



# **Right to Information Act 2009**

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Queensland

# Right to Information Act 2009

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# Right to Information Act 2009

## An Act about rights to government and other information

### Preamble

Parliament's reasons for enacting this Act are—

- 1 Parliament recognises that in a free and democratic society—
  - (a) there should be open discussion of public affairs; and
  - (b) information in the government's possession or under the government's control is a public resource; and
  - (c) the community should be kept informed of government's operations, including, in particular, the rules and practice followed by government in its dealings with members of the community; and
  - (d) openness in government enhances the accountability of government; and
  - (e) openness in government increases the participation of members of the community in democratic processes leading to better informed decision-making; and
  - (f) right to information legislation contributes to a healthier representative, democratic government and enhances its practice; and
  - (g) right to information legislation improves public administration and the quality of government decision-making; and
  - (h) right to information legislation is only 1 of a number of measures that should be adopted by government to increase the flow of information in the government's possession or under the government's control to the community.

[s 1]

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- 2 The Government is proposing a new approach to access to information. Government information will be released administratively as a matter of course, unless there is a good reason not to, with applications under this Act being necessary only as a last resort.
- 3 It is Parliament's intention to emphasise and promote the right to government information. It is also Parliament's intention to provide a right of access to information in the government's possession or under the government's control unless, on balance, it is contrary to the public interest to provide the information. This Act reflects Parliament's opinion about making information available and the public interest.

## **Chapter 1 Preliminary**

### **Part 1 Introductory**

#### **1 Short title**

This Act may be cited as the *Right to Information 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 give a right of access to 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.
- (2) The Act must be applied and interpreted to further the primary object.

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#### **4 Act not intended to prevent other publication or access**

- (1) This Act is not intended to prevent or discourage the publication of information or the giving of access to documents otherwise than under this Act if the publication or giving of access 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 documents to which this Act does not apply, exempt documents and contrary to public interest documents; and
  - (b) the publication of information and the giving of access to documents by an entity to which this Act does not apply or to which this Act does not apply in relation to a particular function.

#### **5 Relationship with other Acts requiring publication or access**

Without limiting section 4, this Act does not affect the operation of another Act or administrative scheme that—

- (a) requires information concerning documents in the possession, or under the control, of government to be made available to members of the community; or
- (b) enables a member of the community to access documents in the possession, or under the control, of government; or
- (c) requires the publication of information concerning government operations;

whether or not on payment of a charge.

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

This Act overrides the provisions of other Acts prohibiting the disclosure of information (however described).

*Notes—*

- 1 The Parliament considers that, unless the information is personal information of the applicant, information the disclosure of which is prohibited under a provision of an Act mentioned in schedule 3, section 12 is information the disclosure of which would, on balance, be contrary to the public interest—see section 44(2)(a) and schedule 3, section 12.
- 2 This information is called exempt information and, under section 47(3)(a), 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 48(3).

## **7 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—*

See, for example, the *Public Records Act 2002*, section 13.

## **8 Relationship with Information Privacy Act**

- (1) The Information Privacy Act also provides for applications for access to documents of an agency or Minister but only to the extent the documents contain the applicants' personal information.
- (2) The Information Privacy Act also provides for applications to amend documents to the extent the documents contain the applicants' personal information.
- (3) If, on its face, an access application purportedly made under the Information Privacy Act should have been made under this Act because the application is for access to a document other than to the extent it contains the applicant's personal information, the Information Privacy Act, section 54 applies.

*Notes—*

- 1 Under the Information Privacy Act, section 54—



- 
- the applicant is given an opportunity to change the application so it is an application that can be made under the Information Privacy Act or to pay the application fee payable under this Act and have the application dealt with under this Act; or
  - the application may continue to be dealt with under the Information Privacy Act but is potentially subject to a decision under section 32(1)(b)(i), as applied by the Information Privacy Act, that the application is outside the Act's scope.
- 2 If the applicant pays the application fee payable under this Act, the applicant is taken to have made the application under this Act on the date of the payment—see the Information Privacy Act, section 54(4).
  - 3 To facilitate this situation, the approved form for an access application under this Act is the same as the approved form for an access application under the Information Privacy Act and agencies will make appropriate administrative arrangements.

## 9 Act binds State

This Act binds the State.

# Part 2 Interpretation

## 10 Definitions

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

## 11 Meaning of *document to which this Act does not apply*

In this Act, a *document to which this Act does not apply* means a document mentioned in schedule 1.

## 12 Meaning of *document of an agency*

In this Act, *document*, of an agency, means a document, other than a document to which this Act does not apply, in the possession, or under the control, of the agency whether

brought into existence or received in the agency, and includes—

- (a) a document to which the agency is entitled to access; and
- (b) a document in the possession, or under the control, of an officer of the agency in the officer's official capacity.

### 13 Meaning of *document* of a Minister

In this Act, *document*, of a Minister, means a document, other than a document of an agency or a document to which this Act does not apply, in the possession, or under the control, of the Minister that relates to the affairs of an agency, and includes—

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

*Note—*

*Minister* is defined to include an Assistant Minister—see schedule 5.

### 14 Meaning of *agency*

- (1) In this Act, an *agency* means—
  - (a) a department; or
  - (b) a local government; or
  - (c) a public authority; or
  - (d) a government owned corporation; or
  - (e) a subsidiary of a government owned corporation.
- (2) However, in this Act, *agency* does not include an entity to which this Act does not apply.

*Note—*

See section 17 for entities to which this Act does not apply. Also, under section 26, an application may not be made to the information commissioner, RTI commissioner or privacy commissioner.

(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) without limiting paragraph (a) and to remove any doubt, it is declared that a school council is not a separate agency, but is taken to be comprised within the department in which the *Education (General Provisions) Act 2006* is administered; and
- (c) a reference to an agency includes a reference to a body that is taken to be comprised within the agency.

(4) In this section—

*school council* means a school council established under the *Education (General Provisions) Act 2006*, section 79.

## 15 Local government references for this Act

A reference to local government includes a reference to the Wide Bay Water Corporation.

## 16 Meaning of *public authority*

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

*Note—*

Under the *Acts Interpretation Act 1954*, schedule 1—  
*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;
  - (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;
  - (ca) a rail government entity under the *Transport Infrastructure Act 1994*;
  - (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 a 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—

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*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.

**17 Meaning of *entity to which this Act does not apply***

In this Act, an *entity to which this Act does 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.

**18 Meaning of *processing period, revision period and transfer period***

In this Act—

*processing period*, for an 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 35(1)—the period during which, under section 35(3), the agency or Minister may continue to consider the application;
  - (c) if the applicant is given a charges estimate notice under section 36—the revision period;
  - (d) if the application involves consultation with a relevant third party under section 37—10 business days;

- (e) if the applicant is given a notice under section 42(1)(a)—the prescribed consultation period under section 42.

**revision period**, for an application, means the period starting on the date of the first charges estimate notice given under section 36 and ending on the day the applicant confirms the application or, if the applicant narrows the application, confirms the changed application.

**transfer period**, for an 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.

## Chapter 2      Disclosure other than by application under this Act

### 19      Other ways of accessing information

Information may be accessed other than by application under this Act.

*Examples—*

- 1 A document may be accessed under administrative arrangements made by an agency, including under its publication scheme or disclosure log or under another Act.
- 2 A document may be available for public inspection under the *Public Records Act 2002* or in a public library.
- 3 A document may be commercially available.

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## 20 Requirement for policy documents to be publicly available

- (1) An agency must make copies of each of its policy documents available for inspection and purchase by the public.
- (2) However, nothing in this section prevents an agency from deleting exempt information or contrary to public interest information from a copy of a policy document.
- (3) A person must not be subjected to any prejudice because of the application of the provisions of an agency's policy document (other than provisions the agency is permitted to delete from a copy of the document) to any act or omission of the person if, at the time of the act or omission—
  - (a) the policy document was not available for inspection and purchase; and
  - (b) the person was not aware of the provisions; and
  - (c) the person could lawfully have avoided the prejudice had the person been aware of the provisions.

## 21 Requirement for publication scheme

- (1) An agency, other than an excluded entity, must publish a scheme (a *publication scheme*) setting out—
  - (a) the classes of information that the agency has available; and
  - (b) the terms on which it will make the information available, including any charges.
- (2) However, an agency (the *relevant agency*) may comply with subsection (1) if another agency publishes a scheme setting out—
  - (a) the classes of information that the relevant agency has available; and
  - (b) the terms on which the relevant agency or other agency will make the information available, including any charges.

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- (3) An agency publishing a publication scheme must ensure that the publication scheme complies with any guidelines about publication schemes published by the Minister on the Minister's website.
- (4) In this section—  
*excluded entity* means a prescribed entity under section 16.

## **22 Disclosure under publication scheme**

Without limiting another way an agency may disclose information, it may disclose information under a publication scheme.

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

## **Part 1 Right to access**

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

- (1) Subject to this Act, a person has a right to be given access under this Act to—
  - (a) documents of an agency; and
  - (b) documents of a Minister.

*Notes—*

- 1 See part 2 for how to exercise this right to access.
- 2 Exclusions of the right are provided for under part 4 (which provides particular circumstances where an entity may refuse to deal with an application) and section 47 (which provides grounds on which an entity may refuse access).
- 3 A limitation on the right is set out in section 73 (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 27 deems an access application to apply only to documents that are, or may be, in existence on the day the application is received.

## Part 2 Access application

### 24 Making access application

- (1) A person who wishes to be given access to a document of an agency or a document of a Minister under this Act may apply to the agency or Minister for access to the document.

*Notes—*

- 1 *Minister* is defined to include an Assistant Minister—see schedule 5.
  - 2 Section 25 provides for access applications by parents for children and section 190 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*. This may be particularly relevant for section 66 (Applicant under financial hardship).
- (2) The application must—
- (a) be in the approved form and be accompanied by the application fee; 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; and
  - (d) state whether access to the document is sought for the benefit of, or use of the document by—
    - (i) the applicant; or
    - (ii) another entity; and

*Example for paragraph (d)(ii)—*

A journalist makes an access application for a document for use of the document by an electronic or print media organisation.

- (e) if access to the document is sought for the benefit of, or use of the document by, an entity other than the applicant—the name of the other entity.
- (3) Also, if the application is for access to a document containing personal information of the applicant, 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 25, evidence the agent is the child’s parent
- (4) The application fee mentioned in subsection (2)(a) may not be waived.

*Note—*

However, an application fee must be refunded if a deemed decision is made—see section 46(1).

- (5) In this section—

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

## **25 Making access applications for children**

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

*Notes—*

- 1 Section 190 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*. This may be particularly relevant for section 66 (Applicant under financial hardship).

(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.

## **26 Access application may not be made to commissioner**

An access application may not be made or transferred to the information commissioner, the RTI commissioner or the privacy commissioner.

## **27 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 54 (a *post-application document*).
- (3) If the agency or Minister gives the applicant access to a post-application document—
  - (a) no processing charge or 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.

## **28 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.

## **29 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 section 52(2).

## **Part 3                      Dealing with application**

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

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

- (1) An access 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 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 section 51;
- (b) whether to refuse access under section 47(3)(d);
- (c) whether to give access despite being able to refuse access under section 47(3)(d);
- (d) whether to give a direction under section 77(2);
- (e) whether to approve a healthcare professional under section 77(2).

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

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

- making a new decision under section 80(2)
- giving notice under section 83(3)

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

- (1) An access 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—

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- (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 application, includes deal with an application for internal review in relation to the access application.

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

- making a new decision under section 80(2)
- giving notice under section 83(3)

*healthcare decision* see section 30.

## Division 2 Preliminary contact with applicant

### 32 Application outside scope of Act

- (1) This section applies if—
- (a) a person purports to make an application under this Act to an entity for access to 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 a document to which this Act does not apply;
    - (ii) the entity is an entity to which this Act does not apply;
    - (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.

### **33 Noncompliance with application requirement**

- (1) This section applies if—
  - (a) a person purports to make an access application for a document to an agency or Minister; and
  - (b) the application does not comply with all relevant application requirements.
- (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 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) Subsection (4) does not limit section 32.
- (6) 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.
- (7) In this section—



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*relevant application requirement*, for an access application, means a matter set out in section 24(2) or (3) that is required for the application.

### **34 Application for personal information**

- (1) This section applies if, on its face, an access application made under this Act could have been made under the Information Privacy Act because the application is for access to a document to the extent it contains the applicant's personal information.
- (2) The agency or Minister must, within 15 business days after the application is received, inform the applicant that—
  - (a) the application could have been made under the Information Privacy Act without any application fee or processing charge being payable; and
  - (b) the applicant may either—
    - (i) ask for the application to be dealt with under the Information Privacy Act; or
    - (ii) confirm the application as an application under this Act.
- (3) If the applicant asks for the application to be dealt with under the Information Privacy Act—
  - (a) the applicant is taken to have made the application under the Information Privacy Act on the date of the request; and
  - (b) any application fee paid by the applicant must be refunded as soon as practicable.
- (4) However, the application continues to be dealt with as an application under this Act if—
  - (a) the applicant confirms the application as an application under this Act; or

- (b) the applicant does not, within a reasonable time, either make the request, or give the confirmation, mentioned in subsection (2)(b).

### **35 Longer processing period**

- (1) At any time before a deemed decision is taken to have been made in relation to an access 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).
- (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 under this Act.
- (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 prescribed written notice of the considered decision and the considered decision is potentially subject to review under this Act.

### **36 Schedule of relevant documents and charges estimate notice**

- (1) If a person makes an access application to an agency or Minister, the agency or Minister must—
  - (a) consider whether a processing charge or access charge is payable in relation to the application; and
  - (b) before the end of the processing period for the application, give the applicant—

- (i) a schedule of relevant documents for the applicant unless the applicant waives the requirement; and
  - (ii) a charges estimate notice.
- (2) After receiving a charges estimate notice, the applicant may consult with the agency or Minister with a view to narrowing the application to reduce the applicable charges.
  - (3) If the applicant does not confirm, narrow or withdraw the access application within the prescribed period, the applicant is taken to have withdrawn the applicant's application at the end of the prescribed period.
  - (4) If the applicant narrows the access application within the prescribed period, the agency or Minister must, before the end of the processing period for the application, give the applicant a new charges estimate notice.
  - (5) No more than 2 charges estimate notices may be given in relation to an access application.
  - (6) Also, subsections (2) to (4) do not apply if a decision is made, under part 6, division 3, to waive charges.
  - (7) In this section—

*charges estimate notice*, for an access application, means a written notice stating the following details—

- (a) if a request has been made to an agency or Minister for waiver of charges—the agency's or Minister's decision on whether charges will be waived under part 6, division 3;
- (b) the agency's or Minister's estimate of the amount of any processing charge or access charge;
- (c) the basis on which the estimate is made;
- (d) the day the decision was made;
- (e) the name and designation of the person making the decision;
- (f) the effect of subsections (2) and (3);

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- (g) any rights of review 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.

***prescribed period***—

- 1 The ***prescribed period*** is 20 business days from the date of the charges estimate notice or any longer period agreed under paragraph 2.
- 2 The applicant and the agency or Minister may agree to extend the prescribed period.

***schedule of relevant documents***—

- 1 For an access application, a ***schedule of relevant documents*** is a schedule that—
  - (a) sets out and gives a brief description of the classes of documents relevant to the application in the possession, or under the control, of the agency or Minister; and
  - (b) sets out the number of documents in each class.
- 2 However, an agency or Minister is not required to include any exempt information or contrary to public interest information in the schedule.

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

### **37                      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—
  - (a) to obtain the views of the relevant third party about whether—

- (i) the document is a document to which this Act does not apply; or
    - (ii) the information is exempt information or contrary to public interest information; and
  - (b) to inform the relevant third party that if access is given to the document because of an access application, access may also be given to the document under a disclosure log.
- (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—
- (a) the agency or Minister obtains the views of the relevant third party and the relevant third party considers—
    - (i) the document is a document to which this Act does not apply; 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 to which this Act does apply; 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

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- (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 under this Act 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.

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

## Division 4                      Transfers

### 38            Transfer of application

- (1) In this section—
- agency* includes a Minister.
- (2) An agency to which an 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.

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- (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 more than 1 document; and
    - (b) 1 or more of the documents is a document mentioned in subsection (2)(a);this section (other than subsections (5) and (6)) applies to each of the documents as if separate applications had been made to the agency for each of the documents.
  - (5) If part of an application is transferred under this section and the transferred part of the application relates to a document that is not personal information of the applicant, a separate application fee is payable for the transferred part of the application.
  - (6) However, if the part of the application which is not transferred under this section relates only to a document that is personal information of the applicant, subsection (5) applies only to the extent that there is a transfer to more than 1 agency.

## **Part 4 Refusal to deal with application**

### **39 Pro-disclosure bias in deciding to deal with applications**

- (1) It is the Parliament's intention that if an access application is made to an agency or Minister, the agency or Minister should deal with the application unless this would, on balance, be contrary to the public interest.
- (2) Sections 40, 41 and 43 state the only circumstances in which the Parliament considers it would, on balance, be contrary to the public interest to deal with an access application.
- (3) However, it is the Parliament's intention that this Act should be administered with a pro-disclosure bias and an agency or Minister may deal with an access application even if this Act

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

#### **40 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.
- (2) The agency or Minister may refuse to deal with the application without having identified any or all of the documents.

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

- (1) An agency or Minister may refuse to deal with an access application or, if the agency or Minister is considering 2 or more access 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—



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- (a) in identifying, locating or collating any documents in the filing system of the agency or the Minister's office; or
  - (b) in deciding whether to give, refuse or defer access to any documents, or to give access to edited copies of any documents, including resources that would have to be used—
    - (i) in examining any documents; or
    - (ii) in consulting in relation to the application with a relevant third party under section 37; or
  - (c) in making a copy, or edited copy, of any documents; or
  - (d) in notifying any final decision on the application.
- (3) In deciding whether to refuse, under subsection (1), to deal with an access application, an agency or Minister must not have regard to—
- (a) any reasons the applicant gives for applying for access; or
  - (b) the agency's or Minister's belief about what are the applicant's reasons for applying for access.

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

- (1) An agency or Minister may refuse to deal with an access application under section 41 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 41 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).

## 43 Previous application for same documents

- (1) This section applies if—

- (a) an applicant makes an access application, whether under this Act or the Information Privacy 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—
    - (i) does not include an access application taken to have been withdrawn under section 36(3) or 42(4); and
    - (ii) if an access application has been narrowed under section 36 or 42—means only the access application as changed; and
  - (b) the first application, if made under the Information Privacy Act—
    - (i) does not include an access application taken to have been withdrawn under section 61(4) of that Act; and
    - (ii) if an access application has been narrowed under section 61 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—

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- (i) the applicant had been given notice under section 54 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 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; 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 Information Privacy Act—
- (i) the applicant had been given notice under section 68 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 chapter 3 of 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 67 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 Information Privacy Act; or
  - (b) an external review under this Act or the Information Privacy Act; or
  - (c) a proceeding under part 11 or under the Information Privacy Act, chapter 3, part 11.
- (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.

## Part 5 Decision

### 44 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 schedule 3 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 section 49 the steps, and, in schedule 4, factors, for deciding, for other types of information, whether disclosure would, on balance, be contrary to the public interest.

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- (3) Also, sections 50 and 51 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 even if this Act provides that access to the document may be refused.

#### **45 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 charge must be paid before access is given; and
- (b) give the person written notice of the decision under section 54.

#### **46 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—
  - (a) 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; and
  - (b) the application fee must be refunded as soon as practicable after the end of the processing period.
- (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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## 47 Grounds on which access may be refused

- (1) This section sets out grounds on which access may be refused.
- (2) It is the Parliament's intention that—
  - (a) the grounds 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.
- (3) On an application, an agency may refuse access to a document of the agency and a Minister may refuse access to a document of the Minister—
  - (a) to the extent the document comprises exempt information under section 48; or
  - (b) to the extent the document comprises information the disclosure of which would, on balance, be contrary to the public interest under section 49; or
  - (c) to the extent the document is sought under an application by or for a child and comprises the child's personal information the disclosure of which would not be in the child's best interests under section 50; or
  - (d) to the extent the document comprises an applicant's relevant healthcare information the disclosure of which might be prejudicial to the physical or mental health or wellbeing of the applicant under section 51; or
  - (e) because the document is nonexistent or unlocatable as mentioned in section 52; or
  - (f) because other access to the document is available as mentioned in section 53.

*Note—*

Only a principal officer, Minister or appointed healthcare professional may refuse access to a document of an agency as mentioned in paragraph (d)—see sections 30(5) and 31(2).

- (4) In this section—

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

## 48 Exempt information

- (1) If an access application is made to an agency or Minister for a document, the agency or Minister must decide to give access to the document unless disclosure would, on balance, be contrary to the public interest.
- (2) Schedule 3 sets out the types of information the disclosure of which the Parliament has considered would, on balance, be contrary to the public interest.
- (3) However, despite an agency or Minister being able, under section 47(3)(a), to refuse access to all or part of a document, the agency or Minister may decide to give access.
- (4) In this Act—  
*exempt information* means the information that is exempt information under schedule 3.

## 49 Contrary to public interest

- (1) If an access application is made to an agency or Minister for a document, the agency or Minister must decide to give access to the document unless disclosure would, on balance, be contrary to the public interest.
- (2) This section sets out the steps, and, in schedule 4, factors, the Parliament considers appropriate for deciding, for types of information (other than exempt information), whether disclosure would, on balance, be contrary to the public interest.
- (3) If it is relevant for an agency or Minister to consider whether, on balance, disclosure of information would be contrary to the public interest, the agency or Minister must undertake the following steps—
  - (a) identify any factor that is irrelevant to deciding whether, on balance, disclosure of the information would be contrary to the public interest, including any factor mentioned in schedule 4, part 1 that applies in relation to the information (an *irrelevant factor*);



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- (b) identify any factor favouring disclosure that applies in relation to the information (a ***relevant factor favouring disclosure***), including any factor mentioned in schedule 4, part 2;
  - (c) identify any factor favouring nondisclosure that applies in relation to the information (a ***relevant factor favouring nondisclosure***), including any factor mentioned in schedule 4, part 3 or 4;
  - (d) disregard any irrelevant factor;
  - (e) having regard to subsection (4), balance any relevant factor or factors favouring disclosure against any relevant factor or factors favouring nondisclosure;
  - (f) decide whether, on balance, disclosure of the information would be contrary to the public interest;
  - (g) unless, on balance, disclosure of the information would be contrary to the public interest, allow access to the information subject to this Act.
- (4) The factors mentioned in schedule 4, part 4 are factors where disclosure could reasonably be expected to cause a public interest harm (***harm factors***) but the fact that 1 or more of the relevant factors favouring nondisclosure is a harm factor does not of itself mean that, on balance, disclosure of the information would be contrary to the public interest.
- (5) However, despite an agency or Minister being able, under section 47(3)(b), to refuse access to all or part of a document, the agency or Minister may decide to give access.

## 50 **Contrary to child's best interests**

- (1) If an access application is made to an agency or Minister for a document, the agency or Minister must decide to give access to the document unless disclosure would, on balance, be contrary to the public interest.
- (2) Despite schedule 3, section 12(2) and schedule 4, part 2, item 8, in relation to an application by or for a child for access to a document, the Parliament considers it would, on balance, be

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contrary to the public interest to give access to the document to the extent it comprises personal information of the child if the disclosure of the information would not be in the child's best interests.

- (3) In considering whether disclosure of the information would not be in the best interests of the child, the agency or Minister must, unless the access application was made for the child, have regard to whether the child has the capacity to—
  - (a) understand the information and the context in which it was recorded; and
  - (b) make a mature judgment as to what might be in his or her best interests.
- (4) However, despite an agency or Minister being able, under section 47(3)(c), to refuse access to all or part of a document, the agency or Minister may decide to give access.
- (5) In this section—

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

## **51 Contrary to applicant's best interests—healthcare information**

- (1) If an access application is made to an agency or Minister for a document, the agency or Minister must decide to give access to the document unless disclosure would, on balance, be contrary to the public interest.
- (2) Despite schedule 3, section 12(2) and schedule 4, part 2, item 7, the Parliament considers it would, on balance, be contrary to the public interest to give access to a document to the extent it comprises relevant healthcare information of the applicant if the disclosure of the information might be prejudicial to the physical or mental health or wellbeing of the applicant.

*Note—*

Only a principal officer, Minister or appointed healthcare professional may decide whether disclosure might be prejudicial to the physical or mental health or wellbeing of the applicant—see sections 30(5) and 31(2).

- (3) However, despite an agency or Minister being able, under section 47(3)(d), to refuse access to all or part of a document, the agency or the Minister may decide to give access.

*Notes—*

- 1 Only a principal officer, Minister or appointed healthcare professional may decide to give access under subsection (3)—see sections 30(5) and 31(2).
- 2 Also, relevant healthcare information to which access is refused may ultimately be disclosed to the applicant by the applicant's nominated healthcare professional under section 77.

## 52 Document nonexistent or unlocatable

- (1) For section 47(3)(e), a document is nonexistent or unlocatable if—

- (a) the agency or Minister dealing with the application for access is satisfied the document does not exist; or

*Example—*

a document that has not been created

- (b) the agency or Minister dealing with the application for access is satisfied—

- (i) the document has been or should be in the agency's or Minister's possession; and
- (ii) all reasonable steps have been taken to find the document but the document can not be found.

*Examples—*

- a document that has been lost
- a document that has been disposed of under an authority given by the State Archivist

*Note—*

Under the *Public Records Act 2002*, section 13, it is an offence to dispose of a public record without authority.

- (2) Before an agency or Minister may be satisfied under subsection (1)(a) that a prescribed document does not exist, a search for the document from a backup system is required, but

only if the agency or Minister considers the document has been kept in, and is retrievable from, the backup system.

(3) Subject to subsection (2), a search for a document from a backup system is not required before the document is nonexistent or unlocatable for section 47(3)(e).

(4) In this section—

***prescribed document*** means a document that—

- (a) is a document required to be kept under the *Public Records Act 2002*; and
- (b) is not a document that the agency or Minister could lawfully have disposed of under the *Public Records Act 2002*.

### **53 Other access available**

For section 47(3)(f), other access is available to a document if—

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

*Note—*

A document mentioned in an agency's disclosure log is a document an applicant can reasonably get access to under arrangements made by the agency.

- (b) the document is reasonably available for public inspection under the *Public Records Act 2002* or in a public library; or
- (c) the document—
  - (i) is stored for preservation or safe custody in the Queensland State Archives; and
  - (ii) is a copy of a document of an agency; or
- (d) the document is commercially available.

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## 54 Notification of decision and reasons

- (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 processing and access charges payable by the applicant; and
    - (ii) the period within which the applicant may access the document under section 69 (the *access period*); and
    - (iii) details of the publication of the document, or of information about the document, that is required or permitted by section 78 or 78A, if the applicant accesses the document within the access period and the document does not contain personal information of the applicant; and
    - (iv) details of the publication of the document, or of information about the document, that is required or permitted by section 78 or 78A, if the applicant fails to access the document within the access period and the document does not contain personal information of the applicant;
  - (b) if access is to be given to a copy of a document subject to the deletion under section 73 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 74 of exempt information—
  - (i) the fact that the document is such a copy; and
  - (ii) the provision of 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 75 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 section 49; and
  - (iii) the reasons for the decision that, on balance, disclosure would be contrary to the public interest under section 49;
- (e) if access to a document is to be given subject to deferral under section 72—
  - (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 72;
- (f) if dealing with the access application is refused under section 40—
  - (i) the provision of schedule 3 under which the information in the document is exempt information; and
  - (ii) the reasons for the decision classifying the information as exempt information;
- (g) if access to a document is refused under section 47(3)—

- (i) the processing charges payable by the applicant; and
- (ii) the provision of section 47(3) under which access is refused; and
- (iii) if access is refused under section 47(3)(a)—
  - (A) the provision of 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
- (iv) if access is refused under section 47(3)(b)—
  - (A) the factors identified as favouring disclosure and the factors identified as favouring nondisclosure under section 49; and
  - (B) the reasons for the decision that, on balance, disclosure would be contrary to the public interest under section 49; and
- (v) if access is refused under section 47(3)(c)—the reason under section 50 the agency or Minister considers access would not be in the best interests of the child; and
- (vi) if access is refused under section 47(3)(d)—the reason under section 51 the agency or Minister considers that the disclosure to the applicant might be prejudicial to the physical or mental health or wellbeing of the applicant; and
- (vii) if access is refused under section 47(3)(e)—the provision of section 52(1) under which the document is nonexistent or unlocatable; and
- (viii) if access is refused under section 47(3)(f)—the type of access to the document under section 53 that is available.

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- (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.

## **55 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 a prescribed written notice that does not include the details mentioned in section 191(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 section 47(3) to the extent it comprised prescribed information.
- (3) The prescribed written notice may be given in a schedule of relevant documents.
- (4) 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 47.

*Note—*

A decision refusing access to a document under section 47 is a reviewable decision—see schedule 5, definition *reviewable decision*, paragraph (e).



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## **Part 6                      Charging regime**

### **Division 1                  Preliminary**

#### **56            Meaning of *processing charge***

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

- (a) searching for or retrieving the document; and
- (b) making, or doing things related to making, a decision on the application.

#### **57            Meaning of *access charge***

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

#### **58            Duty in relation to processing charge and access charge**

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

#### **59            No processing charge for personal information**

To remove any doubt, it is declared that no processing charge is payable in relation to a document to the extent the document contains information that is personal information of the applicant.

## **Division 2                      Payment of charges**

### **60            Requirement to pay charges**

- (1) Before an applicant for an access application for a document is given access to the document, the applicant must pay the applicable processing charge and access charge for the application.
- (2) An applicant for an access application for a document must pay the applicable processing charge for the application even if—
  - (a) access to the document is refused under this Act; or
  - (b) the applicant does not seek to access the document within the access period mentioned in section 69 after a decision is made to give access.

### **61            Amount of charges**

- (1) The amount payable for the processing charge for an access application may not be more than the estimated processing charge set out in the final charges estimate notice for the application.
- (2) The amount payable for the access charge for an access application may not be more than the estimated access charge set out in the final charges estimate notice for the application.

*Note—*

Also, if an applicant is given access to a document in a form different to the form of access requested by the applicant, the applicant must not be required to pay a charge that is more than the charge that would have been payable if access had been given in the form requested by the applicant—see section 68(5).

### **62            Refund of excess payment**

If an applicant pays an agency or Minister an amount for the processing charge and access charge that is more than the amount of the processing charge and access charge ultimately

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payable under this Act, the agency or Minister must refund the difference to the applicant.

## **Division 3                      Waiver of charges**

### **63            Waiver under div 3 only**

A processing charge or access charge may be waived only under this division.

### **64            Uneconomical to charge**

(1) A processing charge, or 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) estimating and otherwise complying with this Act in relation to the charge; and
- (b) receiving payment of the charge.

### **65            Agency or Minister has delayed**

A processing charge may be waived under section 93(2).

### **66            Applicant under financial hardship**

(1) This section applies if, at any time, an applicant makes a written request to an agency or Minister that the applicable processing charge or access charge for the application be waived.

(2) The agency or Minister must decide to waive any processing charge, or access charge, for the application if—

- (a) for an applicant who is an individual—

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- (i) the request is accompanied by a copy of a concession card; and
  - (ii) the agency or Minister considers the applicant is the holder of a concession card; and
  - (iii) 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; or
- (b) for an applicant that is a non-profit organisation—there is in effect a decision of the information commissioner that the non-profit organisation has financial hardship status under section 67.
- (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) However, subsection (3) does not apply if the agency or Minister has given the applicant a charges estimate notice that includes a decision that charges are not to be waived.
- (5) 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.

## 67 Financial hardship status for non-profit organisation

- (1) The information commissioner may, on written application by a non-profit organisation, decide whether a non-profit organisation has financial hardship status by considering the nature and size of the organisation's funding base and the amount of the organisation's liquid funds.

*Example—*

The fact an organisation receives significant government funding may indicate its finances are strictly limited.

- (2) The commissioner must give a non-profit organisation that has applied for financial hardship status prescribed written notice of the decision.
- (3) The commissioner's decision that a non-profit organisation has financial hardship status has effect for 1 year from the date of the decision.
- (4) While there is in effect a decision that a non-profit organisation has financial hardship status—
  - (a) the non-profit organisation must give the commissioner written notice of any substantial improvement in the organisation's financial circumstances as soon as practicable after the improvement happens; and
  - (b) the commissioner may revoke the decision if the commissioner considers that the non-profit organisation's financial circumstances at any time result in the commissioner considering that the organisation should not have financial hardship status.
- (5) If the commissioner revokes a decision that a non-profit organisation has financial hardship status, the commissioner must, as soon as practicable, give the organisation prescribed written notice of the revocation.
- (6) If an organisation that has made an access application to an agency or Minister receives a notice under subsection (5) during the processing period for the application, the organisation must immediately advise the agency or Minister that the decision that the organisation has financial hardship status has been revoked.
- (7) If the commissioner gives a non-profit organisation written notice of a decision that it is not to be given financial hardship status, the non-profit organisation may not make another application for a decision under subsection (1) unless—
  - (a) there is a substantial deterioration in its financial circumstances; or

- (b) it is more than 1 year since the date of the commissioner's decision.

## **Part 7 Giving access**

### **Division 1 Giving access to applicant**

#### **68 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
    - (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;

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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 73 to 75.
- (3) Subject to this section and sections 73 to 75, 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 a charge that is more than the charge that would have been payable if access had been given in the form requested by the applicant.
- (6) Access under subsection (1)(a) to a document to which section 181 or 182 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.

## **69 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 37(3)(d) or 72, 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.
- (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 commissioner given under section 90(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 processing charge and access charge payable under part 6.

## 70 Precautions

- (1) This section applies if—
  - (a) an access application is made to an agency or Minister for a document containing personal information of a person (the *first person*); and
  - (b) disclosure of the information would, on balance, be contrary to the public interest under 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.
- (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.

## 71 Precautions for children

- (1) This section applies if—
  - (a) an access application states that it is made for a child by the child's parent; and
  - (b) the application is for documents containing the child's personal information.

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- (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 25.  
*parent* see section 25.

## **72 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);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).

## **73 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

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considers it is reasonably practicable to give access to the copy.

#### **74 Deletion of exempt information**

- (1) This section applies 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.
- (2) The agency or Minister must give access to a copy of the document from which the exempt information has been deleted.
- (3) This section is subject to section 55.

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

- (1) This section applies if—
  - (a) an access application is made for 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.
- (2) The agency or Minister must give access to a copy of the document from which the contrary to public interest information has been deleted.
- (3) This section is subject to section 55.

#### **75A Deletion of contrary to child's best interests information**

- (1) This section applies if—
  - (a) an access application is made by or for a child for a document containing personal information of the child, the disclosure of which would not be in the child's best interests under section 50; and

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- (b) it is practicable to give access to a copy of the document from which the personal information has been deleted.
- (2) The agency or Minister must give access to a copy of the document from which the personal information has been deleted.
- (3) This section is subject to section 55.

### **75B Deletion of contrary to applicant's best interests information—relevant healthcare information**

- (1) This section applies if—
  - (a) an access application is made for a document containing relevant healthcare information of the applicant, the disclosure of which might be prejudicial to the physical or mental health or wellbeing of the applicant under section 51; and
  - (b) it is practicable to give access to a copy of the document from which the relevant healthcare information has been deleted.
- (2) The agency or Minister must give access to a copy of the document from which the relevant healthcare information has been deleted.
- (3) This section is subject to section 55.

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

- (1) This section applies if under this Act, other than under section 47(3)(d), an agency or a Minister refuses an applicant access to a document to the extent it comprises personal information of the applicant.
- (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 personal

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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—
- (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.

## **77 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 section 47(3)(d).
- (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 30(5) and 31(2).

- (3) The nominated and approved healthcare professional may decide—

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- (a) whether or not to disclose all or part of the relevant healthcare information contained in the document to the applicant; and
- (b) the way in which to disclose the information to the applicant.

## **Division 2                      Giving access to others**

### **78            Disclosure logs—departments and Ministers**

- (1) This section applies if a person makes a valid access application to a department or a Minister.
- (2) The department or Minister must, as soon as practicable after the application is made, include the following information about the application in a disclosure log—
  - (a) details of the information being sought by the applicant, as stated in the application;
  - (b) the date the application was made.
- (3) If the department or Minister decides to give access to a document that does not contain personal information of the applicant and the applicant accesses the document within the access period, the following must be included in a disclosure log as soon as practicable after the applicant accesses the document—
  - (a) a copy of the document;
  - (b) the applicant's name;
  - (c) if access to the document was sought for the benefit of, or use of the document by, an entity other than the applicant—the name of the other entity.
- (4) If the department or Minister decides to give access to a document that does not contain personal information of the applicant and the applicant fails to access the document within the access period, details identifying the document, and information about the way in which the document may be

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accessed and any applicable charge, must be included in a disclosure log as soon as practicable after the access period ends.

- (5) A person may access a document the details of which are included in a disclosure log under subsection (4) on payment of the applicable charge, and in the way mentioned in the disclosure log.
- (6) After a person accesses a document under subsection (5)—
  - (a) no further charge is payable for access to the document by any person; and
  - (b) a copy of the document must be included in a disclosure log.
- (7) However, the inclusion of a document or information in a disclosure log under this section is subject to section 78B(2).
- (8) In this section—

*valid access application* means an access application that—

  - (a) is in a form complying with all relevant application requirements; and
  - (b) is not an application to which section 32 applies.

## **78A Disclosure logs—other agencies**

- (1) If an agency makes a decision in relation to an access application to give access to a document that does not contain personal information of the applicant and the applicant accesses the document within the access period—
  - (a) a copy of the document may be included in a disclosure log, if this is reasonably practicable; or
  - (b) otherwise—details identifying the document and information about the way in which the document may be accessed may be included in a disclosure log.
- (2) A person may access a document the details of which are included in a disclosure log under subsection (1)(b) for no charge and in the way mentioned in the disclosure log.

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- (3) If an agency decides to give access to a document that does not contain personal information of the applicant and the applicant fails to access the document within the access period, details identifying the document, and information about the way in which the document may be accessed and any applicable charge, may be included in a disclosure log.
- (4) A person may access a document the details of which are included in a disclosure log under subsection (3) on payment of the applicable charge, and in the way mentioned in the disclosure log.
- (5) After a person accesses a document under subsection (4)—
  - (a) no further charge is payable for access to the document by any person; and
  - (b) a copy of the document may be included in a disclosure log.
- (6) However, the inclusion of a document or information in a disclosure log under this section is subject to section 78B(2).
- (7) In this section—

*agency* does not include a department or a prescribed entity under section 16.

## **78B Requirements about disclosure logs**

- (1) An agency maintaining a disclosure log must ensure the disclosure log complies with any guidelines published by the Minister on the Minister's website (to the extent the guidelines are consistent with this Act).
- (2) Without limiting subsection (1), an agency must delete from any document or information included in a disclosure log under section 78 or 78A, any information (including an individual's name)—
  - (a) the publication of which is prevented by law; or
  - (b) that may be defamatory; or



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- (c) that, if included in the disclosure log, would unreasonably invade an individual's privacy; or
  - (d) that is, or allows to be ascertained, information—
    - (i) of a confidential nature that was communicated in confidence by a person other than the agency; or
    - (ii) that is protected from disclosure under a contract; or
  - (e) that, if included the disclosure log, would cause substantial harm to an entity.
- (3) In this section—
- agency** includes a Minister but does not include a prescribed entity under section 16.

## Part 8 Internal review

### 79 Definitions for pt 8

In this part—

**internal review** means review under this part.

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

### 80 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 30 and 31.

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- (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.
- (4) Subsection (3) applies despite the *Acts Interpretation Act 1954*, section 27A.

## **81 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 personally;
- (c) a decision by a Minister personally;
- (d) a decision by a healthcare professional appointed under section 30 or 31;
- (e) a decision about the amount of a charge stated in a charges estimate notice.

## **82 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 190 clarifies the powers of those acting for others.

### **83 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 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**

#### **84 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.

#### **85 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.

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

To remove any doubt, it is declared that a decision about the amount of a charge stated in a charges estimate notice is not a reviewable decision for external review.

## **87 Onus**

- (1) On an external review, the agency or Minister who made the decision under review has the onus of establishing that the 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 37; 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 37.

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## **Division 2                      Application**

### **88            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.

*Note—*

Section 190 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.

### **89            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 person whose views were required to be sought under section 37 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**

### **90            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 94.
- (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).

### **91            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, the information commissioner must inform the agency or Minister of the application as soon as practicable after it is made.

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**92 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.

**93 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 application; and
  - (b) the agency or Minister applies to the commissioner to allow the agency or Minister further time to deal with the access application.
- (2) The commissioner may allow the agency or Minister further time to deal with the access application subject to the conditions the commissioner considers appropriate, including a condition that the application fee must be refunded or the applicable processing charge must be reduced or waived.
- (3) If the agency or Minister does not deal with the access 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.

**94 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

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- (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—
- (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**

### **95            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



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- (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.

## **96 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 commissioner may request that a participant give further and better particulars of a matter.
  - 2 The commissioner may request that an agency or Minister specifically indicate in a written document the words the agency or Minister considers are exempt information.
- (2) Subsection (1) applies even if the participant who is asked for assistance does not have the onus under section 87.

## **97 Conduct of reviews**

- (1) If, during an external review, the information 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 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.

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

### **98      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.

### **99      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 written 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.

## **100 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.

## **101 Access in particular form**

- (1) This section—
- (a) applies if an external review application is made; but
  - (b) does not apply to an external review of a decision refusing to give access in the form mentioned in section 68(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
  - (b) 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—

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- (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.

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

## 103 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 178.

## **104 Examining witnesses**

- (1) The information commissioner may administer an oath or affirmation to a person required under section 103 to attend before the commissioner and may examine the person on oath or affirmation.
- (2) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the answers the person will give will be true.

*Note—*

A person must not give false or misleading information—see section 177.

## **105 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 application concerned; and
  - (b) decide any matter in relation to the access application that could, under this Act, have been decided by an agency or Minister.

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

## **106 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.

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

- (1) 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

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- (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.
- (2) Despite subsection (1)(b), if an agency or Minister gives the commissioner a copy of a document for an external review, the commissioner may destroy the copy at the end of the review.

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

- (1) On an external review, 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—
- (a) information that is claimed to be exempt information or contrary to 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 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 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.

### **109 Exception for successful challenge of s 55(2) notice**

- (1) This section applies if an agency or Minister gives a notice under section 55(2) and the information commissioner is satisfied that the document concerned does not include prescribed information.
- (2) Section 108(3) does not apply.
- (3) Section 110 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 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 119 (*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.



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

### **110      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—
  - (a) a document is to be released because of the external review; and
  - (b) the commissioner has notified a person under section 97(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.

## **111 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**

### **112 Costs of external review**

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

### **113 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—

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- (a) there is evidence that a person subject to the direction of a Minister under section 31 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 another local government—the Minister administering the *Local Government Act 2009*; or
- (d) 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
- (e) in relation to a public authority mentioned in section 16(1)(a), (c)(ii) or (ca)—the Minister administering the Act by or under which the public authority is established; or
- (f) in relation to a public authority mentioned in section 16(1)(d)—the Minister administering the Act by which the office is established; or
- (g) in relation to any other public authority—the Minister declared by regulation to be the responsible Minister in relation to the public authority.

## **Part 10**                      **Vexatious applicants**

### **114**    **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 actions; and
  - (b) 1 of the following applies—
    - (i) the repeated engagement involves an abuse of process for an access action;
    - (ii) a particular access action in which the person engages involves, or would involve, an abuse of process for that access action;
    - (iii) a particular access action in which the person engages would be manifestly unreasonable.
- (3) The commissioner 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 application, an internal review application or an external review application only with the written permission of the commissioner.
- (6) The commissioner may publish—
  - (a) a declaration and the reasons for making the declaration; and
  - (b) a decision not to make a declaration and the reasons for the decision.

(7) The commissioner may publish the name of a person the subject of a declaration under subsection (1) when publishing the declaration and the reasons for making it.

(8) In this section—

***abuse of process***, for an access 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 action;
- (c) seeking to use the Act for the purpose of circumventing restrictions on access to a document or documents imposed by a court.

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

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

***agency*** includes a Minister.

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

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

- (1) The information commissioner may vary or revoke a declaration made under section 114.
- (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.



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**119 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.
- (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.

**120 Application to Queensland Civil and Administrative Tribunal for review of decision about financial hardship status**

A non-profit organisation may apply, as provided under the QCAT Act, to QCAT for a review of a decision of the information commissioner made under section 67.

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

A person subject to a declaration made under section 114 may apply, as provided under the QCAT Act, to QCAT for a review of a decision of the information commissioner to declare the person a vexatious applicant.

## **122 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) 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 118 or on an appeal on a question of law under section 119.
  - (3) In this section—

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

# **Chapter 4 Office of the Information Commissioner**

## **Part 1 General**

### **123 Information Commissioner and office of the information commissioner**

- (1) There is to be an Information Commissioner.
- (2) The commissioner is an officer of the Parliament.
- (3) The Office of the Information Commissioner established under the repealed *Freedom of Information Act 1992* is continued in existence.
- (4) The OIC consists of the commissioner and the staff of the office.



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**124 Office of the information commissioner is a statutory body**

- (1) The OIC is a statutory body for the *Financial Accountability Act 2009* and the *Statutory Bodies Financial Arrangements Act 1982*.
- (2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the OIC's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

## **Part 2 Information Commissioner**

**125 General power**

The information commissioner has power to do all things that are necessary or convenient to be done for or in connection with the performance of the commissioner's functions under an Act.

**126 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 128, 129, 130 or 131; 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*.

**127 Control of the office of the information commissioner**

The information commissioner controls the OIC.

## 128 Support functions

- (1) The functions of the information commissioner include giving information and help to agencies and members of the public on matters relevant to this Act, in particular, by—
  - (a) giving guidance on the interpretation and administration of this Act; and
  - (b) giving information and help to agencies, applicants and third parties at any stage of an access application; and
  - (c) promoting greater awareness of the operation of this Act in the community and within government, including by providing training and educative programs; and
  - (d) monitoring the way the public interest test set out in section 49 is applied by agencies and on external review, consulting experts on its application and keeping agencies informed; and
  - (e) commissioning external research, and consulting experts on the design of surveys, to monitor whether this Act and its administration are achieving this Act's stated objectives; and
  - (f) commenting on any issues relating to the administration of right to information or privacy in the public sector environment; and
  - (g) without limiting paragraph (f), identifying and commenting on legislative and administrative changes that would improve the administration of this Act.
- (2) In this section—

*agency* includes a Minister.

## 129 Decision-making functions

The functions of the information commissioner include—

- (a) deciding applications for extensions of time under schedule 4, part 4, item 1; and

- (b) deciding applications from non-profit organisations for financial hardship status under section 67; and
- (c) making, varying or revoking declarations under section 114 or 115.

### 130 External review functions

- (1) The functions of the information commissioner include investigating and reviewing decisions of agencies and Ministers under chapter 3, part 9.
- (2) The functions of the commissioner also include investigating and reviewing whether, in relation to the decisions, agencies and Ministers have taken reasonable steps to identify and locate documents applied for by applicants.

### 131 Performance monitoring functions

- (1) The functions of the information commissioner include reviewing and reporting on agencies in relation to the operation of this Act and the Information Privacy Act, chapter 3, including by—
  - (a) monitoring, auditing and reporting on agencies' compliance with this Act and the Information Privacy Act, chapter 3; and
  - (b) advising the parliamentary committee of the statistical information (including statistical information about giving access to information other than on an access application) agencies are to give the commissioner for reports under this section; and
  - (c) publishing performance standards and measures for use in reports under this section.
- (2) The commissioner must, as soon as practicable after finishing a review, give a report about the outcome of the review to the parliamentary committee.
- (3) In this section—  
*agency* includes a Minister.

### **132 Power to issue guidelines**

- (1) The information commissioner also has power to issue a guideline about a matter for or in connection with any of the commissioner's functions.
- (2) The commissioner must publish the guideline on the commissioner's website.
- (3) Without limiting subsection (1), the commissioner may issue a guideline about any of the following matters—
  - (a) the interpretation and administration of this Act;
  - (b) the application of the public interest test set out in section 49, including examples of the way it should be and has been applied;
  - (c) the production and management of schedules of relevant documents, particularly to achieve consistency;
  - (d) the process for external reviews, including appropriate timeframes for completion of external reviews;
  - (e) when it is appropriate to apply for a declaration that a person is a vexatious applicant;
  - (f) procedural, technical and sector specific issues in relation to this Act, including documents mentioned in schedule 1 and entities mentioned in schedule 2;
  - (g) what agencies or Ministers should include in reasons for a decision;
  - (h) best practice for agencies to improve service to those seeking to access information;
  - (i) best practice for publication schemes;
  - (j) best practice for administrative access schemes, including disclosure logs.

### **133 Budget and performance**

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

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

### **134 Appointment**

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

### **135 Procedure before appointment**

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

### **136 Term of appointment**

- (1) The information commissioner holds office for the term, of not more than 5 years, stated in the instrument of appointment.
- (2) However, a person being reappointed as information commissioner can not be reappointed for a term that would result in the person holding office as information commissioner for more than 10 years continuously.

### **137 Remuneration and conditions**

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

### **138 Leave of absence**

The information commissioner is entitled to the leave of absence decided by the Governor in Council.

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

- (1) A public service officer who is appointed to the office of information 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 or another entity prescribed under a regulation considers the person would have attained in the ordinary course of progression if the person had continued in employment as a public service officer.

#### **140 Oath before performing duties**

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

#### **140A Declaration of interests**

- (1) This section applies to the information commissioner on appointment.

*Note—*

Appointment includes reappointment. See the *Acts Interpretation Act 1954*, schedule 1, definition *appoint*.

- (2) The information commissioner must, within 1 month, give the Speaker a statement setting out the information mentioned in subsection (3) in relation to—
  - (a) the interests of the information commissioner; and
  - (b) the interests of each person who is a related person in relation to the information commissioner.
- (3) The information to be set out in the statement is the information that would be required to be disclosed under the *Parliament of Queensland Act 2001*, section 69B if the information commissioner were a member of the Legislative Assembly.
- (4) Subsections (5) and (6) apply if, after the giving of the statement—

- (a) there is a change in the interests mentioned in subsection (2); and
  - (b) the change is of a type that would have been required to be disclosed under the *Parliament of Queensland Act 2001*, section 69B if the information commissioner were a member of the Legislative Assembly.
- (5) The information commissioner must give the Speaker a revised statement.
- (6) The revised statement must—
- (a) be given as soon as possible after the relevant facts about the change come to the information commissioner's knowledge; and
  - (b) comply with subsection (3).
- (7) The Speaker must, if asked, give a copy of the latest statement to—
- (a) the Minister; or
  - (b) the leader of a political party represented in the Legislative Assembly; or
  - (c) the Crime and Corruption Commission; or
  - (d) a member of the parliamentary committee; or
  - (e) the integrity commissioner.
- (8) The Speaker must, if asked, give a copy of the part of the latest statement that relates only to the information commissioner to another member of the Legislative Assembly.
- (9) A member of the Legislative Assembly may, by writing given to the Speaker, allege that the information commissioner has not complied with the requirements of this section.
- (10) A reference in this section to an interest is a reference to the matter within its ordinary meaning under the general law and the definition in the *Acts Interpretation Act 1954*, schedule 1 does not apply.
- (11) In this section—



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*integrity commissioner* means the Queensland Integrity Commissioner under the *Integrity Act 2009*.

*related person*, in relation to the information commissioner, means—

- (a) the information commissioner's spouse; or
- (b) a person who is totally or substantially dependent on the information commissioner and—
  - (i) the person is the information commissioner's child; or
  - (ii) the person's affairs are so closely connected with the affairs of the information commissioner that a benefit derived by the person, or a substantial part of it, could pass to the information commissioner.

## **140B Conflicts of interest**

- (1) If the information commissioner has an interest that conflicts or may conflict with the discharge of the information commissioner's responsibilities, the information commissioner—
  - (a) must disclose the nature of the interest and conflict to the Speaker and parliamentary committee as soon as practicable after the relevant facts come to the information commissioner's knowledge; and
  - (b) must not take action or further action concerning a matter that is, or may be, affected by the conflict until the conflict or possible conflict is resolved.
- (2) If the conflict or possible conflict between an interest of the information commissioner and the information commissioner's responsibilities is resolved, the information commissioner must give to the Speaker and parliamentary committee a statement advising of the action the information commissioner took to resolve the conflict or possible conflict.
- (3) A reference in this section to an interest or to a conflict of interest is a reference to those matters within their ordinary

meaning under the general law and, in relation to an interest, the definition in the *Acts Interpretation Act 1954*, schedule 1 does not apply.

#### **141 Restriction on outside employment**

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

#### **142 Resignation**

- (1) The information 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.

#### **143 Acting information commissioner**

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



**146 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 way in which the commissioner's powers under an Act are to be exercised.
- (2) Subsection (1) has effect despite the *Public Service Act 2008*.

## **Part 4 Right to Information Commissioner**

**147 Right to Information Commissioner**

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

**148 Role and function of RTI commissioner**

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

**149 RTI commissioner subject to direction of information commissioner**

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

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## **150 Appointment**

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

## **151 Procedure before appointment**

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

## **152 Term of appointment**

- (1) The RTI commissioner holds office for the term, of not more than 5 years, stated in the instrument of appointment.
- (2) However, a person being reappointed as RTI commissioner can not be reappointed for a term that would result in the person holding office as RTI commissioner for more than 10 years continuously.

## **153 Remuneration and conditions**

- (1) The RTI commissioner must be paid remuneration and other allowances decided by the Governor in Council.
- (2) The remuneration paid to the commissioner must not be reduced during the commissioner's term of office without the commissioner's written agreement.

- (3) In relation to matters not provided for by this Act, the commissioner holds office on the terms and conditions decided by the Governor in Council.

#### **154 Leave of absence**

The information commissioner may approve a leave of absence for the RTI commissioner in accordance with entitlements available to the RTI commissioner under the RTI commissioner's conditions of office.

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

- (1) A public service officer who is appointed to the office of RTI 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 ordinary course of progression if the person had continued in employment as a public service officer.

#### **156 Restriction on outside employment**

- (1) The RTI commissioner must not, without the Minister's prior approval in each particular case—
  - (a) hold any office of profit other than that of RTI commissioner; or
  - (b) engage in any remunerative employment or undertaking outside the duties of the office.

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- (2) Contravention of subsection (1) is misconduct under section 160(a).

### **157 Resignation**

- (1) The RTI 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.

### **158 Acting RTI commissioner**

- (1) The Governor in Council may appoint a person to act as RTI commissioner—
- (a) during a vacancy in the office; or
  - (b) during any period, or during all periods, when the RTI commissioner is absent from duty or from Australia or is, for another reason, unable to perform the duties of the office.
- (2) The acting RTI 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 RTI commissioner.





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of members of the political party or parties in government in the Assembly.

## **162 Suspension on address**

- (1) The Governor may, on an address from the Assembly, suspend a commissioner from office.
- (2) The motion for the address may be moved only by the Premier.
- (3) The Premier may move the motion only if—
  - (a) the Premier has given the commissioner a statement setting out the reasons for the motion; and
  - (b) the statement and any written response by the commissioner have been tabled in the Assembly; and
  - (c) the Premier has consulted with the parliamentary committee about the motion; and
  - (d) agreement to the motion has been obtained from—
    - (i) all members of the parliamentary committee; or
    - (ii) a majority of members of the parliamentary committee, other than a majority consisting wholly of members of the political party or parties in government in the Assembly.
- (4) The commissioner is entitled to be paid salary and allowances for the period of the suspension only if—
  - (a) the Assembly resolves that salary and allowances be paid for the period; or
  - (b) the Assembly does not pass a resolution under paragraph (a) and the Governor in Council approves the payment of salary and allowances for the period.

## **163 Suspension if Assembly not sitting**

- (1) If the Assembly is not sitting, the Governor in Council may suspend a commissioner from office.

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

## 164 Acts Interpretation Act 1954

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

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## Part 6 Proceedings

### 165 Third party proceedings

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

***RTI document*** means a document received, or created, by the commissioner or a member of the staff of the OIC in performing functions under this Act.

***RTI information*** means information that the commissioner or a member of the staff of the OIC 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 a member of the staff of the OIC arising out of the performance of functions under this Act.

### 166 Costs in proceedings

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

**167 Information commissioner or RTI commissioner may appear in proceedings**

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

**168 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.

## **Chapter 5 Protections and offences**

### **Part 1 Protections**

**169 Meaning of *access was required or permitted to be given under this Act***

In this part—

*access was required or permitted to be given under this Act* means access was required or permitted to be given under this Act, other than under section 20 or 21.

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**170 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, a Minister or an officer of an agency because of the authorising or giving of the access; and
  - (d) no action for defamation or breach of confidence in relation to any publication involved in, or resulting from, the giving of the access lies against the author of the document or another person because of the author or another person having given the document to an agency or Minister.
- (2) The giving of access to a document (including an exempt document or a contrary to public interest document) because of an access application or under section 78 or 78A 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.

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

- (1) If a document has been published and—
  - (a) the publication was—
    - (i) required or permitted under section 78 or 78A; or
    - (ii) authorised by a Minister, or an officer having authority in relation to disclosure logs, in the

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genuine belief the publication was required or permitted under section 78 or 78A; or

- (b) the publication was required under section 110 or authorised by the information commissioner in the genuine belief that the publication was required under section 110;

then—

- (c) no action for defamation or breach of confidence lies against the State, an agency, a Minister, the commissioner or an officer because of the publication; and
  - (d) 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, Minister or commissioner.
- (2) The publication of a document (including an exempt document or contrary to public interest document) under section 78, 78A or 110 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.

## **172 Access—protection in respect of offences**

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.

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

If a document has been published and—

- (a) the publication was—
  - (i) required or permitted under section 78 or 78A; or
  - (ii) authorised by a Minister, or an officer having authority in relation to disclosure logs, in the genuine belief the publication was required or permitted under section 78 or 78A; or
- (b) the publication was required under section 110 or authorised by the information commissioner in the genuine belief that the publication was required under section 110;

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.

**174 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 Minister;
- (d) a decision-maker;
- (e) a person acting under the direction of an agency, an agency's principal officer or a Minister;

- (f) the information commissioner;
- (g) a member of the staff of the OIC.

## **Part 2                      Offences**

### **175      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 relation to a direction that may be given to a member of the staff of the OIC under section 146.
- (3) A person must not give a direction, either orally or in writing to—
  - (a) a person who is an employee or officer of the agency involved in a matter under this Act; or
  - (b) an employee of a Minister involved in a matter under this Act;

directing the person to act contrary to the requirements of this Act.

Maximum penalty—100 penalty units.

### **176      Unlawful access**

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.



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## **177 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 of the staff of the OIC, to the best of the person’s ability, how the information is false or misleading; and
  - (b) gives the correct information to the commissioner or member of the staff of the OIC if the person has, or can reasonably obtain, the correct information.
- (3) It is enough for a complaint against a person for an offence against subsection (1) to state that the information was ‘false or misleading’, without specifying whether it was false or whether it was misleading.

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

A person given notice under section 103 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.

## **179 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.

## Chapter 6      Miscellaneous provisions

### Part 1              Archival documents

#### 180      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 6, the *Public Records Act 2002* does not prevent a person being given access to a document in the custody of Queensland State Archives to which a person may be given access under this Act.

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

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;

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

## **182 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.

## **Part 2 Operation of this Act**

### **183 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.

#### **184 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 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 commissioner to prepare and give the committee a report on a particular aspect of the performance of the commissioner's functions.
- (5) If a report of the commissioner is given to the Speaker or the parliamentary committee, the Speaker or the chairperson of the committee must cause the report to be tabled in the Assembly on the next sitting day after it is given.

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## 185 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, details of the matters prescribed under a regulation.

## 186 Strategic review of office

- (1) Strategic reviews of the OIC must be conducted under this section and sections 187 and 188.
- (2) The first review under this section must be conducted within 4 years after the commencement of this section.
- (3) Subject to subsection (2), a strategic review must be conducted at least every 5 years, counting from the date of the report (the *earlier report*) for the most recent earlier strategic review up to when the reviewer is appointed under subsection (5) to undertake the latest review.
- (4) However, if the parliamentary committee reported to the Assembly about the earlier report, and the committee's report made recommendations to which a Minister was required to respond under the *Parliament of Queensland Act 2001*, section 107 the 5 years is counted from when the Minister's response was tabled under that section.
- (5) Each strategic review must be undertaken by an appropriately qualified person (*reviewer*), appointed by the Governor in Council, who must give a report on the review.
- (6) For subsection (5), a corporation is an appropriately qualified person if a director, employee or other staff member of the corporation is appropriately qualified to undertake the review.
- (7) The terms of reference for a strategic review are to be decided by the Governor in Council.

- (8) Before a reviewer is appointed to conduct a strategic review, the Minister must consult with the parliamentary committee and the information commissioner about—
  - (a) the appointment of the reviewer; and
  - (b) the terms of reference for the review.
- (9) The remuneration and other terms of appointment of the reviewer are as decided by the Governor in Council.
- (10) In this section—

*strategic review*, of the OIC, includes—

  - (a) a review of the commissioner’s functions; and
  - (b) a review of the commissioner’s performance of the functions to assess whether they are being performed economically, effectively and efficiently.

## **187 Conduct of strategic review**

In conducting a strategic review—

- (a) the reviewer has the powers an authorised auditor has under the *Auditor-General Act 2009* for an audit of an entity; and
- (b) that Act and other Acts apply to the reviewer as if the reviewer were an authorised auditor conducting an audit of an entity.

## **188 Report of strategic review**

- (1) The reviewer must give a copy of a proposed report on the strategic review to the Minister and the information commissioner.
- (2) The commissioner may, within 15 business days after receiving the proposed report, give the reviewer written comments on anything in the proposed report.
- (3) If the commissioner comments under subsection (2), the reviewer must—

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- (a) if the reviewer and commissioner can agree about how to dispose of a comment—incorporate into the report any agreed amendment necessary to dispose of the comment; or
  - (b) if the reviewer and commissioner can not agree about how to dispose of a comment—include the comment, in full, in the report.
- (4) After complying with subsections (1) and (3), the reviewer must give the report (*strategic review report*) to the Minister and the commissioner.
  - (5) The strategic review report must be the same as the proposed report given to them under subsection (1), apart from the changes made under subsection (3).
  - (6) The Minister must table the strategic review report in the Assembly within 3 sitting days after the Minister receives the report.
  - (7) For the *Parliament of Queensland Act 2001*, section 92(2) the report is referred to the parliamentary committee.

## 189 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 access application) agencies and Ministers are to give the commissioner for reports under 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 examine each strategic review report tabled in the Assembly under this Act and, if appropriate, to comment on any aspect of the report and to make recommendations;
- (f) 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;
- (g) the other functions conferred on the parliamentary committee by this Act.

## Part 3 Other

### 190 Power of person acting for another person

- (1) To remove any doubt, it is declared that, in relation to an 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 25.
  - parent* see section 25.

### 191 Contents of prescribed written notice

If an agency or Minister 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 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.

## **192 Approval of forms**

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

## **193 Regulation-making power**

The Governor in Council may make regulations under this Act.

# **Chapter 7 Repeal and transitional provisions**

## **Part 1 Repeal**

### **194 Repeal**

The Freedom of Information Act 1992, No. 42 is repealed.



the filling of the role of information commissioner or RTI commissioner before the enactment.

## **199 Applications under Freedom of Information Act 1992**

- (1) The repealed *Freedom of Information Act 1992* continues to apply in relation to an application under that Act that has not been finalised before the commencement of this section as if this Act had not been enacted.
- (2) For subsection (1), an application has not been finalised until—
  - (a) a decision on the application is made; and
  - (b) either—
    - (i) the time for exercising any review rights or appeal rights in relation to the decision has ended without any rights being exercised; or
    - (ii) any review or appeal in relation to the decision has ended.

## **200 Time limit for access under Freedom of Information Act 1992 continues to apply**

The repealed *Freedom of Information Act 1992*, section 31A continues to apply if a person is given access under that Act to a document whether before or after the commencement of this section.

## **201 Statements of affairs**

The repealed *Freedom of Information Act 1992*, section 18 continues to apply to an agency until the agency publishes a statement of affairs under that section.

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

For section 43, a first application may be an application under the repealed *Freedom of Information Act 1992*.

**203 Delayed appeals and applications to QCAT**

- (1) If a person may appeal to the appeal tribunal under section 119 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 120 or 121 before QCAT comes into existence, the person may apply to QCAT within that period after QCAT comes into existence.

**Part 3 Transitional provisions for State Penalties Enforcement and Other Legislation Amendment Act 2009**

**204 Definition for pt 3**

In this part—

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

**205 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 30, 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 31, as in force immediately after the commencement of this part, had been in force on the day the direction was given.

## **206 Decision under s 55(2) is a reviewable decision**

- (1) A decision made during the relevant period stating the matters mentioned in section 55(2) is, and always has been, a reviewable decision under this Act as if section 55, as in force immediately after the commencement of this part, had been in force on the day the decision was made.
- (2) Despite section 82(c) or 88(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.

## **Part 4 Transitional provision for Integrity Reform (Miscellaneous Amendments) Act 2010**

### **206A Declaration of interests by information commissioner**

- (1) This section applies to the person who, immediately before the commencement of this section, was the information commissioner.
- (2) The person must comply with section 140A(2) within 1 month after the commencement of this section.



(4) In this section—

*committee* means the Establishment and Coordination Committee under the *City of Brisbane Act 2010* and includes the Establishment and Coordination Committee, as constituted from time to time before 1 July 2010, under a local law of the Brisbane City Council.

*former*, for a provision, means as in force before the commencement.

## Part 7

# Transitional provision for Biodiscovery and Other Legislation Amendment Act 2020

### 206D Continued exclusion for particular biodiscovery documents

(1) A document of a type mentioned in former schedule 1, section 11 is taken to be a document to which this Act does not apply, even if the document is created or amended after the commencement.

(2) In this section—

*former schedule 1, section 11* means schedule 1, section 11 of this Act as in force immediately before the section was amended by the *Biodiscovery and Other Legislation Amendment Act 2020*, part 3.

## Chapter 8 Transitional provisions for members of QR Group

### 207 Definitions for ch 8

In this chapter—

*change of ownership* means the beginning of the day notified by the Treasurer by gazette notice for this chapter.

*commencement* means the commencement of this chapter.

*interim period* means the period from the commencement to the change of ownership.

*member of QR Group* means QR Limited or a related body corporate of QR Limited.

*QR Limited* means QR Limited ACN 124 649 967.

*related body corporate* has the meaning given in the Corporations Act.

*Treasurer* means the Minister who administers the *Financial Accountability Act 2009*.

### 208 Application of Act to members of QR Group during interim period

A member of QR Group is taken to be an agency for the purposes of this Act during the interim period.

### 209 Certain provisions continue to apply until change of ownership despite their repeal

Until the change of ownership—

- (a) schedule 2, part 2, items 16, 17 and 18 as they were in force immediately before the commencement continue to apply, despite their repeal, to a member of QR Group; and



- (b) schedule 2, part 2, item 16 as in force on the commencement does not apply to a member of QR Group.

## **Schedule 1      Documents to which this Act does not apply**

section 11

### **1      Security document**

Either of the following documents—

- (a) a document (an *intelligence agency document*) that has originated with, or has been received from, any of the following entities—
  - (i) the Australian Secret Intelligence Service;
  - (ii) the Australian Security Intelligence Organisation;
  - (iii) the Inspector-General of Intelligence and Security;
  - (iv) the Office of National Assessments;
  - (v) the Defence Imagery and Geospatial Organisation;
  - (vi) the Defence Intelligence Organisation;
  - (vii) the Defence Signals Directorate;
- (b) a document that contains a summary of, or an extract or information from, an intelligence agency document, to the extent that it contains such a summary, extract or information.

### **2      Documents under Terrorism (Preventative Detention) Act 2005**

A document created or received in carrying out activities under the *Terrorism (Preventative Detention) Act 2005*.

### **3      Particular documents under Crime and Corruption Act 2001**

Any of the following documents—

- (a) a document under, or a document to the extent it comprises information about an activity under, the *Crime and Corruption Act 2001*, chapter 3, part 6, division 2 or 3;

*Note—*

Part 6 deals with surveillance devices.

- (b) a document under, or a document to the extent it comprises information about an activity under, the *Crime and Corruption Act 2001*, chapter 3, part 6A;

*Note—*

Part 6A deals with controlled operations and controlled activities for misconduct offences.

- (c) a document under, or a document to the extent it comprises information about an activity under, the *Crime and Corruption Act 2001*, chapter 3, part 6B, divisions 2 to 7;

*Note—*

Part 6B deals with assumed identities.

- (d) a covert search warrant under the *Crime and Corruption Act 2001*, chapter 3, part 7;
- (e) an additional powers warrant under the *Crime and Corruption Act 2001*, chapter 3, part 8;
- (f) a document mentioned in the *Crime and Corruption Act 2001*, section 371.

#### **4 Particular documents under Police Powers and Responsibilities Act 2000**

Either of the following documents—

- (a) a document under, or a document to the extent it comprises information about an activity under, any of the following provisions of the *Police Powers and Responsibilities Act 2000*—
- chapter 10
  - chapter 11

- chapter 12, parts 2 to 7
  - chapter 13
  - chapter 18 if it would enable either of the following to be revealed—
    - the identity of a person in relation to whom a disease test order within the meaning of the *Police Powers and Responsibilities Act 2000* is made
    - the identity of a victim of an offence to which the *Police Powers and Responsibilities Act 2000*, chapter 18 applies;
- (b) a document to the extent it comprises information kept in a register under the *Police Powers and Responsibilities Act 2000*, chapter 21, part 2, division 2.

*Note—*

Chapter 10 deals with controlled activities. Chapter 11 deals with controlled operations. Chapter 12 deals with assumed identities. Chapter 13 deals with surveillance device warrants. Chapter 18 deals with blood and urine testing of persons suspected of committing sexual or other serious assault offences. Chapter 21, part 2, division 2 deals with a register of covert acts.

## **5 Particular documents under Police Service Administration Act 1990**

A document created under the *Police Service Administration Act 1990*, part 5A.

*Note—*

Part 5A deals with alcohol and drug tests for members of the police service.

## **6 Documents received or created by integrity commissioner for Integrity Act 2009, ch 3**

A document created, or received, by the Queensland Integrity Commissioner for the *Integrity Act 2009*, chapter 3.

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**7 Document received or created by Prostitution Licensing Authority**

A document created, or received, by the Prostitution Licensing Authority for the *Prostitution Act 1999*.

**8 Particular coronial document during investigation**

A document of an agency that is a coronial document (other than a document given to, or accessed by, the agency under the *Coroners Act 2003*, section 25, 54 or 54A) while a coroner is investigating the death to which the document relates.

**9 Root cause analysis document**

A document created for a root cause analysis of a reportable event under—

- (a) the *Ambulance Service Act 1991*, part 4A; or
- (b) the *Hospital and Health Boards Act 2011*, part 6.

*Notes—*

- 1 For what is a root cause analysis of a reportable event under the *Ambulance Service Act 1991*, part 4A, see sections 36A and 36B.
- 2 For what is a root cause analysis of a reportable event under the *Hospital and Health Boards Act 2011*, part 6, see sections 94 and 95.

**10 Particular documents under Workers' Compensation and Rehabilitation Act 2003**

Either of the following documents—

- (a) a document created, or received, by the Workers' Compensation Regulator in carrying out its function of monitoring the financial performance of self-insurers within the meaning of the *Workers' Compensation and Rehabilitation Act 2003*;
- (b) a document created, or received, by WorkCover Queensland in carrying out its commercial activities other than activities about policies, applications for compensation, or proceedings for damages.

**11 Particular documents under Biodiscovery Act 2004**

Any of the following documents under the *Biodiscovery Act 2004*—

- (a) a benefit sharing agreement;
- (b) a record kept by a department about a benefit sharing agreement or proposed benefit sharing agreement;
- (c) a subsequent use agreement;
- (d) a record kept by a department about a subsequent use agreement;
- (e) a record kept by a department about a collection authority;
- (f) a document identifying a person who gave a sample of native biological material to a receiving entity under section 30 of that Act.

**12 Particular documents under the Gene Technology (Queensland) Act 2016**

A document to the extent it contains confidential commercial information under the *Gene Technology Act 2000* (Cwlth), as applied as a law of Queensland by the *Gene Technology (Queensland) Act 2016*.

**13 Particular documents under Sugar Industry Act 1999**

Either of the following documents—

- (a) a document in connection with any of the following matters under the *Sugar Industry Act 1999* that was held by the Sugar Authority on or after 1 July 2004 and before 1 January 2006—
  - (i) the giving of a periodic estimate;
  - (ii) the making or granting of an application for an exemption;
  - (iii) the giving of an annual return;

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- (b) a document in connection with either of the following matters under the *Sugar Industry Act 1999* that was given to the Sugar Industry Commissioner on or after 1 January 2006 and before 1 July 2008—
- (i) the making or granting of an application for an exemption;
  - (ii) the giving of an annual return.

**14 Particular GOC documents created or received before commencement**

A document to which the repealed *Freedom of Information Act 1992* did not apply under section 11A of that Act.

**15 Particular corporatised corporation documents created or received before commencement**

A document to which the repealed *Freedom of Information Act 1992* did not apply under section 11B of that Act.

**16 Particular documents relating to judicial appointments**

Either of the following documents—

- (a) a document received by or for the Attorney-General, the justice department or a judicial appointments adviser that expresses a person's interest in being considered for judicial appointment in Queensland;
- (b) a document created, or received, by or for the Attorney-General, the justice department or a judicial appointments adviser for the purpose of—
  - (i) consulting on, or nominating, candidates for judicial appointment in Queensland; or
  - (ii) otherwise carrying out a function under a judicial appointments protocol.

## **Schedule 2      Entities to which this Act does not apply**

section 17

### **Part 1                      Entities to which this Act does not apply**

- 1 the Governor
- 2 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
- 3 the Parliamentary Judges Commission of Inquiry appointed under the expired *Parliamentary (Judges) Commission of Inquiry Act 1988*
- 4 a commission of inquiry issued by the Governor in Council, whether before or after the commencement of this schedule
- 5 the parliamentary service established by the *Parliamentary Service Act 1988*
- 6 a quality assurance committee established under the *Hospital and Health Boards Act 2011*, section 82
- 7 a parents and citizens association under the *Education (General Provisions) Act 2006*
- 8 a grammar school to which the *Grammar Schools Act 2016* applies



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## Part 2                      **Entities to which this Act does 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
- 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 functions
- 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
- 9 Queensland Treasury Corporation in relation to its borrowing, liability and asset management related functions
- 9A QSuper Board continued under the *Superannuation (State Public Sector) Act 1990* in relation to its functions under that Act
- 10 the public guardian under the *Public Guardian Act 2014* in relation to an investigation or audit under that Act

Schedule 2

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- 11 the Health Rights Commissioner in relation to the conciliation of health service complaints under the repealed *Health Rights Commission Act 1991*, part 6
- 12 the Health Quality and Complaints Commission in relation to the conciliation of health service complaints under—
  - (a) the repealed *Health Rights Commission Act 1991*, part 6; or
  - (b) the *Health Quality and Complaints Commission Act 2006*, chapter 6
- 12A the health ombudsman in relation to the conciliation of a health service complaint under the *Health Ombudsman Act 2013* or the repealed *Health Quality and Complaints Commission Act 2006*
- 13 CS Energy Limited ACN 078 848 745, or a subsidiary of CS Energy Limited, in relation to its functions, except so far as they relate to community service obligations
- 13A CleanCo Queensland Limited ACN 628 008 159, or a subsidiary of CleanCo Queensland Limited, in relation to its functions, except so far as they relate to community service obligations
- 14 Ergon Energy Queensland Pty Ltd ACN 121 177 802 in relation to its functions, except so far as they relate to community service obligations
- 15 QIC Limited ACN 130 539 123, or a subsidiary of QIC Limited, in relation to its functions, except so far as they relate to community service obligations
- 16 a rail government entity under the *Transport Infrastructure Act 1994* in relation to freight or insurance operations, except so far as they relate to community service obligations
- 19 Stanwell Corporation Limited ACN 078 848 674, or a subsidiary of Stanwell Corporation Limited, in relation to its functions, except so far as they relate to community service obligations
- 21 a declared entity under the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009*, all or part of whose businesses, assets and liabilities are being disposed of in a

declared project under that Act, in relation to the following functions—

- (a) if all of the entity's businesses, assets and liabilities are being disposed of—all of the entity's functions;
  - (b) otherwise—the functions that relate to the businesses, assets and liabilities being disposed of
- 22 the Cross River Rail Delivery Authority established under the *Cross River Rail Delivery Authority Act 2016*, section 8, in relation to its functions, except so far as they relate to community service obligations under that Act

## Schedule 3 Exempt information

section 48

*Note—*

Access to a document may be refused to the extent the document comprises exempt information—see section 47(3)(a).

### 1 Cabinet matter brought into existence before commencement

Matter is exempt information if the matter is—

- (a) brought into existence before the commencement of this section; and
- (b) mentioned in section 36(1) of the repealed *Freedom of Information Act 1992*; and
- (c) not officially published by decision of Cabinet.

### 2 Cabinet information brought into existence on or after commencement

- (1) Information is exempt information for 10 years after its relevant date if—
  - (a) it has been brought into existence for the consideration of Cabinet; or
  - (b) its disclosure would reveal any consideration of Cabinet or would otherwise prejudice the confidentiality of Cabinet considerations or operations; or
  - (c) it has been brought into existence in the course of the State's budgetary processes.
- (2) Subsection (1) does not apply to—
  - (a) information brought into existence before the commencement of this section; or
  - (b) information officially published by decision of Cabinet.

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- (3) Without limiting subsection (1), the following documents are taken to be documents comprised exclusively of exempt information under subsection (1)—
- (a) Cabinet submissions;
  - (b) Cabinet briefing notes;
  - (c) Cabinet agendas;
  - (d) notes of discussions in Cabinet;
  - (e) Cabinet minutes;
  - (f) Cabinet decisions;
  - (g) a draft of a document mentioned in any of paragraphs (a) to (f).
- (4) A report of factual or statistical information attached to a document mentioned in subsection (3) is exempt information under subsection (1) only if—
- (a) its disclosure would have an effect mentioned in subsection (1)(b); or
  - (b) it was brought into existence for the consideration of Cabinet or for the State's budgetary processes.
- (5) In this section—
- Cabinet** includes a Cabinet committee or subcommittee.
- consideration** includes—
- (a) discussion, deliberation, noting (with or without discussion) or decision; and
  - (b) consideration for any purpose, including, for example, for information or to make a decision.
- draft** includes a preliminary or working draft.
- relevant date**, for information, means—
- (a) for information considered by Cabinet—the date the information was most recently considered by Cabinet; or
  - (b) for other information—the date the information was brought into existence.

### 3 Executive Council information

- (1) Information is exempt information if—
- (a) it has been submitted to Executive Council; or
  - (b) it was brought into existence for submission to Executive Council and is proposed, or has at any time been proposed, to be submitted to Executive Council by a Minister; or
  - (c) it was brought into existence for briefing, or the use of, the Governor, a Minister or a chief executive in relation to information—
    - (i) submitted to Executive Council; or
    - (ii) that is proposed, or has at any time been proposed, to be submitted to Executive Council by a Minister; or
  - (d) it is, or forms part of, an official record of Executive Council; or
  - (e) its disclosure would involve the disclosure of any consideration of Executive Council or could otherwise prejudice the confidentiality of Executive Council considerations or operations; or
  - (f) it is a draft of matter mentioned in any of paragraphs (a) to (e); or
  - (g) it is a copy of or extract from, or part of a copy of or extract from, information mentioned in any of paragraphs (a) to (f).
- (2) Subsection (1) does not apply to information officially published by decision of the Governor in Council.
- (3) In this section—
- chief executive*** means a chief executive of a unit of the public sector.
- consideration*** includes—
- (a) discussion, deliberation, noting (with or without discussion) or decision; and

- (b) consideration for any purpose, including, for example, for information or to make a decision.

*draft* includes a preliminary or working draft.

*official record*, of Executive Council, includes an official record of information submitted to Executive Council.

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

#### **4 Information briefing incoming Minister**

Information is exempt information for 10 years after the appointment of a Minister for a department if the information is brought into existence by the department to brief an incoming Minister about the department.

#### **4B Budgetary information for local governments**

- (1) Information brought into existence in the course of a local government's budgetary processes is exempt information for 10 years after the date it was brought into existence.
- (2) Subsection (1) does not apply to information officially published by decision of the local government.

#### **5 Information revealing particular Sovereign communications**

Information is exempt information if its disclosure would reveal—

- (a) any communications between the Sovereign and the Sovereign's representative; or
- (b) any communications between the Sovereign, or the Sovereign's representative, and the Premier.

**6 Information disclosure of which would be contempt of court or Parliament**

Information is exempt information if its public disclosure would, apart from this Act and any immunity of the Crown—

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

**7 Information subject to legal professional privilege**

Information is exempt information if it would be privileged from production in a legal proceeding on the ground of legal professional privilege.

**8 Information disclosure of which would found action for breach of confidence**

- (1) Information is exempt information if its disclosure would found an action for breach of confidence.
- (2) However, deliberative process information is not exempt information under subsection (1) unless it consists of information communicated by an entity other than—
  - (a) a person in the capacity of—
    - (i) a Minister; or
    - (ii) a member of the staff of, or a consultant to, a Minister; or
    - (iii) an officer of an agency; or



- (b) the State or an agency.
- (3) In this section—
  - deliberative process information* means information disclosing—
    - (a) an opinion, advice or recommendation that has been obtained, prepared or recorded; or
    - (b) a consultation or deliberation that has taken place; in the course of, or for the purposes of, the deliberative processes involved in the functions of government.

## 9 National or State security information

- (1) Information is exempt information if its disclosure could reasonably be expected to damage the security of the Commonwealth or a State.
- (2) For subsection (1), the security of the Commonwealth includes—
  - (a) matters relating to detecting, preventing or suppressing activities, whether within or outside Australia, that are subversive of, or hostile to, the interests of the Commonwealth or a country allied or associated with the Commonwealth; and
  - (b) the security of a communications system or cryptographic system of the Commonwealth or another country used for—
    - (i) the defence of the Commonwealth or a country allied or associated with the Commonwealth; or
    - (ii) the conduct of the international relations of the Commonwealth.
- (3) For subsection (1), the security of a State includes matters relating to detecting, preventing or suppressing activities, whether within or outside the State, that are subversive of, or hostile to, the interests of the State.

## **10 Law enforcement or public safety information**

- (1) Information is exempt information if its disclosure could reasonably be expected to—
- (a) prejudice the investigation of a contravention or possible contravention of the law (including revenue law) in a particular case; or
  - (b) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; or
  - (c) endanger a person's life or physical safety; or
  - (d) result in a person being subjected to a serious act of harassment or intimidation; or
  - (e) prejudice a person's fair trial or the impartial adjudication of a case; or
  - (f) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law (including revenue law); or
  - (g) prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety; or
  - (h) endanger the security of a building, structure or vehicle; or
  - (i) prejudice a system or procedure for the protection of persons, property or the environment; or
  - (j) facilitate a person's escape from lawful custody; or
  - (k) prejudice the wellbeing of a cultural or natural resource or the habitat of animals or plants.
- (2) However, information is not exempt information under subsection (1) if it consists of—
- (a) matter revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law; or
  - (b) matter containing a general outline of the structure of a program adopted by an agency for dealing with a contravention or possible contravention of the law; or

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- (c) a report on the degree of success achieved in a program adopted by an agency for dealing with a contravention or possible contravention of the law; or
  - (d) a report prepared in the course of a routine law enforcement inspection or investigation by an agency whose functions include that of enforcing the law (other than the criminal law or the law relating to corruption under the *Crime and Corruption Act 2001*; or
  - (e) a report on a law enforcement investigation that has already been disclosed to the entity the subject of the investigation.
- (3) Also, information is exempt information if—
- (a) it consists of information given in the course of an investigation of a contravention or possible contravention of the law (including revenue law); and
  - (b) the information was given under compulsion under an Act that abrogated the privilege against self-incrimination.
- (4) Also, information is exempt information if it consists of information obtained, used or prepared for an investigation by a prescribed crime body, or another agency, in the performance of the prescribed functions of the prescribed crime body.
- (5) Also, information is exempt information if it consists of information obtained, used or prepared—
- (a) for an investigation by a part of the Queensland Police Service known as the State Intelligence Group; or
  - (b) for an investigation by a part of the Queensland Police Service known as the State Security Operations Group; or
  - (c) by Crime Stoppers Queensland Limited ACN 010 995 650.
- (6) However, information is not exempt information under subsection (4) or (5) in relation to a particular applicant if—
- (a) it consists of information about the applicant; and

(b) the investigation has been finalised.

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

(8) A reference in this section to a contravention or possible contravention of the law includes a reference to corruption or possible corruption under the *Crime and Corruption Act 2001*.

(9) In this section—

**corruption functions** see the *Crime and Corruption Act 2001*, section 33.

**crime function** see the *Crime and Corruption Act 2001*, section 25.

**intelligence functions** mean the functions mentioned in the *Crime and Corruption Act 2001*, section 53.

**law** includes law of the Commonwealth, a State or a foreign country.

**prescribed crime body** means—

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

**prescribed functions** means—

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

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

## 11 Investment incentive scheme information

- (1) Information is exempt information for the relevant period if its disclosure could reasonably be expected to disclose information about—
- (a) a particular incentive given to, or arranged for, a relevant person under a contract in relation to an investment incentive scheme; or
  - (b) an incentive sought by, or proposed for, a relevant person whether or not an incentive was, in fact, given to, or arranged for, the relevant person under an investment incentive scheme.
- (2) In this section—

***department*** means the department administered by the Minister having responsibility for business, industry development, and investment opportunities and attraction, as identified in the Administrative Arrangements and within which that responsibility is administered.

***incentive*** includes any of the following—

- (a) an amount that is a refund of all or part of an amount paid as a tax, fee or charge;
- (b) another amount, whether as a lump sum or by instalments;
- (c) a benefit that is not an amount mentioned in paragraph (a) or (b).

***investment incentive scheme*** means a written scheme that—

- (a) promotes projects by giving incentives; and
- (b) includes processes for assessing an application under the scheme; and
- (c) is administered by the department.

**project** means a project or proposed project that involves investing or spending money, or the continued investing or spending of money, and is intended to create job opportunities or to continue existing jobs.

**relevant period**—

- (a) for an incentive given or arranged under a contract, means the period ending at the earlier of—
  - (i) 1 year after the contract ends; or
  - (ii) 8 years after the contract begins; or
- (b) for an incentive that was sought or proposed but that was not given or arranged, means the period ending 8 years after the last written communication between the department and the relevant person in relation to the incentive.

**relevant person** means a person to the extent the person is or was any 1 or more of the following—

- (a) a person who inquires of, or enters into discussions with, the department or a public service employee about an incentive for a project, whether or not the person makes an application under an investment incentive scheme for an incentive;
- (b) a person who makes an application under an investment incentive scheme, whether or not the person is given an incentive;
- (c) a person who is given an incentive for a project, whether or not the person continues to be subject to a provision of an agreement about the incentive that allows the department to monitor the person or project.

## **12 Information disclosure of which prohibited by Act**

- (1) Information is exempt information if its disclosure is prohibited by 1 of the following provisions—
  - *Aboriginal Cultural Heritage Act 2003*, section 29(2)
  - *Adoption Act 2009*, section 314

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- *Auditor-General Act 2009*, section 53
  - *Australian Crime Commission (Queensland) Act 2003*, sections 19 and 20, to the extent they apply to a summons or notice that includes a notation under section 21 of that Act
  - *Child Protection Act 1999*, sections 186 to 188
  - *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*, sections 51C and 70
  - *Financial Intermediaries Act 1996*, section 239
  - *G20 (Safety and Security) Act 2013*, section 85
  - *Maintenance Act 1965*, section 129
  - *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020*, section 102
  - *Mineral and Energy Resources (Financial Provisioning) Act 2018*, section 80(2) or 82(2)
  - *Public Interest Disclosure Act 2010*, section 65(1)
  - *Taxation Administration Act 2001*, part 8, so far as it applies to personal confidential information under that Act
  - *Torres Strait Islander Cultural Heritage Act 2003*, section 29(2)
  - *Witness Protection Act 2000*, sections 36 and 38
  - *Youth Justice Act 1992*, section 288.
- (1A) Information is exempt information if its disclosure was prohibited by the repealed *Transport (Rail Safety) Act 2010*, part 9, division 2, as in force at any time before its repeal.
- (2) Information is not exempt information under subsection (1) or (1A) in relation to an access application if it is only personal information of the applicant.
- (3) Subject to subsection (2), information is exempt information if it is contained in a document mentioned in section 112(1) of the repealed *Freedom of Information Act 1992*.

## **Schedule 4      Factors for deciding the public interest**

section 49

*Note—*

Access to a document may be refused to the extent the document comprises information the disclosure of which would, on balance, be contrary to the public interest under section 49—see section 47(3)(b).

### **Part 1                      Factors irrelevant to deciding the public interest**

- 1 Disclosure of the information could reasonably be expected to cause embarrassment to the Government or to cause a loss of confidence in the Government.
- 2 Disclosure of the information could reasonably be expected to result in the applicant misinterpreting or misunderstanding the document.
- 3 Disclosure of the information could reasonably be expected to result in mischievous conduct by the applicant.
- 4 The person who created the document containing the information was or is of high seniority within the agency.

### **Part 2                      Factors favouring disclosure in the public interest**

- 1 Disclosure of the information could reasonably be expected to promote open discussion of public affairs and enhance the Government's accountability.



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- 2 Disclosure of the information could reasonably be expected to contribute to positive and informed debate on important issues or matters of serious interest.
  - 3 Disclosure of the information could reasonably be expected to inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by the Government in its dealings with members of the community.
  - 4 Disclosure of the information could reasonably be expected to ensure effective oversight of expenditure of public funds.
  - 5 Disclosure of the information could reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official.
  - 6 Disclosure of the information could reasonably be expected to reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct.
  - 7 The information is the applicant's personal information.
  - 8 The information is the personal information of a child within the meaning of section 25, the agent acting for the applicant is the child's parent within the meaning of section 25 and disclosure of the information is reasonably considered to be in the child's best interests.
  - 9 The information relates to a person who has died and both of the following apply—
    - (a) the information would, if the person were alive, be personal information of the person;
    - (b) the applicant is an eligible family member of the person.
  - 10 Disclosure of the information could reasonably be expected to advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies.
  - 11 Disclosure of the information could reasonably be expected to reveal the reason for a government decision and any background or contextual information that informed the decision.



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- 2 Disclosure of the information could reasonably be expected to prejudice the private, business, professional, commercial or financial affairs of entities.
  - 3 Disclosure of the information could reasonably be expected to prejudice the protection of an individual's right to privacy.
  - 4 The information is the personal information of a child within the meaning of section 25, the applicant is the child's parent within the meaning of section 25 and disclosure of the information is reasonably considered not to be in the child's best interests.
  - 5 The information relates to a person who has died and all of the following apply—
    - (a) the information would, if the person were alive, be personal information of the person;
    - (b) the applicant is an eligible family member of the person;
    - (c) the disclosure of the information could reasonably be expected, if the person were alive, to impact on the person's privacy.
  - 6 Disclosure of the information could reasonably be expected to prejudice the fair treatment of individuals and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct.
  - 7 Disclosure of the information could reasonably be expected to prejudice security, law enforcement or public safety.
  - 8 Disclosure of the information could reasonably be expected to impede the administration of justice generally, including procedural fairness.
  - 9 Disclosure of the information could reasonably be expected to impede the administration of justice for a person.
  - 10 Disclosure of the information could reasonably be expected to prejudice the security or good order of a corrective services facility.
  - 11 Disclosure of the information could reasonably be expected to impede the protection of the environment.

Schedule 4

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- 12 Disclosure of the information could reasonably be expected to prejudice the economy of the State.
- 13 Disclosure of the information could reasonably be expected to prejudice the flow of information to the police or another law enforcement or regulatory agency.
- 14 Disclosure of the information could reasonably be expected to prejudice intergovernmental relations.
- 15 Disclosure of the information could reasonably be expected to prejudice trade secrets, business affairs or research of an agency or person.
- 16 Disclosure of the information could reasonably be expected to prejudice an agency's ability to obtain confidential information.
- 17 Disclosure of the information could reasonably be expected to prejudice the competitive commercial activities of an agency.
- 18 Disclosure of the information could reasonably be expected to prejudice the conduct of investigations, audits or reviews by the ombudsman or auditor-general.
- 19 Disclosure of the information could reasonably be expected to prejudice the management function of an agency or the conduct of industrial relations by an agency.
- 20 Disclosure of the information could reasonably be expected to prejudice a deliberative process of government.
- 21 Disclosure of the information could reasonably be expected to prejudice the effectiveness of testing or auditing procedures.
- 22 Disclosure of the information is prohibited by an Act.

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## Part 4 **Factors favouring nondisclosure in the public interest because of public interest harm in disclosure**

### 1 **Affecting relations with other governments**

- (1) Disclosure of the information could reasonably be expected to cause a public interest harm if disclosure could—
  - (a) cause damage to relations between the State and another government; or
  - (b) divulge information of a confidential nature that was communicated in confidence by or for another government.
- (2) Subsection (1) applies only for 10 years after the information was brought into existence.
- (3) The information commissioner may, on application by a prescribed entity, extend the 10 year period if the commissioner considers the extension in the public interest.
- (4) An application for an extension may be made before or after the end of the 10 year period.
- (5) In this section—

*prescribed entity* means—

  - (a) an agency or Minister; or
  - (b) an entity that would be a relevant third party under section 37 in relation to the document containing the information in relation to which the extension is sought.

### 2 **Affecting investigations by ombudsman or audits by auditor-general**

Disclosure of the information could reasonably be expected to cause a public interest harm if disclosure could prejudice the conduct of—

- (a) an investigation by the ombudsman; or
- (b) an audit by the auditor-general.

### **3 Affecting particular operations of agencies**

Disclosure of the information could reasonably be expected to cause a public interest harm if disclosure could—

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

### **4 Disclosing deliberative processes**

(1) Disclosure of the information could reasonably be expected to cause a public interest harm through disclosure of—

- (a) an opinion, advice or recommendation that has been obtained, prepared or recorded; or
- (b) a consultation or deliberation that has taken place;

in the course of, or for, the deliberative processes involved in the functions of government.

*Examples of information of the type mentioned in subsection (1)—*

- a document prepared by an agency about projections of future revenue for the State
- a document prepared to inform a decision by an agency about potential road routes, where disclosure of all potential routes, including those that are subsequently rejected, could have a negative impact on property values or cause community concern

(2) If the deliberative processes mentioned in subsection (1) include public consultation, subsection (1) applies only until the public consultation starts.

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- (3) However, subsection (1) does not apply for information to the extent it consists of—
- (a) information that appears in an agency's policy document; or
  - (b) factual or statistical information; or
  - (c) expert opinion or analysis (other than expert opinion or analysis commissioned in the course of, or for, the deliberative processes mentioned in subsection (1)) by a person recognised as an expert in the field of knowledge to which the opinion or analysis relates.
- (4) Also, subsection (1) does not apply for information if it consists of—
- (a) a report of a body or organisation—
    - (i) established within an agency; and
    - (ii) prescribed under a regulation; or
  - (b) the record of, as a formal statement of the reasons for, a final decision, order or ruling given in the exercise of—
    - (i) a power; or
    - (ii) an adjudicative function; or
    - (iii) a statutory function; or
    - (iv) the administration of a publicly funded scheme.

## **5 Disclosing information brought into existence for ensuring security or good order of corrective services facility**

- (1) Disclosure of the information could reasonably be expected to cause a public interest harm if disclosure would disclose information that—
- (a) is in the possession of, or brought into existence by, the department in which the *Corrective Services Act 2006* is administered; and
  - (b) is—

- (i) a recording of a telephone call made by an offender from a corrective services facility; or
  - (ii) an audio recording made in a corrective services facility for the security or good order of the facility; or
  - (iii) a visual recording of a corrective services facility or a part of a corrective services facility; or
  - (iv) a document to the extent that it refers to or contains any part of a recording mentioned in subparagraph (i), (ii) or (iii).
- (2) In this section—

*offender* means an offender as defined under the *Corrective Services Act 2006*.

## **6 Disclosing personal information**

- (1) Disclosure of the information could reasonably be expected to cause a public interest harm if disclosure would disclose personal information of a person, whether living or dead.
- (2) However, subsection (1) does not apply if what would be disclosed is only personal information of the person by whom, or on whose behalf, an application for access to a document containing the information is being made.

## **7 Disclosing trade secrets, business affairs or research**

- (1) Disclosure of the information could reasonably be expected to cause a public interest harm because—
  - (a) disclosure of the information would disclose trade secrets of an agency or another person; or
  - (b) disclosure of the information—
    - (i) would disclose information (other than trade secrets) that has a commercial value to an agency or another person; and



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- (ii) could reasonably be expected to destroy or diminish the commercial value of the information;  
or
  - (c) disclosure of the information—
    - (i) would disclose information (other than trade secrets or information mentioned in paragraph (b)) concerning the business, professional, commercial or financial affairs of an agency or another person; and
    - (ii) could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of information of this type to government.
  - (2) However, subsection (1) does not apply if what would be disclosed concerns only the business, professional, commercial or financial affairs of the person by whom, or on whose behalf, an application for access to the document containing the information is being made.
  - (3) Disclosure of the information could reasonably be expected to cause a public interest harm because disclosure—
    - (a) would disclose the purpose or results of research, whether the research is yet to be started, has started but is unfinished, or is finished; and
    - (b) could reasonably be expected to have an adverse effect on the agency or other person by whom, or on whose behalf, the research is intended to be, is being, or was, carried out.
  - (4) However, subsection (3) does not apply if what would be disclosed concerns only research that is intended to be, is being, or was, carried out by the agency or other person by whom, or on whose behalf, an application for access to the document containing the information is being made.

## **8 Affecting confidential communications**

- (1) Disclosure of the information could reasonably be expected to cause a public interest harm if—

- (a) the information consists of information of a confidential nature that was communicated in confidence; and
  - (b) disclosure of the information could reasonably be expected to prejudice the future supply of information of this type.
- (2) However, subsection (1) does not apply in relation to deliberative process information unless it consists of information communicated by an entity other than—
- (a) a person in the capacity of—
    - (i) a Minister; or
    - (ii) a member of the staff of, or a consultant to, a Minister; or
    - (iii) an officer of an agency; or
  - (b) the State or an agency.
- (3) In this section—
- deliberative process information*** means information disclosing—
- (a) an opinion, advice or recommendation that has been obtained, prepared or recorded; or
  - (b) a consultation or deliberation that has taken place; in the course of, or for the purposes of, the deliberative processes involved in the functions of government.

## 9 Affecting State economy

- (1) Disclosure of the information could reasonably be expected to cause a public interest harm because disclosure could—
- (a) have a substantial adverse effect on the ability of government to manage the economy of the State; or
  - (b) expose any person or class of persons to an unfair advantage or disadvantage because of the premature disclosure of information concerning proposed action or inaction of the Assembly or government in the course of, or for, managing the economy of the State.

- (2) Without limiting subsection (1)(a), that paragraph applies to information the disclosure of which would reveal—
  - (a) the consideration of a contemplated movement in government taxes, fees or charges; or
  - (b) the imposition of credit controls.

**10 Affecting financial or property interests of State or agency**

- (1) Disclosure of the information could reasonably be expected to cause a public interest harm because disclosure could have a substantial adverse effect on the financial or property interests of the State or an agency.
- (2) Subsection (1) applies only for 8 years after the information was brought into existence.

## Schedule 5 Dictionary

### section 10

***access application*** means an application under this Act for access.

***access charge*** see section 57.

***access was required or permitted to be given under this Act***, for chapter 5, part 1, see section 169.

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

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

***agency*** see section 14.

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

***appeal tribunal***, for chapter 3, part 11, see section 116.

***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.

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

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

***approved form*** means a form approved under section 192.

***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.

***change of ownership***, for chapter 8, see section 207.

***charge*** does not include an application fee.

**charges estimate notice** see section 36.

**commencement**, for chapter 8, see section 207.

**commissioner**, for chapter 4, part 5, see section 159.

**community service obligations** see the *Government Owned Corporations Act 1993*.

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

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

**considered decision** see section 45.

**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 the public interest under section 49.

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

**coronial document** see the *Coroners Act 2003*.

**corrective services facility** means a corrective services facility as defined under the *Corrective Services Act 2006*.

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

**decision-maker** means—

- (a) for an access application to an agency—the person with power in relation to all or part of the application under section 30; or
- (b) for an access application to a Minister—the Minister or the person with power in relation to all or part of the application under section 31.

**deemed decision** see section 46.

**disclosure log** means a part of an agency's website called a disclosure log.

**document**—

- (a) of an agency—see section 12; or
- (b) of a Minister—see section 13.

**document to which this Act does not apply** see section 11.

**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 this Act does not apply*** see section 17.

***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*** see section 48.

*Note—*

Access to a document may be refused to the extent it comprises exempt information—see section 47(3)(a).

***external review*** see section 84.

***external review application*** see section 84.

***freight operations*** means 1 or more of the following operations—

- (a) coal operations;
- (b) bulk freight operations;
- (c) intermodal freight operations;
- (d) general freight operations;
- (e) agricultural freight operations.

***function*** includes a power.

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

***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.

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

**information commissioner** means the Information Commissioner.

**Information Privacy Act** means the *Information Privacy Act 2009*.

**interim period**, for chapter 8, see section 207.

**internal review** see section 79.

**internal review application** see section 79.

**judicial appointments adviser** means an entity that has a function under a judicial appointments protocol of—

- (a) considering expressions of interest for judicial appointment in Queensland; and
- (b) preparing, and presenting to the Attorney-General, a list of candidates who are suitable for judicial appointment in Queensland.

**judicial appointments protocol** means a protocol establishing a process for considering, consulting on or recommending candidates for judicial appointment in Queensland.

**judicial member**, for chapter 3, part 11, see section 116.

**justice department** means the department in which the *Attorney-General Act 1999* is administered.

**member of QR Group**, for chapter 8, see section 207.

**Minister** includes an Assistant Minister.

**narrow**, 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.

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

*Examples of entities that may be non-profit organisations—*

charities, churches, clubs, environment protection societies



**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.

**parliamentary committee** means—

- (a) if the Legislative Assembly resolves that a particular committee of the Assembly is to be the parliamentary committee under this Act—that committee; or
- (b) if paragraph (a) does not apply and the standing rules and orders state that the portfolio area of a portfolio committee includes the information commissioner—that committee; or
- (c) otherwise—the portfolio committee whose portfolio area includes the department, or the part of a department, in which this Act is administered.

**participant**, in an external review, means a person who is a participant in the review under section 89.

**personal information** see the Information Privacy Act.

*Note—*

Under the Information Privacy Act, **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.

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

- (a) a document containing interpretations, rules, guidelines, statements of policy, practices or precedents; or
- (b) a document containing details of an administrative scheme; or
- (c) a document containing a statement of the way, or intended way, of administration of an enactment or administrative scheme; or

- (d) a document describing the procedures to be followed in investigating a contravention or possible contravention of an enactment or administrative scheme; or
- (e) another document of a similar kind;

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

**portfolio area** see the *Parliament of Queensland Act 2001*, schedule.

**portfolio committee** see the *Parliament of Queensland Act 2001*, schedule.

**prescribed information** means—

- (a) exempt information mentioned in 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 section 47(3)(b).

**prescribed written notice** means a notice under section 191.

**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 local 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 under the Information Privacy Act.

***processing charge*** see section 56.

***processing period*** see section 18.

***publication scheme*** see section 21.

***public authority*** see section 16.

***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.

***QR Limited***, for chapter 8, see section 207.

***quasi-judicial entity*** means an entity that exercises quasi-judicial functions.

***related body corporate***, for chapter 8, see section 207.

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

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

- (a) a decision that an access application is outside the scope of this Act under section 32(1)(b);
- (b) a decision that an access application does not comply with all relevant application requirements under section 33(6);
- (c) a decision—
  - (i) to disclose a document contrary to the views of a relevant third party obtained under section 37; 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 37;
- (d) a decision refusing to deal with an application under chapter 3, part 4;
- (e) a decision refusing access to all or part of a document under section 47;
- (f) a decision deferring access to a document under section 72;
- (g) a decision about whether a processing charge or access charge is payable in relation to access to a document (including a decision not to waive charges);
- (h) a decision giving access to documents subject to the deletion of information under section 73;
- (i) 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;
- (j) a deemed decision.

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

***revision period*** see section 18.

***RTI commissioner*** see section 147(1).

***schedule of relevant documents*** see section 36.

*standing rules and orders* see the *Parliament of Queensland Act 2001*, schedule.

*strategic review report* see section 188.

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

*transfer period* see section 18.

*Treasurer*, for chapter 8, see section 207.