



# Information Privacy Act 2009

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**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprint.**

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Queensland

# Information Privacy Act 2009

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# Information Privacy Act 2009

[as amended by all amendments that commenced on or before 19 November 2009]

**An Act to provide safeguards for the handling of personal information in the public sector environment, and to allow access to and amendment of personal information**

## Chapter 1 Preliminary

### Part 1 Introductory

#### 1 Short title

This Act may be cited as the *Information Privacy Act 2009*.

#### 2 Commencement

This Act commences on a day to be fixed by proclamation.

#### 3 Object of Act

- (1) The primary object of this Act is to provide for—
  - (a) the fair collection and handling in the public sector environment of personal information; and
  - (b) a right of access to, and amendment of, personal information in the government's possession or under the government's control unless, on balance, it is contrary to the public interest to give the access or allow the information to be amended.

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- (2) The Act must be applied and interpreted to further the primary object.

#### **4 Act not intended to prevent other accessing or amendment of personal information**

- (1) This Act is not intended to prevent or discourage the giving of access to, or allowing the amendment of, documents otherwise than under this Act if the giving of access or the allowing of amendment can properly be done or is permitted or required to be done by law.
- (2) To remove any doubt, it is declared that subsection (1) applies to—
  - (a) the giving of access to, or allowing the amendment of, documents that are not documents for chapter 3 or documents to which the privacy principles do not apply; or
  - (b) the giving of access to, or allowing the amendment of, documents by—
    - (i) an entity that is not an entity for chapter 3; or
    - (ii) an entity to which the privacy principles do not apply; or
    - (iii) an entity to which the privacy principles do not apply in relation to a particular function.

#### **5 Relationship with other Acts requiring access to or amendment of personal information**

Without limiting section 4, this Act does not affect the operation of another Act, and chapter 3 does not affect the operation of an administrative scheme, whether or not under an Act, that—

- (a) requires information about personal information in the possession, or under the control, of government to be made available to members of the community; or

- (b) enables an individual to be given access to or to amend the individual's personal information in the possession, or under the control, of government;

whether or not on payment of a charge.

## **6 Scope of personal information under this Act**

This Act applies to the collection of personal information, regardless of when it came into existence, and to the storage, handling, accessing, amendment, management, transfer, use and disclosure of personal information regardless of when it was collected.

## **7 Relationship with other Acts prohibiting disclosure of information**

- (1) Chapter 3 overrides the provisions of other Acts prohibiting the disclosure of personal information (however described).

*Notes—*

- 1 The Parliament considers that personal information the disclosure of which is prohibited under a provision of an Act mentioned in the Right to Information Act, schedule 3, section 12 is information the disclosure of which would, on balance, be contrary to the public interest—see the Right to Information Act, section 44(2)(a), as applied under this Act, and schedule 3, section 12 of that Act.
  - 2 This information is called exempt information and, under the Right to Information Act, section 47(3)(a), as applied under this Act, an agency or Minister may refuse access to a document to the extent the document comprises exempt information.
  - 3 However, an agency or Minister may give access to a document even if this Act provides that access to the document may be refused—see section 64(4).
- (2) Other than as provided for in subsection (1), this Act is intended to operate subject to the provisions of other Acts relating to—
- (a) the collection, storage, handling, accessing, amendment, management, transfer, and use of personal information; and

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- (b) the disclosure, within the meaning of section 23, of personal information.

## **8 Relationship with other Acts regulating disposal of information**

This Act does not affect the provisions of other Acts regulating the disposal of information (however described).

*Note—*

For example, the *Public Records Act 2002*, section 13 provides—

### **13 Disposal of public records**

A person must not dispose of a public record unless the record is disposed of under—

- (a) an authority given by the archivist; or
- (b) other legal authority, justification or excuse.

Maximum penalty—165 penalty units.

## **9 Relationship with Right to Information Act**

- (1) The Right to Information Act also provides for access to documents of an agency or Minister.
- (2) If, on its face, an access application made under the Right to Information Act could have been made under this Act, the Right to Information Act, section 34 applies.

*Notes—*

- 1 Under the Right to Information Act, section 34—
  - (a) the applicant is given an opportunity to have the application dealt with under this Act and the application fee refunded; or
  - (b) the application may be continue to be dealt with as an application under the Right to Information Act.
- 2 To facilitate this situation, the approved form for an access application under the Right to Information Act is the same as the approved form for an access application under this Act and agencies will make appropriate administrative arrangements.
- 3 If the applicant asks for the application to be dealt with under this Act, the applicant is taken to have made the application under this



Act on the date of the request—see the Right to Information Act, section 34(3)(a).

**10 Act binds State**

This Act binds the State.

## **Part 2 Interpretation**

**11 Definitions**

The dictionary in schedule 5 defines particular words used in this Act.

**12 Meaning of *personal information***

*Personal information* is information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

**13 Meaning of *document* of an agency for ch 3**

For chapter 3, *document*, of an agency, means anything that is a document of an agency under the Right to Information Act.

**14 Meaning of *document* of a Minister for ch 3**

For chapter 3, *document*, of a Minister means anything that is a document of a Minister under the Right to Information Act.

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**15 Meaning of *document* otherwise**

For this Act, other than for chapter 3, a *document* does not include a document to which the privacy principles do not apply.

**16 Meaning of *document to which the privacy principles do not apply***

In this Act, a *document to which the privacy principles do not apply* means a document mentioned in schedule 1.

**17 Meaning of *agency* for ch 3**

For chapter 3, *agency* means anything that is an agency under the Right to Information Act.

**18 Meaning of *agency* otherwise**

- (1) For this Act, other than for chapter 3, an *agency* means—
  - (a) a Minister; or
  - (b) a department; or
  - (c) a local government; or
  - (d) a public authority.
- (2) However, for this Act other than for chapter 3, *agency* does not include an entity to which the privacy principles do not apply.
- (3) 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; and

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- (c) a reference to local government includes a reference to the Wide Bay Water Corporation.

**19 Meaning of *entity to which the privacy principles do not apply***

In this Act, an *entity to which the privacy principles do not apply* means—

- (a) an entity mentioned in schedule 2, part 1; or
- (b) an entity mentioned in schedule 2, part 2 in relation to the function mentioned in that part.

**20 Special provision about application of Act other than ch 3 to a Minister**

- (1) If a provision of this Act applies to a Minister, the provision applies only for acts done, or practices engaged in, as the case may be, in the Minister's capacity as a Minister in relation to the affairs of an agency administered by the Minister.
- (2) Subsection (1) does not apply to chapter 3, or to any other provision of this Act to the extent it applies for the purposes of chapter 3.

**21 Meaning of *public authority***

- (1) In this Act, *public authority* means any of the following entities—

*Note—*

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

*entity* includes a person and an unincorporated body.

- (a) an entity—
- (i) established for a public purpose by an Act; or
- (ii) established by government under an Act for a public purpose, whether or not the public purpose is stated in the Act;

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- (b) an entity created by the Governor in Council or a Minister;
  - (c) another entity declared by regulation to be a public authority for this Act, being an entity—
    - (i) supported directly or indirectly by government funds or other assistance or over which government is in a position to exercise control; or
    - (ii) established under an Act; or
    - (iii) given public functions under an Act;
  - (d) subject to subsection (3), a person holding an office established under an Act;
  - (e) a person holding an appointment—
    - (i) made by the Governor in Council or Minister otherwise than under an Act; and
    - (ii) declared by regulation to be an appointment the holder of which is a public authority for this Act.
- (2) A prescribed entity is not a public authority in relation to documents received, or created, by it in performing a function other than the public function given under an Act.
- (3) A person is not a public authority merely because the person holds—
- (a) an office the duties of which are performed as duties of employment as an agency's officer; or
  - (b) an office of member of a body; or
  - (c) an office established under an Act for the purposes of an agency.
- (4) In this section—
- prescribed entity*** means an entity that is a public authority only because it is given public functions under an Act and is declared by regulation to be a public authority for this Act.

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## 22 Meaning of *processing period* and *transfer period* for ch 3

For chapter 3—

*processing period*, for an access or amendment application to an agency or Minister—

- 1 The processing period is a period of 25 business days from the day the application is received by the agency or Minister.
- 2 However, the following periods do not count as part of the processing period—
  - (a) if the application is transferred to the agency or Minister—the transfer period;
  - (b) if the agency or Minister asks the applicant for a further specified period under section 55(1)—the period during which, under section 55(3), the agency or Minister may continue to consider the application;
  - (c) if the application involves consultation with a relevant third party under section 56—10 business days;
  - (d) if the applicant is given a notice under section 61(1)(a)—the prescribed consultation period under section 61.

*transfer period*, for an access or amendment application, means the lesser of the following periods—

- (a) the period starting on the day the application is received by the agency or Minister who transfers the application and ending on the day the application is transferred;
- (b) the period of 10 business days.

## 23 What it means to *disclose* personal information and to *use* personal information

- (1) This section applies for the application of the privacy principles.

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- (2) An entity (the *first entity*) *discloses* personal information to another entity (the *second entity*) if—
  - (a) the second entity does not know the personal information, and is not in a position to be able to find it out; and
  - (b) the first entity gives the second entity the personal information, or places it in a position to be able to find it out; and
  - (c) the first entity ceases to have control over the second entity in relation to who will know the personal information in the future.
- (3) An entity *uses* personal information if it—
  - (a) manipulates, searches or otherwise deals with the information; or
  - (b) takes the information into account in the making of a decision; or
  - (c) transfers the information from a part of the entity having particular functions to a part of the entity having different functions.
- (4) Subsection (3) does not limit what actions may be *use* of the personal information.
- (5) However, *use* of the personal information does not include the action of disclosing the personal information to another entity.

## 24 Meaning of *control* of a document

For the application of the privacy principles, an entity has a document under its *control* if the entity has the document in its possession or otherwise has the document under its control.

## **25 References to IPPs and NPPs**

- (1) If a provision of this Act refers to an IPP by a number, the reference is a reference to the section of schedule 3 having that number.
- (2) If a provision of this Act refers to an NPP by a number, the reference is a reference to the section of schedule 4 having that number.

# **Chapter 2 Privacy principles**

## **Part 1 Compliance with IPPs by agencies**

### **26 Information Privacy Principles**

The Information Privacy Principles are set out in schedule 3.

### **27 Agencies to comply with IPPs**

- (1) An agency, other than the health department, must comply with the IPPs.

*Note—*

Under section 18, an agency includes a Minister, a department, a local government or a public authority. However, section 20 provides that for the application of this Act, other than chapter 3, or this Act other than for the purposes of chapter 3, to a Minister, the Act applies only for acts done, or practices engaged in, as the case may be, in the Minister's capacity as a Minister in relation to the affairs of an agency administered by the Minister.

- (2) Without limiting subsection (1), the agency—

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- (a) must not do an act, or engage in a practice, that contravenes, or is otherwise inconsistent with a requirement of, an IPP; and
  - (b) must not fail to do an act, or fail to engage in a practice, if the failure contravenes, or is otherwise inconsistent with a requirement of, an IPP.
- (3) An act or practice mentioned in subsection (2) includes any act or practice relating to the agency's collection, storage, handling, accessing, amendment, management, transfer, use or disclosure of personal information.

## 28 Noncompliance with particular IPPs

- (1) An agency is not required to comply with a prescribed IPP in relation to an individual's personal information if the information is related to or connected with personal information of the individual that has previously been published, or given for the purpose of publication, by the individual.
- (2) In this section—

***prescribed IPP*** means IPP 8, 9, 10 or 11.

*Editor's note—*

IPP 8 (Checking of accuracy etc. of personal information before use by agency), 9 (Use of personal information only for relevant purpose), 10 (Limits on use of personal information) or 11 (Limits on disclosure)

***publish***, for personal information, means to publish it to the public by way of television, newspaper, radio, the internet or other form of communication.

## 29 Special provision for law enforcement agencies

- (1) A law enforcement agency is not subject to IPP 2, 3, 9, 10 or 11, but only if the law enforcement agency is satisfied on reasonable grounds that noncompliance with the IPP is necessary for—



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- (a) if the enforcement agency is the Queensland Police Service—the performance of its activities related to the enforcement of laws; or
  - (b) if the enforcement agency is the Crime and Misconduct Commission—the performance of its activities related to the enforcement of laws and its intelligence functions; or
  - (c) if the enforcement agency is the community safety department—the containment, supervision and rehabilitation of offenders under the *Corrective Services Act 2006* and the supervision of prisoners subject to supervision orders or interim supervision orders under the *Dangerous Prisoners (Sexual Offenders) Act 2003*; or
  - (d) if the enforcement agency is any other law enforcement agency—the performance of its responsibility mentioned in schedule 5, definition *law enforcement agency*, paragraph (d), including the conduct of proceedings started or about to be started in a court or tribunal in relation to the responsibility.
- (2) In this section—  
*intelligence functions* means the functions mentioned in the *Crime and Misconduct Act 2001*, section 53.

## Part 2 Compliance with NPPs

### 30 National Privacy Principles

The National Privacy Principles are set out in schedule 4.

*Editor's note—*

The principles set out in schedule 4 are called the National Privacy Principles in this Act because of their correspondence to the National Privacy Principles set out in the *Privacy Act 1988* (Cwlth), schedule 3.

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The NPPs, rather than the IPPs, are applied to the health department under this chapter because of particular arrangements applying nationally to the health department, corresponding entities in other Australian jurisdictions and the private health sector.

### **31 Health department to comply with NPPs**

- (1) The health department must comply with the NPPs.
- (2) Without limiting subsection (1), the health department—
  - (a) must not do an act, or engage in a practice, that contravenes, or is otherwise inconsistent with a requirement of, an NPP; and
  - (b) must not fail to do an act, or fail to engage in a practice, if the failure contravenes, or is otherwise inconsistent with a requirement of, an NPP.
- (3) An act or practice mentioned in subsection (2) includes any act or practice relating to the health department's collection, storage, handling, accessing, amendment, management, transfer, use or disclosure of personal information.

### **32 Noncompliance with particular NPPs**

- (1) The health department is not required to comply with a prescribed NPP in relation to an individual's personal information if the information is related to or connected with personal information of the individual that has previously been published, or given for the purpose of publication, by the individual.
- (2) In this section—

***prescribed NPP*** means—

  - (a) NPP 2; or
  - (b) NPP 3, but only in relation to use or disclosure of personal information; or
  - (c) NPP 9(4).



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individual, and if it were practicable to seek the agreement of the individual, the individual would be likely to give the agreement;

- (iv) the agency has taken reasonable steps to ensure that the personal information it transfers will not be held, used or disclosed by the recipient of the information in a way that is inconsistent with the IPPs or, if the agency is the health department, the NPPs.

## Part 4 Compliance with parts 1 to 3 by contracted service providers

### 34 Meaning of *service arrangement*

- (1) In this Act, a *service arrangement* is a contract or other arrangement entered into after the commencement of this section under which an entity other than an agency (the *contracted service provider*) agrees or otherwise arranges with an agency (the *contracting agency*) to provide services.
- (2) For subsection (1)—
  - (a) the services must be for the purposes of the performance of 1 or more of the contracting agency's functions; and
  - (b) the services must be provided either—
    - (i) directly to the contracting agency; or
    - (ii) to another entity on the contracting agency's behalf; and
  - (c) the contracted service provider must not be in the capacity of employee of the contracting agency in providing the services.

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**35 Binding a contracted service provider to privacy principles**

- (1) An agency entering into a service arrangement must take all reasonable steps to ensure that the contracted service provider is required to comply with part 1 or 2 and part 3, as if it were the agency, in relation to the discharge of its obligations under the arrangement.
- (2) However, the agency must comply with subsection (1) only if—
  - (a) the contracted service provider will in any way deal with personal information for the contracting agency; or
  - (b) the provision of services under the arrangement will involve—
    - (i) the transfer of personal information to the contracting agency; or
    - (ii) the provision of services to a third party for the contracting agency.
- (3) The agency is not required to comply with subsection (1) if—
  - (a) the contracted service provider is to receive funding from the contracting agency; and
  - (b) the contracted service provider will not collect personal information for the contracting agency; and
  - (c) the contracted service provider will not receive any personal information from the contracting agency for the purposes of discharging its obligations; and
  - (d) the contracted service provider will not be required to give the contracting agency any personal information it collects in discharging its obligations.
- (4) Subsections (1) to (3) are not intended to limit what may be provided for in a service arrangement about the contracted service provider's collection, storage, handling, accessing, amendment, management, transfer, use or disclosure of

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personal information, whether or not the contracted service provider is a bound contracted service provider.

### **36 Bound contracted service provider to comply with privacy principles**

- (1) A bound contracted service provider under a service arrangement must comply with part 1 or 2 and part 3 in relation to the discharge of its obligations under the arrangement as if it were the entity that is the contracting agency.
- (2) The requirement to comply under subsection (1) continues to apply to the bound contracted service provider in relation to personal information it continues to hold after its obligations under the service arrangement otherwise end.
- (3) A bound contracted service provider's compliance with part 1 or 2 and part 3 may be enforced under this Act as if it were an agency.
- (4) Subsections (1) to (3) are not intended to prevent a service arrangement from including a requirement for the contracted service provider to comply with all or part of the privacy principles even though this part does not require that the service arrangement include the requirement.

### **37 Contracting agency to comply with privacy principles if contracted service provider not bound**

- (1) This section applies if a contracted service provider under a service arrangement is not a bound contracted service provider because the contracting agency under the service arrangement did not take the steps required of it under section 35.
- (2) The obligations that would attach to the contracted service provider if it were a bound contracted service provider attach instead to the contracting agency under the arrangement.

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## **Part 5**                      **Provision of information to Ministers**

### **38**      **Personal information relevant to portfolio responsibilities**

An agency does not contravene the requirement under this Act that it comply with the IPPs or NPPs only because it gives personal information to a Minister to inform the Minister about matters relevant to the Minister's responsibilities in relation to the agency.

## **Part 6**                      **Miscellaneous**

### **39**      **Nature of rights created by pts 1 to 3**

- (1) Except as provided for under the procedures set out in this Act, an obligation imposed on an entity under part 1, 2 or 3 does not—
  - (a) give rise to any civil cause of action; or
  - (b) operate to create in any person any legal right enforceable in a court or tribunal.
- (2) Subsection (1) does not limit chapter 5.

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## **Chapter 3      Disclosure and amendment by application under this Act**

### **Part 1            Right to access and amendment**

#### **40      Right to be given access to particular documents**

- (1) Subject to this Act, an individual has a right to be given access under this Act to—
- (a) documents of an agency to the extent they contain the individual's personal information; and
  - (b) documents of a Minister to the extent they contain the individual's personal information.

*Notes—*

- 1 See part 2 for how to exercise this right to access.
  - 2 Exclusions of the right are provided for under the Right to Information Act, chapter 3, part 4 (which provides particular circumstances where an entity may refuse to deal with an application) and section 67 (which applies the Right to Information Act, section 47 which in turn provides grounds on which an entity may refuse access).
  - 3 A limitation on the right is provided for under section 88 (which provides that, in particular circumstances, an entity may delete irrelevant information from a document before giving access).
- (2) Subsection (1) applies to documents even if they came into existence before the commencement of this Act.

*Note—*

Section 47 deems an access application to apply only to documents that are, or may be, in existence on the day the application is received.



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## **41 Right to amend personal information in particular documents**

- (1) Subject to this Act, an individual has a right under this Act to amend, if inaccurate, incomplete, out of date or misleading—
- (a) documents of an agency to the extent they contain the individual's personal information; and
  - (b) documents of a Minister to the extent they contain the individual's personal information.

*Notes—*

- 1 See part 2 for how to exercise this right to amend.
  - 2 Exclusions of the right are provided for under section 46 (which provides an amendment application may not be made to the information commissioner), part 4 (which provides particular circumstances where an entity may refuse to deal with an application) and section 72 (which provides grounds on which an entity may refuse amendment).
- (2) Subsection (1) applies to documents even if they came into existence before the commencement of this Act.

## **42 Other ways of accessing or amending personal information**

Personal information may be accessed or amended other than by application under this chapter.

*Examples—*

- 1 A document may be accessed under administrative arrangements made by an agency.
- 2 A public service employee may access his or her employee record by application under the *Public Service Regulation 2008*.
- 3 A document may be commercially available.

## Part 2 Access and amendment applications

### 43 Making access application

- (1) An individual who wishes to be given access to a document of an agency or a document of a Minister under this Act to the extent it contains the individual's personal information may apply to the agency or Minister for access to the document.

*Notes—*

- 1 *Minister* is defined to include a Parliamentary Secretary—see schedule 5.
  - 2 Section 45 provides for access applications by parents for children and section 196 clarifies the powers of those acting for others.
  - 3 For an application made for a person, the person (and not the agent) is the applicant—see schedule 5, definition *applicant*.
- (2) The access application must—
- (a) be in the approved form; and
  - (b) give sufficient information concerning the document to enable a responsible officer of the agency or the Minister to identify the document; and
  - (c) state an address to which notices under this Act may be sent to the applicant.
- (3) Also, the applicant must provide with the application or within 10 business days after making the application—
- (a) evidence of identity for the applicant; and
  - (b) if an agent is acting for the applicant—evidence of the agent's authorisation and evidence of identity for the agent.

*Examples of an agent's authorisation—*

- the will or court order appointing the agent to act as the applicant's guardian

- the client agreement authorising a legal practitioner to act for an applicant
- if the application is made in reliance on section 45, evidence the agent is the child's parent

(4) In this section—

*evidence of identity* means the evidence of identity prescribed under a regulation.

#### 44 Making amendment application

(1) An individual who has had access to a document of an agency or a document of a Minister, whether or not under this Act, may apply to the agency or Minister for amendment of any part of the individual's personal information contained in the document that the individual claims is inaccurate, incomplete, out of date or misleading.

*Notes—*

- 1 *Minister* is defined to include a Parliamentary Secretary—see schedule 5.
  - 2 Section 45 provides for amendment applications by parents for children and section 196 clarifies the powers of those acting for others.
- (2) For subsection (1), the reference to an individual who has had access to a document includes a reference to an individual whose agent has had access to the document.
- (3) Without limiting how an agent may be authorised for this section in relation to an applicant who is deceased, an agent may include—
- (a) an eligible family member of the deceased person; or
  - (b) a person the agency or Minister considers has an appropriate interest in the amendment of the personal information.
- (4) The amendment application must—
- (a) be in the approved form; and

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- (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 an address to which notices under this Act may be sent to the applicant; and
  - (d) state the information the applicant claims is inaccurate, incomplete, out of date or misleading; and
  - (e) 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
  - (f) 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
  - (g) 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.
- (5) Also, the applicant must provide with the application or within 10 business days after making the application—
- (a) evidence of identity for the applicant; and
  - (b) if an agent is acting for the applicant—evidence of the agent's authorisation and evidence of identity for the agent.

*Examples of an agent's authorisation—*

- the will or court order appointing the agent to act as the applicant's guardian
- the client agreement authorising a legal practitioner to act for an applicant
- if the application is made in reliance on section 45, evidence the agent is the child's parent

- (6) In this section—

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*evidence of identity* means the evidence of identity prescribed under a regulation.

#### 45 Making access or amendment applications for children

- (1) Without limiting the ability of persons to make access or amendment applications for children, an access or amendment application may be made for the child by the child's parent.

*Note—*

- 1 Section 196 clarifies the powers of those acting for others.
- 2 For an application made for a child, the child (and not the parent) is the applicant—see schedule 5, definition *applicant*.

- (2) In this section—

*child* means an individual who is under 18 years.

*parent—*

- 1 Parent, of a child, is any of the following persons—
  - (a) the child's mother;
  - (b) the child's father;
  - (c) a person who exercises parental responsibility for the child, including a person who is granted guardianship of the child under the *Child Protection Act 1999* or who otherwise exercises parental responsibility for the child under a decision or order of a federal court or a court of a State.
- 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.
- 4 A parent of a Torres Strait Islander child includes a person who, under Island custom, is regarded as a parent of the child.

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**46 Access or amendment application may not be made to commissioner**

- (1) An access or amendment application may not be made or transferred to the information commissioner, other than in relation to personal information of the staff of the OIC.
- (2) An access or amendment application may not be made or transferred to the RTI commissioner or the privacy commissioner.

**47 Application for documents then existing**

- (1) An access application is taken only to apply to documents that are, or may be, in existence on the day the application is received.
- (2) However, subsection (1) 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 68 (a *post-application document*).
- (3) If the agency or Minister gives an applicant access to a post-application document—
  - (a) no access charge is payable in relation to the document; and
  - (b) the applicant is not entitled to review under this Act of a decision about the document made in relation to the application.

**48 Application for metadata**

- (1) An access application for a document is taken not to include an application for access to metadata about the document unless the access application expressly states that it does.
- (2) If an access application for a document expressly states that access to metadata about the document is sought, access to the metadata does not need to be given unless access is reasonably practicable.

(3) In this section—

*metadata*, about a document, includes information about the document's content, author, publication date and physical location.

#### **49 Application not for backup system documents**

- (1) An access application, however expressed, for a document does not require an agency or Minister to search for the document from a backup system.
- (2) However, subsection (1) 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—*

While a search for a document from a backup system is not generally required before refusing access on the ground that the document is nonexistent or unlocatable, a search is required in the particular circumstances mentioned in the Right to Information Act, section 52(2), as applied under this Act.

## **Part 3 Dealing with application**

### **Division 1 Decision-maker**

#### **50 Decision-maker for application to agency**

- (1) An access or amendment application to an agency must be dealt with for the agency by the agency's principal officer.
- (2) The agency's principal officer may delegate the power to deal with the application to another officer of the agency.
- (3) Also, for an agency other than a local government, the agency's principal officer may, with the agreement of another

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agency's principal officer, delegate the power to deal with the application to the other agency's principal officer.

- (4) The principal officer of the other agency may subdelegate a power delegated to him or her under subsection (3).

*Note—*

Under the *Acts Interpretation Act 1954*, section 27A(2), a delegation may be revoked, wholly or partly, by the delegator. Accordingly, a delegation may be revoked before a decision is made in a particular case and the delegator may make the decision.

- (5) However—
- (a) a principal officer may not, under subsection (2) or (4) delegate the power to deal with the application to the extent it involves—
    - (i) making a healthcare decision; or
    - (ii) appointing a healthcare professional under paragraph (b); but
  - (b) the agency may appoint an appropriately qualified healthcare professional to make a healthcare decision in relation to the application.

- (6) In this section—

***healthcare decision*** means a decision about any of the following matters—

- (a) whether disclosure to the applicant of relevant healthcare information about the applicant might be prejudicial to the physical or mental health or wellbeing of the applicant under the Right to Information Act, section 51, as applied under this Act;
- (b) whether to refuse access under the Right to Information Act, section 47(3)(d), as applied under this Act;
- (c) whether to give access despite being able to refuse access under the Right to Information Act, section 47(3)(d), as applied under this Act;
- (d) whether to give a direction under section 92(2);



- (e) whether to approve a healthcare professional under section 92(2).

***power to deal***, with an access or amendment application, includes power to deal with an application for internal review in relation to the access or amendment application.

*Examples of dealing with an application for internal review—*

- making a new decision under section 94(2)
- giving notice under section 97(3)

## 51 Decision-maker for application to Minister

- (1) An access or amendment application to a Minister may be dealt with by the person the Minister directs, either generally or in a particular case.
- (2) However—
- (a) the Minister may not direct the person to deal with the application to the extent it involves—
- (i) making a healthcare decision; or
- (ii) appointing a healthcare professional under paragraph (b); but
- (b) the Minister may appoint an appropriately qualified healthcare professional to make a healthcare decision in relation to the application.

- (3) In this section—

***deal***, with an access or amendment application, includes deal with an application for internal review in relation to the access or amendment application.

*Examples of dealing with an application for internal review—*

- making a new decision under section 94(2)
- giving notice under section 97(3)

***healthcare decision*** see section 50.

## **Division 2                      Preliminary contact with applicant**

### **52            Application outside scope of Act**

- (1) This section applies if—
  - (a) a person purports to make an application under this chapter to an entity for access to or to amend a document; and
  - (b) the entity decides the application is outside the scope of this Act for 1 or more of the following reasons—
    - (i) the document is not a document of an agency, or a document of a Minister, for this chapter;
    - (ii) the entity is not an agency for this chapter;
    - (iii) the application is made to the information commissioner, RTI commissioner or privacy commissioner.
- (2) Within 10 business days after the purported application is received, the entity must give prescribed written notice to the applicant of the decision.

### **53            Noncompliance with application requirement**

- (1) This section applies if—
  - (a) a person purports to make an access or amendment application for a document to an agency or Minister; and
  - (b) the application does not comply with all relevant application requirements for the application.
- (2) The agency or Minister must make reasonable efforts to contact the person within 15 business days after the purported application is received and inform the person how the application does not comply with a relevant application requirement.
- (3) An agency or Minister must not refuse to deal with an application because it does not comply with all relevant

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application requirements without first giving the applicant a reasonable opportunity to consult with a view to making an application in a form complying with all relevant application requirements.

- (4) The applicant is taken to have made an application under this Act if and when the application is made in a form complying with all relevant application requirements.
- (5) If, after giving the opportunity mentioned in subsection (3) and any consultation, an agency or Minister decides the application does not comply with all relevant application requirements, the agency or Minister must, within 10 business days after making the decision, give the applicant prescribed written notice of the decision.
- (6) In this section—  
*relevant application requirement* means—
  - (a) for an access application—a matter set out in section 43(2) or (3) that is required for the application; or
  - (b) for an amendment application—a matter set out in section 44(4) and (5) that is required for the application.

## **54 Access application not limited to personal information**

- (1) This section applies if, on its face, an access application purportedly made under this Act should have been made under the Right to Information Act because the application is for access to a document other than to the extent it contains the applicant's personal information.
- (2) The agency or Minister must make reasonable efforts to contact the applicant within 15 business days after the application is received and inform the applicant that—
  - (a) the application is not an application that can be made under this Act; and
  - (b) the application could have been made under the Right to Information Act upon payment of the application fee payable under that Act; and

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- (c) the applicant may consult with the agency or Minister with a view to—
  - (i) making an application under this Act by changing the application; or
  - (ii) having the application dealt with under the Right to Information Act by paying the application fee.
- (3) An agency or Minister must not refuse to deal with an application purportedly made under this Act without first giving the applicant a reasonable opportunity to consult as mentioned in subsection (2)(c).
- (4) If the application fee is paid, the applicant is taken to have made the application under the Right to Information Act on the date of the payment.
- (5) However—
  - (a) the application continues to be dealt with as an application under this Act if, after the opportunity mentioned in subsection (3) is given and any consultation happens, the applicant does not either change the application, or pay the fee, as mentioned in subsection (2)(c); and
  - (b) the agency or Minister must again consider whether the application is an application that can be made under this Act and, within 10 days of deciding that matter, give the applicant prescribed written notice of the decision.

## **55 Longer processing period**

- (1) At any time before a deemed decision is taken to have been made in relation to an access or amendment application, the agency or Minister may ask the applicant for a further specified period to consider the application.
- (2) Additional requests for further specified periods may be made under subsection (1).

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- (3) The agency or Minister may continue to consider the application and make a considered decision in relation to it only if—
    - (a) the agency or Minister has asked the applicant for a further specified period under subsection (1); and
    - (b) the applicant has not refused the request; and
    - (c) the agency or Minister has not received notice that the applicant has applied for review.
  - (4) If a considered decision is made, the considered decision replaces any deemed decision for the purposes of this Act.

*Note—*

The agency or Minister must give notice of the considered decision under section 65 or 70 and the considered decision is potentially subject to internal review and external review.

## **Division 3                      Contact with relevant third party**

### **56            Disclosure of concern to third party**

- (1) An agency or Minister may give access to a document that contains information the disclosure of which may reasonably be expected to be of concern to a government, agency or person (the *relevant third party*) only if the agency or Minister has taken the steps that are reasonably practicable to obtain the views of the relevant third party about whether—
  - (a) the document is a document for this chapter; or
  - (b) the information is exempt information or contrary to public interest information.
- (2) If disclosure of information may reasonably be expected to be of concern to a person but for the fact that the person is deceased, subsection (1) applies as if the person's representative were a relevant third party.
- (3) If—

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- (a) the agency or Minister obtains the views of the relevant third party and the relevant third party considers—
    - (i) the document is not a document for this chapter; or
    - (ii) the information is exempt information or contrary to public interest information; but
  - (b) the agency or Minister decides—
    - (i) the document is a document for this chapter; or
    - (ii) the information is not exempt information or contrary to public interest information;
- the agency or Minister must—
- (c) give prescribed written notice of the decision of the agency or Minister to the applicant and the relevant third party; and
  - (d) defer giving access to the document until after—
    - (i) the agency or Minister is given written notice by the relevant third party that it 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 review has ended (whether because of an informal resolution or because of a decision of the entity conducting the review).
- (4) The agency or Minister must give the applicant written notice when access is no longer deferred under subsection (3)(d).
- (5) In this section—
- representative***, in relation to a deceased person, 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.

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

## Division 4                      Transfers

### 57            Transfer of access or amendment application

- (1) In this section—  
*agency* includes a Minister.
- (2) An agency to which an access or amendment application has been made (the *original agency*) may transfer the application to another agency if—
  - (a) the document to which the application relates is not in the original agency's possession but is, to the original agency's knowledge, in the other agency's possession; and
  - (b) the other agency consents to the transfer.
- (3) An application that is transferred from 1 agency to another agency is taken to have been made to the other agency.
- (4) If—
  - (a) an application is made to an agency for access to or amendment of more than 1 document; and
  - (b) 1 or more of the documents is a document mentioned in subsection (2)(a);

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

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## **Part 4 Refusal to deal with access or amendment application**

### **58 Pro-disclosure bias and pro-amendment bias in deciding to deal with applications**

- (1) It is the Parliament's intention that if an access or amendment application is made to an agency or Minister, the agency or Minister should deal with the application unless this would not be in the public interest.
- (2) Sections 59, 60 and 62 state the only circumstances in which the Parliament considers it would not be in the public interest to deal with an access application.
- (3) Section 60 states the only circumstances in which the Parliament considers it would not be in the public interest to deal with an amendment application.
- (4) However, it is the Parliament's intention that this Act should be administered with a pro-disclosure bias and pro-amendment bias and an agency or Minister may deal with an access or amendment application even if this Act provides that the agency or Minister may refuse to deal with the application.

### **59 Exempt information**

- (1) This section applies if—
  - (a) an access 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 comprised of exempt information.



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- (2) The agency or Minister may refuse to deal with the application without having identified any or all of the documents.

## **60 Effect on agency's or Minister's functions**

- (1) An agency or Minister may refuse to deal with an access or amendment application, or, if the agency or Minister is considering 2 or more access or amendment 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 any document in the filing system of the agency or the Minister's office; or
  - (b) for an access application—in deciding whether to give, refuse or defer access to any documents, or to give access to an edited copy of any documents, including resources that would have to be used—
    - (i) in examining any document; or
    - (ii) in consulting in relation to the application with a relevant third party under section 56; or
  - (c) in making a copy, or edited copy, of any document; or
  - (d) in notifying any final decision on the application.

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- (3) In deciding whether to refuse, under subsection (1), to deal with an access or amendment application, an agency or Minister must not have regard to—
  - (a) any reasons the applicant gives for applying for access or amendment; or
  - (b) the agency's or Minister's belief about what are the applicant's reasons for applying for access or amendment.

## **61 Prerequisites before refusal because of effect on functions**

- (1) An agency or Minister may refuse to deal with an access or amendment application under section 60 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 the prescribed consultation period for the notice, the applicant may consult with the agency or Minister with a view to making an application in a form that would remove the ground for refusal; and
    - (iii) stating the effect of subsections (2) to (6); and
  - (b) the agency or Minister has given the applicant a reasonable opportunity to consult with the agency or Minister; and
  - (c) the agency or Minister has, as far as is reasonably practicable, given the applicant any information that would help the making of an application in a form that would remove the ground for refusal.
- (2) Following any consultation, the applicant may give the agency or Minister written notice either confirming or narrowing the application.

- (3) If the application is narrowed, section 60 applies in relation to the changed application but this section does not apply to it.
- (4) If the applicant fails to consult after being given notice under subsection (1), the applicant is taken to have withdrawn the application at the end of the prescribed consultation period.
- (5) Without limiting subsection (4), the applicant is taken to have failed to consult if, by the end of the prescribed consultation period, the applicant has not given the named officer or member written notice under subsection (2).
- (6) In this section—  
*prescribed consultation period*, for a written notice under subsection (1)(a), means—
  - (a) the period of 10 business days after the date of the notice; or
  - (b) the longer period agreed by the agency or Minister and the applicant whether before or after the end of the 10 business days mentioned in paragraph (a).

## **62 Previous application for same documents—access application**

- (1) This section applies if—
  - (a) an applicant makes an access application, whether under this Act or the Right to Information Act, to an agency or Minister (the *first application*); and
  - (b) the applicant makes another access application under this Act (the *later application*) to the same agency or Minister for access to 1 or more of the same documents sought under the first application and the later application does not, on its face, disclose any reasonable basis for again seeking access to the document or documents.
- (2) For subsection (1)(a)—
  - (a) the first application, if made under this Act—

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- (i) does not include an access application taken to have been withdrawn under section 61(4); and
    - (ii) if an access application has been narrowed under section 61—means only the access application as changed; and
  - (b) the first application, if made under the Right to Information Act—
    - (i) does not include an access application taken to have been withdrawn under section 42(4) of that Act; and
    - (ii) if an access application has been narrowed under section 42 of that Act—means only the access application as changed.
- (3) The agency or Minister may refuse to deal with the later application to the extent it is for access to a document or documents sought under the first application if—
  - (a) when the later application was made, the agency or Minister had not decided the first application; or
  - (b) in relation to the first application if made under this Act—
    - (i) the applicant had been given notice under section 68 that access was to be given to the document sought or to some or all of the documents sought; or
    - (ii) the agency or Minister had decided that the application was for a document to which this chapter does not apply; or
    - (iii) the agency or Minister had decided the document or documents sought were documents access to which was refused under section 67; or
    - (iv) the agency or Minister had refused to deal with it under this part; or

- (c) in relation to the first application, if made under the Right to Information Act—
  - (i) the applicant had been given notice under section 54 of that Act that access was to be given to the document sought or to some or all the documents sought; or
  - (ii) the agency or Minister had decided that the application was for a document to which that Act does not apply; or
  - (iii) the agency or Minister had decided the document or documents sought were documents access to which was refused under section 47 of that Act; or
  - (iv) the agency or Minister had refused to deal with it under chapter 3, part 4 of that Act; or
- (d) the agency's or Minister's decision on the first application—
  - (i) is the subject of a review and the review is not complete; or
  - (ii) has been the subject of a completed review (other than an internal review).
- (4) For subsection (3), if a document sought under the later application is merely a record of the first application having been made (a **record document**), access to a record document is taken to have been sought under the first application.
- (5) For subsection (3)(d)—

**review** means—

  - (a) an internal review under this Act or the Right to Information Act; or
  - (b) an external review under this Act or the Right to Information Act; or
  - (c) a proceeding under part 11 or under the Right to Information Act, chapter 3, part 11.

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- (6) For subsection (3)(d), a review is complete if the review has ended because of an informal resolution or because of a decision of the entity conducting the review.

### **63 Previous application for same documents—amendment application**

- (1) This section applies if—
- (a) an applicant makes an amendment application to an agency or Minister (the *first application*); and
  - (b) the applicant makes another amendment application (the *later application*) to the same agency or Minister for amendment of 1 or more of the same documents sought to be amended under the first application and the later application does not, on its face, disclose any reasonable basis for again seeking the amendment of the document or documents.
- (2) For subsection (1)(a), the first application—
- (a) does not include an amendment application taken to have been withdrawn under section 61(4); and
  - (b) if an amendment application has been narrowed within the meaning of section 61—means only the application as changed.
- (3) The agency or Minister may refuse to deal with the later application to the extent it is for amendment of a document or documents sought to be amended, under the first application if—
- (a) when the later application was made, the agency or Minister had not decided the first application; or
  - (b) in relation to the first application—
    - (i) the applicant had been given notice under section 73 that amendment was to be allowed for the document sought to be amended or for some or all of the documents sought to be amended; or

- (ii) the agency or Minister had decided that the application was for a document to which this chapter does not apply; or
- (iii) the agency or Minister had decided the document or documents sought to be amended were documents amendment of which was refused under section 72; or
- (iv) the agency or Minister had refused to deal with it under this part; or
- (c) the agency's or Minister's decision on the first application—
  - (i) is the subject of a review and the review is not complete; or
  - (ii) has been the subject of a completed review (other than an internal review).
- (4) For subsection (3)(c), *review* means—
  - (a) an internal review; or
  - (b) an external review; or
  - (c) a proceeding under part 11.
- (5) For subsection (3)(c), a review is complete if the review has ended because of an informal resolution or because of a decision of the entity conducting the review.

## **Part 5                      Decision**

### **Division 1                      Access applications**

#### **64            Pro-disclosure bias in deciding access to documents**

- (1) It is the Parliament's intention that if an access application is made to an agency or Minister for a document, the agency or Minister should decide to give access to the document unless giving access would, on balance, be contrary to the public interest.
- (2) The purpose of this part is to help the agency or Minister decide whether giving access would, on balance, be contrary to the public interest by—
  - (a) setting out in the Right to Information Act, schedule 3, as applied under this Act, types of information the disclosure of which the Parliament has considered would, on balance, be contrary to the public interest; and
  - (b) setting out in the Right to Information Act, section 49, as applied under this Act, the steps, and in schedule 4 of that Act, as applied under this Act, factors, for deciding, for other types of information, whether disclosure would, on balance, be contrary to the public interest.
- (3) Also, the Right to Information Act, sections 50 and 51, as applied under this Act, set out circumstances concerning information about a child and personal healthcare information about an applicant in which the Parliament has stated its intention about what is in the best interests of the child and applicant.
- (4) However, it is the Parliament's intention that this Act should be administered with a pro-disclosure bias and an agency or Minister may give access to a document in relation to an applicant's personal information even if this Act provides that access to the document may be refused.



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## 65 Considered decision on access application

If a person makes an access application for a document to an agency or Minister, the agency or Minister must—

- (a) after considering the application, make a decision (a *considered decision*)—
  - (i) whether access is to be given to the document; and
  - (ii) if access is to be given—whether any access charge must be paid before access is given; and
- (b) give the person written notice of the decision under section 68.

## 66 Deemed decision on access application

- (1) If an applicant is not given written notice of the decision by the end of the processing period for an access application for a document, on the last day of the processing period, the principal officer of the agency or the Minister is taken to have made a decision (a *deemed decision*) refusing access to the document.
- (2) As soon as practicable after a deemed decision is taken to have been made, the principal officer or Minister must give prescribed written notice of the decision to the applicant.

## 67 Grounds on which access may be refused

- (1) An agency may refuse access to a document of the agency and a Minister may refuse access to a document of the Minister in the same way and to the same extent the agency or Minister could refuse access to the document under the Right to Information Act, section 47 were the document to be the subject of an access application under that Act.

*Note—*

See the Right to Information Act, section 47 (Grounds on which access may be refused). Generally, the grounds for refusal relate to issues concerning exempt information, the public interest, a child or applicant's best interests, documents being nonexistent or unable to be

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located and other availability of access to documents. However, see also section 4 (Act not intended to prevent other accessing or amendment of personal information) of this Act.

- (2) It is the Parliament's intention that—
  - (a) the grounds on which access may be refused under the Right to Information Act, as applied under this Act, are to be interpreted narrowly; and
  - (b) an agency or Minister may give access to a document even if a ground on which access may be refused applies.

## **68 Notification of decision and reasons—access application**

- (1) An agency or Minister must give a prescribed written notice to an applicant for an access application of—
  - (a) the decision on the application, including a decision to refuse to deal with the application; and
  - (b) if the application relates to a document that is not a document in the possession, or under the control, of the agency or Minister—the fact that the document is not a document in the possession, or under the control, of the agency or Minister.
- (2) In addition to the details that must be stated in a prescribed written notice, the notice must also specify the following—
  - (a) if access to a document is to be given—
    - (i) an itemisation of any access charges payable by the person; and
    - (ii) the period within which the applicant may access the document under section 84 (the *access period*);
  - (b) if access is to be given to a copy of a document subject to the deletion under section 88 of irrelevant information—the fact that the document is such a copy;

- (c) if access is to be given to a copy of a document subject to the deletion under section 89 of exempt information—
  - (i) the fact that the document is such a copy; and
  - (ii) the provision of the Right to Information Act, schedule 3 under which the information is exempt information; and
  - (iii) the reasons for the decision classifying the information as exempt information;
- (d) if access is to be given to a copy of a document subject to the deletion under section 90 of contrary to public interest information—
  - (i) the fact that the document is such a copy; and
  - (ii) the factors identified as favouring disclosure and the factors identified as favouring nondisclosure under the Right to Information Act, section 49, as applied under this Act; and
  - (iii) the reasons why disclosure of the information would, on balance, be contrary to the public interest under the Right to Information Act, section 49, as applied under this Act;
- (e) if access to a document is to be given subject to deferral under section 87—
  - (i) the reason for the deferral; and
  - (ii) the day on which the agency or Minister expects the document to be presented or released as mentioned in section 87;
- (f) if dealing with the access application is refused under section 59—
  - (i) the provision of the Right to Information Act, schedule 3 under which the information in the document is exempt information; and

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- (ii) the reasons for the decision classifying the information as exempt information;
- (g) if access to a document is refused under section 67—
  - (i) the provision of the Right to Information Act, section 47(3), as applied under this Act, under which access is refused; and
  - (ii) if access is refused under the Right to Information Act, section 47(3)(a), as applied under this Act—
    - (A) the provision of the Right to Information Act, schedule 3 under which the information in the document is exempt information; and
    - (B) the reasons for the decision classifying the information as exempt information; and
  - (iii) if access is refused under the Right to Information Act, section 47(3)(b), as applied under this Act—
    - (A) the factors identified as favouring disclosure and the factors identified as favouring nondisclosure under the Right to Information Act, section 49; and
    - (B) the reasons for the decision that, on balance, disclosure would be contrary to the public interest; and
  - (iv) if access is refused under the Right to Information Act, section 47(3)(c), as applied under this Act—the reason under the Right to Information Act, section 50 the agency or Minister considers access would not be in the best interests of the child; and
  - (v) if access is refused under the Right to Information Act, section 47(3)(d), as applied under this Act—the reason under the Right to Information Act, section 51 the agency or Minister considers that the disclosure to the applicant might be

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- prejudicial to the physical or mental health or wellbeing of the applicant; and
- (vi) if access is refused under the Right to Information Act, section 47(3)(e), as applied under this Act—the provision of the Right to Information Act, section 52(1) under which the document is nonexistent or unlocatable; and
  - (vii) if access is refused under the Right to Information Act, section 47(3)(f), as applied under this Act—the type of access to the document under the Right to Information Act, section 53 that is available.
- (3) An agency or Minister is not required to include any exempt information or contrary to public interest information in the notice.
  - (4) Subsection (2)(a)(ii) does not apply if the document is given with the notice.
  - (5) This section does not apply in relation to a deemed decision.

## **69 Information as to existence of particular documents**

- (1) Nothing in this Act requires an agency or Minister to give information as to the existence or non-existence of a document containing prescribed information.
- (2) For an access application for a document containing prescribed information, the agency or Minister may give prescribed written notice that does not include the details mentioned in section 199(a) or (b) but, by way of a decision, states that—
  - (a) the agency or Minister neither confirms nor denies the existence of that type of document as a document of the agency or a document of the Minister; but
  - (b) assuming the existence of the document, it would be a document to which access would be refused under

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section 67 to the extent it comprised prescribed information.

- (3) To avoid any doubt, it is declared that a decision that states the matters mentioned in subsection (2) is a decision refusing access to a document under section 67.

*Note—*

A decision refusing access to a document under section 67 is a reviewable decision—see schedule 5, definition *reviewable decision*, paragraph (f).

## Division 2                      Amendment applications

### 70                      Considered decision on amendment application

If a person makes an amendment application for a document to an agency or Minister, the agency or Minister must—

- (a) after considering the application, make a decision (a *considered decision*) whether amendment of the document is to be permitted; and
- (b) give the person written notice of the decision under section 73.

### 71                      Deemed decision on amendment application

- (1) If an applicant is not given written notice of the decision by the end of the processing period for an amendment application, on the last day of the processing period, the principal officer of the agency or the Minister is taken to have made a decision (a *deemed decision*) refusing to amend the document.
- (2) As soon as practicable after a deemed decision is taken to have been made, the principal officer or Minister must give prescribed written notice of the decision to the applicant.

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## 72 Grounds on which amendment may be refused

- (1) Without limiting the grounds on which the agency or Minister may refuse to amend the document, the agency or Minister may refuse to amend the document because—
  - (a) the agency or Minister is not satisfied—
    - (i) the personal information is inaccurate, incomplete, out of date or misleading; or
    - (ii) the information sought to be amended is personal information of the applicant; or
    - (iii) if the application is purportedly made by an agent—that the agent is suitably authorised to make the amendment application; or
  - (b) the document does not form part of a functional record.
- (2) 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.

## 73 Notification of decision and reasons—amendment application

- (1) An agency or Minister is to give a prescribed written notice to an applicant for an amendment application of the decision on the application.
- (2) If amendment of the document is to be permitted, the prescribed written notice is not required to state the reasons for the decision.
- (3) An agency or Minister is not required to include any exempt information, or contrary to public interest information, in the notice.
- (4) This section does not apply in relation to a deemed decision.

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#### **74 Amendment of document by alteration or notation**

If an agency or Minister to whom an amendment application is made decides to amend the document in relation to the personal information contained in the document the subject of the application, the agency or Minister may make the amendment by—

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

#### **75 Notation to information**

If an agency or Minister adds a notation to personal information, the notation must—

- (a) state how the information is inaccurate, incomplete, out of date or misleading; and
- (b) if the information is claimed to be incomplete or out of date—set out the information required to complete the information or bring it up to date.

#### **76 Particular notations required to be added**

- (1) This section applies if—
  - (a) a person makes an amendment application to an agency or Minister; and
  - (b) under section 70, the agency or Minister refuses to amend the document.
- (2) The applicant may, whether or not the applicant has applied under part 8 or 9 for review of the decision, by written notice, require the agency or Minister to add to the personal information included in the document a notation—
  - (a) stating the way the applicant claims the information to be inaccurate, incomplete, out of date or misleading; and



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- (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.
- (4) Subsection (3)(a) does not require the agency or Minister to make a notation using the same words as the words provided by the applicant.
- (5) If the agency or Minister decides the information to which the notice relates is not information in relation to which the applicant was entitled to apply to the agency or Minister for amendment of the document—
- (a) subsection (3) does not apply; and
  - (b) the agency or Minister must give prescribed written notice to the applicant of the decision.
- (6) If an agency or Minister (the *document holder*) discloses to a person (including an agency or Minister) any information contained in the part of the document the subject of the amendment application, 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

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- (ii) setting out particulars of the notation added under this section; and
- (b) may include in the statement the reason for the document holder's refusal to amend the document.

## **Part 6                      Charging regime**

### **Division 1                Preliminary**

#### **77        Meaning of *access charge***

In this Act, an *access charge*, in relation to an access application for a document, means the charge prescribed under a regulation in relation to the giving of access to the document.

#### **78        Duty in relation to access charge**

It is the duty of the agency or Minister to minimise any access charge payable by an applicant.

### **Division 2                Payment of charges**

#### **79        Requirement to pay access charge**

Before an applicant for an access application for a document is given access to the document, the applicant must pay the applicable access charge for the application.

*Note—*

The access charge is prescribed under a regulation—see section 77.

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## **Division 3                      Waiver of charges**

### **80            Waiver under div 3 only**

An access charge may be waived only under this division.

### **81            Uneconomical to charge**

- (1) An access charge for an access application may be waived if the agency or Minister considers the likely associated costs to the agency or Minister would be more than the likely amount of the charge.
- (2) In this section—  
*associated costs* mean the costs of—
  - (a) complying with this Act in relation to the charge; and
  - (b) receiving payment of the charge.

### **82            Applicant under financial hardship**

- (1) This section applies if, at any time, an applicant for an access application makes a written request to an agency or Minister that the applicable access charge for the application be waived.
- (2) The agency or Minister must decide to waive any access charge for the application if—
  - (a) the request is accompanied by a copy of a concession card; and
  - (b) the agency or Minister considers the applicant is the holder of a concession card; and
  - (c) the agency or Minister considers the applicant is not making the application for some other person who is seeking to avoid the payment of a charge.

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(3) The agency or Minister must give the applicant a prescribed written notice of a decision under subsection (2) before the end of the processing period.

(4) In this section—

*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.

*holder*, of a concession card, at a time the concession card is being relied on for a purpose under this Act, means a person who is named on the concession card and would be qualified to be named on the concession card if the concession card were issued at the time the concession card is being relied on.

## Part 7 Giving access

### 83 Forms of access

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

(a) a reasonable opportunity to inspect the document;

(b) providing a copy of the document;

(c) if the document is an article or material from which sounds or visual images are capable of being reproduced—making arrangements for the person to hear the sounds or view the images;

(d) if the document is one—

(i) by which words are recorded in a way in which they are capable of being reproduced in the form of sound; or

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- (ii) in which words are contained in the form of shorthand writing or in codified form;  
providing a written transcript of the words recorded or contained in the document;
- (e) if—
- (i) the application relates to information that is not contained in a written document in the possession, or under the control, of the agency; and
- (ii) the agency could create a written document containing the information using equipment that is usually available to it for retrieving or collating stored information;  
providing a written document created using the equipment.
- (2) For subsection (1)(a) and (b), the reference to the document includes a reference to a copy of the document from which information has been deleted under sections 88 to 90.
- (3) Subject to this section and sections 88 to 92, if an applicant has requested access in a particular form, access must be given in that form.
- (4) If giving access in the form requested by the applicant—
- (a) would interfere unreasonably with the operations of the agency, or the performance by the Minister of the Minister's functions; or
- (b) would be detrimental to the preservation of the document or, having regard to the physical nature of the document, would be inappropriate; or
- (c) would involve an infringement of the copyright of a person other than the State;
- access in that form may be refused and given in another form.
- (5) If an applicant is given access to a document in a form different to the form of access requested by the applicant, the applicant must not be required to pay an access charge that is

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more than the charge that would have been payable if access had been given in the form requested by the applicant.

- (6) Access under subsection (1)(a) to a document to which section 190 or 191 applies must be given by affording the applicant a reasonable opportunity to inspect the document on the premises of the Queensland State Archives or public library or in an office of an agency.
- (7) If a document is more than 25 years old or in the custody of the Queensland State Archives, the State Archivist may direct that access not be given in 1 or more, but not all, of the forms mentioned in subsection (1) if, in the State Archivist's opinion, giving access in that form would be detrimental to the document's preservation or, having regard to the physical nature of the document, would be inappropriate.
- (8) This section does not prevent an agency or Minister giving access to a document in another form agreed to by the applicant.

## **84 Time limit for access**

- (1) This section applies if an applicant for an access application for a document is given access to the document.
- (2) The person may access the document—
  - (a) if the giving of access is deferred under section 56(3)(d) or 87, within—
    - (i) 40 business days after the date of the notice that access is no longer deferred; and
    - (ii) any additional period allowed by the agency or Minister; or
  - (b) otherwise, within—
    - (i) 40 business days after the date of the decision to give the person access to the document; and
    - (ii) any additional period allowed by the agency or Minister.

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- (3) For subsection (2)(b)(i), the date of the decision to give the person access to the document is—
    - (a) if the person is given access because of a decision of the agency or Minister—the date of the prescribed written notice; or
    - (b) if the person is given access because of a decision of the information commissioner, QCAT or a court—the date of the decision; or
    - (c) if the person is given access because of an informal resolution of an external review—the date of the notice of the information commissioner given under section 103(4)(a); or
    - (d) if the person is given access because of an informal resolution of a proceeding under part 11—the date of the informal resolution.
  - (4) If the person does not seek to access the document within the 40 business days, or any additional period allowed by the agency or Minister, the person's entitlement to access under the application ends.
  - (5) To remove any doubt, it is declared that subsection (2) does not entitle a person to access a document without paying any access charge payable under part 6.

## 85 Precautions

- (1) This section applies if—
  - (a) an access application is made to an agency or Minister for a document containing personal information for a person (the *first person*); and
  - (b) disclosure of the information would, on balance, be contrary to the public interest having regard to the Right to Information Act, section 49, or the information would be exempt information, if the application were made by a person other than the first person or the first person's agent.

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- (2) The agency or Minister must ensure, by the adoption of appropriate procedures, that any information intended for the applicant is received—
  - (a) if the application is made by the applicant’s agent—only by the applicant or the agent; or
  - (b) in any other case—only by the applicant.

## **86 Precautions for children**

- (1) This section applies if—
  - (a) an access application states that it is made for a child by a parent; and
  - (b) the application is for documents containing the child’s personal information.
- (2) The agency or Minister must ensure, by the adoption of appropriate procedures, that any information intended for the child is received only by the parent.
- (3) In this section—

*child* see section 45.

*parent* see section 45.

## **87 Deferral of access**

- (1) An agency or Minister may defer giving access to a document for a reasonable period if the document was prepared—
  - (a) for presentation to the Assembly or a committee of the Assembly; or
  - (b) for release to the media; or
  - (c) solely for inclusion, in the same or an amended form, in a document to be prepared for a purpose mentioned in paragraph (a) or (b);



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

- (2) The agency or Minister must give the applicant written notice when access is no longer deferred under subsection (1).

## **88 Deletion of irrelevant information**

- (1) This section applies if giving access to a document will disclose to the applicant information the agency or Minister reasonably considers is not relevant to the access application for the document.
- (2) The agency or Minister may delete the irrelevant information from a copy of the document and give access to the document by giving access to a copy of the document with the irrelevant information deleted.
- (3) However, the agency or Minister may give access to the document under subsection (2) only if the agency or Minister considers, from the terms of 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.

## **89 Deletion of exempt information**

Subject to section 69, if—

- (a) an access application is made for a document containing exempt information; and
- (b) it is practicable to give access to a copy of the document from which the exempt information has been deleted; and
- (c) it appears to the agency or Minister concerned (whether from the terms of the application or after consultation

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with the applicant) that the applicant would wish to be given access to the copy;  
the agency or Minister must give access accordingly.

## **90 Deletion of contrary to public interest information**

Subject to section 69, if—

- (a) an application is made for access to a document containing contrary to public interest information; and
- (b) it is practicable to give access to a copy of the document from which the contrary to public interest information has been deleted; and
- (c) it appears to the agency or Minister concerned (whether from the terms of the application or after consultation with the applicant) that the applicant would wish to be given access to such a copy;

the agency or Minister must give access accordingly.

## **91 Giving summary of personal information to applicant or intermediary**

- (1) This section applies if under this Act, other than under the Right to Information Act, section 47(3)(d), as applied under this Act, an agency or a Minister refuses an applicant under an access application access to a document.
- (2) Despite the refusal mentioned in subsection (1), the agency or Minister must consider whether it is consistent with the primary object of this Act to give the applicant, or a person nominated by the applicant and approved by the agency or Minister (an *intermediary*), a summary of the applicant's personal information on conditions of use or disclosure agreed between the agency or Minister and the intermediary, or between the agency or Minister, the intermediary and the applicant.
- (3) However—

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- (a) if a summary of information under subsection (2) includes information given by a person (the *information giver*), other than the applicant, who gave the information on a confidential basis—the summary must not be given to the applicant or intermediary without consultation with, and the agreement of, the information giver; and
  - (b) if a summary of information under subsection (2) includes personal information of a person other than the applicant—the summary must not be given to the applicant or intermediary without consultation with, and the agreement of, the other person.
- (4) Subsection (3) applies whether or not the summary is capable of revealing the identity of the information giver or other person.

## **92 Giving relevant healthcare information to applicant's nominated healthcare professional**

- (1) This section applies if an agency or Minister refuses access to a document under the Right to Information Act, section 47(3)(d), as applied under this Act.
- (2) Despite the refusal, the agency or Minister may direct that access to the document is to be given instead to an appropriately qualified healthcare professional nominated by the applicant and approved by the agency or Minister.

*Note—*

Only a principal officer, Minister or appointed healthcare professional may give this direction or approve the applicant's nominated healthcare professional—see sections 50(5) and 51(2).

- (3) The nominated and approved healthcare professional may decide—
  - (a) whether or not to disclose all or part of the relevant healthcare information contained in the document to the applicant; and

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

## Part 8 Internal review

### 93 Definitions for pt 8

In this part—

*internal review* means review under this part.

*internal review application* means an application for internal review.

### 94 Internal review

- (1) A person affected by a reviewable decision may apply to have the decision reviewed by the agency or Minister dealing with the application.

*Notes—*

- 1 *Reviewable decision* is defined in schedule 5.
  - 2 It is not necessary to have an internal review before applying for an external review under part 9.
  - 3 An internal review application may be dealt with under a delegation or direction. See sections 50 and 51.
- (2) On an internal review of a decision, the reviewer must make a new decision as if the reviewable decision had not been made.
  - (3) An internal review application must not be decided by—
    - (a) the person who made the reviewable decision; or
    - (b) a person who is less senior than that person.

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## **95 Decisions that may not be reviewed**

To remove any doubt, it is declared that the following decisions in relation to an access application are not reviewable decisions for internal review—

- (a) a decision on an internal review application;
- (b) a decision by an agency's principal officer;
- (c) a decision by a Minister;
- (d) a decision by a healthcare professional appointed under section 50 or 51.

## **96 Applying for internal review**

An application for internal 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 for internal review; and
- (c) be made within 20 business days after the date of the written notice of the decision or within the further time the agency or the Minister allows (whether before or after the end of the 20 business days); and
- (d) be lodged at an office of the agency or Minister.

*Note—*

Section 196 clarifies the powers of those acting for others.

## **97 When internal review application to be decided**

- (1) An agency or Minister must decide an internal review application as soon as practicable.
- (2) However, if an agency or Minister does not decide an internal review application and notify the applicant of the decision within 20 business days after the internal review application is made, the agency's principal officer or the Minister is taken to

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have made a decision at the end of the 20 business days affirming the original decision.

- (3) As soon as practicable after a decision is made or taken to have been made under this section, the principal officer or Minister must give prescribed written notice of the decision to the applicant.

## Part 9 External review

### Division 1 Preliminary

#### 98 Definitions for pt 9

In this part—

*external review* means review by the information commissioner under this part.

*external review application* means an application for external review.

#### 99 External review

A person affected by a reviewable decision may apply to have the decision reviewed by the information commissioner.

*Notes—*

- 1 *Reviewable decision* is defined in schedule 5.
- 2 It is not necessary to have an internal review under part 8 before applying for an external review.

#### 100 Onus

- (1) On an external review, the agency or Minister who made the decision under review has the onus of establishing that the

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decision was justified or that the information commissioner should give a decision adverse to the applicant.

- (2) However, if the decision under external review is a disclosure decision, the participant in the external review application who opposes the disclosure decision has the onus of establishing that a decision not to disclose the document or information is justified or that the commissioner should give a decision adverse to the person who wishes to be given access to the document.
- (3) In this section—  
*disclosure decision* means—
  - (a) a decision to disclose a document or information contrary to the views of a relevant third party obtained under section 56; or
  - (b) a decision to disclose a document or information if the agency or Minister should have taken, but has not taken, steps to obtain the views of a relevant third party under section 56.

## **Division 2                      Application**

### **101      Applying for external review**

- (1) An application for external review must—
  - (a) be in writing; and
  - (b) specify an address of the applicant to which notices may be sent under this Act; and
  - (c) give details of the decision for review; and
  - (d) be made within 20 business days from the date of the written notice of the decision, or within the longer period the information commissioner allows; and
  - (e) be lodged at an office of the OIC.

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*Note—*

Section 196 clarifies the powers of those acting for others.

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

## **102 Participants in external review**

- (1) The applicant for external review and the agency or Minister concerned are participants in an external review.
- (2) Any other person affected by the decision the subject of the external review (including a government, agency or persons whose views were required to be sought under section 56 before the decision was made), may apply to the information commissioner to participate in the external review.
- (3) The commissioner may allow a person mentioned in subsection (2) to participate in the external review in the way the commissioner directs.

## **Division 3 After application made**

### **103 Early resolution encouraged**

- (1) If an external review application is made to the information commissioner, the commissioner must—
  - (a) identify opportunities and processes for early resolution of the external review application, including mediation; and
  - (b) promote settlement of the external review application.
- (2) Subsection (1) does not apply if the commissioner decides not to deal with, or to further deal with, the external review application under section 107.
- (3) The commissioner may suspend an external review at any time to allow the participants in the external review to negotiate a settlement.



- (4) If an external review is resolved informally—
  - (a) the commissioner must give each participant in the external review notice that the external review is complete; and
  - (b) the external review is taken to be complete at the date of the notice mentioned in paragraph (a).

**104 Agency or Minister to be informed of application for external review of deemed decision**

If an application is made for external review of a deemed decision of an agency's principal officer or a Minister under section 66 or 71, the information commissioner must inform the agency or Minister of the application as soon as practicable after it is made.

**105 Agency or Minister to be informed before external review of decision**

Before starting an external review of a decision, the information commissioner must inform the agency or Minister concerned that the decision is to be reviewed under this part.

**106 Applications where decision delayed**

- (1) This section applies if—
  - (a) an application is made to the information commissioner for external review of a deemed decision in relation to an access or amendment application; and
  - (b) the agency or Minister applies to the commissioner to allow the agency or Minister further time to deal with the access or amendment application.
- (2) The commissioner may allow the agency or Minister further time to deal with the access or amendment application subject to the conditions the commissioner considers appropriate,

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including a condition that the applicable access charge must be reduced or waived.

- (3) If the agency or Minister does not deal with the access or amendment application and give the applicant for external review prescribed written notice of a considered decision within the further time, the agency's principal officer or the Minister is taken, for the purpose of enabling a fresh external review application to be made, to have made, on the last day of the further time, a decision affirming the deemed decision.

### **107 Information commissioner may decide not to review**

- (1) The information commissioner may decide not to deal with, or not to further deal with, all or part of an external review application 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 external review fails to comply with a direction given by the commissioner; or
  - (c) the commissioner considers the applicant for external review has failed to cooperate in progressing the external review application, or the part of it, without reasonable excuse; or
  - (d) the commissioner considers the address the applicant for external 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 external review application, 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—

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- (a) the applicant for external review, unless subsection (1)(d) applies;
  - (b) any other person informed by the commissioner of the proposed external review.

## **Division 4                      Conduct of external review**

### **108      Procedure on external review**

- (1) On an external review—
  - (a) the procedure to be followed is, subject to this Act, within the discretion of the information commissioner; and
  - (b) proceedings must be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act and a proper consideration of the matters before the commissioner allow; and
  - (c) the commissioner is not bound by the rules of evidence and may inform himself or herself on any matter in any way the commissioner considers appropriate.
- (2) The commissioner may, during an external review, give directions as to the procedure to be followed on the external review.

### **109      Requirement to assist during review**

- (1) During an external review, any participant must comply in a timely way with a reasonable request made by the information commissioner for assistance in relation to the review.

*Examples—*

- 1 The information commissioner may request that a participant give further and better particulars of a matter.
- 2 The information commissioner may request that an agency or Minister specifically indicate in a written document the words the agency or Minister considers are exempt information.

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- (2) Subsection (1) applies even if the participant who is asked for assistance does not have the onus under section 100.

## **110 Conduct of reviews**

- (1) If, during an external review, the commissioner proposes to—
- (a) allow a participant to make oral submissions; or
  - (b) take evidence on oath or affirmation;
- that part of the external review must be conducted in public unless the commissioner decides otherwise.

- (2) In conducting an external review, the information commissioner must—
- (a) adopt procedures that are fair, having regard to the obligations of the commissioner under this Act; and
  - (b) ensure that each participant has an opportunity to present the participant's views to the commissioner by making written or oral submissions;

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

- (3) If the commissioner gives a participant an opportunity to appear before the commissioner, the participant may, with the approval of the commissioner, be represented by another person.
- (4) If—
- (a) the commissioner has decided not to notify a person of the review; and
  - (b) it later becomes apparent to the commissioner that documents in which the person has an interest are likely to be released;

the commissioner must take reasonable steps to notify the person of the likely release if the release may reasonably be expected to be of concern to the person.

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## **Division 5                      Powers of information    commissioner on external review**

### **111      Preliminary inquiries**

If an external review application is made, the information commissioner may, for the purpose of deciding—

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

make inquiries of the applicant for external review or the agency or Minister concerned.

### **112      Better reasons**

- (1) This section applies if—
  - (a) an application is made for external review of a decision of an agency or a Minister; and
  - (b) the information commissioner considers that the reasons for the decision stated in the prescribed notice for the decision are not adequate.
- (2) The commissioner may require the agency or Minister to give the applicant for external review and the commissioner an additional statement, as soon as practicable, but in any case within 20 business days, containing further and better particulars of the reasons for the decision.

### **113      Access to documents**

If an external review application is made, the information commissioner is entitled to full and free access at all reasonable times to the documents of the agency or Minister concerned, including documents protected by legal professional privilege.

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## **114 Access in particular form**

- (1) This section—
  - (a) applies if an external review application is made in relation to an access application; but
  - (b) does not apply to an external review of a decision refusing to give access in the form mentioned in section 83(1)(e).
- (2) If a document relevant to an external review is a document—
  - (a) by which words are recorded in a way in which they are capable of being reproduced in the form of sound; or
  - (ii) in which words are contained in the form of shorthand writing or in codified form;

the information commissioner may require the agency or Minister concerned to give the commissioner a written transcript of the words recorded or contained in the document.
- (3) If—
  - (a) the access application relevant to the external review relates to information that is not contained in a written document in the possession, or under the control, of the agency or Minister concerned; and
  - (b) the agency or Minister could create a written document containing the information using equipment that is usually available to it for retrieving or collating stored information;

the commissioner may require the agency or Minister to give the commissioner a written document created using the equipment.

## **115 Requiring a search**

- (1) In the conduct of an external review of a decision to refuse access to a document, the information commissioner may require the agency or Minister concerned to conduct a particular further search, or further searches, for a document.

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- (2) In this section—  
*conduct further searches*, for a document, includes make inquiries to locate the document.

## 116 Requiring information, documents and attendance

- (1) If the information commissioner has reason to believe that a person has information or a document relevant to an external review, the commissioner may give to the person a written notice requiring the person—
- (a) to give the information to the commissioner in writing signed by the person or, in the case of a corporation, by an officer of the corporation; or
  - (b) to produce the document to the commissioner.
- (2) The notice must state—
- (a) the place at which the information or document must be given or produced to the commissioner; and
  - (b) a reasonable time at which, or a reasonable period within which, the information or document must be given or produced.
- (3) If the commissioner has reason to believe that a person has information relevant to an external review, the commissioner may give to the person a written notice requiring the person to attend before the commissioner at a reasonable time and place specified in the notice to answer questions relevant to the external review.

*Note—*

A person must not fail to comply with the notice—see section 187.

## 117 Examining witnesses

- (1) The information commissioner may administer an oath or affirmation to a person required under section 116 to attend before the commissioner and may examine the person on oath or affirmation.

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

*Note—*

A person must not give false or misleading information—see section 186.

### **118 Additional powers**

- (1) In the conduct of an external review, the information 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 access or amendment application concerned; and
  - (b) decide any matter in relation to the access or amendment application that could, under this Act, have been decided by an agency or Minister.
- (2) If it is established that a document is an exempt document or a contrary to public interest document, or contains exempt information or contrary to public interest information, the commissioner does not have power to direct that access to the document, or the document to the extent of the information, is to be given.
- (3) Any decision of the information commissioner under this section has the same effect as a decision of the agency or Minister.

### **119 Restrictions under other laws not applicable**

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



- (2) Legal professional privilege does not apply to the production of documents or the giving of evidence by a member of an agency or a Minister for the purposes of an external review.
- (3) Subject to subsections (1) and (2), every participant in an external review has the same privileges in relation to the giving of evidence and producing documents and things that the person would have as a witness in a proceeding before a court.

## **120 Information commissioner to ensure proper disclosure and return of documents**

On an external review, the information commissioner must do all things necessary to ensure that any document that is given to the commissioner and is the subject of the decision being reviewed—

- (a) is not disclosed to a person other than—
  - (i) a member of the staff of the OIC in the course of performing duties as a member of the staff; or
  - (ii) a person who created the document or who gave 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) at the end of the review, is returned to the person who gave it.

## **121 Information commissioner to ensure nondisclosure of particular information**

- (1) On an external review relating to an access application, the information commissioner may give the directions the commissioner considers necessary to avoid the disclosure to an access participant or an access participant’s representative of—

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- (a) information that is claimed to be exempt information or contrary to the public interest information; or
  - (b) information the commissioner considers may be protected by legal professional privilege.
- (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 information that is claimed to be exempt information or contrary to the public interest information.
- (3) The commissioner must not, in a decision on an external review or in reasons for a decision on an external review, include information that is claimed to be exempt information or contrary to the public interest information.
- (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 gave the document concerned to the agency or Minister who made the decision under review.

## **122 Exception for successful challenge of s 69(2) notice**

- (1) This section applies if an agency or Minister gives a notice under section 69(2) and the information commissioner is satisfied that the document concerned does not include prescribed information.
- (2) Section 121(3) does not apply.
- (3) Section 123 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 20 business days after the date of the

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decision, the commissioner has not been notified that the agency or Minister has—

- (i) applied for a statutory order of review under the *Judicial Review Act 1991* in relation to the commissioner's decision (*applied for judicial review*); or
  - (ii) appealed to QCAT against the commissioner's decision under section 132 (*appealed on a question of law*).
- (4) Further, if the commissioner directs that access to the document is to be given, the agency or Minister must comply with the direction only if, at the end of 20 business days after the date of the decision, the agency or Minister has not applied for judicial review or appealed on a question of law.

## **Division 6                      Decision on external review**

### **123      Decision on external review**

- (1) The information commissioner, after conducting an external review of a decision, must make a written decision—
  - (a) affirming the decision; or
  - (b) varying the decision; or
  - (c) setting aside the decision and making a decision in substitution for the decision.
- (2) To remove any doubt, it is declared that subsection (1) does not apply if the external review is resolved informally.
- (3) The commissioner must include in the decision the reasons for the decision.
- (4) The commissioner must give a copy of the decision to each participant.
- (5) If—

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- (a) a document is to be released because of the external review; and
  - (b) the commissioner has notified a person under section 110(4) and the person did not become a participant in the review;
- the commissioner must take reasonable steps to notify the person of the release.
- (6) The commissioner must arrange to have decisions and reasons for decisions published.
  - (7) However, subsection (6) does not require the commissioner to arrange to have a decision and reasons for a decision published to the extent they contain, or publication would disclose, exempt information or contrary to public interest information.

## **124 Correction of mistakes in decisions**

- (1) This section applies if the information commissioner considers—
  - (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 may, on application by a participant, or on the commissioner's own initiative, at any time correct the error.

## **Division 7 Miscellaneous**

### **125 Costs of external review**

The costs incurred by a participant to an external review are payable by the participant.

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## 126 Disciplinary action

- (1) If the information commissioner, at the completion of an external review, is of the opinion that—
  - (a) there is evidence that an agency's officer has committed a breach of duty or misconduct in the administration of this Act; and
  - (b) the evidence is, in all the circumstances, of sufficient force to justify doing so;the commissioner must bring the evidence to the notice of—
  - (c) if the person is the principal officer of an agency—the responsible Minister of the agency; or
  - (d) in any other case—the principal officer of the agency.
- (2) Also, if the commissioner, at the completion of an external review, is of the opinion that—
  - (a) there is evidence that a person subject to the direction of a Minister under section 51 has committed a breach of duty or misconduct in the administration of this Act; and
  - (b) the evidence is, in all the circumstances, of sufficient force to justify doing so;the commissioner must bring the evidence to the notice of the Minister.
- (3) In this section—

***responsible Minister*** means—

  - (a) in relation to a department—the Minister administering the department; or
  - (b) in relation to the town commission constituted under the *Alcan Queensland Pty. Limited Agreement Act 1965*—the Minister administering that Act; or
  - (c) in relation to a council constituted under the *Local Government (Aboriginal Lands) Act 1978*—the Minister administering that Act; or

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- (d) in relation to another local government—the Minister administering the *Local Government Act 1993*; or
- (e) in relation to a government owned corporation or a subsidiary of a government owned corporation—the Minister administering the *Government Owned Corporations Act 1993*; or
- (f) in relation to a public authority mentioned in section 21(1)(a) or (c)(ii)—the Minister administering the Act by or under which the public authority is established; or
- (g) in relation to a public authority mentioned in section 21(1)(d)—the Minister administering the Act by which the office is established; or
- (h) in relation to any other public authority—the Minister declared by regulation to be the responsible Minister in relation to the public authority.

## Part 10 Vexatious applicants

### 127 Vexatious applicants

- (1) The information commissioner may, on the commissioner's own initiative or on the application of 1 or more agencies, declare in writing that a person is a vexatious applicant.
- (2) The commissioner may make the declaration in relation to a person only if the commissioner is satisfied that—
  - (a) the person has repeatedly engaged in access or amendment actions; and
  - (b) 1 of the following applies—
    - (i) the repeated engagement involves an abuse of process for an access or amendment action;
    - (ii) a particular access or amendment action in which the person engages involves, or would involve, an

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abuse of process for that access or amendment action;

(iii) a particular access or amendment action in which the person engages would be manifestly unreasonable.

- (3) The information commission must not make the declaration in relation to a person without giving the person an opportunity to make written or oral submissions.
- (4) A declaration has effect subject to the terms and conditions, if any, stated in the declaration.
- (5) Without limiting the conditions that may be stated, a declaration may include a condition that the vexatious applicant may make an access or amendment application, an internal review application or an external review application only with the written permission of the commissioner.
- (6) In this section—

*abuse of process*, for an access or amendment action, includes, but is not limited to, the following—

- (a) harassing or intimidating an individual or an employee of an agency in relation to the access action;
- (b) unreasonably interfering with the operations of an agency in relation to the access actions;
- (c) seeking to use the Act for the purpose of circumventing restrictions on access to or amendment of a document or documents imposed by a court.

*access or amendment action* means any of the following—

- (a) an access application;
- (b) an amendment application;
- (c) an internal review application;
- (d) an external review application.

*agency* includes a Minister.

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*engage*, for an access or amendment action, means make the access or amendment action.

### **128 Declaration may be varied or revoked**

- (1) The information commissioner may vary or revoke a declaration made under section 127.
- (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.

## **Part 11 References of questions of law and appeals**

### **129 Definitions for pt 11**

In this part—

*appeal tribunal* means the appeal tribunal under the QCAT Act.

*judicial member* see the *Queensland Civil and Administrative Tribunal Act 2009*.

*Note—*

Section 196 clarifies the powers of those acting for others.

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

- (1) The information commissioner may, at the request of a participant in an external review or on the commissioner's own initiative, refer a question of law arising on an external review to the Supreme Court.
- (2) The Supreme Court has jurisdiction to hear and decide a question of law referred to it under this section.



- (3) If a question of law is referred to the Supreme Court under this section, the commissioner must not make a decision on the external review while the reference is pending.
- (4) If the Supreme Court decides a question of law referred to it under this section, the commissioner is bound by the decision.
- (5) This section expires on the commencement of section 131.

**131 Reference of questions of law to Queensland Civil and Administrative Tribunal**

- (1) *The information commissioner may, at the request of a participant in an external review or on the commissioner's own initiative, refer a question of law arising on an external review to QCAT.*
- (2) *QCAT must—*
  - (a) *exercise its original jurisdiction under the QCAT Act to hear and decide the question of law referred to it under this section; and*
  - (b) *be constituted by 1 judicial member.*
- (3) *If a question of law is referred to QCAT under this section, the commissioner must not make a decision on the external review while the reference is pending.*
- (4) *If QCAT decides a question of law referred to it under this section, the commissioner is bound by the decision.*

*Editor's note—*

This provision had not commenced on or before the reprint date.

**132 Appeal to Queensland Civil and Administrative Tribunal on question of law**

- (1) A participant in an external review may appeal to the appeal tribunal against a decision of the information commissioner on the external review.
- (2) The appeal may only be on a question of law.

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- (3) The notice of appeal must, unless the appeal tribunal orders otherwise—
  - (a) be filed in QCAT’s registry within 20 business days after the date of the decision appealed from; and
  - (b) be served as soon as possible on all participants in the external review.
- (4) The appeal tribunal—
  - (a) has jurisdiction to hear and decide the appeal; and
  - (b) must be constituted by 1 judicial member.
- (5) The appeal may only be by way of a rehearing.

**133 Application to Queensland Civil and Administrative Tribunal for review of vexatious applicant declaration**

- (1) A person subject to a declaration made under section 127 may apply, as provided under the QCAT Act, for a review of a decision of the information commissioner to declare the person a vexatious applicant.
- (2) QCAT must exercise its review jurisdiction under the QCAT Act.

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## Chapter 4 Information Commissioner and Privacy Commissioner

*Note—*

A reference in this chapter to an agency includes a reference to a Minister, a department, a local government or a public authority—see section 18.

### Part 1 Functions of information commissioner under this Act

#### 134 Information commissioner not subject to direction

- (1) The information commissioner is not subject to direction by any person about—
  - (a) the way in which the commissioner's powers are to be exercised in the performance of a function under section 135, 136 or 137; or
  - (b) the priority to be given to investigations and reviews under this Act.
- (2) Subsection (1) has effect despite the *Public Service Act 2008*.

#### 135 Performance monitoring and support functions

- (1) The functions of the information commissioner include—
  - (a) on the commissioner's own initiative or otherwise—
    - (i) conducting reviews into personal information handling practices of relevant entities, including technologies, programs, policies and procedures, to identify privacy related issues of a systemic nature generally or to identify particular grounds for the issue of compliance notices; and
    - (ii) if considered appropriate, reporting to the Speaker on the findings of any review; and

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- (b) leading the improvement of public sector privacy administration in Queensland by taking appropriate action to—
    - (i) promote understanding of and compliance with the privacy principles; and
    - (ii) provide best practice leadership and advice, including by providing advice and assistance to relevant entities on the interpretation and administration of this Act; and
    - (iii) conduct compliance audits to assess relevant entities' compliance with the privacy principles; and
    - (iv) initiate privacy education and training, including education and training programs targeted at particular aspects of privacy administration, and education and training programs to promote greater awareness of the operation of this Act in the community and within the public sector environment; and
    - (v) comment on any issues relating to the administration of privacy in the public sector environment; and
  - (c) issuing guidelines about any matter relating to the information commissioner's functions, including guidelines on how this Act should be applied and on privacy best practice generally; and
  - (d) supporting applicants of any type under this Act, and all relevant entities to the extent they are subject to the operation of this Act.
- (2) In this section—

***relevant entity*** means an agency or bound contracted service provider.

### **136 Decision-making functions**

The functions of the information commissioner include—

- (a) waiving or modifying privacy principles obligations under part 5; and
- (b) issuing compliance notices under part 6; and
- (c) making, varying or revoking declarations under section 127 or 128; and
- (d) dealing with privacy complaints under chapter 5.

### **137 External review functions**

- (1) The functions of the information commissioner include investigating and reviewing decisions of agencies and Ministers made subject to external review under chapter 3, part 9.
- (2) The functions of the commissioner also include investigating and reviewing whether, in relation to the decisions, agencies have taken reasonable steps to identify and locate documents applied for by applicants.
- (3) In this section—  
*agency* means a chapter 3 agency.

### **138 Guidelines under Right to Information Act**

To remove any doubt, it is declared that guidelines issued under the Right to Information Act, section 132 may include guidelines relating to the information commissioner's functions under this Act.

## **Part 2                      Staff of Office of Information Commissioner in relation to this Act**

### **139      Delegation**

The information commissioner may delegate to a member of the staff of the OIC all or any of the commissioner's powers under this Act.

### **140      Staff subject only to direction of information commissioner**

- (1) The staff of the OIC are not subject to direction by any person, other than the information commissioner or a person authorised by the commissioner, about the performance of the commissioner's functions under this Act.
- (2) Subsection (1) has effect despite the *Public Service Act 2008*.

## **Part 3                      Privacy Commissioner**

### **141      The Privacy Commissioner**

- (1) There is to be a Privacy Commissioner (the *privacy commissioner*).
- (2) The privacy commissioner is a member of the staff of the OIC.

### **142      Role and function of privacy commissioner**

- (1) The privacy commissioner's role is that of a deputy to the information commissioner, with particular responsibility for matters relating to the information commissioner's functions under this Act.

- (2) The privacy commissioner's function is to perform the functions of the information commissioner under this Act to the extent the functions are delegated to the privacy commissioner by the information commissioner.

### **143 Privacy commissioner subject to direction of information commissioner**

The privacy commissioner is subject to the direction of the information commissioner.

### **144 Appointment**

- (1) The privacy commissioner is appointed by the Governor in Council.
- (2) The privacy commissioner is appointed under this Act and not under the *Public Service Act 2008*.

### **145 Procedure before appointment**

- (1) A person may be appointed as privacy 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 privacy commissioner.
- (2) Subsection (1)(a) and (b)(i) does not apply to the reappointment of a person as privacy commissioner.

### **146 Term of appointment**

- (1) The privacy commissioner holds office for the term, of not more than 5 years, stated in the instrument of appointment.

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- (2) However, a person being reappointed as privacy commissioner can not be reappointed for a term that would result in the person holding office as privacy commissioner for more than 10 years continuously.

#### **147 Remuneration and conditions**

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

#### **148 Leave of absence**

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

#### **149 Preservation of rights if public service officer appointed**

- (1) A public service officer who is appointed to the office of privacy 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 must be employed on the classification level and remuneration that the Public Service Commission under the *Public Service Act 2008* or another entity prescribed under a regulation considers the person would have attained in the



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ordinary course of progression if the person had continued in employment as a public service officer.

### **150 Restriction on outside employment**

- (1) The privacy commissioner must not, without the Minister's prior approval in each particular case—
  - (a) hold any office of profit other than that of privacy commissioner; or
  - (b) engage in any remunerative employment or undertaking outside the duties of the office.
- (2) Contravention of subsection (1) is misconduct under the Right to Information Act, section 160(a).

### **151 Resignation**

- (1) The privacy 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 Assembly; and
    - (ii) the chairperson of the parliamentary committee.
- (3) Failure to comply with subsection (2) does not affect the effectiveness of the resignation.

### **152 Acting privacy commissioner**

- (1) The Governor in Council may appoint a person to act as privacy commissioner—
  - (a) during a vacancy in the office; or

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- (b) during any period, or during all periods, when the privacy commissioner is absent from duty or from Australia or is, for another reason, unable to perform the duties of the office.
- (2) The acting privacy commissioner is appointed under this Act and not the *Public Service Act 2008*.
- (3) The *Acts Interpretation Act 1954*, section 25(1)(b)(iv) and (v) does not apply to the office of acting privacy commissioner.

## Part 4 Proceedings

### 153 Third party proceedings

- (1) The information commissioner or a member of the staff of the OIC can not be compelled—
  - (a) to produce a privacy document in third party legal proceedings; or
  - (b) to disclose privacy information in third party legal proceedings.
- (2) In this section—

***privacy document*** means a document received, or created, by the commissioner or member in performing functions under this Act.

***privacy information*** means information that the commissioner or member obtained in 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.

#### **154 Costs in proceedings**

If a proceeding arising out of the performance of the functions of the information commissioner under this Act is started by the State, the reasonable costs of a party to the proceeding must be paid by the State.

#### **155 Information commissioner and privacy commissioner may appear in proceedings**

The information commissioner or privacy commissioner is entitled to appear and be heard in a proceeding arising out of the performance of the functions of the commissioner.

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

- (1) The Attorney-General may, for the State, intervene in a proceeding before a court arising out of the performance of the functions of the information commissioner under this Act.
- (2) If the Attorney-General intervenes—
  - (a) the court may make the order as to costs against the State the court considers appropriate; and
  - (b) the Attorney-General becomes a party to the proceeding.

## **Part 5**

# **Waiving or modifying privacy principles obligations in the public interest**

### **157 Waiver or modification approval**

- (1) An agency may apply to the information commissioner for an approval under this section.
- (2) The commissioner may, by gazette notice, give an approval that waives or modifies the agency's obligation to comply with the privacy principles—
  - (a) if it is a temporary approval—for the period of the approval's operation; or
  - (b) otherwise—until the approval is revoked or amended.
- (3) The *Statutory Instruments Act 1992*, sections 49 to 51 apply to a gazette notice under subsection (2), including a gazette notice revoking or amending an approval, as if it were subordinate legislation.
- (4) The commissioner may give an approval under this section only if the commissioner is satisfied that the public interest in the agency's compliance with the privacy principles is outweighed by the public interest in waiving or modifying the agency's compliance with the privacy principles to the extent stated in the approval.
- (5) While an approval is in force, the agency to which it applies does not contravene this Act in relation to the privacy principles if it acts in accordance with the approval.
- (6) If the commissioner gives an approval under this section—
  - (a) the commissioner must also ensure that a copy of the gazette notice is published on the commissioner's website on the internet while the approval is in force; and

- (b) if it is practicable to do so, the agency the subject of the approval must ensure that a copy of the gazette notice is published on the agency's website on the internet.
- (7) In this section—  
*agency* includes a bound contracted service provider.

## Part 6 Compliance notices

### 158 Compliance notice

- (1) The information commissioner may give an agency a notice (*compliance notice*) if the commissioner is satisfied on reasonable grounds that the agency—
  - (a) has done an act or engaged in a practice in contravention of the agency's obligation to comply with the privacy principles; and
  - (b) the act or practice—
    - (i) is a serious or flagrant contravention of the obligation; or
    - (ii) is of a kind that has been done or engaged in by the agency on at least 5 separate occasions within the last 2 years.
- (2) A compliance notice may require an agency to take stated action within a stated period for the purpose of ensuring compliance with the obligation.

### 159 Extension of time for compliance

- (1) An agency that is given a compliance notice may ask the information commissioner to extend the time within which it must take the action stated in the compliance notice.

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- (2) The commissioner may amend the compliance notice by extending the period stated in the compliance notice for taking the action stated in the notice.
- (3) Before the commissioner extends the period—
  - (a) the commissioner must be satisfied that it is not reasonably practicable for the agency to take the action stated in the compliance notice within the time stated in the notice; and
  - (b) the agency must give the commissioner an undertaking to take the stated action within the extended period.

#### **160 Agency must comply with notice**

An agency that is given a compliance notice under this part must take all reasonable steps to comply with the notice.

Maximum penalty—100 penalty units.

#### **161 Application to Queensland Civil and Administrative Tribunal for review of decision to give compliance notice**

- (1) *An agency given a compliance notice under this part may apply, as provided under the QCAT Act, to QCAT for a review of a decision of the information commissioner to give the agency the compliance notice.*
- (2) *QCAT must exercise its review jurisdiction under the QCAT Act.*

*Editor's note—*

This provision had not commenced on or before the reprint date.

#### **162 Parties to QCAT proceeding**

*The agency given a compliance notice and the information commissioner are both parties to—*

- (a) *an application to QCAT to review the decision to give the notice; and*

(b) *any review by QCAT of the decision.*

*Editor's note—*

This provision had not commenced on or before the reprint date.

### **163 How QCAT may dispose of review**

*If QCAT reviews a decision of the information commissioner to give an agency a compliance notice, QCAT may make any of the following orders—*

- (a) *confirm the commissioner's decision to give the compliance notice;*
- (b) *confirm the commissioner's decision to give a compliance notice but substitute a compliance notice that is in different terms from the compliance notice given;*
- (c) *revoke the giving of the compliance notice;*
- (d) *revoke the giving of the compliance notice and give the commissioner directions about the issuing of a replacement compliance notice.*

*Editor's note—*

This provision had not commenced on or before the reprint date.

## **Chapter 5 Privacy complaints**

*Editor's note—*

This chapter had not commenced on or before the reprint date.

*Note—*

*A reference in this chapter to an agency includes a reference to a Minister, a department, a local government or a public authority—see section 18.*

### **Part 1 Making privacy complaints**

#### **164 Meaning of privacy complaint**

- (1) A **privacy complaint** is a complaint by an individual about an act or practice of a relevant entity (the **respondent** for the complaint) in relation to the individual's personal information that is a breach of the relevant entity's obligation under this Act to comply with—
- (a) the privacy principles; or
  - (b) an approval under section 157.
- (2) In this chapter—
- relevant entity** means—
- (a) an agency, in relation to documents of the agency; or
  - (b) a bound contracted service provider, in relation to documents held by the bound contracted service provider for the purposes of performing its obligations under a service arrangement.

#### **165 Privacy complaint may be made or referred to information commissioner**

- (1) An individual whose personal information is, or at any time has been, held by a relevant entity may make a privacy complaint to the information commissioner.



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- (2) *Also, a privacy complaint may be referred to the commissioner by any of the following entities—*
- (a) *the ombudsman;*
  - (b) *the Health Quality and Complaints Commission under the Health Quality and Complaints Commission Act 2006;*
  - (c) *a person or other entity having responsibilities, under a law of another State or the Commonwealth that corresponds to this Act, that correspond to the responsibilities of the commissioner under this Act;*
  - (d) *any other commission or external review body that has received the privacy complaint in performing its functions under a law.*
- (3) *As soon as practicable after receiving a privacy complaint made or referred under this section, the commissioner must advise the relevant entity the subject of the complaint.*

## **166 Requirements for privacy complaint**

- (1) *A privacy complaint made or referred to the information commissioner must—*
- (a) *be written; and*
  - (b) *state an address of the complainant to which notices may be forwarded under this Act; and*
  - (c) *give particulars of the act or practice complained of.*
- (2) *For a privacy complaint made to the commissioner by an individual, the commissioner must give reasonable help to the complainant to put the complaint into written form.*
- (3) *However, an individual may not make a privacy complaint to the commissioner unless—*
- (a) *the individual has first complained to an appropriate person within the relevant entity under the complaints management system of the relevant entity; and*

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- (b) *at least 45 business days have elapsed since the complaint was made under paragraph (a); and*
- (c) *the individual has not received a response to the complaint or the individual has received a response but considers the response not to be an adequate response.*

## **Part 2**                      **Dealing with privacy complaints**

### **167 Preliminary action**

*The information commissioner may make preliminary inquiries of the complainant and the respondent for a privacy complaint to decide whether the commissioner is authorised to deal with the privacy complaint and whether the commissioner may decline to deal with the complaint.*

### **168 Information commissioner may decline to deal with or to deal further with complaint**

- (1) *The information commissioner may decline to deal with a privacy complaint, or a part of a privacy complaint, made or referred to the commissioner if—*
  - (a) *the act or practice the subject of the complaint or part does not relate to the personal information of the complainant; or*
  - (b) *the requirements under section 166(3) for making a complaint have not been fully satisfied; or*
  - (c) *the commissioner reasonably believes the complaint or part is frivolous, vexatious, misconceived or lacking in substance; or*

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- (d) *there is a more appropriate course of action available under another Act to deal with the substance of the complaint or part; or*
  - (e) *although the complainant made the complaint to the respondent as required under section 166(3), in the circumstances, the respondent has not yet had an adequate opportunity to deal with the complaint or part; or*
  - (f) *12 months have elapsed since the complainant first became aware of the act or practice the subject of the complaint or part.*
- (2) *The commissioner may decline to continue dealing with a privacy complaint, or a part of a privacy complaint, made or referred to the commissioner if—*
- (a) *the complainant does not comply with a reasonable request made by the commissioner in dealing with the complaint or part; or*
  - (b) *the commissioner is satisfied on reasonable grounds that the complainant, without a reasonable excuse, has not cooperated in the commissioner's dealing with the complaint or part; or*
  - (c) *the commissioner considers the address the complainant stated in making the privacy complaint is no longer the address at which the complainant can be contacted, and the complainant has not, within a reasonable time, advised the commissioner of a new address to which notices may be sent under this Act.*

### **169 Referral of privacy complaint to other entity**

- (1) *If the subject of a privacy complaint could be the subject of a complaint under the Ombudsman Act 2001, the information commissioner may refer the complaint to the ombudsman.*
- (2) *If the subject of a privacy complaint could be the subject of a complaint under the Health Quality and Complaints*

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*Commission Act 2006, the commissioner may refer the complaint to the Health Quality and Complaints Commission under that Act.*

- (3) *If the subject of a privacy complaint could be the subject of a complaint under a law of another State or the Commonwealth that corresponds to this Act, the commissioner may refer the complaint to the entity under that law having responsibility for dealing with complaints in the nature of privacy complaints.*

### **170 Arrangement with ombudsman**

- (1) *The information commissioner may enter into an arrangement with the ombudsman providing for—*
- (a) *the privacy complaints under this chapter that the commissioner should refer to the ombudsman because they—*
    - (i) *relate to administrative actions; and*
    - (ii) *would be more appropriately dealt with by the ombudsman under the Ombudsman Act 2001; or*
  - (b) *the complaints under the Ombudsman Act 2001 that the ombudsman should refer to the commissioner because they—*
    - (i) *relate to decisions or other actions for which the commissioner has jurisdiction; and*
    - (ii) *would be more appropriately dealt with by the commissioner under this chapter; or*
  - (c) *how to deal with an administrative action that is the subject of a complaint, preliminary inquiry or investigation under the Ombudsman Act 2001 and a privacy complaint under this chapter; or*
  - (d) *the cooperative performance by the commissioner and the ombudsman of their respective functions relating to administrative actions.*

- (2) *If an arrangement entered into under subsection (1) provides for referrals as mentioned in subsection (1)(a) or (b), the arrangement must also provide for how the referral is to be made.*
- (3) *The commissioner and the ombudsman are empowered to perform their functions in accordance with any relevant arrangement entered into under this section.*
- (4) *In this section—*  
*administrative action* *has the meaning given by the Ombudsman Act 2001, section 7.*

## **Part 3**                      **Mediation of privacy complaints**

### **171    Attempting resolution through mediation**

- (1) *The information commissioner must consider whether, in the circumstances as known to the commissioner, resolution of a privacy complaint could be achieved through mediation.*
- (2) *If it appears to the commissioner that it is reasonably likely that resolution of the privacy complaint could be achieved through mediation, the commissioner must take all reasonable steps to cause the complaint to be mediated.*

### **172    Certification of mediated agreement**

- (1) *This section applies if, after mediation of a privacy complaint, the complainant and the respondent for the complaint agree on a resolution of the complaint.*
- (2) *The complainant or the respondent may ask the information commissioner to prepare a written record of the agreement.*

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- (3) *A request under subsection (2) must be made within 20 business days after the agreement is reached under subsection (1).*
- (4) *If a request is made under subsection (2), the commissioner must take all reasonable steps to—*
  - (a) *prepare a written record of the agreement; and*
  - (b) *have the record signed by both the complainant and the respondent; and*
  - (c) *certify the agreement.*

**173 Filing of certified agreement with Queensland Civil and Administrative Tribunal**

- (1) *The complainant or respondent to a privacy complaint the subject of a certified agreement under this part may file a copy of the agreement with QCAT.*
- (2) *QCAT may make orders necessary to give effect to the certified agreement if, within 5 business days after the agreement is filed with QCAT, neither the complainant nor the respondent advises QCAT that the party wishes to withdraw from the agreement.*
- (3) *However, QCAT may make an order under subsection (2) only if it is satisfied that implementation of the order is practicable and that the order is consistent with an order QCAT may make under the QCAT Act.*
- (4) *An order under subsection (2) becomes, and may be enforced as, an order of QCAT under the QCAT Act.*

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## **Part 4**                      **Referral of privacy complaints to QCAT**

### **174**    **Application of pt 4**

*This part applies if a privacy complaint is made to the information commissioner under this chapter, and—*

- (a) it does not appear to the commissioner reasonably likely that resolution of the complaint could be achieved through mediation; or*
- (b) mediation of the complaint is attempted under this chapter but a certified agreement for the resolution of the complaint is not achieved.*

### **175**    **Advice to parties**

*The information commissioner must give written notice to both the complainant and the respondent for the privacy complaint advising—*

- (a) that this part applies and why it applies; and*
- (b) that the commissioner will, if asked by the complainant to do so, refer the privacy complaint to QCAT for hearing.*

### **176**    **Referral to Queensland Civil and Administrative Tribunal**

- (1) The information commissioner must refer the privacy complaint to QCAT, if asked to do so by the complainant, within 20 business days after being asked to refer it.*
- (2) QCAT must exercise its original jurisdiction under the QCAT Act to hear and decide a privacy complaint referred to it under this section.*

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### **177 Parties to QCAT proceeding**

- (1) *The complainant and respondent for a privacy complaint the information commissioner refers to QCAT are both parties to the proceeding before QCAT.*
- (2) *The complainant is taken to be the applicant for the proceeding before QCAT.*

### **178 How QCAT may dispose of complaint**

*After the hearing of a privacy complaint referred to QCAT, QCAT may make 1 or more of the following orders—*

- (a) *an order that the complaint, or a part of the complaint, has been substantiated, together with, if considered appropriate, an order in accordance with 1 or more of the following—*
  - (i) *that an act or practice of the respondent is an interference with the privacy of the complainant for the complaint and that the respondent must not repeat or continue the act or practice;*
  - (ii) *that the respondent must engage in a stated reasonable act or practice to compensate for loss or damage suffered by the complainant;*
  - (iii) *that the respondent must apologise to the complainant for the interference with the privacy of the complainant;*
  - (iv) *that the respondent must make stated amendments of documents it holds;*
  - (v) *that the complainant is entitled to a stated amount, of not more than \$100000, to compensate the complainant for loss or damage suffered by the complainant because of the act or practice complained of, including for any injury to the complainant's feelings or humiliation suffered by the complainant;*



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- (b) *an order that the complaint, or a part of the complaint, has been substantiated together with an order that no further action is required to be taken;*
  - (c) *an order that the complaint, or a part of the complaint, has not been substantiated, together with an order that the complaint or part is dismissed;*
  - (d) *an order that the complainant be reimbursed for expenses reasonably incurred in connection with making the complaint.*

## Chapter 6 Protections and offences

*Note—*

A reference in this chapter to an agency includes a reference to a Minister, a department, a local government or a public authority, but also includes a chapter 3 agency—see section 18 and schedule 5, definition *agency*.

### Part 1 Protections

#### 179 Access—protection against actions for defamation or breach of confidence

- (1) If a person has been given access to a document and—
  - (a) the access was required or permitted to be given under this Act; or
  - (b) the access was authorised by a decision-maker, in the genuine belief that the access was required or permitted to be given under this Act;

then—

- (c) no action for defamation or breach of confidence lies against the State, an agency or officer of an agency because of the authorising or giving of the access; and

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- (d) no action for defamation or breach of confidence in relation to any publication involved in, or resulting from, the giving of the access lies against the author of the document or another person because of the author or another person having given the document to an agency.
- (2) The giving of access to a document (including an exempt document or contrary to public interest document) because of an access application or in compliance with the privacy principles must not be taken for the purposes of the law relating to defamation or breach of confidence to constitute an authorisation or approval of the publication of the document or its contents by the person to whom access is given.
- (3) In this section—  
*document* includes a chapter 3 document.

**180 Publication—protection against actions for defamation or breach of confidence**

- (1) If a chapter 3 document has been published and the publication was required under section 123 or authorised by the information commissioner in the genuine belief that the publication was required under section 123—
  - (a) no action for defamation or breach of confidence lies against the State, an agency, the information commissioner or an officer because of the publication; and
  - (b) no action for defamation or breach of confidence in relation to the publication or a resulting publication lies against the author of the document or another person because of the author or another person having given the document to an agency or the commissioner.
- (2) The publication of a document (including an exempt document or contrary to public interest document) under section 123 must not be taken for the purposes of the law relating to defamation or breach of confidence to constitute an

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authorisation or approval of the publication of the document or its contents.

**181 Access—protection in respect of offences**

- (1) If access has been given to a document and—
- (a) the access was required or permitted to be given under this Act; or
  - (b) the access was authorised by a decision-maker in the genuine belief that the access was required or permitted to be given under this Act;

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

- (2) In this section—

*document* includes a chapter 3 document.

**182 Publication—protection in respect of offences**

If—

- (a) a chapter 3 document has been published; and
- (b) the publication was required under section 123 or authorised by the information commissioner in the genuine belief that the publication was required under section 123;

the person authorising publication and any other person concerned in the publication of the document do not commit a criminal offence merely because of authorising or being concerned in the publication.

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**183 Protection of agency, information commissioner etc. from personal liability**

- (1) A relevant entity does not incur civil liability for an act done or omission made honestly and without negligence under this Act.
- (2) A liability that would, other than for this section, attach to a relevant entity attaches instead to the State.
- (3) In this section—  
*relevant entity* means any of the following—
  - (a) an agency;
  - (b) an agency’s principal officer;
  - (c) a decision-maker;
  - (d) a person acting under the direction of an agency or an agency’s principal officer;
  - (e) the information commissioner;
  - (f) a member of the staff of the OIC.

## **Part 2 Offences**

**184 Direction to act in particular way**

- (1) A person must not give a direction, either orally or in writing to a person required or permitted to make a decision under this Act directing the person to make a decision the person believes is not the decision that should be made under this Act.

Maximum penalty—100 penalty units.

- (2) Subsection (1) does not apply to the information commissioner or a person authorised by the commissioner in

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relation to a direction that may be given to a member of the staff of the OIC under section 140.

- (3) A person must not give a direction, either orally or in writing to a person who is an employee or officer of the agency involved in a matter under this Act directing the person to act contrary to the requirements of this Act.

Maximum penalty—100 penalty units.

### **185 Unlawful access**

- (1) A person must not, in order to gain access to a document containing another person's personal information knowingly deceive or mislead a person exercising powers under this Act.

Maximum penalty—100 penalty units.

- (2) In this section—

*document* includes a chapter 3 document.

### **186 False or misleading information**

- (1) A person must not give information to the information commissioner, or a member of the staff of the OIC, 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, to the best of the person's ability, how the information is false or misleading; and

- (b) gives the correct information to commissioner or member 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

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or misleading', without specifying whether it was false or whether it was misleading.

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

(1) A person given notice under section 116 or 197 to—

- (a) give information; or
  - (b) produce a document; or
  - (c) attend before the information commissioner;
- must not, without reasonable excuse, fail to do so.

Maximum penalty—100 penalty units.

(2) In this section—

*document* includes a chapter 3 document.

### **188 Disclosure or taking advantage of information**

If a person is or has been the information commissioner or a member of the staff of the OIC, the person must not—

- (a) otherwise than for the purposes of this Act or a proceeding arising under this Act, disclose any information that the person obtained in performing functions under this Act; or
- (b) take advantage of that information to benefit himself or herself or another person.

Maximum penalty—100 penalty units.

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## Chapter 7 Miscellaneous provisions

*Note—*

A reference in this chapter to an agency includes a reference to a Minister, a department, a local government or a public authority—see section 18.

### Part 1 Archival documents

#### 189 Operation of Public Records Act 2002

- (1) Without limiting section 4, this Act does not affect the provisions of the *Public Records Act 2002* relating to the giving of access to documents by the Queensland State Archives.
- (2) Without limiting section 7, the *Public Records Act 2002* does not prevent a person obtaining access to a document in the custody of Queensland State Archives to which a person may obtain access under this Act.

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

- (1) A document that—
  - (a) has been placed in the custody of Queensland State Archives or a public library by a person; and
  - (b) was not, immediately before being placed in that custody, a document of an agency or a document of a Minister;

is available for access to members of the community under this Act, subject to any restrictions or conditions imposed by the person—

- (c) at the time the document was placed in the custody of the Queensland State Archives or public library; or

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(d) as permitted under section 23(2) of the repealed *Freedom of Information Act 1992*.

(2) In this section—

**agency** means a chapter 3 agency.

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

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

(a) has been placed in the custody of the Queensland State Archives by an agency (whether before or after the commencement of this section); and

(b) is not reasonably available for inspection under the *Public Records Act 2002*;

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

(2) For the purposes of this Act, a document that has been placed by an agency (including the Queensland State Archives) in a place of deposit under the *Libraries Act 1988* (whether before or after the commencement of this part) or the *Public Records Act 2002* is taken to be in the agency's possession, or, if the agency no longer exists, the agency whose functions are most closely related to the document, if the agency is entitled to access to the document.

(3) In this section—

**agency** means a chapter 3 agency.



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## Part 2                      Operation of this Act

### 192    Review of Act

- (1) The Minister must review this Act and the review must start no later than 2 years after the commencement of this section.
- (2) The objects of the review include—
  - (a) deciding whether the primary object of this Act remains valid; and
  - (b) deciding whether this Act is meeting its primary object; and
  - (c) deciding whether the provisions of this Act are appropriate for meeting its primary object; and
  - (d) investigating any specific issue recommended by the Minister or the information commissioner.
- (3) The Minister must, as soon as practicable after finishing the review, table a report about the outcome of the review in the Assembly.

### 193    Reports of information commissioner

- (1) The information commissioner may make a report to the Speaker on matters relating to a particular external review.
- (2) The commissioner must, as soon as practicable after the end of each financial year, give the Speaker and parliamentary committee a report of the operations of the OIC under this Act during that year.
- (3) A report under subsection (2) must include, in relation to the financial year to which it relates, details of the matters prescribed under a regulation.
- (4) The parliamentary committee may require the information commissioner to prepare and give the committee a report on a particular aspect of the performance of the commissioner's functions.

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- (5) If a report of the commissioner is given to the Speaker or the parliamentary committee, the Speaker or chairperson of the committee must cause the report to be tabled in the Assembly on the next sitting day after it is given.
- (6) An annual report under this section may be included as part of an annual report the commissioner is required to give under the Right to Information Act.

### **194 Report to Assembly on Act's operation**

- (1) The Minister administering this Act shall, as soon as practicable after the end of each financial year, prepare a report on the operation of this Act during that year and cause a copy of the report to be tabled in the Assembly.
- (2) A report under subsection (1) must include, in relation to the financial year to which it relates, particulars of the matters prescribed under a regulation.
- (3) An annual report under this section may be included as part of an annual report the Minister is required to give under the Right to Information Act.

### **195 Functions of parliamentary committee**

The parliamentary committee has the following functions under this Act—

- (a) to monitor and review the performance by the information commissioner of the commissioner's functions under this Act;
- (b) to report to the 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 Assembly's attention;
- (c) to decide, in consultation with the commissioner, the statistical information (including statistical information about giving access to information other than on an

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access application) agencies are to give the commissioner for the report under the Right to Information Act, section 131;

- (d) to examine each annual report tabled in the Assembly under this Act and, if appropriate, to comment on any aspect of the report and to make recommendations;
- (e) to report to the Assembly any changes to the functions, structures and procedures of the OIC the committee considers desirable for the more effective operation of this Act;
- (f) 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).

## Part 3 Other

### 196 Power of person acting for another person

- (1) To remove any doubt, it is declared that, in relation to an access or amendment application or other matter under this Act—
  - (a) a person's agent is able to do, in accordance with the terms of the person's authorisation as agent, anything that the person could do; and
  - (b) a child's parent is able to do anything that the child could do if the child were an adult.
- (2) In this section—
  - child* see section 45.
  - parent* see section 45.

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**197 Power of information commissioner for compliance notices and privacy complaints**

- (1) This section applies if the information commissioner is satisfied on reasonable grounds that a person has information relevant to—
  - (a) a decision of the commissioner whether to give an agency a compliance notice under chapter 4; or
  - (b) the mediation of a privacy complaint under chapter 5.
- (2) The commissioner may give the person a written notice requiring the person to give the information to the commissioner in written form.
- (3) The written notice given by the commissioner must state—
  - (a) where the information must be given to the commissioner; and
  - (b) a reasonable time at which, or a reasonable period within which, the information must be given.
- (4) The commissioner may also give the person a written notice requiring the person to attend before the commissioner at a reasonable time and place stated in the notice to answer questions relevant to the giving of the compliance notice or to the privacy complaint the subject of the mediation.
- (5) The commissioner may administer an oath or affirmation to a person required under subsection (4) to attend before the commissioner and may examine the person on oath or affirmation.
- (6) The oath or affirmation is an oath or affirmation that the answers the person will give will be true.

**198 Rules and procedures of Queensland Civil and Administrative Tribunal**

- (1) *Anything done under this Act involving QCAT must be done in accordance with QCAT rules and procedures.*

*Examples—*

- *rules and procedures relating to filing of documents*
- *rules and procedures relating to conduct of hearings*

(2) *However, for the QCAT Act, section 43(2)(b)(iii), a person may be represented before QCAT by a lawyer on a reference of a question of law under section 131 or on an appeal on a question of law under section 132.*

(3) *In this section—*

***QCAT rules and procedures*** means the rules and procedures applying to QCAT under the QCAT Act.

*Editor's note—*

This provision had not commenced on or before the reprint date.

## **199 Contents of prescribed written notice**

If an agency must give a person a prescribed written notice of a decision under this Act, the notice must be in writing and state the following details—

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

*Note—*

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

- (c) the day the decision was made;
- (d) the name and designation of the person making the decision;
- (e) if the decision is not the decision sought by the person—any rights of review given under this Act in relation to the decision, the procedures to be followed for exercising the rights and the time within which an application for review must be made.

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## **200 Approval of forms**

The chief executive may approve forms for use under this Act.

## **201 Regulation-making power**

The Governor in Council may make regulations under this Act.

# **Chapter 8 Transitional provisions**

## **Part 1 Transitional provisions for Act No. 14 of 2009**

### **202 Delayed application of Act other than ch 3 to local governments**

(1) This Act, other than the relevant provisions, does not apply to a local government until 1 year after the commencement of this section.

(2) In this section—

*relevant provisions* means—

- (a) chapter 3; and
- (b) the other provisions of this Act to the extent they apply for the purposes of chapter 3.

### **203 Outdated references**

In an Act or document, if the context permits, a reference to the *Freedom of Information Act 1992*, is taken to be a reference to this Act.

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**204 Pre-enactment recruitment process**

An appointment of a person as privacy commissioner after the enactment of this Act is not to be taken to be invalid only because action was taken in relation to the filling of the role of privacy commissioner before the enactment.

**205 Refusal to deal with application—previous application for same documents**

For section 62 or 63, a first application may be an application under the repealed *Freedom of Information Act 1992*.

**206 Delayed filing of certified agreement with QCAT**

- (1) *This section applies if—*
- (a) *a privacy complaint becomes the subject of a certified agreement under chapter 5 before QCAT comes into existence; and*
  - (b) *the complainant or respondent for the complaint wishes to file a copy of the agreement with QCAT.*
- (2) *The agreement must be filed within 20 business days after QCAT comes into existence.*

*Editor's note—*

This provision had not commenced on or before the reprint date.

**207 Delayed referral of privacy complaint to QCAT**

- (1) *This section applies if the information commissioner is required under chapter 5 to refer a privacy complaint to QCAT before QCAT comes into existence.*
- (2) *The commissioner must refer the privacy complaint to QCAT within 20 business days after QCAT comes into existence.*

*Editor's note—*

This provision had not commenced on or before the reprint date.

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## **208 Delayed application to QCAT**

- (1) If a person may appeal to the appeal tribunal under section 132 before QCAT comes into existence, the person may appeal to the appeal tribunal within 20 business days after QCAT comes into existence.
- (2) If a person may, within a period, apply to QCAT under section 133 before QCAT comes into existence, the person may apply to QCAT within that period after QCAT comes into existence.

## **209 Privacy complaints to relate to actions after ch 5 commencement**

*A privacy complaint may be made only about a breach of an entity's obligation happening after the commencement of chapter 5.*

*Editor's note—*

This provision had not commenced on or before the reprint date.

## **210 Continuing application of relevant information standards**

- (1) This section applies if—
  - (a) a contract or other arrangement (the *relevant agreement*) entered into before the commencement, applies, or otherwise refers to, a relevant information standard; and
  - (b) on or after the commencement, the relevant information standard is repealed, or the application of the standard in Queensland is otherwise ended.
- (2) For the purposes of the ongoing operation of the relevant agreement, the relevant information standard, as in force for the purposes of the relevant agreement immediately before the commencement, continues to apply for the purposes of the relevant agreement as if the standard still applied in Queensland in the same way it applied immediately before the commencement.



(3) In this section—

*commencement* means the commencement of this section.

*relevant information standard* means an instrument applying in Queensland before the commencement of this section under the name of—

- (a) Information Standard No. 42; or
- (b) Information Standard No. 42A.

### **211 Acts and practices authorised before commencement**

The privacy principles do not apply to an entity in relation to an act done or practice engaged in by the entity after the commencement of this section if the act or practice is necessary for the performance of a contract entered into before the commencement of this section.

## **Part 2 Transitional provisions for State Penalties Enforcement and Other Legislation Amendment Act 2009**

### **212 Definition for pt 2**

In this part—

*relevant period* means the period starting on 1 July 2009 and ending immediately before the commencement of this part.

### **213 Retrospective validation for particular delegations and directions**

- (1) A delegation, or an amendment of a delegation, made by a principal officer under this Act during the relevant period is

taken to be, and always to have been, as valid as if section 50, as in force immediately after the commencement of this part, had been in force on the day the delegation, or the amendment, was made.

- (2) A direction given by a Minister under this Act during the relevant period is taken to be, and always to have been, as valid as if section 51, as in force immediately after the commencement of this part, had been in force on the day the direction was given.

#### **214 Decision under s 69(2) is a reviewable decision**

- (1) It is declared that a decision made during the relevant period stating the matters mentioned in section 69(2) is, and always has been, a reviewable decision under this Act as if section 69, as in force immediately after the commencement of this part, had been in force on the day the decision was made.
- (2) Despite section 96(c) or 101(1)(d), an application for internal review or external review in relation to the decision may be made within 20 business days after the commencement of this part.
- (3) If an application for internal review or external review in relation to the decision is made before the commencement of this part, for the purposes of any review, the application is taken to have been made immediately after the commencement of this part.

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# Schedule 1 Documents to which the privacy principles do not apply

## section 16

## 1 Covert activity

A document to the extent it contains personal information—

- (a) arising out of, or in connection with, a controlled operation or controlled activity under the *Police Powers and Responsibilities Act 2000* or the *Crime and Misconduct Act 2001*; or
- (b) arising out of, or in connection with, the covert undertaking of an operation, investigation or function of a law enforcement agency; or
- (c) obtained under a warrant issued under the *Telecommunications (Interception and Access) Act 1979* (Cwlth).

## 2 Witness protection

A document to the extent it contains personal information about a person who is included in a witness protection program under the *Witness Protection Act 2000* or who is subject to other witness protection arrangements made under an Act.

## 3 Disciplinary actions and misconduct

A document to the extent it contains personal information arising out of—

- (a) a complaint under the *Police Service Administration Act 1990*, part 7; or
- (b) a complaint, or an investigation of misconduct, under the *Crime and Misconduct Act 2001*.

**4 Whistleblowers**

A document to the extent it contains personal information—

- (a) contained in a public interest disclosure under the *Whistleblowers Protection Act 1994*; or
- (b) that has been collected in an investigation arising out of a public interest disclosure under the *Whistleblowers Protection Act 1994*.

**5 Cabinet and Executive Council**

A document to the extent it contains personal information that is also the subject of the Right to Information Act, schedule 3, section 1, 2 or 3.

**6 Commissions of inquiry**

A document to the extent it contains personal information arising out of a commission of inquiry.

**7 Other**

A document that is—

- (a) a generally available publication; or
- (b) kept in a library, art gallery or museum for the purposes of reference, study or exhibition; or
- (c) a public record under the *Public Records Act 2002* in the custody of Queensland State Archives that is not in a restricted access period under that Act; or
- (d) a letter, or anything else, while it is being transmitted by post.

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## **Schedule 2      Entities to which the privacy principles do not apply**

section 19

### **Part 1                      Entities to which the privacy principles do not apply**

- 1 the Assembly, a member of the Assembly, a committee of the Assembly, a member of a committee of the Assembly, a parliamentary commission of inquiry or a member of a parliamentary commission of inquiry
- 2 the Parliamentary Judges Commission of Inquiry appointed under the expired *Parliamentary (Judges) Commission of Inquiry Act 1988*
- 3 a commission of inquiry issued by the Governor in Council, whether before or after the commencement of this schedule
- 4 a parents and citizens association under the *Education (General Provisions) Act 2006*
- 5 a grammar school to which the *Grammar Schools Act 1975* applies
- 6 a government owned corporation or a subsidiary of a government owned corporation

### **Part 2                      Entities to which the privacy principles do not apply in relation to a particular function**

- 1 a court, or the holder of a judicial office or other office connected with a court, in relation to the court's judicial functions

Schedule 2

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- 2 a registry or other office of a court, or the staff of a registry or other office of a court in their official capacity, so far as its or their functions relate to the court's judicial function
- 3 a tribunal in relation to the tribunal's judicial or quasi-judicial functions
- 4 a tribunal member or the holder of an office connected with a tribunal, in relation to the tribunal's judicial or quasi-judicial functions
- 5 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
- 6 a quasi-judicial entity in relation to its quasi-judicial functions
- 7 a member of, or the holder of an office connected with, a quasi-judicial entity, in relation to the entity's quasi-judicial functions
- 8 the staff of a quasi-judicial entity in their official capacity, so far as their functions relate to the entity's quasi-judicial functions

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## Schedule 3 Information privacy principles

## section 26

### 1 IPP 1—Collection of personal information (lawful and fair)

- (1) An agency must not collect personal information for inclusion in a document or generally available publication unless—
  - (a) the information is collected for a lawful purpose directly related to a function or activity of the agency; and
  - (b) the collection of the information is necessary to fulfil the purpose or is directly related to fulfilling the purpose.
- (2) An agency must not collect personal information in a way that is unfair or unlawful.

### 2 IPP 2—Collection of personal information (requested from individual)

- (1) This section applies to the collection by an agency of personal information for inclusion in a document or generally available publication.
- (2) However, this section applies only if the agency asks the individual the subject of the personal information for either—
  - (a) the personal information; or
  - (b) information of a type that would include the personal information.
- (3) The agency must take all reasonable steps to ensure that the individual is generally aware of—
  - (a) the purpose of the collection; and
  - (b) if the collection of the personal information is authorised or required under a law—
    - (i) the fact that the collection of the information is authorised or required under a law; and
    - (ii) the law authorising or requiring the collection; and

- (c) if it is the agency's usual practice to disclose personal information of the type collected to any entity (the *first entity*)—the identity of the first entity; and
  - (d) if the agency is aware that it is the usual practice of the first entity to pass on information of the type collected to another entity (the *second entity*)—the identity of the second entity.
- (4) The agency must take the reasonable steps required under subsection (3)—
- (a) if practicable—before the personal information is collected; or
  - (b) otherwise—as soon as practicable after the personal information is collected.
- (5) However, the agency is not required to act under subsection (3) if—
- (a) the personal information is collected in the context of the delivery of an emergency service; and
- Example—*
- personal information collected during a triple 0 emergency call or during the giving of treatment or assistance to a person in need of an emergency service
  - (b) the agency reasonably believes there would be little practical benefit to the individual in complying with subsection (3) in the circumstances; and
  - (c) the individual would not reasonably expect to be made aware of the matters mentioned in subsection (3).

### **3 IPP 3—Collection of personal information (relevance etc.)**

- (1) This section applies to the collection by an agency of personal information for inclusion in a document or generally available publication.
- (2) However, this section applies to personal information only if the agency asks for the personal information from any person.
- (3) The agency must take all reasonable steps to ensure that—



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- (a) the personal information collected is—
    - (i) relevant to the purpose for which it is collected; and
    - (ii) complete and up to date; and
  - (b) the extent to which personal information is collected from the individual the subject of it, and the way personal information is collected, are not an unreasonable intrusion into the personal affairs of the individual.

#### **4 IPP 4—Storage and security of personal information**

- (1) An agency having control of a document containing personal information must ensure that—
  - (a) the document is protected against—
    - (i) loss; and
    - (ii) unauthorised access, use, modification or disclosure; and
    - (iii) any other misuse; and
  - (b) if it is necessary for the document to be given to a person in connection with the provision of a service to the agency, the agency takes all reasonable steps to prevent unauthorised use or disclosure of the personal information by the person.
- (2) Protection under subsection (1) must include the security safeguards adequate to provide the level of protection that can reasonably be expected to be provided.

#### **5 IPP 5—Providing information about documents containing personal information**

- (1) An agency having control of documents containing personal information must take all reasonable steps to ensure that a person can find out—
  - (a) whether the agency has control of any documents containing personal information; and

- (b) the type of personal information contained in the documents; and
  - (c) the main purposes for which personal information included in the documents is used; and
  - (d) what an individual should do to obtain access to a document containing personal information about the individual.
- (2) An agency is not required to give a person information under subsection (1) if, under an access law, the agency is authorised or required to refuse to give that information to the person.

**6 IPP 6—Access to documents containing personal information**

- (1) An agency having control of a document containing personal information must give an individual the subject of the personal information access to the document if the individual asks for access.
- (2) An agency is not required to give an individual access to a document under subsection (1) if—
- (a) the agency is authorised or required under an access law to refuse to give the access to the individual; or
  - (b) the document is expressly excluded from the operation of an access law.

**7 IPP 7—Amendment of documents containing personal information**

- (1) An agency having control of a document containing personal information must take all reasonable steps, including by the making of an appropriate amendment, to ensure the personal information—
- (a) is accurate; and
  - (b) having regard to the purpose for which it was collected or is to be used and to any purpose directly related to fulfilling the purpose, is relevant, complete, up to date and not misleading.

- 
- (2) Subsection (1) applies subject to any limitation in a law of the State providing for the amendment of personal information held by the agency.
  - (3) Subsection (4) applies if—
    - (a) an agency considers it is not required to amend personal information included in a document under the agency's control in a way asked for by the individual the subject of the personal information; and
    - (b) no decision or recommendation to the effect that the document should be amended wholly or partly in the way asked for has been made under a law mentioned in subsection (2).
  - (4) The agency must, if the individual asks, take all reasonable steps to attach to the document any statement provided by the individual of the amendment asked for.

## **8 IPP 8—Checking of accuracy etc. of personal information before use by agency**

Before an agency uses personal information contained in a document under its control, the agency must take all reasonable steps to ensure that, having regard to the purpose for which the information is proposed to be used, the information is accurate, complete and up to date.

## **9 IPP 9—Use of personal information only for relevant purpose**

- (1) This section applies if an agency having control of a document containing personal information proposes to use the information for a particular purpose.
- (2) The agency must use only the parts of the personal information that are directly relevant to fulfilling the particular purpose.

## **10 IPP 10—Limits on use of personal information**

- (1) An agency having control of a document containing personal information that was obtained for a particular purpose must not use the information for another purpose unless—
- (a) the individual the subject of the personal information has expressly or impliedly agreed to the use of the information for the other purpose; or
  - (b) the agency is satisfied on reasonable grounds that use of the information for the other purpose is necessary to lessen or prevent a serious threat to the life, health, safety or welfare of an individual, or to public health, safety or welfare; or
  - (c) use of the information for the other purpose is authorised or required under a law; or
  - (d) the agency is satisfied on reasonable grounds that use of the information for the other purpose is necessary for 1 or more of the following by or for a law enforcement agency—
    - (i) the prevention, detection, investigation, prosecution or punishment of criminal offences or breaches of laws imposing penalties or sanctions;
    - (ii) the enforcement of laws relating to the confiscation of the proceeds of crime;
    - (iii) the protection of the public revenue;
    - (iv) the prevention, detection, investigation or remedying of seriously improper conduct;
    - (v) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of the orders of a court or tribunal; or
  - (e) the other purpose is directly related to the purpose for which the information was obtained; or

*Examples for paragraph (e)—*

- 1 An agency collects personal information for staff administration purposes. A new system of staff administration is introduced into the agency, with much greater functionality. Under this paragraph, it would be

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appropriate to transfer the personal information into the new system.

- 2 An agency uses personal information, obtained for the purposes of operating core services, for the purposes of planning and delivering improvements to the core services.
- (f) all of the following apply—
- (i) the use is necessary for research, or the compilation or analysis of statistics, in the public interest;
  - (ii) the use does not involve the publication of all or any of the personal information in a form that identifies any particular individual the subject of the personal information;
  - (iii) it is not practicable to obtain the express or implied agreement of each individual the subject of the personal information before the use.
- (2) If the agency uses the personal information under subsection (1)(d), the agency must include with the document a note of the use.

## 11 IPP 11—Limits on disclosure

- (1) An agency having control of a document containing an individual's personal information must not disclose the personal information to an entity (the *relevant entity*), other than the individual the subject of the personal information, unless—
- (a) the individual is reasonably likely to have been aware, or to have been made aware, under IPP 2 or under a policy or other arrangement in operation before the commencement of this schedule, that it is the agency's usual practice to disclose that type of personal information to the relevant entity; or
  - (b) the individual has expressly or impliedly agreed to the disclosure; or
  - (c) the agency is satisfied on reasonable grounds that the disclosure is necessary to lessen or prevent a serious

- threat to the life, health, safety or welfare of an individual, or to public health, safety or welfare; or
- (d) the disclosure is authorised or required under a law; or
  - (e) the agency is satisfied on reasonable grounds that the disclosure of the information is necessary for 1 or more of the following by or for a law enforcement agency—
    - (i) the prevention, detection, investigation, prosecution or punishment of criminal offences or breaches of laws imposing penalties or sanctions;
    - (ii) the enforcement of laws relating to the confiscation of the proceeds of crime;
    - (iii) the protection of the public revenue;
    - (iv) the prevention, detection, investigation or remedying of seriously improper conduct;
    - (v) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of the orders of a court or tribunal; or
  - (f) all of the following apply—
    - (i) the disclosure is necessary for research, or the compilation or analysis of statistics, in the public interest;
    - (ii) the disclosure does not involve the publication of all or any of the personal information in a form that identifies the individual;
    - (iii) it is not practicable to obtain the express or implied agreement of the individual before the disclosure;
    - (iv) the agency is satisfied on reasonable grounds that the relevant entity will not disclose the personal information to another entity.
- (2) If the agency discloses the personal information under subsection (1)(e), the agency must include with the document a note of the disclosure.
- (3) If the agency discloses personal information under subsection (1), it must take all reasonable steps to ensure that the relevant

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entity will not use or disclose the information for a purpose other than the purpose for which the information was disclosed to the agency.

- (4) The agency may disclose the personal information under subsection (1) if the information may be used for a commercial purpose involving the relevant entity's marketing of anything to the individual only if, without limiting subsection (3), the agency is satisfied on reasonable grounds that—
- (a) it is impracticable for the relevant entity to seek the consent of the individual before the personal information is used for the purposes of the marketing; and
  - (b) the relevant entity will not charge the individual for giving effect to a request from the individual to the entity that the individual not receive any marketing communications; and
  - (c) the individual has not made a request mentioned in paragraph (b); and
  - (d) in each marketing communication with the individual, the relevant entity will draw to the individual's attention, or prominently display a notice, that the individual may ask not to receive any further marketing communications; and
  - (e) each written marketing communication from the relevant entity to the individual, up to and including the communication that involves the use, will state the relevant entity's business address and telephone number and, if the communication with the individual is made by fax, or other electronic means, a number or address at which the relevant entity can be directly contacted electronically.

## **Schedule 4      National privacy principles**

section 30

### **1      NPP 1—Collection of personal information**

- (1) The department must not collect personal information unless the information is necessary for 1 or more of its functions or activities.
- (2) The department must collect personal information only by lawful and fair means and not in an unreasonably intrusive way.
- (3) At or before the time or, if that is not practicable, as soon as practicable after, the department collects personal information about an individual from the individual, the department must take reasonable steps to ensure that the individual is aware of—
  - (a) the identity of the department and how to contact it; and
  - (b) the fact that he or she is able to gain access to the information; and
  - (c) the purposes for which the information is collected; and
  - (d) the entities, or the types of entities, to which the department usually discloses information of that kind; and
  - (e) any law that requires the particular information to be collected; and
  - (f) the main consequences, if any, for the individual if all or part of the information is not provided.
- (4) If it is reasonable and practicable to do so, the department must collect personal information about an individual only from that individual.
- (5) If the department collects personal information about an individual from someone else, it must take reasonable steps to ensure that the individual is or has been made aware of the matters listed in subsection (3) except to the extent that—



- 
- (a) the personal information is collected under NPP 9(1)(e);  
or
  - (b) making the individual aware of the matters would pose a serious threat to the life, health, safety or welfare of an individual.
- (6) If the information is required under a statutory collection, the department is not required to ensure that the individual is or has been made aware of the matters listed in subsection (3).
- (7) In this section—
- statutory collection*** means—
- (a) a register or other collection of personal information that the department is authorised or required to maintain under an Act for monitoring public health issues, including, for example, by identifying morbidity and mortality trends, planning and evaluating health services or facilitating and evaluating treatments; or
  - (b) personal information collected by the department under an Act requiring a person to give the information to the department.

## **2 NPP 2—Limits on use or disclosure of personal information**

- (1) The department must not use or disclose personal information about an individual for a purpose (the ***secondary purpose***) other than the primary purpose of collection unless—
- (a) both of the following apply—
    - (i) the secondary purpose is related to the primary purpose of collection and, if the personal information is sensitive information, directly related to the primary purpose of collection;
    - (ii) the individual would reasonably expect the department to use or disclose the information for the secondary purpose; or
  - (b) the individual has consented to the use or disclosure; or

- (c) if the information is health information and the use or disclosure is necessary for research, or the compilation or analysis of statistics, relevant to public health or public safety—
  - (i) it is impracticable for the department to seek the individual's consent before the use or disclosure; and
  - (ii) the use or disclosure is conducted in accordance with guidelines approved by the chief executive of the department for the purposes of this subparagraph; and
  - (iii) for disclosure—the department reasonably believes that the entity receiving the health information will not disclose the health information or personal information derived from the health information; or
- (d) the department reasonably believes that the use or disclosure is necessary to lessen or prevent a serious threat to an individual's life, health, safety or welfare or a serious threat to public health, safety or welfare; or
- (e) the department has reason to suspect that unlawful activity has been, is being or may be engaged in, and uses or discloses the personal information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities; or
- (f) the use or disclosure is authorised or required by or under law; or
- (g) the department reasonably believes that the use or disclosure is reasonably necessary for 1 or more of the following by or for an enforcement body—
  - (i) the prevention, detection, investigation, prosecution or punishment of criminal offences or breaches of laws imposing penalties or sanctions;
  - (ii) the enforcement of laws relating to the confiscation of the proceeds of crime;
  - (iii) the protection of the public revenue;

- (iv) the prevention, detection, investigation or remedying of seriously improper conduct;
- (v) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of the orders of a court or tribunal.

*Notes—*

- 1 It is not intended to deter the department from lawfully cooperating with agencies performing law enforcement functions in the performance of their functions.
  - 2 Subsection (1) does not override any existing legal obligations not to disclose personal information (for example, *Health Services Act 1991*, section 62A). Nothing in subsection (1) requires the department to disclose personal information. The department is always entitled not to disclose personal information in the absence of a legal obligation to disclose it.
  - 3 The department is also subject to the requirements of chapter 2, part 3 if it transfers personal information to an entity outside Australia.
- (2) If the department uses or discloses personal information under subsection (1)(g), it must include with the personal information a note of the use or disclosure.
- (3) Despite subsection (1), if the department provides a health service to an individual, it may disclose health information about the individual to a person who is responsible for the individual if—
- (a) the individual—
    - (i) is physically or legally incapable of giving consent to the disclosure; or
    - (ii) physically can not communicate consent to the disclosure; and
  - (b) a health professional providing the health service for the department is satisfied that either—
    - (i) the disclosure is necessary to provide appropriate care or treatment of the individual; or
    - (ii) the disclosure is made for compassionate reasons; and
  - (c) the disclosure is not contrary to any wish—

- (i) expressed by the individual before the individual became unable to give or communicate consent; and
    - (ii) of which the health professional is aware, or of which the health professional could reasonably be expected to be aware; and
  - (d) the disclosure is limited to the extent reasonable and necessary for a purpose mentioned in paragraph (b).
- (4) For subsection (3), a person is *responsible* for an individual if the person is—
- (a) a parent of the individual; or
  - (b) a child or sibling of the individual who a health professional believes has capacity; or
  - (c) a spouse or de facto partner of the individual; or
  - (d) a relative of the individual and a member of the individual's household; or
  - (e) a guardian of the individual; or
  - (f) a person exercising a power under an enduring power of attorney made by the individual that is exercisable in relation to decisions about the individual's health; or
  - (g) a person who has sufficient personal interest in the health and welfare of the individual; or
  - (h) a person nominated by the individual to be contacted in case of emergency.

*Note—*

Subsection (3) does not override any law with respect to assisted and substituted decision-making, including, for example, the *Guardianship and Administration Act 2000* and the *Powers of Attorney Act 1998*.

- (5) Despite subsection (1), the department may use an individual's personal information that is not sensitive information for a commercial purpose involving the department's marketing of anything to the individual, but only if—

- 
- (a) it is impracticable for the department to seek the consent of the individual before the personal information is used for the purposes of the marketing; and
  - (b) the department will not charge the individual for giving effect to a request from the individual to the department that the individual not receive any marketing communications; and
  - (c) the individual has not made a request mentioned in paragraph (b); and
  - (d) in each marketing communication with the individual, the department will draw to the individual's attention, or prominently display a notice, that the individual may ask not to receive any further marketing communications; and
  - (e) each written marketing communication from the department to the individual, up to and including the communication that involves the use, will state the department's business address and telephone number and, if the communication with the individual is made by fax or other electronic means, a number or address at which the department can be directly contacted electronically.

(6) In this section—

**child**, of an individual, includes an adopted child, a stepchild and a foster-child, of the individual.

**enforcement body** means an enforcement body within the meaning of the *Privacy Act 1988* (Cwlth).

**parent**, of an individual, includes a step-parent, adoptive parent and a foster-parent, of the individual.

**relative**, of an individual, means a grandchild, uncle, aunt, nephew or niece, of the individual.

**sibling**, of an individual, includes a half-brother, half-sister, adoptive brother, adoptive sister, stepbrother, stepsister, foster-brother and foster-sister, of the individual.

**3 NPP 3—Data quality**

The department must take reasonable steps to ensure that the personal information it collects, uses or discloses is accurate, complete and up to date.

**4 NPP 4—Data security**

- (1) The department must take reasonable steps to protect the personal information it holds from misuse, loss and unauthorised access, modification or disclosure.
- (2) If the personal information is no longer needed for any purpose for which the information may be used or disclosed under NPP 2, the department must take reasonable steps to ensure that the individual the subject of the personal information can no longer, and can not in the future, be identified from the personal information.

*Note—*

Subsection (2) will apply subject to the requirements of the *Public Records Act 2002* providing for the retention of records.

**5 NPP 5—Openness**

- (1) The department must set out in a document clearly expressed policies on its management of personal information and must make the document available to anyone who asks for it.
- (2) On request by a person, the department must take reasonable steps to let the person know, generally, what sort of personal information it holds, for what purposes, and how it collects, holds, uses and discloses that information.

**6 NPP 6—Access to documents containing personal information**

- (1) If the department has control of a document containing personal information, it must give the individual the subject of the personal information access to the document if the individual asks for access.

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- (2) The department is not required to give an individual access to a document under subsection (1) if—
    - (a) the department is authorised or required under an access law to refuse to give the access to the individual; or
    - (b) the document is expressly excluded from the operation of an access law.

## **7 NPP 7—Amendment of documents containing personal information**

- (1) If the department has control of a document containing personal information, it must take all reasonable steps, including by the making of an appropriate amendment, to ensure the personal information—
  - (a) is accurate; and
  - (b) having regard to the purpose for which it was collected or is to be used and to any purpose directly related to fulfilling the purpose, is relevant, complete, up to date and not misleading.
- (2) Subsection (1) applies subject to any limitation in a law of the State providing for the amendment of personal information held by the department.
- (3) Subsection (4) applies if—
  - (a) the department considers it is not required to amend personal information included in a document under the department's control in a way asked for by the individual the subject of the personal information; and
  - (b) no decision or recommendation to the effect that the document should be amended wholly or partly in the way asked for has been made under a law mentioned in subsection (2).
- (4) The department must, if the individual asks, take all reasonable steps to attach to the document any statement provided by the individual of the amendment asked for.

## **8 NPP 8—Anonymity**

Wherever it is lawful and practicable, individuals must have the option of not identifying themselves when entering into transactions with the department.

## **9 NPP 9—Sensitive information**

- (1) The department must not collect sensitive information about an individual (the *relevant individual*) unless—
  - (a) the relevant individual has consented; or
  - (b) the collection is required by law; or
  - (c) the collection is necessary to prevent or lessen a serious threat to the life, health, safety or welfare of an individual, and the relevant individual—
    - (i) is physically or legally incapable of giving consent to the collection; or
    - (ii) physically can not communicate consent to the collection; or
  - (d) the collection is necessary for the establishment, exercise or defence of a legal or equitable claim; or
  - (e) the information is a family medical history, social medical history or other relevant information about any individual, that is collected for the purpose of providing any person, whether or not the relevant individual, with a health service, and is collected by the department from—
    - (i) the person who is to receive or is receiving the service; or
    - (ii) a parent of the relevant individual; or
    - (iii) a child or sibling of the relevant individual if a health professional believes the child or sibling has capacity; or
    - (iv) a spouse or de facto partner of the relevant individual; or



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- (v) a relative of the relevant individual if the relative is a member of the relevant individual's household; or
  - or
  - (vi) a guardian of the relevant individual; or
  - (vii) a person exercising a power under an enduring power of attorney made by the relevant individual that is exercisable in relation to decisions about the relevant individual's health; or
  - (viii) a person who has sufficient personal interest in the health and welfare of the relevant individual; or
  - (ix) a person nominated by the relevant individual to be contacted in case of emergency.
- (2) Despite subsection (1), the department may collect health information about an individual if the information is necessary to provide a health service to the individual and—
- (a) the individual would reasonably expect the department to collect the information for that purpose; or
  - (b) the information is collected as authorised or required by law.
- (3) Despite subsection (1), the department may collect health information about an individual if—
- (a) the collection is necessary for any of the following purposes—
    - (i) research relevant to public health or public safety;
    - (ii) the compilation or analysis of statistics relevant to public health or public safety;
    - (iii) the management, funding or monitoring of a health service; and
  - (b) the purpose can not be served by the collection of information that does not identify the individual or from which the individual's identity can not reasonably be ascertained; and
  - (c) it is impracticable for the department to seek the individual's consent to the collection; and

- (d) the information is collected—
  - (i) as authorised or required by law; or
  - (ii) by a designated person with the approval of the chief executive of the department; or

*Note—*

The chief executive could delegate the power to approve the collection of information by a designated person.

- (iii) in accordance with guidelines approved by the chief executive of the department for the purposes of this subparagraph.
- (4) If the department collects health information about an individual in accordance with subsection (3), the department must, before it discloses the personal information, take reasonable steps to ensure that the individual the subject of the personal information can no longer, and can not in the future, be identified from the personal information.

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## Schedule 5      Dictionary

### section 11

***access application*** means an application by an individual under chapter 3 to access a document to the extent it contains the individual's personal information.

***access charge*** see section 77.

***access law*** means a law of the State that provides for access by persons to documents.

***adult child*** means a child who is 18 years or more.

***adult sibling*** means a sibling who is 18 years or more.

***agency***—

- (a) for chapter 3—has the meaning given by section 17; or
- (b) otherwise—has the meaning given by section 18, but for chapter 6, includes a chapter 3 agency.

***agent***, in relation to an application, means a person who makes the application for another person.

***amendment application*** means an application by an individual under chapter 3 to amend a document in relation to the individual's personal information contained in the document.

***appeal tribunal***, for chapter 3, part 11, see section 129.

***applicant***, in relation to an application, means—

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

***appropriately qualified***, in relation to a healthcare professional, means having the qualifications and experience appropriate to assess relevant healthcare information in a document.

***approved form*** means a form approved under section 200.

**Assembly** means the Legislative Assembly.

**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.

**bound contracted service provider** means the contracted service provider under a service arrangement if—

- (a) under section 35(1) and (2), the contracting agency is required to take all reasonable steps to ensure the contracted service provider is required to comply with the privacy principles as if it were the contracting agency; and
- (b) under the service arrangement, the contracted service provider is required to comply with the privacy principles as if it were the contracting agency.

**chapter 3 agency** means an agency for chapter 3.

**chapter 3 document** means a document of an agency for chapter 3 or a document of a Minister for chapter 3.

**community safety department** means the department in which the *Corrective Services Act 2006* is administered.

**complainant**, for a privacy complaint, means the person who makes the complaint.

**compliance notice** see section 158.

**consent**, for the NPPs, means express consent or implied consent.

**considered decision**—

- (a) for an access application—see section 65; or
- (b) for an amendment application—see section 70.

**contracted service provider** see section 34.

**contracting agency** see section 34.

**contrary to public interest document** means a document containing contrary to public interest information where it is not practicable to give access to a copy of the document from

which the contrary to public interest information has been deleted.

***contrary to public interest information*** means information the disclosure of which would, on balance, be contrary to public interest under the Right to Information Act, section 49.

***control***, of a document, for the application of the privacy principles, see section 24.

***coroner*** see the *Coroners Act 2003*.

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

***decision-maker*** means—

- (a) for an access or amendment application to an agency—the person with power in relation to all or part of the application under section 50; or
- (b) for an access or amendment application to a Minister—the Minister or the person with power in relation to all or part of the application under section 51.

***deemed decision***—

- (a) for an access application—see section 66; or
- (b) for an amendment application—see section 71.

***department***, for the NPPs, means the health department.

***designated person***, for the NPPs, means a person who is a designated person under the *Health Services Act 1991*, part 7.

***disclose***, personal information, for the application of the privacy principles, see section 23.

***document***—

- (a) of an agency, for chapter 3—see section 13; or
- (b) of a Minister, for chapter 3, see section 14; or
- (c) otherwise—see section 15.

***document to which the privacy principles do not apply*** see section 16.

*eligible family member*—

- 1 *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.
- 2 A person described in item 1 is not *reasonably available* if—
  - (a) a person of that description does not exist or is deceased; 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 eligible family member of the deceased person for the purposes of this Act.

*entity to which the privacy principles do not apply* see section 19.

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**exempt document** means a document containing exempt information where it is not practicable to give access to a copy of the document from which the exempt information has been deleted.

**exempt information** means information that is exempt information under the Right to Information Act.

**external review** see section 98.

**external review application** see section 98.

**function** includes a power.

**generally available publication** means a publication that is, or is to be made, generally available to the public, however it is published.

**healthcare 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.

**health department** means the department in which the *Health Services Act 1991* is administered.

**health information**, about an individual, for the NPPs, means—

- (a) personal information about the individual that includes any of the following—
  - (i) the individual's health at any time;
  - (ii) a disability of the individual at any time;
  - (iii) the individual's expressed wishes about the future provision of health services to the individual;
  - (iv) a health service that has been provided, or that is to be provided, to the individual; or

- (b) personal information about the individual collected for the purpose of providing, or in providing, a health service; or
- (c) personal information about the individual collected in connection with the donation, or intended donation, by the individual of any of the individual's body parts, organs or body substances.

**health professional**, for the NPPs, means a person who is a health professional under the *Health Services Act 1991*, part 7.

**health service** means—

- (a) an activity performed in relation to an individual that is intended or claimed, expressly or otherwise, by the individual or by a person performing the activity—
  - (i) to assess, record, preserve or improve the individual's health; or
  - (ii) to diagnose an illness or disability of the individual; or
  - (iii) to treat an illness or disability of the individual or a suspected illness or disability; or
- (b) the dispensing on prescription of a drug or medicinal preparation by a pharmacist.

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

**information commissioner** means the information commissioner under the Right to Information Act.

**internal review** see section 93.

**internal review application** see section 93.

**IPP** means an information privacy principle stated as a section of schedule 3.

**judicial member**, for chapter 3, part 11, see section 129.

**law enforcement agency** means—

- (a) the Queensland Police Service under the *Police Service Administration Act 1990*; or



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- (b) the Crime and Misconduct Commission under the *Crime and Misconduct Act 2001*; or
  - (c) the community safety department; or
  - (d) any other agency, to the extent it has responsibility for—
    - (i) the performance of functions or activities directed to the prevention, detection, investigation, prosecution or punishment of offences and other breaches of laws for which penalties or sanctions may be imposed; or
    - (ii) the management of property seized or restrained under a law relating to the confiscation of the proceeds of crime; or
    - (iii) the enforcement of a law, or of an order made under a law, relating to the confiscation of the proceeds of crime; or
    - (iv) the execution or implementation of an order or decision made by a court or tribunal.

**Minister** includes a Parliamentary Secretary.

**narrow**—

- (a) for an access application, means change the application by reducing the part of a document or the number of documents to which access is sought under the application; or
- (b) for an amendment application, means change the application by reducing the part of a document or the number of documents sought to be amended under the application.

**NPP** means a national privacy principle stated as a section of schedule 4.

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

- (a) the agency's principal officer; and
- (b) a member of the agency; and
- (c) a member of the agency's staff; and

(d) a person employed by or for the agency.

**OIC** means the office of the information commissioner under the Right to Information Act.

**parliamentary committee** means the Law, Justice and Safety Committee of the Assembly.

**participant**, in an external review, means a person who is a participant in the review under section 102.

**personal information** see section 12.

**prescribed information** means—

- (a) exempt information mentioned in the Right to Information Act, schedule 3, section 1, 2, 3, 4, 5, 9 or 10; or
- (b) personal information the disclosure of which would, on balance, be contrary to the public interest, under the Right to Information Act, section 47(3)(b).

**prescribed written notice** means a notice under section 199.

**principal officer** means—

- (a) in relation to a department—the chief executive of the department; or
- (b) in relation to a local government—the chief executive officer (however described) of the government; or
- (c) in relation to a government owned corporation—the chief executive officer (however described) of the government owned corporation; or
- (d) in relation to a subsidiary of a government owned corporation—the principal officer (however described) of the subsidiary; or
- (e) in relation to a public authority for which a regulation declares an office to be the principal office—the holder of the office; or
- (f) in relation to another public authority—

- 
- (i) if it is an incorporated body that has no members—the person who manages the body's affairs; or
  - (ii) if it is a body (whether or not incorporated) that is constituted by 1 person—the person; or
  - (iii) if it is a body (whether or not incorporated) that is constituted by 2 or more persons—the person who is entitled to preside at a meeting of the body at which the person is present.

**privacy commissioner** means the Privacy Commissioner appointed under this Act.

**privacy complaint** see section 164.

**privacy principles** means the requirements applying to an entity under chapter 2.

**processing period**, for an access or amendment application, for chapter 3, see section 22.

**publication** includes a book, magazine or newspaper.

**public authority** has the meaning given by section 21.

**public library** includes—

- (a) the State library; and
- (b) a local government library; and
- (c) a library in the State that forms part of a public tertiary educational institution.

**relevant entity**, for chapter 5, see section 164.

**relevant healthcare information** means healthcare information provided by a healthcare professional.

**respondent**, for a privacy complaint, see section 164.

**reviewable decision** means any of the following decisions in relation to an access or amendment application—

- (a) a decision that an access or amendment application is outside the scope of this Act under section 52(1)(b);

- (b) a decision that an access or amendment application does not comply with all relevant application requirements under section 53(5);
- (c) a decision under section 54(5)(b) that an application purportedly made under this Act can not be dealt with under this Act;
- (d) a decision—
  - (i) to disclose a document contrary to the views of a relevant third party obtained under section 56; or
  - (ii) to disclose a document if an agency or Minister should have taken, but has not taken, steps to obtain the views of a relevant third party under section 56;
- (e) a decision refusing to deal with an access or amendment application under chapter 3, part 4;
- (f) a decision refusing access to a document under section 67 or refusing amendment of a document under section 72;
- (g) a decision under section 76(5) that information to which a notice under section 76(2) relates is not information in relation to which the applicant was entitled to apply to the agency or Minister for amendment of the document;
- (h) a decision deferring access to a document under section 87;
- (i) a decision about whether an access charge is payable in relation to access to a document (including a decision not to waive charges);
- (j) a decision giving access to documents subject to the deletion of information under section 88, 89 or 90;
- (k) 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;
- (l) a deemed decision.

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**review under this Act** means internal review or external review.

**Right to Information Act** means the *Right to Information Act 2009*.

**RTI commissioner** means the RTI commissioner under the Right to Information Act.

**sensitive information**, about an individual, for the NPPs, means—

- (a) personal information about the individual that includes any of the following—
  - (i) the individual's racial or ethnic origin;
  - (ii) the individual's political opinions;
  - (iii) the individual's membership of a political association;
  - (iv) the individual's religious beliefs or affiliations;
  - (v) the individual's philosophical beliefs;
  - (vi) the individual's membership of a professional or trade association;
  - (vii) the individual's membership of a trade union;
  - (viii) the individual's sexual preferences or practices;
  - (ix) the individual's criminal record; or
- (b) information that is health information about the individual for the NPPs.

**service arrangement** see section 34.

**subsidiary** see the *Government Owned Corporations Act 1993*.

**transfer period**, for an access or amendment application, for chapter 3, see section 22.

**use**, personal information, see section 23.

## Endnotes

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 19 November 2009. Future amendments of the Information Privacy Act 2009 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

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

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

### 4 Table of reprints

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

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

Reprint No.	Amendments included	Effective	Notes
1	none	1 July 2009	
1A	2009 Act No. 48	19 November 2009	

### 5 Tables in earlier reprints

Name of table	Reprint No.
Corrected minor errors	1

## 6 List of legislation

### **Information Privacy Act 2009 No. 14**

date of assent 12 June 2009

ss 1–2 commenced on date of assent

ss 131, 161–163, 198, 206–207, 209, ch 5 commence 1 December 2009 (2009 SL No. 259)

remaining provisions commenced 1 July 2009 (2009 SL No. 133)

amending legislation—

### **State Penalties Enforcement and Other Legislation Amendment Act 2009 No. 48 s 1, ch 5 pt 6**

date of assent 19 November 2009

s 224(1) commenced on date of assent (amdt could not be given effect to the extent it amends s 120 hdg)

remaining provisions commenced on date of assent

## 7 List of annotations

### **Decision-maker for application to agency**

s 50 amd 2009 No. 48 s 220

### **Decision-maker for application to Minister**

s 51 amd 2009 No. 48 s 221

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

s 69 amd 2009 No. 48 s 222

### **Internal review**

s 94 amd 2009 No. 48 s 223

### **Information commissioner to ensure proper disclosure and return of documents**

prov hdg amd 2009 No. 48 s 224(1) (amdt could not be given effect)

s 120 amd 2009 No. 48 s 224

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

s 130 exp on commencement of s 131 (see s 130(5))

## **CHAPTER 8—TRANSITIONAL PROVISIONS**

### **PART 1—TRANSITIONAL PROVISIONS FOR ACT No. 14 OF 2009**

pt hdg ins 2009 No. 48 s 225

### **PART 2—TRANSITIONAL PROVISIONS FOR STATE PENALTIES ENFORCEMENT AND OTHER LEGISLATION AMENDMENT ACT 2009**

pt 2 (ss 212–214) ins 2009 No. 48 s 226



## **8 List of forms notified or published in the gazette**

(The following information about forms is taken from the gazette and is included for information purposes only. Because failure by a department to notify or publish a form in the gazette does not invalidate the form, you should check with the relevant government department for the latest information about forms (see Statutory Instruments Act, section 58(8)).)

**Form 1 (RTI-IP), paper Version 1—Right to Information and Information Privacy Access Application Form**  
pubd gaz 26 June 2009 p 829

**Form 1A (RTI-IP), electronic Version 1—Right to Information and Information Privacy Access Application Form**  
pubd gaz 26 June 2009 p 829

**Form 2 (IP), paper Version 1—Information Privacy Personal Information Amendment Application Form**  
pubd gaz 26 June 2009 p 829

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