iii) a post-prison community based release order.

period of imprisonment see the *Penalties and Sentences Act 1992*, section 4.

prescribed offence means—

- (a) an offence against a provision mentioned in the *Penalties and Sentences Act 1992*, schedule;¹⁶ or

Note—

See the *Penalties and Sentences Act 1992*, section 208(2).

- (b) an offence against the Criminal Code, section 302;¹⁷ or
(c) an offence against the Criminal Code, section 359E.¹⁸

risk assessment document means a document, or that part of a document, that assesses or is used for the assessment of—

- (a) the risk an offender may pose to the community; or
(b) a risk to the security or good order of a corrective services facility as defined under the *Corrective Services Act 2000*.

Example for paragraph (a)—

a document prepared to help the chief executive make a decision under the *Corrective Services Act 2000*, section 12(3)(a), 57(2)(b), 75(2)(a) or 76(3)(a)¹⁹

term of imprisonment see the *Penalties and Sentences Act 1992*, section 4.’.

11 **Amendment of s 18 (Publication of information concerning affairs of agencies)**

Section 18(2)—

insert—

- ‘(i) particulars of any reading room or other facility provided by the agency for use by applicants or members of the community, and the publications, documents or other information regularly on display in the reading room or other facility.’.

16 *Penalties and Sentences Act 1992*, schedule (Serious violent offences)

17 Criminal Code, section 302 (Definition of *murder*)

18 Criminal Code, section 359E (Punishment of unlawful stalking)

19 *Corrective Services Act 2000*, section 12 (Prisoner classifications), 57 (Eligibility for WORC and WCC programs), 75 (Eligibility for remission) or 76 (Eligibility for conditional release)

12 Amendment of s 20 (Notices to require specification of documents in statements)

Section 20—

insert—

- ‘(4) If the principal officer fails to notify the person under subsection (2)(b), the principal officer is taken to have decided the person’s opinion is incorrect.’

13 Amendment of s 22 (Documents to which access may be refused)

- (1) Section 22(a) and (b)—

omit, insert—

- ‘(a) a document the applicant can reasonably get access to under another enactment, or under arrangements made by an agency, whether or not the access is subject to a fee or charge; or’.

- (2) Section 22(e)—

omit.

- (3) Section 22(c) and (d)—

renumber as section 22(b) and (c).**14 Amendment of s 25 (How applications for access are made)**

Section 25—

insert—

- ‘(5) The application is taken only to apply to documents that are, or may be, in existence on the day the application is received.
- ‘(6) However, subsection (5) does not prevent an agency or Minister giving access to a document created after the application is received but before notice is given under section 34 (a *post-application document*).²⁰

20 Section 34 (Notification of decisions and reasons)

- ‘(7) If an agency or Minister gives a person access to a post-application document—
- (a) no processing charge or access charge is payable in relation to the document; and
 - (b) the person is not entitled to a review under section 52 or part 5²¹ in relation to a decision about the document made in relation to the application concerned.
- ‘(8) The application for access to a document may not require an agency or Minister to search for the document from a backup system.
- ‘(9) However, subsection (8) does not prevent an agency or Minister searching for a document from a backup system if the agency or Minister considers the search appropriate.

Note—

A search for a document from a backup system is not required before access may be refused under section 28B except in the circumstances mentioned in section 28B(4).’

15 Replacement of s 25 (How applications for access are made)

Section 25—

omit, insert—

‘25 How applications for access are made

- ‘(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.

Notes—

If a document applied for does not concern the applicant’s personal affairs, the applicant must pay, at the time the application is made, an application fee (see section 35B(2)).

For applications on behalf of a child, see section 50A (Applications on behalf of children and matters affecting personal affairs of children).

-
- ‘(2) The application must—
- (a) be in writing; and
 - (b) provide sufficient information concerning the document to enable a responsible officer of the agency or the Minister to identify the document; and
 - (c) state the address to which notices under this Act may be sent to the applicant; and
 - (d) if the application is being made on behalf of the applicant—state the name of the applicant and the name of the applicant’s agent.
- ‘(3) The application is taken only to apply to documents that are, or may be, in existence on the day the application is received.
- ‘(4) However, subsection (5) does not prevent an agency or Minister giving access to a document created after the application is received but before notice is given under section 34 (a *post-application document*).²²
- ‘(5) If an agency or Minister gives a person access to a post-application document—
- (a) no processing charge or access charge is payable in relation to the document; and
 - (b) the person is not entitled to a review under section 52 or part 5²³ in relation to a decision about the document made in relation to the application concerned.
- ‘(6) The application for access to a document may not require an agency or Minister to search for the document from a backup system.
- ‘(7) However, subsection (6) does not prevent an agency or Minister searching for a document from a backup system if the agency or Minister considers the search appropriate.

22 Section 34 (Notification of decisions and reasons)

23 Section 52 (Internal review) or part 5 (External review of decisions)

Note—

A search for a document from a backup system is not required before access may be refused under section 28B except in the circumstances mentioned in section 28B(4).

‘25A Initial duties of agency or Minister in relation to application

‘(1) If a person—

- (a) wishes to make an application under this Act to an agency or Minister for access to a document (***relevant application***); or
- (b) has made a relevant application but it does not comply with section 25; or
- (c) has made a relevant application, or part of a relevant application, to the wrong agency or Minister;

it is the duty of the agency or Minister to inform the person how to make the application in a way that complies with section 25 or to inform the person of the appropriate agency or Minister to whom application should be made.

‘(2) An agency or Minister must not refuse to deal with an application because it does not comply with section 25 without first giving the applicant a reasonable opportunity of consultation with a view to making an application in a form complying with section 25.

‘(3) If, after consulting under subsection (2), an agency or Minister decides—

- (a) the application does not contain sufficient information to enable a responsible officer of the agency or the Minister to identify the document; or
- (b) an application fee is payable, because a document sought by the applicant does not concern the applicant’s personal affairs, but is unpaid;

the agency or Minister must give the applicant written notice of the decision.

‘(4) The time between the date of the notice and when the applicant gives the information or pays the application fee

does not count as part of the appropriate period under section 27.²⁴

- ‘(5) However, the applicant is taken to have withdrawn the application if—
- (a) the applicant fails to give the information within 30 days after the day the notice of a decision under subsection (3)(a) is sent to the applicant; or
 - (b) after the applicant is sent the notice of a decision under subsection (3)(b), the applicant fails to pay the application fee—
 - (i) if an application for review is made within the period within which an application for review under this Act may be made—within 30 days after the review has been finally disposed of (unless on the review it is decided the application fee is not payable); or
 - (ii) otherwise—by the end of the period within which an application for review under this Act may be made.’.

16 Amendment of s 26 (Transfer of applications)

- (1) Section 26(2), ‘(the *receiving agency*)’—

omit, insert—

‘(the *original agency*)’.

- (2) Section 26(2)(a), ‘receiving’—

omit, insert—

‘original’.

- (3) Section 26—

insert—

- ‘(7) If part of an application is transferred under this section and the transferred part of the application relates to a document that does not concern the applicant’s personal affairs, a

²⁴ Section 27 (How applications are dealt with)

separate application fee is payable for the transferred part of the application.’.

17 Amendment of s 27 (How applications are dealt with)

- (1) Section 27(4), ‘the agency or Minister is taken’—
omit, insert—
‘the agency’s principal officer or the Minister is taken’.
- (2) Section 27(4) to (6), as amended—
renumber as section 27(5) to (7).
- (3) Section 27(3)—
omit, insert—
- ‘(3) If giving access to a document will disclose to the applicant matter the agency or Minister reasonably considers is not relevant to the application, the agency or Minister may delete the irrelevant matter from a copy of the document before giving access to the document.
- ‘(4) The agency or Minister may give access to a document by giving access to a copy of the document with the irrelevant matter deleted only if the agency or Minister considers, from the application or after consultation with the applicant—
 - (a) the applicant would accept the copy; and
 - (b) it is reasonably practicable to give access to the copy.’.

18 Insertion of new s 28B

After section 28A—

insert—

‘28B Refusal of access—document nonexistent or unlocatable

- ‘(1) An agency or Minister may refuse access to a document if the agency or Minister is satisfied the document does not exist.

Example—

documents that have not been created

- ‘(2) An agency or Minister may refuse access to a document if—
- (a) the agency or Minister is satisfied the document has been or should be in the agency’s or Minister’s possession; and
 - (b) all reasonable steps have been taken to find the document but the document can not be found.

Examples—

- documents that have been lost
 - documents that have been disposed of under an authority given by the State Archivist
- ‘(3) Subject to subsection (4), a search for a document from a backup system is not required before refusing access under this section.
- ‘(4) A search for a document from a backup system is required before refusing access under subsection (1) only if—
- (a) the document is—
 - (i) a document required to be kept under the *Public Records Act 2002*; and
 - (ii) not a document that the agency or Minister could lawfully have disposed of under the *Public Records Act 2002*; and
 - (b) the agency or Minister considers the document has been kept in, and is retrievable from, the backup system.’.

19 Replacement of ss 28–29D

Sections 28 to 29D—

omit, insert—

‘27A Calculation of appropriate period for s 27

- ‘(1) If an applicant gives an agency or Minister a copy of the applicant’s concession card, the period commencing on the day the applicant gives the copy and ending on—

- (a) the day the applicant is notified of the decision of the agency or Minister under schedule 4, section 8(2) or schedule 4, section 9(2)(b);²⁵ or
- (b) the day the agency or Minister, having not notified the applicant of the decision, is taken to have made a decision under schedule 4, section 9(3);

does not count as part of the appropriate period under section 27.

‘(2) If an applicant is given a preliminary assessment notice before the end of the original section 27 period applying to the application, the period commencing on the day the applicant is given the notice and ending on—

- (a) the day the applicant—
 - (i) if no deposit is payable, agrees in writing to pay the relevant charge; or
 - (ii) pays the relevant deposit and agrees in writing to pay the relevant charge; or
- (b) the day the applicant, having not agreed to pay the relevant charge, or having not paid the relevant deposit and agreed in writing to pay the relevant charge, is notified of a decision, whether or not made on review, that no charges are payable because the charges have been wrongly assessed or are to be waived;

does not count as part of the appropriate period under section 27.

Note—

The appropriate period for section 27 may also be affected by section 29A(7).

‘(3) In this section—

original section 27 period, for an application, means the period under the definition *appropriate period* in section 27(7) that would apply to the application in the absence of this section.

²⁵ Schedule 4 (Process for assessment of charges), section 8 (Concession card given and accepted) or section 9 (Concession card given but not accepted)

relevant charge means the original charge or amount of the charge decided on review.

relevant deposit means the original deposit or the deposit, if any, on account of the charge decided on review that the applicant is required to pay.

review means consideration under this Act of an objection notice.

‘28 Refusal of access—matter or document exempt

‘An agency or Minister may refuse access to exempt matter or an exempt document.

‘28A Refusal of access—document nonexistent or unlocatable

‘(1) An agency or Minister may refuse access to a document if the agency or Minister is satisfied the document does not exist.

Example—

documents that have not been created

‘(2) An agency or Minister may refuse access to a document if—

(a) the agency or Minister is satisfied the document has been or should be in the agency’s or Minister’s possession; and

(b) all reasonable steps have been taken to find the document but the document can not be found.

Examples—

- documents that have been lost
- documents that have been disposed of under an authority given by the State Archivist

‘(3) Subject to subsection (4), a search for a document from a backup system is not required before refusing access under this section.

‘(4) A search for a document from a backup system is required before refusing access under subsection (1) only if—

(a) the document is—

- (i) a document required to be kept under the *Public Records Act 2002*; and
 - (ii) not a document that the agency or Minister could lawfully have disposed of under the *Public Records Act 2002*; and
- (b) the agency or Minister considers the document has been kept in, and is retrievable from, the backup system.

‘29 Refusal to deal with application—agency’s or Minister’s functions

- ‘(1) An agency or Minister may refuse to deal with an application for access to documents or, if the agency or Minister is considering 2 or more applications by the applicant, all the applications, if the agency or Minister considers the work involved in dealing with the application or all the applications would, if carried out—
- (a) substantially and unreasonably divert the resources of the agency from their use by the agency in the performance of its functions; or
 - (b) interfere substantially and unreasonably with the performance by the Minister of the Minister’s functions.
- ‘(2) Without limiting the matters to which the agency or Minister may have regard in making a decision under subsection (1), the agency or Minister must have regard to the resources that would have to be used—
- (a) in identifying, locating or collating the documents in the filing system of the agency or the Minister’s office; or
 - (b) in deciding whether to give, refuse or defer access to the documents, or to give access to edited copies of the documents, including resources that would have to be used—
 - (i) in examining the documents; or
 - (ii) in consulting with an entity in relation to the application; or
 - (c) in making a copy, or edited copy, of the documents; or

- (d) in notifying any interim or final decision on the application.
- ‘(3) In deciding whether to refuse, under subsection (1), to give access to documents, an agency or Minister must not have regard to—
- (a) any reasons the applicant gives for applying for access; or
 - (b) the agency’s or Minister’s belief about what are the applicant’s reasons for applying for access.
- ‘(4) If—
- (a) an application is expressed to relate to all documents, or to all documents of a stated class, that contain information of a stated kind or relate to a stated subject matter; and
 - (b) it appears to the agency or Minister that all of the documents to which the application relates are exempt documents;
- the agency or Minister may refuse to deal with the application without having identified any or all of the documents.
- ‘(5) The notice of the agency’s or Minister’s decision under subsection (4) to refuse to deal with an application must identify the provision under which the documents are exempt documents.

‘29A What an agency or Minister must do before refusing to deal with application under s 29

- ‘(1) An agency or Minister may refuse to deal with an application under section 29(1) only if—
- (a) the agency or Minister has given the applicant a written notice—
 - (i) stating an intention to refuse to deal with the application; and
 - (ii) advising that, for a consultation period, the applicant may consult with a stated officer of the agency or a stated member of the staff of the

-
- Minister with a view to making an application in a form that would remove the ground for refusal; and
- (iii) advising that the consultation period ends 21 days after the day the applicant is given the notice; and
- (iv) stating the effect of subsections (2), (3), (4), (5), (6) and (7); and
- (b) the agency or Minister has given the applicant a reasonable opportunity to consult with the officer or member; and
- (c) the agency or Minister has, as far as is reasonably practicable, provided the applicant with any information that would help the making of an application in a form that would remove the ground for refusal.
- ‘(2) During consultation, the applicant and officer or member may agree what is to be the appropriate period for section 27 in relation to the application.
- ‘(3) Following consultation, the applicant may give the officer or member written notice either confirming or altering the application.
- Examples of alterations—*
- an alteration of the documents to which the application relates
 - an alteration of the application to state that the appropriate period for section 27 in relation to the application is to be a period that has been agreed with the officer or member
- ‘(4) If the application is altered, section 29 applies in relation to the altered application but the other provisions of this section do not apply to it.
- ‘(5) If the applicant fails to consult after being given notice under subsection (1)(a), the applicant is taken to have withdrawn the application.
- ‘(6) Without limiting subsection (5), the applicant is taken to have failed to consult if, by the end of the consultation period, the applicant has not given the officer or member written notice under subsection (3).
- ‘(7) If the applicant gives the officer or member written notice altering the application to state that the appropriate period for

section 27 is a period agreed under subsection (2), the agreed period is taken to be the appropriate period for section 27.

- ‘(8) Also, the period commencing on the day an applicant is given notice under subsection (1)(a) and ending on the day the applicant gives the agency or Minister written notice confirming or altering the application following consultation does not count as part of the appropriate period for section 27.

‘29B Refusal to deal with application—previous application for same documents

- ‘(1) This section applies if an applicant applies to an agency or Minister (the *later application*) for access to documents that have been the subject of an earlier application made by the same applicant to the same agency or Minister (the *earlier application*).
- ‘(2) However, this section does not apply if the applicant withdrew the earlier application or the application was taken to be withdrawn under section 25A(5), 29A(5) or schedule 4, section 2.²⁶
- ‘(3) The agency or Minister may, to the extent the later application relates to documents sought under the earlier application, refuse to deal with the later application on a ground mentioned in subsection (4) if—
- (a) the agency or Minister is satisfied the documents sought under the later application are the documents sought under the earlier application; and
 - (b) the later application has not disclosed any reasonable basis for again seeking access to the documents.
- ‘(4) The grounds are as follows—
- (a) the agency’s or Minister’s decision on the earlier application—

²⁶ Section 25A (Initial duties of agency or Minister in relation to application), 29A (What an agency or Minister must do before refusing to deal with application under s 29) or schedule 4 (Process for assessment of charges), section 2 (Deemed withdrawal of application)

- (i) is the subject of a review under part 5²⁷ and the review is not complete; or
- (ii) has been the subject of a completed review under part 5;
- (b) when the later application was made, the agency or Minister had not decided whether to grant access to the documents under the earlier application;
- (c) the agency or Minister has decided this Act, or a part of this Act, does not apply to an entity—
 - (i) because the entity is not an agency for this Act; or
 - (ii) because of section 11 or 12²⁸ or another Act;

Note—

Schedule 3 lists provisions of other Acts that exclude or limit the operation of this Act—see section 11D.

- (d) the agency or Minister has decided—
 - (i) this Act, or a part of this Act, does not apply to the documents because of section 11, 11A, 11B, 11C or 12 or another Act;²⁹ or
 - (ii) access to the documents may be refused under section 22;³⁰ or
 - (iii) the documents sought under the earlier application were exempt from disclosure;

Note—

Schedule 3 lists provisions of other Acts that exclude or limit the operation of this Act—see section 11D.

- (e) the agency or Minister has decided the applicant is not entitled to access because of section 11E;³¹

27 Part 5 (External review of decisions)

28 Section 11 (Act not to apply to certain bodies etc.) or 12 (Application of Act to Information Commissioner)

29 Section 11A (Application of Act to GOCs), 11B (Application of Act to corporatised corporations) or 11C (Application of Act to coronial documents)

30 Section 22 (Documents to which access may be refused)

31 Section 11E (Application of Act to offenders)

- (f) the agency or Minister refused access to the documents under section 28A³² in relation to the earlier application.’.

20 Insertion of new s 31A

After section 31—

insert—

‘31A Time limit for access

- ‘(1) This section applies if a person who applies for access to a document under this Act is granted access to the document.
- ‘(2) The person may obtain access to the document—
- (a) if providing access is deferred under section 31, within—
- (i) 60 days after the person is given notice that access is no longer deferred; and
- (ii) any additional period allowed by the agency or Minister; or
- (b) otherwise, within—
- (i) 60 days after the person is given notice of the agency’s or Minister’s decision, or the commissioner’s decision, to give the person access to the document; and
- (ii) any additional period allowed by the agency or Minister.
- ‘(3) If the person does not seek to obtain access to the document within the 60 days, or any additional period allowed by the agency or Minister, the person’s entitlement to access under the application ends.’.

21 Replacement of s 33 (Persons who are to make decisions for agencies and Ministers)

Section 33—

32 Section 28A (Refusal of access—document nonexistent or unlocatable)

omit, insert—

‘33 Persons who are to make decisions for agencies and Ministers

- ‘(1) An application to an agency is to be dealt with on behalf of the agency by—
- (a) if the agency is a department or public authority—the agency’s principal officer; or
 - (b) if the agency is a local government—
 - (i) the agency’s principal officer; or
 - (ii) another officer of the agency who the local government, by resolution, nominates.
- ‘(2) A nomination under subsection (1)(b)(ii) may be general or limited to a particular application.
- ‘(3) An application to a Minister may be dealt with by the person the Minister directs, either generally or in a particular case.
- ‘(4) Under subsection (1)(a), an agency’s principal officer may delegate the power to deal with the application to—
- (a) another officer of the agency; or
 - (b) if the principal officer of a portfolio agency agrees—the principal officer of the portfolio agency.
- ‘(5) The principal officer of a portfolio agency may subdelegate a power delegated to him or her under subsection (4)(b).
- ‘(6) In this section—
- portfolio agency*, in relation to an agency, means another department or public authority that is administered by the Minister who administers the agency.’.

22 Amendment of s 34 (Notification of decisions and reasons)

Section 34(2)(b) and (c)—

omit, insert—

- ‘(b) if access to a document is to be given, the period within which the person may access the document under section 31A;³³ and
- (c) if access to a document is to be given subject to the deletion of irrelevant matter—that irrelevant matter has been deleted from the document under section 27(3);³⁴ and’.

23 Insertion of new pt 3, div 1A

After section 35—

insert—

‘Division 1A Fees and charges

‘35A Meaning of *financial hardship*

- ‘(1) An applicant is in *financial hardship* only if the applicant is—
 - (a) an individual who holds a concession card; or
 - (b) a non-profit organisation in financial hardship.
- ‘(2) Whether a non-profit organisation is in financial hardship depends on—
 - (a) the nature and size of the organisation’s funding base; and
 - Example for paragraph (a)—*
 - The fact an organisation receives significant government funding may indicate its finances are strictly limited.
 - (b) the amount of the original charge compared to the organisation’s financial position, having regard especially to the organisation’s liquid funds.

33 Section 31A (Time limit for access)

34 Section 27 (How applications are dealt with)

Example for paragraph (b)—

A charge of up to \$100 would normally not be beyond the means of an organisation unless its financial position was extremely limited.

‘(3) In this section—

non-profit organisation means an organisation that is not carried on for the profit or gain of its individual members.

Examples of entities that may be non-profit organisations—

charities, churches, clubs, environment protection societies

‘35B Fees and charges for access to documents not concerning personal affairs

‘(1) This section applies to an applicant applying for access to a document that does not concern the applicant’s personal affairs.

‘(2) The applicant must pay, at the time the application is made, an application fee.

‘(3) The applicant must pay any processing charge and access charge before the applicant is provided access to the document.

‘(4) However, a requirement to pay a processing charge applies even if—

(a) access to the document asked for is granted and the applicant does not seek to obtain access to the document within the 60 days, or additional period, mentioned in section 31A;³⁵ or

(b) access to the document asked for is refused under this Act.

‘(5) If the agency or Minister considers it appropriate that the applicant pay a deposit on account of any processing charge or access charge, the applicant must pay any deposit at the time required under schedule 4.³⁶

35 Section 31A (Time limit for access)

36 Schedule 4 (Process for assessment of charges)

- ‘(6) The amount of any deposit is the amount provided for under a regulation.

‘35C Waiver of fees and charges

- ‘(1) An application fee may not be waived.
- ‘(2) A processing charge or access charge may be waived only as provided under this Act.
- ‘(3) A processing charge or access charge must be waived if the agency or Minister considers the applicant is in financial hardship.
- ‘(4) A processing charge or access charge may also be waived under section 79(2).³⁷

‘35D Process for assessment of charges

‘The process for assessment of charges is stated in schedule 4.³⁸

‘35E Refund of excess payment

‘If an applicant pays an agency or Minister an amount for processing charges and access charges that is more than the amount of processing charges and access charges ultimately payable under this Act, the agency or Minister must refund the difference to the applicant.’.

24 Amendment of s 42 (Matter relating to law enforcement or public safety)

- (1) Section 42(1)—

insert—

‘(ca) result in a person being subjected to a serious act of harassment or intimidation; or’.

³⁷ Section 79 (Applications where decisions delayed)

³⁸ Schedule 4 (Process for assessment of charges)

(2) Section 42—

insert—

‘(3A) Matter is also exempt matter if it consists of information obtained, used or prepared for an investigation by a prescribed crime body, or another agency, in the performance of the prescribed functions of the prescribed crime body.

‘(3B) Matter is not exempt under subsection (3A) in relation to a particular applicant if—

- (a) it consists of information about the applicant; and
- (b) the investigation has been finalised.

‘(3C) A reference in this section to a repealed Act includes a reference to the repealed Act as originally enacted and as in force from time to time.’.

(3) Section 42(5)—

insert—

‘prescribed crime body means—

- (a) the Crime and Misconduct Commission; or
- (b) the former Criminal Justice Commission; or
- (c) the former Queensland Crime Commission.

prescribed functions means—

- (a) in relation to the Crime and Misconduct Commission—the crime function, and the misconduct functions, within the meaning of the *Crime and Misconduct Act 2001*; and
- (b) in relation to the former Criminal Justice Commission—the functions of the former Criminal Justice Commission under the repealed *Criminal Justice Act 1989* in relation to organised or major crime or in relation to misconduct or official misconduct within the meaning of that Act; and
- (c) in relation to the former Queensland Crime Commission—the functions of the former Queensland Crime Commission under the repealed *Crime*

Commission Act 1997 in relation to relevant criminal activity or major crime within the meaning of that Act.’.

25 Amendment of s 44 (Matter affecting personal affairs)

- (1) Section 44(1), after ‘public interest.’—

insert—

‘Note—

See also section 50A (Applications on behalf of children and matters affecting personal affairs of children).’.

- (2) Section 44(3)(a), ‘information of a medical or psychiatric nature concerning the person making the application’—

omit, insert—

‘health care information concerning the applicant’.

- (3) Section 44(3), ‘a medical practitioner’—

omit, insert—

‘an appropriately qualified health care professional’.

- (4) Section 44(4)—

omit, insert—

- ‘(4) The principal officer or Minister may appoint an appropriately qualified health care professional to make a decision under subsection (3) on behalf of the principal officer or Minister.

- ‘(5) A health care professional nominated and approved under subsection (3) may decide—

(a) whether or not to disclose all or part of the information contained in the document to the applicant; and

(b) the way in which to disclose the information to the applicant.

- ‘(6) In this section—

appropriately qualified means having the qualifications and experience appropriate to assess the health care information in the document.

health care information means information provided by a health care professional.

health care professional means a person who carries on, and is entitled to carry on, an occupation involving the provision of care for a person's physical or mental health or wellbeing, including, for example—

- (a) a doctor, including a psychiatrist; or
- (b) a psychologist; or
- (c) a social worker; or
- (d) a registered nurse.'.

26 Amendment of s 45 (Matter relating to trade secrets, business affairs and research)

- (1) Section 45(3)(a)—

omit, insert—

'(a) it would disclose the purpose or results of research, whether or not the research is yet to be started, the research has started but is unfinished, or the research is finished; and'.

- (2) Section 45(3)(b), after 'whose behalf the research'—

insert—

'was,'.

- (3) Section 45(4), after 'it concerns research that'—

insert—

'was,'.

27 Amendment of s 46 (Matter communicated in confidence)

Section 46(2), from 'its disclosure would' to 'confidence owed to'—

omit, insert—

'it consists of information communicated by'.

28 Insertion of new pt 3, div 2A

After section 50—

insert—

‘Division 2A Children**‘50A Applications on behalf of children and matters affecting personal affairs of children**

- ‘(1) Without limiting the ability of persons to make applications on behalf of children, an application may be made under section 25³⁹ on behalf of a child by a parent or a person having guardianship of the child.
- ‘(2) If an application made under section 25 states that it is made on behalf of a child by a parent or another person having guardianship of the child—
- (a) the application must state the name of the child and the name of the parent or other person; and
 - (b) the child is the applicant for the purposes of division 1A;⁴⁰ and
 - (c) section 105⁴¹ does not apply in relation to the application but, if the application is for documents that relate to the personal affairs of the child and that contain matter that would be exempt matter if the application were made by a person (other than the child or the child’s agent), an agency or Minister—
 - (i) must not give access to the information unless the agency or the Minister is satisfied of the identity of the child and the parent or other person; and
 - (ii) must ensure, by the adoption of appropriate procedures, that any information intended for the child is received only by the parent or other person.

39 Section 25 (How applications for access are made)

40 Division 1A (Fees and charges)

41 Section 105 (Precautions)

- ‘(3) If an application is made under section 25 by, or on behalf of a child, then, despite section 44(2),⁴² if a document contains information concerning the personal affairs of the child, the agency or Minister may refuse access to all or part of the information if the agency or Minister considers access would not be in the best interests of the child.
- ‘(4) If an application is made under section 25 by a child, the agency or Minister, in deciding whether to give the child access to all or part of the information, must consider whether the child has the capacity to—
- (a) understand the information and the context in which it was recorded; and
 - (b) make a mature judgment as to what might be in his or her best interests.
- ‘(5) In this section—

child means an individual who is under 18.

guardianship includes guardianship, whether sole guardianship or otherwise and whether for a particular purpose or otherwise, under a law of the Commonwealth or of a State or Territory.

parent see the *Child Protection Act 1999*, section 11(1) to (4).

Note—

Child Protection Act 1999, section 11(1) to (4)—

11 Who is a parent

- (1) A ***parent*** of a child is the child’s mother, father or someone else (other than the chief executive) having or exercising parental responsibility for the child.
- (2) However, a person standing in the place of a parent of a child on a temporary basis is not a parent of the child.
- (3) A parent of an Aboriginal child includes a person who, under Aboriginal tradition, is regarded as a parent of the child.

42 Section 44 (Matter affecting personal affairs)

- (4) A parent of a Torres Strait Islander child includes a person who, under Island custom, is regarded as a parent of the child.’.

29 Amendment of s 51 (Disclosure that may reasonably be expected to be of substantial concern)

- (1) Section 51(2)(e)—

omit, insert—

‘(e) defer giving access to the document until after—

- (i) the agency or Minister is given written notice by the government, agency or person concerned that the government, agency or person concerned does not intend to make any application for review under this Act; or
- (ii) if notice is not given under subparagraph (i) and no application for review under this Act is made by the end of the review period—the end of the review period; or
- (iii) if an application for review is made by the end of the review period—the application is finally disposed of.’.

- (2) Section 51(3)—

omit, insert—

- ‘(3) In this section—

adult child means a child who is 18 or more.

adult sibling means a sibling who is 18 or more.

eligible family member, of a deceased person, means—

- (a) a spouse of the deceased person; or
- (b) if a spouse is not reasonably available—an adult child of the deceased person; or
- (c) if a spouse or adult child is not reasonably available—a parent of the deceased person; or
- (d) if a spouse, adult child or parent is not reasonably available—an adult sibling of the deceased person; or

- (e) if a spouse, adult child, parent or adult sibling is not reasonably available and the deceased person was not an Aboriginal person or Torres Strait Islander—the next nearest adult relative of the deceased person who is reasonably available; or
- (f) if a spouse, adult child, parent or adult sibling is not reasonably available and the deceased person was an Aboriginal person or Torres Strait Islander—a person who is an appropriate person according to the tradition or custom of the Aboriginal or Torres Strait Islander community to which the deceased person belonged and who is reasonably available.

person concerned, in relation to a person who has died, means the deceased person's eligible family member, or, if 2 or more persons qualify as the deceased person's eligible family member, 1 of those persons.

review period means the period within which any application for review under this Act may be made.

- '(4) For the definition *eligible family member*, a person described in the definition is not *reasonably available* if—
- (a) a person of that description does not exist; or
 - (b) a person of that description can not be reasonably contacted; or
 - (c) a person of that description is unable or unwilling to act as the person concerned for this section.'

30 Replacement of s 52 (Internal review)

Section 52—

omit, insert—

'52 Internal review

- '(1) A person who is aggrieved by any of the following decisions is entitled to a review of the decision—
- (a) a decision under this part;
 - (b) a decision that this Act, or a part of this Act, does not apply to an entity—

- (i) because the entity is not an agency for this Act; or
- (ii) because of section 11 or 12⁴³ or another Act;
- (c) a decision that this Act, or a part of this Act, does not apply to a document because of section 11, 11A, 11B, 11C or 12⁴⁴ or another Act;

Note—

Schedule 3 lists provisions of other Acts that exclude or limit the operation of this Act—see section 11D.

- (d) a decision of the agency or Minister that the applicant is not entitled to access because of section 11E.⁴⁵
- ‘(2) An application for review of a decision must—
 - (a) be in writing; and
 - (b) state an address to which notices under this Act may be sent to the applicant; and
 - (c) be lodged at an office of the agency or the Minister within 28 days after the day on which written notice of the decision was given to the applicant or within the further time the agency’s principal officer or the Minister allows (whether before or after the end of the 28 day 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 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.

43 Section 11 (Act not to apply to certain bodies etc.) or 12 (Application of Act to Information Commissioner)

44 Section 11A (Application of Act to GOCs), 11B (Application of Act to corporatised corporations) or 11C (Application of Act to coronial documents)

45 Section 11E (Application of Act to offenders)

- ‘(5) The reviewer must decide the application as if it were a fresh application under section 25.
- ‘(6) If an agency or Minister does not decide an application and notify the applicant of the decision within 28 days after receiving it, the agency’s principal officer or the Minister 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 only if section 52A(1), (3) or (4) applies.

‘52A Who is aggrieved by a decision for s 52

- ‘(1) For section 52, a person is aggrieved by a decision if the decision relates to an application made by the person under section 25 and is to the effect that—
 - (a) the agency or Minister refuses, under section 29 or 29B,⁴⁶ to deal with the application; or
 - (b) the agency or Minister refuses to give the applicant access to a document; or
 - (c) access to a document is to be given to the applicant subject to deferral; or
 - (d) access to a document is to be given to the applicant subject to the deletion of exempt matter or matter an agency or Minister considers is irrelevant matter; or
 - (e) an application fee is payable; or
 - (f) a processing charge or access charge is payable under a final assessment notice and—
 - (i) the applicant considers the charge is wrongly assessed; or
 - (ii) the applicant considers the processing charge and access charge should be waived because the applicant is in financial hardship and, if the agency is not a department, the applicant gave the agency

46 Section 29 (Refusal to deal with application—agency’s or Minister’s functions) or 29B (Refusal to deal with application—previous application for same documents)

an objection notice in which the applicant contended that charges should be waived because the applicant is in financial hardship; or

Note—

For challenges to a processing charge or access charge payable under a preliminary assessment notice, see schedule 4 (Process for assessment of charges), part 2 (Objection process).

- (g) a contention in an objection notice is rejected.
- ‘(2) For subsection (1)(f), it does not matter whether the processing charge or access charge has already been paid.
- ‘(3) For section 52, a person, including a government or agency, is aggrieved by a decision if the decision relates to an application by another person under section 25 for access to a document and—
 - (a) the agency or Minister should have taken, but has not taken, the steps that are reasonably practicable to obtain the views of the aggrieved person about whether or not the document contained matter that is exempt matter; or
 - (b) the agency or Minister has obtained the views of the aggrieved person but the decision is not in accordance with the views.
- ‘(4) For section 52, a person is aggrieved by a decision if—
 - (a) the decision relates to an application by another person under section 25 for access to a document; and
 - (b) 2 or more persons, including the aggrieved person, qualify as a deceased person’s eligible family member as defined under section 51;⁴⁷ and
 - (c) the agency or Minister obtained the views of 1 of the persons and that person was of the view that the matter contained in the document was not exempt matter; and
 - (d) the agency or Minister did not obtain the views of the aggrieved person and the aggrieved person is of the view

⁴⁷ Section 51 (Disclosure that may reasonably be expected to be of substantial concern)

that the matter contained in the document is exempt matter.’.

31 Replacement of ss 53 and 54

Sections 53 and 54—

omit, insert—

‘53 Person may apply for amendment of information

‘(1) A person who has had access to a document from an agency or Minister (whether or not under this Act) containing information relating to the person’s personal affairs is entitled to apply to the agency or Minister for amendment of any part of the information that the person claims is inaccurate, incomplete, out-of-date or misleading.

‘(2) A person who—

(a) has had access to a document from an agency or Minister (whether or not under this Act) containing information relating to the personal affairs of a deceased person; and

(b) is either—

(i) a person who qualifies as a deceased person’s eligible family member as defined under section 51; or

(ii) a person the agency or Minister considers has an appropriate interest in the amendment of the information relating to the personal affairs of the deceased person;

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

‘54 Form of application for amendment of information

An application under section 53 must—

(a) be in writing; and

-
- (b) state an address to which a notice under section 57⁴⁸ may be sent to the applicant; and
 - (c) state the information the applicant claims is inaccurate, incomplete, out-of-date or misleading and the document containing the information; and
 - (d) state the way in which the applicant claims the information to be inaccurate, incomplete, out-of-date or misleading and the grounds for the applicant's claim; and
 - (e) if the applicant claims the information to be inaccurate or misleading—state the amendments the applicant claims are necessary for the information to be accurate or not misleading; and
 - (f) if the applicant claims the information to be incomplete or out-of-date—state the other information the applicant claims is necessary to complete the information or to bring it up-to-date.

'54A Transfer of applications

- '(1) An agency to which an application under section 53⁴⁹ has been made (the *original agency*) may transfer the application to another agency if—
 - (a) the document to which the application relates is held by the original agency but is more closely related to the functions of the other agency; and
 - (b) the other agency consents to the transfer.
- '(2) If the application is transferred, the original agency must—
 - (a) give a copy of the document (whether or not in the form of a written document) to the other agency with the application; and

48 Section 57 (Time within which agency or Minister must notify applicant)

49 Section 53 (Person may apply for amendment of information)

- (b) immediately give the applicant written notice of the transfer, stating in the notice the day on which, and the agency to which, the application has been transferred.
- ‘(3) If the application is transferred, the application is taken—
 - (a) to be an application under section 53 made to the other agency; and
 - (b) to have been received by the other agency—
 - (i) on the day on which it is transferred; or
 - (ii) 14 days after the day on which it was received by the original agency;
 whichever is the earlier.
- ‘(4) If the other agency decides to amend the information to which the application relates, then—
 - (a) the other agency must advise the original agency of the decision and how, under section 55,⁵⁰ it proposes to make the amendment; and
 - (b) the original agency must make the same amendment to the information in the document it holds.
- ‘(5) If an application is made to an agency for amendment of information in more than 1 document, this section applies in relation to each of the documents as if separate applications had been made to the agency for amendment of information in each of the documents.
- ‘(6) In this section—

agency includes a Minister.

‘54B Refusal to deal with application—agency’s or Minister’s functions

- ‘(1) An agency or Minister to whom an application is made under section 53 may refuse to deal with the application or, if the agency or Minister is considering 2 or more applications made by the same person, all the applications, if the agency or

⁵⁰ Section 55 (Amendment of information by alteration or notation)

Minister considers the work involved in dealing with the application or all the applications, would, if carried out—

- (a) substantially and unreasonably divert the resources of the agency from their use by the agency in the performance of its functions; or
 - (b) interfere substantially and unreasonably with the performance by the Minister of the Minister's functions.
- '(2) If the agency or Minister decides to refuse to deal with the application or all the applications—
- (a) the agency or Minister must give written notice to the applicant of the decision and the reasons for the decision; and
 - (b) the notice must specify—
 - (i) the day on which the decision was made; and
 - (ii) details of any public interest considerations on which the decision was based; and
 - (iii) the name and designation of the officer who made the decision; and
 - (c) section 59⁵¹ does not apply in relation to the information the subject of the application.

'54C What an agency or Minister must do before refusing to deal with application under s 54B

- '(1) The agency or Minister may refuse to deal with the application, or all the applications, under section 54B only if—
- (a) the agency or Minister has given the applicant a written notice—
 - (i) stating an intention to refuse to deal with the application or all the applications; and
 - (ii) advising that, for a consultation period, the applicant may consult with a stated officer of the

agency or a stated member of the staff of the Minister with a view to making an application or applications in a form that would remove the ground for refusal; and

- (iii) advising that the consultation period ends 21 days after the day the applicant is given the notice; and
 - (iv) stating the effect of subsections (2), (3), (4), (5), (6) and (7); and
- (b) the agency or Minister has given the applicant a reasonable opportunity to consult with the officer or member; and
- (c) the agency or Minister has, as far as is reasonably practicable, provided the applicant with any information that would help the making of an application or applications in a form that would remove the ground for refusal.
- ‘(2) During consultation, the applicant and officer or member may agree on a different period to the period mentioned in section 57⁵² for notification of the decision in relation to the application or any of the applications.
- ‘(3) Following consultation, the applicant may give the officer or member written notice either confirming or altering the application or any of the applications.
- Examples of alterations—*
- an alteration of the documents to which the application relates
 - an alteration of the application to state that the period for notification of the decision in relation to the application is to be the period agreed with the officer or member rather than the period mentioned in section 57
- ‘(4) If the application is altered, section 54B applies in relation to the altered application but the other provisions of this section do not apply to it.
- ‘(5) If the applicant fails to consult after being given notice under subsection (1)(a), the applicant is taken to have withdrawn the application or all of the applications.

-
- ‘(6) Without limiting subsection (5), the applicant is taken to have failed to consult if, by the end of the consultation period, the applicant has not given the officer or member written notice under subsection (3).
- ‘(7) If the applicant gives the officer or member written notice altering the application to state that the period for notification of the decision in relation to the application is to be the different period agreed under subsection (2), the agreed period is taken to be the period mentioned in section 57.
- ‘(8) Also, the period commencing on the day an applicant is given notice under subsection (1)(a) and ending on the day the applicant gives the agency or Minister written notice confirming or altering the application following consultation does not count as part of the period mentioned in section 57.

‘54D Refusal to deal with application—previous application for same amendment

- ‘(1) This section applies if an applicant applies to an agency or Minister for amendment under section 53 of information in 1 or more documents (the *later application*) and has made an earlier application to the same agency or Minister for the same or a similar amendment under section 53 of information in 1 or more of the same documents (the *earlier application*).
- ‘(2) However, this section does not apply if the applicant withdrew the earlier application or the application was taken to be withdrawn under section 54C.⁵³
- ‘(3) The agency or Minister may, to the extent the later application relates to the amendment of a document or documents sought under the earlier application, refuse to deal with the later application on a ground mentioned in subsection (4) if—
- (a) the agency or Minister is satisfied the amendment sought under the later application was the same or similar amendment sought under the earlier application; and

⁵³ Section 54C (What an agency or Minister must do before refusing to deal with application under s 54B)

-
- (b) the later application has not disclosed any reasonable basis for again seeking amendment of information in the document or documents.
- ‘(4) The grounds are as follows—
- (a) the agency’s or Minister’s decision on the earlier application was to refuse to amend on a ground mentioned in section 54E(2);
- (b) when the later application was made, the agency or Minister had not decided whether to amend the information to which the earlier application relates;
- (c) the agency’s or Minister’s decision on the earlier application—
- (i) is the subject of a review under division 2⁵⁴ and the review is not complete; or
- (ii) has been the subject of a completed review under division 2.

‘54E Discretion to amend information

- ‘(1) An agency or Minister to whom an application is made under section 53 may decide to amend the information to which the application relates.
- ‘(2) Without limiting the grounds on which the agency or Minister may refuse to amend the information, the agency or Minister may refuse to amend the information because—
- (a) the agency or Minister is not satisfied—
- (i) the information is inaccurate, incomplete, out-of-date or misleading; or
- (ii) the information sought to be amended is information relating to the personal affairs of the applicant or relating to the personal affairs of a deceased person; or

(iii) if the information sought to be amended is information relating to the personal affairs of a deceased person, that the applicant is a person entitled to apply for amendment under section 53(2)(b); or

(b) the information is not recorded in a functional record.

‘(3) In this section—

functional record, of an agency or Minister, means a record available for use in the day to day or ordinary performance of the agency’s or Minister’s functions.’.

32 Amendment of s 55 (Agency or Minister may amend information)

Section 55, heading—

omit, insert—

‘55 Amendment of information by alteration or notation’.

33 Amendment of s 57 (Time within which agency or Minister must notify applicant)

Section 57—

insert—

Note—

The period of 30 days mentioned in subsection (1) may be affected by section 54C(7).

‘(2) If—

(a) the period of 30 days mentioned in subsection (1) has ended; and

(b) the applicant has not received notice of a decision;

the agency’s principal officer or the Minister is taken to have made, on the last day of the period, a decision refusing to amend the information.’.

34 Replacement of s 59 (Certain notations required to be added)

Section 59—

omit, insert—

‘59 Particular notations required to be added

‘(1) This section applies if—

- (a) a person applies to an agency or Minister under section 53 to amend information; and
- (b) the agency or Minister has refused to amend the information under section 54E;⁵⁵ and
- (c) the agency or Minister has not added a notation to the information under section 56.

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

- (a) stating the way 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 inaccurate or misleading—setting out the amendments the applicant claims are necessary for the information to be accurate or not misleading; and
- (c) if the applicant claims the information to be incomplete or out-of-date—setting out the information the applicant claims is necessary to complete the information or to bring it up-to-date.

‘(3) The agency or Minister must—

- (a) comply with the requirements of a notice under this section; and
- (b) give the applicant written notice of the nature of the notation; and

55 54E (Discretion to amend information)

- (c) if the application made under section 53 was transferred to the agency under section 54A, advise the agency to which the application was originally made (the **original agency**) of the notation.
- ‘(4) Subsection (3)(a) does not require the agency or Minister to make a notation in the words provided by the applicant.
- ‘(5) If the original agency is advised of a notation under subsection (3)(c), the original agency must make the same notation to the information in the document it holds.
- ‘(6) If the agency or Minister decides the information to which the notice relates does not relate to information about which the applicant was entitled to apply to the agency under section 53—
 - (a) subsections (2) and (3) do not apply; and
 - (b) the agency or Minister must give written notice to the applicant of the decision and the reasons for the decision; and
 - (c) section 34(2)(a), (g) and (h) applies to the notice.
- ‘(7) If an agency or Minister (the **document holder**) discloses to a person (including an agency or Minister) any information contained in the part of its documents to which a notice under this section relates, the document holder—
 - (a) must ensure the person is given, when the information is disclosed, a statement—
 - (i) stating that the person, or eligible family member 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.’.

35 Replacement of s 60 (Internal review)

Section 60—

omit, insert—

‘60 Internal review

- ‘(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) state an address to which notices under this Act may be sent to the applicant; and
 - (c) be lodged at an office of the agency or Minister within 28 days after the day on which written notice of the decision was given to the applicant or within the further time the agency’s principal officer or the Minister 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 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.
- ‘(5) The reviewer must decide the application as if it were a fresh application under section 53.
- ‘(6) If an agency, Minister or delegate of the Minister does not decide an application and notify the applicant of the decision within 28 days after receiving it, the agency’s principal officer or the Minister 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 only if—
- (a) the decision relates to an application made by a person under section 53 and is to the effect that the agency or a delegate of the Minister refuses to deal with the application or refuses to amend information under the application; or

- (b) the decision relates to a notice given by a person under section 59 and is to the effect that the agency or a delegate of the Minister considers the information to which the notice relates is not information about which the person was entitled to apply to the agency or Minister under section 53.’.

36 Omission of pt 5, divs 1–3

- (1) Part 5, divisions 1, 2 and 2A—
omit.
- (2) Part 5, division 3—
omit.

37 Renumbering of pt 5, divs 4 and 5

Part 5, divisions 4 and 5—
renumber as part 5, divisions 1 and 2.

38 Amendment of s 73 (Applications for review)

- (1) Section 73(1)(d)—
omit, insert—
‘(d) be made within 28 days from the day on which written notice of the decision is given to the applicant, or within the longer period the commissioner allows.’.
- (2) Section 73(3)(b), ‘14 days’—
omit, insert—
‘28 days’.

39 Replacement of s 74 (Commissioner to notify)

Section 74—
omit, insert—

‘74 Commissioner to notify agency or Minister

‘Before starting a review of a decision, the commissioner must inform the agency or Minister concerned that the decision is to be reviewed.’.

40 Replacement of ss 76 and 77

Sections 76 and 77—

omit, insert—

‘76 Inspection by commissioner of documents from agency or Minister

‘(1) The commissioner may require an agency or Minister to produce a document for inspection for the purpose of enabling the commissioner to decide—

- (a) whether the document is a document of the agency or an official document of the Minister; or
- (b) whether the document falls within the terms of an application for access made under section 25; or
- (c) whether the document is excluded from the application of the Act under section 11, 11A, 11B, 11C or 12⁵⁶ or another Act; or

Note—

Schedule 3 lists provisions of other Acts that exclude or limit the operation of this Act—see section 11D.

- (d) whether the document is a document mentioned in section 11E;⁵⁷ or
- (e) whether the document is a document to which access may be refused under section 22;⁵⁸ or
- (f) whether the document is an exempt document or contains or comprises exempt matter; or

56 Section 11 (Act not to apply to certain bodies etc.), 11A (Application of Act to GOCs), 11B (Application of Act to corporatised corporations), 11C (Application of Act to coronial documents) or 12 (Application of Act to Information Commissioner)

57 Section 11E (Application of Act to offenders)

58 Section 22 (Documents to which access may be refused)

- (g) whether, for the purposes of section 29B,⁵⁹ the later application for access to the document has disclosed any reasonable basis for again seeking access to the document; or
 - (h) whether an application fee, processing charge or access charge is payable in relation to access to the document.
- ‘(2) The commissioner must do all things necessary to ensure a document produced under subsection (1)—
- (a) is not disclosed to a person other than—
 - (i) a member of the staff of the commissioner in the course of performing duties as a member of the staff; or
 - (ii) a person who created the document or who provided the document or information in the document to the agency or Minister; or
 - (iii) if a person mentioned in subparagraph (ii) is a participant in the review—the participant’s representative; and
 - (b) is returned to the agency or Minister at the end of the review.

‘77 Commissioner may decide not to review

- ‘(1) The commissioner may decide not to deal with, or not to further deal with, all or part of an application for review if—
- (a) the commissioner is satisfied the application, or the part of the application, is frivolous, vexatious, misconceived or lacking substance; or
 - (b) the applicant for review fails to comply with a direction given by the commissioner; or
 - (c) the commissioner considers the applicant for review has failed to cooperate in progressing the application, or the part of the application, without reasonable excuse; or

⁵⁹ Section 29B (Refusal to deal with application—previous application for same documents)

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- (d) the commissioner considers the address the applicant for review stated in the application is no longer an address at which the applicant is contactable and the applicant has not, within a reasonable time, advised the commissioner of a new address of the applicant to which notices may be sent under this Act.
- ‘(2) If the commissioner decides not to deal with, or not to further deal with, all or part of an application for review, the commissioner must, as soon as practicable, inform each of the following persons in writing of the decision and of the reasons for the decision—
- (a) the applicant for review, unless subsection (1)(d) applies;
- (b) any other person informed by the commissioner of the proposed review.’.

41 Replacement of s 79 (Applications where decisions delayed)

Section 79—

omit, insert—

‘79 Applications where decisions delayed

- ‘(1) This section applies if an agency’s principal officer or a Minister is taken to have made a decision (the ***original decision***) under section 20(4), 27(5) or 57(2), schedule 4, section 7 or schedule 4, section 9(3)⁶⁰ in relation to an application, or a notice served under section 20(1) (the ***original application***).
- ‘(2) If an application is made to the commissioner for review of the original decision, the commissioner may—
- (a) on the application of the agency or Minister concerned, allow further time to the agency or Minister to deal with the original application; and

⁶⁰ Section 20 (Notices to require specification of documents in statements), section 27 (How applications are dealt with), section 57 (Time within which agency or Minister must notify applicant), schedule 4 (Process for assessment of charges), section 7 (Deemed decision) or section 9(3) (Concession card given but not accepted)

- (b) make the decision to allow further time subject to the conditions the commissioner considers appropriate, including a condition that any processing charge that was required to be paid must be reduced or waived.
- ‘(3) If the agency or Minister does not deal with the original application and notify the applicant within the further time, the agency’s principal officer or the Minister is taken, for the purpose of enabling an application to be made to the commissioner under section 73, to have made, on the last day of the further time, a decision affirming the original decision.’.

42 Replacement of s 81 (Onus to lie with agencies and Ministers)

Section 81—

omit, insert—

‘81 Onus

- ‘(1) 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.
- ‘(2) However, if the decision under review is a disclosure decision, the participant in the application for review who opposes the disclosure decision has the onus of establishing that a decision not to disclose the document or matter is justified or that the commissioner should give a decision adverse to the person who wishes to obtain access to the document.
- ‘(3) In this section—
 - disclosure decision* means—
 - (a) a decision to disclose a document or matter contrary to the views of a person obtained under section 51;⁶¹ or
 - (b) a decision to disclose a document or matter if the agency or Minister should have taken, but has not taken, steps to obtain the views of a person under section 51.’.

61 Section 51 (Disclosure that may reasonably be expected to be of substantial concern)

43 Amendment of s 83 (Conduct of reviews)

Section 83(5)(a), ‘under section 74(2)’—
omit.

44 Replacement of ss 87 and 88

Sections 87 and 88—
omit, insert—

‘86A False or misleading information

‘(1) A person must not give information to the commissioner, or a member of the commissioner’s staff, that the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

‘(2) Subsection (1) does not apply to information given in a document, if the person when giving the document—

(a) informs the commissioner or member of the commissioner’s staff, to the best of the person’s ability, how the information is false or misleading; and

(b) gives the correct information to the commissioner or member of the commissioner’s staff if the person has, or can reasonably obtain, the correct information.

‘(3) It is enough for a complaint against a person for an offence against subsection (1) to state that the information was ‘false or misleading’, without specifying whether it was false or whether it was misleading.

‘87 Commissioner to ensure non-disclosure of particular matter

‘(1) On a review, the commissioner may give the directions the commissioner considers necessary to avoid the disclosure to an access participant or an access participant’s representative of—

(a) matter that is claimed to be exempt matter; or

(b) information that is claimed to be information of the kind mentioned in section 35.

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- ‘(2) The commissioner may receive evidence, or hear argument, in the absence of an access participant or an access participant’s representative if it is necessary to do so to prevent disclosure to that person of matter or information of that kind.
- ‘(3) The commissioner must not, in a decision on a review or in reasons for a decision on review, include matter or information of a kind mentioned in subsection (1).
- ‘(4) In this section—
- access participant*** means a participant other than—
- (a) the agency or Minister who made the decision under review; or
 - (b) a participant who created the document concerned or who provided the document concerned to the agency or Minister who made the decision under review.

‘87A Exception for successful challenge of s 35 notice

- ‘(1) This section applies if an agency or Minister gives a notice under section 35(2) and the commissioner is satisfied that the document concerned does not include exempt matter under section 36, 37, 42 or 42A.
- ‘(2) Section 87(3) does not apply.
- ‘(3) Section 89 applies except that the commissioner must—
- (a) first give a copy of the decision only to the agency or Minister; and
 - (b) give a copy of the decision to each other participant only if, at the end of 28 days after the decision is given to the agency or Minister, the commissioner has not been notified that the agency or Minister has applied for a statutory order of review under the *Judicial Review Act 1991* in relation to the commissioner’s decision (***judicial review***).
- ‘(4) Further, if the commissioner directs that access to the document is to be granted, the agency or Minister must comply with the direction only if, at the end of 28 days after

the decision is given to the agency or Minister, the agency or Minister has not applied for judicial review.

‘88 Powers of commissioner on review

- ‘(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, or prescribed person under schedule 4, section 10.⁶²
- ‘(2) In the conduct of a review of a decision mentioned in section 101C(1)(c), the commissioner also has, in addition to any other power, power to require the agency or Minister concerned to conduct further searches for a document.
- ‘(3) 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.
- ‘(4) Any decision of the commissioner under this section has the same effect as a decision of the agency, Minister or prescribed person.
- ‘(5) In this section—
- conduct further searches* for a document includes make inquiries to locate the document.’.

45 Insertion of new s 89A

Part 5, division 1, as renumbered, after section 89—

insert—

‘89A Correction of mistakes in decisions

- ‘(1) This section applies if the commissioner considers—

62 Schedule 4 (Process for assessment of charges), section 10 (Financial hardship claim if agency is a department)

-
- (a) there is an obvious error in a written decision of the commissioner; and
 - (b) the error resulted from an accidental slip or omission.
- ‘(2) The commissioner, on application by a party or on the commissioner’s own initiative, may at any time correct the error.’.

46 Amendment of s 93 (Secrecy)

Section 93, penalty, ‘20’—

omit, insert—

‘100’.

47 Amendment of s 94 (Failure to produce documents or attend proceedings)

Section 94, penalty, ‘20’—

omit, insert—

‘100’.

48 Insertion of new ss 96A and 96B

After section 96—

insert—

‘96A Vexatious applicants

- ‘(1) The commissioner may declare in writing that a person is a vexatious applicant.
- ‘(2) The commissioner may make the declaration on the commissioner’s own initiative or on the application of 1 or more agencies.
- ‘(3) The commissioner may make a declaration only if the commissioner is satisfied that—
 - (a) the person has made repeated applications under this Act in relation to the agency or agencies; and

-
- (b) the repeated applications involve an abuse of the right of access, amendment or review under this Act.
- ‘(4) For subsection (3)(b), repeated applications involve an abuse of the right of access, amendment or review if, for example, the applications were made for the purpose, or have had the effect, of—
- (a) harassing or intimidating an individual or an employee or employees of the agency or agencies; or
- (b) unreasonably interfering with the operations of the agency or agencies.
- ‘(5) The commissioner must not make a declaration in relation to a person without hearing the person and giving the person an opportunity of being heard.
- ‘(6) A declaration has effect subject to the terms and conditions, if any, stated in the declaration.
- ‘(7) Without limiting the conditions that may be stated, a declaration may include a condition that the vexatious applicant may make an application for access under section 25, an application for amendment under part 4 or an application for review under section 52, 60 or 73 only with the written permission of the commissioner.
- ‘(8) In this section—
agency includes a Minister.

‘96B Declaration may be varied or revoked

- ‘(1) The commissioner may vary or revoke a declaration made under section 96A.
- ‘(2) The commissioner may vary or revoke the declaration on the commissioner’s own initiative or on the application of the person subject to the declaration.’.

49 Insertion of new s 99A

After section 99—

insert—

‘99A Third party proceedings

‘(1) The commissioner or a member of the commissioner’s staff can not be compelled—

- (a) to produce an FOI document in third party legal proceedings; or
- (b) to disclose FOI information in third party legal proceedings.

‘(2) In this section—

FOI document means a document received, or brought into existence, by the commissioner or member in performing functions under this Act.

FOI information means information that the commissioner or member obtained while performing functions under this Act.

third party legal proceedings means a legal proceeding other than—

- (a) a legal proceeding started by the commissioner; or
- (b) a legal proceeding started against the commissioner or member arising out of the performance of functions under this Act.’.

50 Amendment of s 101 (Reports of commissioner)

(1) Section 101(3) and (4)—

renumber as section 101(4) and (5).

(2) Section 101—

insert—

‘(3) Without limiting subsection (2), a report under subsection (2) must include, in relation to the financial year to which it relates—

- (a) the number of applications for review to the commissioner under section 73; and
- (b) in relation to each application that results in a decision under section 89—
 - (i) the decision of the commissioner; and

- (ii) if the decision in relation to which the application was made was a decision refusing access to exempt matter—the provision of this Act under which the matter was classified as exempt matter.’.

51 Insertion of new pt 5A

After part 5—

insert—

‘Part 5A Office of the Information Commissioner

‘Division 1 General

‘101A The Information Commissioner and Office

- ‘(1) There is to be an Information Commissioner.
- ‘(2) The office called the Office of the Information Commissioner is established.
- ‘(3) The office consists of the commissioner and the staff of the office.

‘101B Office is a statutory body

- ‘(1) The office is a statutory body for the *Financial Administration and Audit Act 1977* and the *Statutory Bodies Financial Arrangements Act 1982*.
- ‘(2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the office’s powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

‘101C Functions of commissioner

- ‘(1) The functions of the commissioner are to investigate and review decisions of agencies and Ministers of the following kinds—

-
- (a) a decision under section 20 as to whether a person's opinion is correct and a decision under section 20 not to publish statements of affairs or as to whether a statement of affairs complies with part 2;
 - (b) a decision under section 29, 29B or 54B⁶³ refusing to deal with an application;
 - (c) a decision refusing to grant access to documents in accordance with an application under section 25;
 - (d) a decision giving access to documents subject to the deletion of exempt matter or matter an agency or Minister considers is irrelevant matter;
 - (e) a decision giving access to a document of a kind applied for by the applicant but not to all documents of the kind applied for by the applicant;
 - (f) a decision giving access to documents in a form different to the form applied for by the applicant, unless access in the form applied for would involve an infringement of the copyright of a person other than the State;
 - (g) a decision deferring providing access to documents;
 - (h) a decision about whether an application fee is payable;
 - (i) a decision that a processing charge or access charge is payable under a final assessment notice if—
 - (i) the applicant considers that the charge is wrongly assessed; or
 - (ii) the applicant considers that the charge should be waived because the applicant is in financial hardship and an objection notice has been given in which the applicant contended the charge should be waived because the applicant is in financial hardship;
 - (j) a decision, in relation to an objection notice, that—

63 Section 29 (Refusal to deal with application—agency's or Minister's functions), 29B (Refusal to deal with application—previous application for same documents) or 54B (Refusal to deal with application—agency's or Minister's functions)

- (i) the original charge was wrongly assessed and should be reduced on a proper assessment; or
 - (ii) a contention in the objection notice should be rejected;
 - (k) a decision—
 - (i) to disclose documents contrary to the views of a government, agency or person obtained under section 51; or
 - (ii) to disclose documents if an agency or Minister should have taken, but has not taken, steps to obtain the views of a government, agency or person under section 51;
 - (l) a decision not to amend information in accordance with an application under section 53;
 - (m) a decision mentioned in section 59(6);
 - (n) a decision that this Act, or a part of this Act, does not apply to an entity—
 - (i) because the entity is not an agency for this Act; or
 - (ii) because of section 11 or 12⁶⁴ or another Act;
 - (o) a decision that this Act, or a part of this Act, does not apply to a document because of section 11, 11A, 11B, 11C or 12⁶⁵ or another Act;
 - (p) a decision that a person is not entitled to access to a document because of section 11E.⁶⁶
- ‘(2) For subsection (1)(i), it does not matter whether the processing charge or access charge has already been paid.
- ‘(3) The functions of the commissioner also include—

64 Section 11 (Act not to apply to certain bodies etc.) or 12 (Application of Act to Information Commissioner)

65 Section 11A (Application of Act to GOCs), 11B (Application of Act to corporatised corporations) or 11C (Application of Act to coronial documents)

66 Section 11E (Application of Act to offenders)

- (a) investigating and reviewing the grounds for a decision to issue a certificate under section 36, 37, 42 or 42A; and
 - (b) investigating and reviewing whether, in relation to a decision mentioned in subsection (1)(c) or (e), agencies and Ministers have taken reasonable steps to identify and locate documents applied for by applicants; and
 - (c) making declarations under section 96A;⁶⁷ and
 - (d) providing information and help to agencies and members of the public on matters relevant to part 5 or 5A⁶⁸ of this Act.
- ‘(4) 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.

‘101D Control of the office

‘The commissioner controls the office.

‘101E Commissioner not subject to direction

- ‘(1) The commissioner is not subject to direction by any person about—
- (a) the way in which the commissioner’s powers in relation to investigations and reviews are to be exercised; or
 - (b) the priority to be given to investigations and reviews.
- ‘(2) Subsection (1) has effect despite the *Public Service Act 1996*.

‘101F Budget and performance

- ‘(1) For each financial year, the commissioner must develop, adopt and submit to the Minister a budget for the office not later than the day the Minister directs.

⁶⁷ Section 96A (Vexatious applicants)

⁶⁸ Part 5 (External review of decisions) or 5A (Office of the Information Commissioner)

-
- ‘(2) A budget has no effect until approved by the Minister.
 - ‘(3) During a financial year the commissioner may develop, adopt and submit to the Minister amendments to the office’s budget.
 - ‘(4) An amendment has no effect until approved by the Minister.
 - ‘(5) The office must comply with its budget.
 - ‘(6) This section does not require the commissioner to give the Minister any details that would, if given, prejudice a current investigation or review by the commissioner.

‘Division 2 Information Commissioner

‘101G Appointment

- ‘(1) The commissioner is appointed by the Governor in Council.
- ‘(2) The commissioner is appointed under this Act and not under the *Public Service Act 1996*.

‘101H Procedure before appointment

- ‘(1) A person may be appointed as commissioner only if—
 - (a) the Minister has placed press advertisements nationally calling for applications from suitably qualified persons to be considered for appointment; and
 - (b) the Minister has consulted with the parliamentary committee about—
 - (i) the process of selection for appointment; and
 - (ii) the appointment of the person as commissioner.
- ‘(2) Subsection (1)(a) and (b)(i) does not apply to the reappointment of a person as commissioner.

‘101I Term of appointment

‘The commissioner holds office for the term, of not more than 3 years, stated in the instrument of appointment.

‘101J Remuneration and conditions

- ‘(1) The commissioner is to be paid remuneration and other allowances decided by the Governor in Council.
- ‘(2) The remuneration paid to the commissioner must not be reduced during the commissioner’s term of office without the commissioner’s written consent.
- ‘(3) In relation to matters not provided for by this Act, the commissioner holds office on the terms and conditions decided by the Governor in Council.

‘101K Leave of absence

‘The Minister may grant leave to the commissioner in accordance with entitlements available to the commissioner under the commissioner’s conditions of office.

‘101L Preservation of rights if public service officer appointed

- ‘(1) A public service officer who is appointed to the office of commissioner or who is appointed to act in the office is entitled to retain all existing and accruing rights as if service in the office were a continuation of service as a public service officer.
- ‘(2) If the person stops holding the office for a reason other than misconduct, the person is entitled to be employed as a public service officer.
- ‘(3) The person is to be employed on the classification level and remuneration that the public service commissioner or another entity prescribed under a regulation considers the person would have attained in the ordinary course of progression if the person had continued in employment as a public service officer.

‘101M Oath before performing duties

- ‘(1) Before performing the duties of office, the commissioner must make an oath or affirmation to the effect that he or she will faithfully and impartially perform the duties of the office.
- ‘(2) The oath must be administered by the Speaker.

‘101N Restriction on outside employment

- ‘(1) The commissioner must not, without the Minister’s prior approval in each particular case—
 - (a) hold any office of profit other than that of commissioner; or
 - (b) engage in any remunerative employment or undertaking outside the duties of the office.
- ‘(2) Contravention of subsection (1) is misconduct under section 101Q(a).

‘101O Resignation

- ‘(1) The commissioner may resign by signed notice given to the Minister.
- ‘(2) As soon as practicable after the notice is given to the Minister, the Minister must—
 - (a) give the notice to the Governor for information; and
 - (b) give a copy of the notice to—
 - (i) the Speaker of the Legislative Assembly; and
 - (ii) the chairperson of the parliamentary committee.
- ‘(3) Failure to comply with subsection (2) does not affect the effectiveness of the resignation.

‘101P Acting commissioner

- ‘(1) 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 during all periods, when the commissioner is absent from duty or from Australia or is, for another reason, unable to perform the duties of the office.
- ‘(2) The acting commissioner is appointed under this Act and not the *Public Service Act 1996*.
- ‘(3) Before performing the duties of office, the acting commissioner must make an oath or affirmation to the effect that he or she will faithfully and impartially perform the duties of the office.
- ‘(4) The oath must be administered by the Speaker.
- ‘(5) The *Acts Interpretation Act 1954*, section 25(1)(b)(iv) and (v)⁶⁹ does not apply to the office of acting commissioner.

‘Division 3 Commissioner may be removed or suspended from office

‘101Q Grounds for removal or suspension from office

‘The following are grounds for removal or suspension of the commissioner from office—

- (a) proved incapacity, incompetence or misconduct;
- (b) conviction of an indictable offence.

‘101R Removal of commissioner on address

- ‘(1) The Governor may, on an address from the Assembly, remove the commissioner from office.
- ‘(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

⁶⁹ *Acts Interpretation Act 1954*, section 25 (Powers of appointment imply certain incidental powers)

- (b) the statement and any written response by the commissioner have been tabled in the 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 wholly of members of the political party or parties in government in the Assembly.

‘101S Suspension of commissioner on address

- ‘(1) The Governor may, on an address from the Assembly, suspend the commissioner from office.
- ‘(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 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 wholly of members of the political party or parties in government in the Assembly.
- ‘(4) The commissioner is entitled to be paid salary and allowances for the period of the suspension only if—
 - (a) the Assembly resolves that salary and allowances be paid for the period; or

- (b) the Assembly does not pass a resolution under paragraph (a) and the Governor in Council approves the payment of salary and allowances for the period.

‘101T Suspension of commissioner if Assembly not sitting

- ‘(1) If the Assembly is not sitting, the Governor in Council may suspend the commissioner from office.
- ‘(2) 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.
- ‘(3) The Premier must table the statement and any written response by the commissioner in the Assembly within 3 sitting days after the day the suspension begins.
- ‘(4) The suspension stops having effect—
 - (a) at the end of 6 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 Assembly—at the earlier time.
- ‘(5) If the suspension stops having effect under subsection (4)(a), the commissioner is entitled to be paid salary and allowances for the period of the suspension.
- ‘(6) Except as provided in subsection (5), the commissioner is entitled to be paid salary and allowances for the period of the suspension only if—
 - (a) the Assembly resolves that salary and allowances be paid for the period; or
 - (b) the Assembly does not pass a resolution under paragraph (a) and the Governor in Council approves the payment of salary and allowances for the period.

‘101U Acts Interpretation Act 1954

‘The *Acts Interpretation Act 1954*, section 25(1)(b)(i) to (iii)⁷⁰ does not apply to the removal or suspension of the commissioner.

‘Division 4 Staff of the office

‘101V Staff employed under Public Service Act 1996

‘The staff of the office are to be employed under the *Public Service Act 1996*.

‘101W Staff subject only to direction of commissioner

- ‘(1) The staff of the office are not subject to direction by any person, other than the commissioner or a person authorised by the commissioner, about—
- (a) the way in which the commissioner’s powers in relation to investigations and reviews are to be exercised; or
 - (b) the priority to be given to investigations and reviews.
- ‘(2) Subsection (1) has effect despite the *Public Service Act 1996*.’.

52 Amendment of s 105 (Precautions)

- (1) Section 105(b)(i)—

omit, insert—

‘(i) if the application is made by the applicant’s agent—only by the applicant or the agent; or’.

- (2) Section 105(c)—

omit, insert—

‘(c) must ensure that, if the application is made by the applicant’s agent, the agent has the written authority of

⁷⁰ *Acts Interpretation Act 1954*, section 25 (Powers of appointment imply certain incidental powers)

the applicant to obtain the information or is otherwise properly authorised by the applicant to obtain the information.’

53 Amendment of s 106 (Offence of unlawful access)

Section 106, penalty, ‘20’—

omit, insert—

‘100’.

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

Section 108(4)(a) to (j)—

omit, insert—

- ‘(a) the number of applications for access under this Act made to each agency and to each Minister; and
- (b) the number of preliminary assessment notices and the number of final assessment notices given by each agency and by each Minister; and
- (c) 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
- (d) the number of applications under section 52 for review of a decision, and, 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 for amendment of information under this Act made to each agency and to each Minister; and
- (f) the number of applications under section 60 for review of a decision; and
- (g) the number of notices served on the principal officer of the agency under section 20(1) and the number of

decisions by the principal officer that were adverse to the person's claim; and

- (h) particulars of any disciplinary action taken against an officer in relation to the administration of this Act; and
- (i) the amount of fees and charges collected by the agency or Minister; and
- (j) any other facts indicating an effort by the agency or Minister to implement and administer this Act.'.

55 Insertion of new s 108C

After section 108B—

insert—

'108C Functions of parliamentary committee

'The parliamentary committee has the following functions under this Act—

- (a) to monitor and review the performance by the commissioner of the commissioner's functions under this Act;
- (b) to report to the Legislative Assembly on any matter concerning the commissioner, the commissioner's functions or the performance of the commissioner's functions that the committee considers should be drawn to the Legislative Assembly's attention;
- (c) to examine each annual report tabled in the Legislative Assembly under this Act and, if appropriate, to comment on any aspect of the report;
- (d) to report to the Legislative Assembly any changes to the functions, structures and procedures of the office of information commissioner the committee considers desirable for the more effective operation of this Act;
- (e) the other functions conferred on the parliamentary committee by this Act.

Note—

The parliamentary committee also has functions under other Acts, for example, the *Parliament of Queensland Act 2001*, section 86 (Administrative review reform).’.

56 Replacement of s 109 (Regulations)

Section 109—

omit, insert—

‘109 Regulation-making power

- ‘(1) The Governor in Council may make regulations under this Act.
- ‘(2) Without limiting subsection (1), a regulation may be made about the following—
- (a) an application fee for an application for access to a document that does not concern the applicant’s personal affairs;
 - (b) a processing charge and access charge for access to a document that does not concern the applicant’s personal affairs;
 - (c) waiver of charges for up to 2 hours of charges consisting of processing charges and access charges;
 - (d) deposits required on account of charges;
 - (e) the officers who may give decisions on behalf of an agency.
- ‘(3) However, a regulation providing for the making of charges must not allow the amount or rate of charge to vary according to whether the document is a document of 1 agency or of an agency included in 1 class of agency or is a document of another agency or of an agency included in another class of agency.’.

57 Insertion of new pt 10

After part 9—

insert—

‘Part 10 Transitional provisions for Freedom of Information and Other Legislation Amendment Act 2005

‘113 Definition for pt 10

‘In this part—

amending Act means the *Freedom of Information and Other Legislation Amendment Act 2005*.

‘114 Application of amendments to existing applications

‘(1) This Act, as in force at the time an access application or amendment application is received, continues to apply in relation to the application as if any subsequent amendment of the Act under the amending Act had not been enacted.

‘(2) However, section 42,⁷¹ as amended by section 24(2) and (3) of the amending Act (the *section 24 amendment*), applies in relation to an access application received before the commencement of the section 24 amendment.

‘(3) Also, subsection (1) applies subject to section 115.

‘(4) In this section—

access application means an application for access to a document.

amendment application means an application for amendment of information including the addition of a notation to information.

subsequent amendment, in relation to an application, means an amendment that commences after the application is received.

71 Section 42 (Matter relating to law enforcement or public safety)

‘115 Application of particular amendments to reviews etc.

- ‘(1) Section 73(1)(d),⁷² as in force immediately before the commencement of section 38 of the amending Act, continues to apply in relation to an application for review made within 60 days after the commencement as if the amending Act had not been enacted.
- ‘(2) Section 74,⁷³ as inserted by section 39 of the amending Act (the *section 39 amendment*), applies in relation to a review whether started before or after the commencement of the section 39 amendment.
- ‘(3) Section 77,⁷⁴ as inserted by section 40 of the amending Act (the *section 40 amendment*), applies in relation to a review whether started before or after the commencement of the section 40 amendment.
- ‘(4) Section 87,⁷⁵ as inserted by section 44 of the amending Act (the *section 44 amendment*), applies in relation to a review of an access application whether received before or after the commencement of the section 44 amendment.
- ‘(5) Section 89A,⁷⁶ as inserted by section 45 of the amending Act (the *section 45 amendment*), applies whether the error was made before or after the commencement of the section 45 amendment.
- ‘(6) Section 99A,⁷⁷ as inserted by section 49 of the amending Act (the *section 49 amendment*), applies in relation to proceedings whether started before or after the commencement of the section 49 amendment.
- ‘(7) In this section—
access application means an application for access to a document.

72 Section 73 (Applications for review)

73 Section 74 (Commissioner to notify agency or Minister)

74 Section 77 (Commissioner may decide not to review)

75 Section 87 (Commissioner to ensure non-disclosure of particular matter)

76 Section 89A (Correction of mistakes in decisions)

77 Section 99A (Third party proceedings)

‘116 Charges for existing applications for access

‘(1) The *Freedom of Information Regulation 1992*, as in force immediately before the commencement of section 56 of the amending Act (the *section 56 amendment*), continues to apply in relation to charging for an existing application as if the section 56 amendment had not been enacted.

‘(2) In this section—

existing application means an application made, before the commencement of the section 56 amendment, for access to a document that does not concern the applicant’s personal affairs.

‘117 Continuation of appointment as commissioner

‘A person who, immediately before the commencement of section 101G,⁷⁸ was the commissioner continues as the commissioner.

‘118 Continuation of current staff member’s employment under Public Service Act 1996

‘(1) On the commencement—

- (a) a current officer is employed under the *Public Service Act 1996*; and
- (b) the current officer is entitled to retain all existing and accruing rights, including rights under former section 70D(1), in relation to the current officer’s employment as an officer of the commissioner; and
- (c) the current officer’s service as an officer of the commissioner must be regarded as service as a public service officer for deciding the current officer’s rights as a public service officer; and
- (d) the fact of employment under the *Public Service Act 1996* does not break the current officer’s continuity of service.

78 Section 101G (Appointment)

‘(2) On the commencement—

- (a) a current employee is employed on an equivalent basis under the *Public Service Act 1996*, section 113;⁷⁹ and

Examples—

- 1 A current employee who was a part-time temporary employee is employed on a temporary basis and part-time under the *Public Service Act 1996*, section 113, that is, under section 113(2)(a).
 - 2 A current employee who was a casual employee is employed on a casual basis under the *Public Service Act 1996*, section 113, that is, under section 113(2)(b).
- (b) the current employee is entitled to retain all existing and accruing rights in relation to the current employee’s employment under former section 70B; and
- (c) the current employee’s service as an employee under former section 70B must be regarded as service as an employee under the *Public Service Act 1996*, section 113 for deciding the current employee’s rights under that Act; and
- (d) the fact of employment under the *Public Service Act 1996* does not break the current employee’s continuity of service.

‘(3) In this section—

current employee means a person who, immediately before the commencement, was a temporary employee or casual employee employed by the commissioner under former section 70B.⁸⁰

current officer means a person who, immediately before the commencement, was an officer of the commissioner appointed under former section 70.⁸¹

former section 70 means section 70⁸² as in force from time to time before the commencement.

79 *Public Service Act 1996*, section 113 (Employment of temporary employees)

80 Section 70B (Temporary and casual employees)

81 Section 70 (Officers)

82 Section 70 (Officers)

former section 70B means section 70B⁸³ as in force from time to time before the commencement.

former section 70D(1) means section 70D(1)⁸⁴ as in force from time to time before the commencement.

the commencement means the commencement of section 101V.⁸⁵

‘119 Report to Legislative Assembly

‘(1) It is sufficient compliance with section 108(4) for the report under section 108(1) in relation to the financial year ending 30 June 2005 to include the particulars stated in former section 108(4) in relation to each agency and Minister.

‘(2) In this section—

former section 108(4) means section 108(4) as in force immediately before the commencement of section 54 of the amending Act.

‘120 Reports of commissioner

‘It is sufficient compliance with section 101 for a report mentioned in the section in relation to the financial year ended 30 June 2005 to comply with section 101 as in force before the commencement of section 50⁸⁶ of the amending Act.

‘121 Amendment of regulation by Freedom of Information and Other Legislation Amendment Act 2005 does not affect powers of Governor in Council

‘The amendment of the *Freedom of Information Regulation 1992* by the amending Act does not affect the power of the Governor in Council to further amend the regulation or to repeal it.

83 Section 70B (Temporary and casual employees)

84 Section 70D (Preservation of rights if public service officer appointed)

85 Section 101V (Staff employed under Public Service Act 1996)

86 Section 50 (Amendment of s 101 (Reports of commissioner))

‘122 Re-enactment of regulation-making power does not affect validity of Freedom of Information Regulation 1992

‘The re-enactment of section 109 by the amending Act did not repeal the *Freedom of Information Regulation 1992* or any provision of that regulation.’.

58 Amendment of sch 1 (Secrecy provisions giving exemption)

(1) Schedule 1, entries for the *Biodiscovery Act 2004*, *Crime and Misconduct Act 2001*, *Gene Technology Act 2001*, *Prostitution Act 1999* and *Public Sector Ethics Act 1994*—

omit.

(2) Schedule 1—

insert—

‘*Witness Protection Act 2000*, sections 36 and 38’.

59 Amendment of sch 2 (Application of Act to GOCs)

Schedule 2—

insert—

‘5 Golden Casket Lottery Corporation Limited ACN 078 785 449 *Lotteries Act 1997*, section 225A’.

60 Insertion of new sch 3

After schedule 2—

insert—

‘Schedule 3 Application of Act to other Acts

section 11D

Biodiscovery Act 2004, section 116⁸⁷

Crime and Misconduct Act 2001, sections 120 and 371(4)⁸⁸

Education (General Provisions) Act 1989, section 69⁸⁹

Gene Technology Act 2001, section 187(3)⁹⁰

Police Powers and Responsibilities Act 2000, sections 122, 321 and 401⁹¹

Police Service Administration Act 1990, section 5A.22⁹²

Prostitution Act 1999, section 137⁹³

Public Sector Ethics Act 1994, section 33A⁹⁴

Sugar Industry Act 1999, section 107T⁹⁵

Workers’ Compensation and Rehabilitation Act 2003, sections 379(2) and 475(2)⁹⁶.

87 *Biodiscovery Act 2004*, section 116 (Freedom of Information Act 1992 does not apply to benefit sharing agreement)

88 *Crime and Misconduct Act 2001*, sections 120 (Acts that do not apply to divs 2–5) and 371 (Warrants)

89 *Education (General Provisions) Act 1989*, section 69 (Freedom of Information Act 1992)

90 *Gene Technology Act 2001*, section 187 (Confidential commercial information must not be disclosed)

91 *Police Powers and Responsibilities Act 2000*, sections 122 (Certain Acts do not apply to this part), 321 (Certain Acts do not apply to this chapter) and 401 (Particular Acts do not apply to this division)

92 *Police Service Administration Act 1990*, section 5A.22 (Application of Freedom of Information Act 1992)

93 *Prostitution Act 1999*, section 137 (Application of Freedom of Information Act)

94 *Public Sector Ethics Act 1994*, section 33A (Freedom of Information Act does not apply)

95 *Sugar Industry Act 1999*, section 107T (Exempt matter)

96 *Workers’ Compensation and Rehabilitation Act 2003*, sections 379 (Application of various other Acts) and 475 (Application of various other Acts)

61 Insertion of new sch 4

After schedule 3—

insert—

‘Schedule 4 Process for assessment of charges

section 35D

‘Part 1 Preliminary assessment process

‘1 Preliminary assessment of charges

- ‘(1) This section applies if an agency or Minister considers a processing charge or access charge is payable in relation to an application.
- ‘(2) The agency or Minister must give the applicant a written notice (a *preliminary assessment notice*) stating—
 - (a) the agency’s or Minister’s preliminary assessment of the amount of any processing charge or access charge; and
 - (b) the basis on which the preliminary assessment is made.
- ‘(3) The preliminary assessment notice must also state the following—
 - (a) that the applicant may consult with a stated officer of the agency or a stated member of the staff of the Minister with a view to making an application in a form that would reduce the original charge;
 - (b) the effect of sections 2 and 3(1) and (2);⁹⁷
 - (c) any matters that may be taken into account under the Act or a regulation in deciding whether any processing

⁹⁷ Sections 2 (Deemed withdrawal of application) and 3 (Objection notice)

charge and access charge should be waived because the applicant is in financial hardship;

- (d) the original deposit, if any.

‘2 Deemed withdrawal of application

‘An application is taken to have been withdrawn unless, within the period of 30 days, or the further period the agency or Minister allows, after the preliminary assessment notice is given—

- (a) if an original deposit is stated in the notice—the applicant pays the original deposit and agrees in writing to pay the original charge; or
- (b) if an original deposit is not stated in the notice—the applicant agrees in writing to pay the original charge; or
- (c) the applicant gives the agency or Minister an objection notice.

‘Part 2 Objection process

‘3 Objection notice

- ‘(1) An applicant is not entitled to a review under section 52 of the Act⁹⁸ of a preliminary assessment notice.
- ‘(2) However, within the period of 30 days, or the further period the agency or Minister allows, after a preliminary assessment notice is given, the applicant may give the agency or Minister a written notice (an *objection notice*) of, including the reasons for, an applicant’s contention that—
- (a) an original charge has been wrongly assessed and should be reduced on a proper assessment; or

98 Section 52 of the Act (Internal review)

- (b) any processing charge and access charge should be waived because the applicant is in financial hardship.
- ‘(3) Subject to section 10,⁹⁹ the agency or Minister may decide, in relation to an objection notice, that—
 - (a) the original charge was wrongly assessed and should be reduced on a proper assessment; or
 - (b) any processing charge and access charge are to be waived because the applicant is in financial hardship; or
 - (c) the contention in the objection notice should be rejected.

‘4 **New preliminary assessment notice**

- ‘(1) If the agency or Minister makes a decision mentioned in section 3(3)(a), other than a decision that no charges are payable, the agency or Minister must give the applicant a new preliminary assessment notice that also states the following—
 - (a) the new original deposit, if any;
 - (b) that the application will be taken to have been withdrawn unless, within the period of 30 days, or the further period the agency or Minister allows, after the new notice is given—
 - (i) either—
 - (A) if a new original deposit is stated in the notice—the applicant pays the new original deposit and agrees in writing to pay the new original charge; or
 - (B) if a new original deposit is not stated in the notice—the applicant agrees in writing to pay the new original charge; or
 - (ii) the applicant applies for a review under part 5 of the Act¹⁰⁰ of the new preliminary assessment notice;

⁹⁹ Section 10 (Financial hardship claim if agency is a department)

¹⁰⁰ Part 5 of the Act (External review of decisions)

- (c) the applicant may not give the agency or Minister a further objection notice and is not entitled to a review under section 52 of the Act¹⁰¹ of the new preliminary assessment notice.
- ‘(2) If the applicant fails to comply with subsection (1)(b)(i) or (ii) within the period or further period mentioned in subsection (1)(b), the applicant is taken to have withdrawn the application.

‘5 Notice that charges waived

‘If the agency or Minister makes a decision mentioned in section 3(3)(b),¹⁰² the agency or Minister must give the applicant a notice stating that any processing charge and access charge is to be waived because the applicant is in financial hardship.

‘6 Notice of other decision

‘If the agency or Minister makes a decision mentioned in section 3(3)(c),¹⁰³ the agency or Minister must give the applicant a notice stating—

- (a) the decision and the reasons for the decision; and

Note—

See the *Acts Interpretation Act 1954*, section 27B (Content of statement of reasons for decision).

- (b) the name and designation of the person making the decision; and
- (c) appropriate information about—
 - (i) the applicant’s rights to review of the decision; and
 - (ii) the procedure for the exercise of the rights, including, if applicable, particulars of the way in

101 Section 52 of the Act (Internal review)

102 Section 3 (Objection notice)

103 Section 3 (Objection notice)

which an application for review under section 52 of the Act¹⁰⁴ may be made.

‘7 Deemed decision

‘If within the period of 30 days after an applicant gives an agency or Minister an objection notice, the applicant has not received notice of a decision under section 3(3),¹⁰⁵ the principal officer of the agency or the Minister is taken to have made, on the last day of the period, a decision under section 3(3)(c) to which section 6¹⁰⁶ does not apply.

‘Part 3 Financial hardship process

‘8 Concession card given and accepted

‘(1) This section applies if—

- (a) an applicant who claims to be the holder of a concession card gives an agency or Minister a copy of the concession card before the applicant is given a preliminary assessment notice; and
- (b) the agency or Minister is satisfied the applicant is the holder of a concession card.

‘(2) Section 1¹⁰⁷ does not apply in relation to the application and, subject to section 10,¹⁰⁸ the agency or Minister must give the applicant a notice stating that any processing charge and access charge is to be waived because the applicant is in financial hardship.

104 Section 52 of the Act (Internal review)

105 Section 3 (Objection notice)

106 Section 6 (Notice of other decision)

107 Section 1 (Preliminary assessment of charges)

108 Section 10 (Financial hardship claim if agency is a department)

‘9 Concession card given but not accepted

- ‘(1) This section applies if—
- (a) an applicant who claims to be the holder of a concession card gives an agency or Minister a copy of the concession card before the applicant is given a preliminary assessment notice; and
 - (b) the agency or Minister is not satisfied the applicant is the holder of a concession card.
- ‘(2) Section 1¹⁰⁹ applies in relation to the application and the preliminary assessment notice must—
- (a) state the agency or Minister is not satisfied the applicant is the holder of a concession card; and
 - (b) give the reasons the agency or Minister is not satisfied.
- ‘(3) If within the period of 30 days after the applicant gives the agency or Minister a copy of the concession card, the applicant has not received a notice under section 8¹¹⁰ or a preliminary assessment notice, the principal officer of the agency or the Minister is taken to have made, on the last day of the period, a decision that the agency or the Minister is not satisfied the applicant is the holder of a concession card.

‘10 Financial hardship claim if agency is a department

- ‘(1) This section applies if an agency that is a department is given—
- (a) an objection notice in which the applicant contends charges should be waived because the applicant is in financial hardship; or
 - (b) a copy of the concession card before the applicant, who claims to be the holder of the card, is given a preliminary assessment notice.
- ‘(2) The agency must give the prescribed person—

109 Section 1 (Preliminary assessment of charges)

110 Section 8 (Concession card given and accepted)

64 Replacement of ss 7 to 12

Sections 7 to 12—

omit, insert—

‘7 Amount of charges—Act, s 7, definitions *access charge* and *processing charge*

- ‘(1) This section applies in relation to an applicant applying for access to a document that does not concern the applicant’s personal affairs.
- ‘(2) The schedule, part 1 sets out the processing charges.
- ‘(3) The schedule, part 2 sets out the access charges.
- ‘(4) This section applies subject to sections 8 and 9.

‘8 No charge for less than 2 hours

‘Despite section 7 and the schedule, a charge is not payable for doing, for an application, a thing mentioned in the schedule, part 1, item 1 or part 2, item 1, or a combination of the things mentioned in those items, if the total amount of time spent by an officer or officers doing the thing or things is 2 hours or less.

Examples—

- 1 Assume an officer spends, for the application, 1 hour searching for documents and deciding the application for access and 30 minutes supervising inspection of the documents. No charge is payable under the schedule, part 1, item 1 or part 2, item 1.
- 2 Assume an officer spends, for the application, 2.5 hours searching for documents and deciding the application for access and 2 hours supervising inspection of the documents. This section does not apply and a charge of \$91.80, calculated under this regulation, is payable for the activities.

‘9 No charge for particular search and retrieval time

‘Despite section 7 and the schedule, the amount of time spent searching for or retrieving a document does not include—

- (a) if the document is not found in the place in which, according to the filing system of the agency or of the office of the Minister (the *relevant filing system*) it

ought to be located—any time other than the time that would have been spent by the agency or Minister in searching for or retrieving the document if the document had been found in that place; or

- (b) if the relevant filing system ought reasonably to have indicated, but does not indicate, the place in which the document is located—any time other than the time that would have been spent by the agency or Minister in searching for or retrieving the document if the relevant filing system had indicated the place in which the document is located and the document had been found in that place.

‘10 Deposit—Act, s 35B(6)

‘If an agency or Minister considers it appropriate that the applicant pay a deposit on account of a charge, the deposit must be 25% of the charge.

‘11 Prescribed person—Act, sch 4, s 10(6)

‘The chief executive of the Department of the Premier and Cabinet is the prescribed person who decides whether processing and access charges are to be waived because the applicant is in financial hardship.’.

65 Replacement of schedule (Charges)

Schedule—

omit, insert—

‘Schedule Charges

section 7

‘Part 1 Processing charges

- 1 Charge for time spent by an agency or Minister in searching for or retrieving a document, or in making, or doing things related to making, a decision on an application for access—\$5.10 for each 15 minutes or part of 15 minutes.

‘Part 2 Access charges

- 1 Charge if an agency or Minister makes an officer available to supervise the inspection of a document—\$5.10 for each 15 minutes or part of 15 minutes.
- 2 Charge for giving access to a written document by providing a black and white photocopy of the document in A4 size—\$0.20 for each page.
- 3 Charge for a form of access to a document under the Act, section 30, other than by inspection or providing a black and white photocopy of the document in A4 size—an amount that is not more than the actual cost incurred by an agency or Minister in giving access to the document.’.

Part 3 Amendment of Lotteries Act 1997

66 Act amended in pt 3

This part amends the *Lotteries Act 1997*.

67 Insertion of new s 225A

After section 225—

insert—

‘225A Golden Casket Lottery Corporation Limited exemption from application of Freedom of Information Act 1992

- ‘(1) The *Freedom of Information Act 1992* does not apply to a document received or brought into existence by the Golden Casket Lottery Corporation Limited ACN 078 785 449 (the *corporation*) in carrying out its excluded activities.
- ‘(2) For subsection (3), definition *excluded activities*, paragraph (a), a regulation may declare the activities of the corporation that are taken to be, or are taken not to be, activities conducted on a commercial basis.
- ‘(3) In this section—
- excluded activities* means—
- (a) activities conducted on a commercial basis; or
 - (b) community service obligations, within the meaning of the *Government Owned Corporations Act 1993*, that are prescribed under a regulation.’

Part 4 Amendment of Public Records Act 2002**68 Act amended in pt 4**

This part amends the *Public Records Act 2002*.

69 Amendment of s 16 (Meaning of *restricted access period*)

Section 16(4)(b), after ‘42’—

insert—

‘, 42A’.

70 Amendment of s 18 (Public access to public records)

- (1) Section 18(5)(a), before ‘of the FOI Act’—
insert—
‘or 42A’.
- (2) Section 18(5)(a)(iii), ‘and’—
omit, insert—
‘or’.
- (3) Section 18(5)(a)—
insert—
‘(iv) damage the security of the Commonwealth or a State; and’.

Part 5 Amendment of Public Sector Ethics Act 1994

71 Act amended in pt 5

This part amends the *Public Sector Ethics Act 1994*.

72 Amendment of s 28 (Functions of integrity commissioner)

Section 28—

insert—

- ‘(2) For subsection (1)(b), advice on an issue about a person may only be given if the person is or has been a designated person.’

73 Amendment of s 33 (Secrecy)

- (1) Section 33(1) and (3), ‘conflict of interest issue about anyone’—

omit, insert—

‘relevant issue about another person’.

(2) Section 33—

insert—

‘(4) In this section—

relevant issue means—

- (a) an ethics or integrity issue; or
- (b) a conflict of interest issue.’.

74 Insertion of new ss 33A and 33B

After section 33—

insert—

‘33A Freedom of Information Act does not apply

- ‘(1) If advice is sought on an issue about a person under section 28(1)(b), the *Freedom of Information Act 1992* does not apply to a document received or brought into existence by the integrity commissioner in relation to the advice.
- ‘(2) If advice about a conflict of interest issue is sought under section 30, the *Freedom of Information Act 1992* does not apply to a document received or brought into existence by the integrity commissioner in relation to the conflict of interest issue.

‘33B Authorisation of particular disclosures—ethics or integrity issue

- ‘(1) A relevant document about an ethics or integrity issue may be disclosed under subsections (2) and (3).
- ‘(2) A person who is or has been a designated person to whom a relevant document relates may disclose the document.
- ‘(3) The integrity commissioner may disclose a relevant document to the person who is or has been the designated person to whom the relevant document relates.
- ‘(4) In this section—

designated person to whom a relevant document relates means the designated person involved in an ethics or integrity issue and to whom the relevant document relates.

relevant document, for an ethics or integrity issue, means a document received or brought into existence by the integrity commissioner in relation to advice sought under section 28(1)(b).

75 Amendment of s 34 (Authorisation of particular disclosures)

(1) Section 34, heading—

omit, insert—

‘34 Authorisation of particular disclosures—conflict of interest issue’.

(2) Section 34(9), definition *designated person to whom the relevant documents relate*—

omit, insert—

‘designated person to whom a relevant document relates means the designated person involved in a conflict of interest issue and to whom the relevant document relates.’.

76 Amendment of schedule (Dictionary)

Schedule—

insert—

‘ethics or integrity issue means an issue concerning ethics or integrity in relation to which advice is sought under section 28(1)(b).’.

Part 7 Amendment of Public Service Regulation 1997

80 Regulation amended in pt 7

This part amends the *Public Service Regulation 1997*.

81 Omission of s 30 (Declared government entity and declared public sector unit—Act, ss 20 and 21)

Section 30—

omit.

Chapter 3 Other Amendments

Part 1 Amendment of Legal Profession Act 2004

82 Act amended in pt 1

This part amends the *Legal Profession Act 2004*.

83 Amendment of s 281 (Orders to be filed in Supreme Court and information notices to be given to parties etc.)

Section 281(1)—

omit, insert—

‘(1) This section applies to the Brisbane registrar after the tribunal makes—

- (a) an order under section 280 or 286 or part 6¹¹² in relation to a discipline application; or
- (b) an order under section 293¹¹³ in relation to a discipline application that the tribunal dealt with on an appeal from the committee.’.

84 Amendment of s 293 (Appeal to tribunal against committee’s decision)

Section 293(3), after ‘an order’—

insert—

‘, including an order for costs.’.

85 Amendment of s 470 (Conduct of committee for hearing and deciding discipline applications)

Section 470(3)—

omit, insert—

‘(3) The committee may issue particular directions for a hearing.

‘(4) Despite section 469(2), the committee may be constituted by the chairperson or deputy chairperson of the committee for the purpose of issuing particular directions for a hearing.’.

86 Amendment of ch 8, pt 5, hdg

Chapter 8, part 5, heading, after ‘provisions’—

insert—

‘for Legal Profession Act 2004’.

86A Amendment of s 610 (Continuation of rules of the law society)

‘(1) Section 610(4), after ‘under section’—

112 Section 280 (Decisions of tribunal about an Australian legal practitioner) or 286 (Costs) or part 6 (Compensation orders)

113 Section 293 (Appeal to tribunal against committee’s decision)

insert—

‘595 or’.

‘(2) Section 610(7), ‘1 year’—

omit, insert—

‘2 years’.

87 Replacement of s 616 (Records of Solicitors’ Board and Barristers’ Board)

Section 616—

omit, insert—

‘616 Records of Solicitors’ Board and Barristers’ Board

‘(1) The Legal Practitioners Admissions Board has the custody and control of the records of the previous Solicitors’ Board and Barristers’ Board.

‘(2) The records may be given to the law society in its role of providing administrative support to the Legal Practitioners Admissions Board.’.

88 Insertion of ch 8, pt 6

Chapter 8—

insert—

**‘Part 6 Transitional provision for
Freedom of Information and
Other Legislation Amendment
Act 2005**

**‘644 Amendment of regulation does not affect powers of
Governor in Council**

‘The amendment of the *Legal Profession Regulation 2004* by the *Freedom of Information and Other Legislation Amendment Act 2005* does not affect the power of the

Governor in Council to further amend the regulation or to repeal it.’.

Part 2 Amendment of Legal Profession Regulation 2004

89 Regulation amended in pt 2

This part amends the *Legal Profession Regulation 2004*.

90 Omission of ss 33 and 34

Sections 33 and 34—
omit.

Part 3 Amendment of Standard Time Act 1894

91 Act amended in pt 3

This part amends the *Standard Time Act 1894*.

92 Amendment of title

Title, ‘**in the colony of Queensland**’—
omit.

93 Omission of preamble

Preamble—
omit.

94 Replacement of s 3 (The time of the 150th meridian to be standard time)

Section 3—

omit, insert—

‘3 Standard time

‘(1) Standard time in Queensland is 10 hours in advance of Co-ordinated Universal Time.

‘(2) In this section—

Co-ordinated Universal Time means Co-ordinated Universal Time (UTC) as determined by the International Bureau of Weights and Measures and maintained under the *National Measurement Act 1960* (Cwlth), section 8AA.’

95 Insertion of new s 5

After section 4—

insert—

‘5 Transitional provision for Freedom of Information and Other Legislation Amendment Act 2005

‘Section 3, as inserted by the *Freedom of Information and Other Legislation Amendment Act 2005*, (*new section 3*) applies to an instrument even though it was made before the commencement of new section 3.’