



Queensland

Information Privacy Bill 2009

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Public Consultation Draft

2009

A Bill

for

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

The Parliament of Queensland enacts—

Chapter 1 Preliminary

Part 1 Introductory

1 Short title

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

2 Commencement

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

3 Objects of Act

- (1) The primary objects of this Act are to provide for—
 - (a) the fair collection and handling in the public sector environment of personal information; and
 - (b) a statutory right for individuals to access and amend their personal information held by entities in the public sector environment.
- (2) The Act must be applied and interpreted to further the objects stated in subsection (1).

4 Act binds State

This Act binds the State.

5 Act not intended to prevent other accessing or amendment of personal information

This Act is not intended to prevent or discourage—

- (a) the giving of access to, or allowing the amendment of, a document that is not a document for chapter 3 or a document to which the privacy principles do not apply; or
- (b) an entity that is not an entity for chapter 3 or an entity to which the privacy principles do not apply, or to which the privacy principles do not apply in relation to a particular function, from giving access to, or allowing the amendment of, documents;

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

6 Relationship with other enactments requiring access to or amendment of personal information

Without limiting section 5, this Act does not affect the operation of another Act or administrative scheme that—

- (a) requires information about personal information held by any entity to be made available to members of the community; or
- (b) enables an individual to obtain access to or to amend the individual's personal information;

whether or not on payment of a charge.

7 Scope of personal information under this Act

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

8 Application of Act to information commissioner

- (1) The provisions of this Act providing for the accessing and amendment of personal information do not apply to personal

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information held by the information commissioner, other than in relation to the accessing or amending of the personal information of the staff of the Office of the Information Commissioner.

- (2) Subsection (1) does not affect the application of this Act to another entity if the other entity also holds the personal information.

9 Relationship with other Act prohibiting disclosure of information

- (1) The provisions of chapter 3 relating to access and amendment applications override the provisions of other Acts (other than the Right to Information Act) prohibiting the disclosure of personal information (however described).
- (2) Subject to subsection (1), this Act is intended to operate subject to the provisions of other Acts relating to the collection, storage, handling, accessing, amendment, management, transfer, use and disclosure of personal information.

10 Relationship to Right to Information Act

- (1) Access applications for information that is not personal information for the applicant are dealt with under the Right to Information Act.
- (2) Further, a mixed access application is also dealt with under the Right to Information Act even if it is initially made under this Act.

Note—

The approved form for an access application under this Act is the same as the approved form for an access application under the Right to Information Act. Agencies will make appropriate administrative arrangements to process mixed access applications. However, while no application fee is required for an access application under this Act, an application fee is required for an access application under the Right to Information Act and a mixed access application will not be a valid application for that Act until the application fee is received.

(3) In this section—

mixed access application means an application for access to 1 or more documents in relation to—

- (a) the applicant’s personal information; and
- (b) at least 1 of the following—
 - (i) another person’s personal information;
 - (ii) information that is not personal information.

Part 2 Interpretation

11 Definitions

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

12 Meaning of *personal information*

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

13 Meaning of *document*

In this Act, a *document* includes—

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

Editor’s note—

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

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document includes—

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

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

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

15 Meaning of *control*

In this Act, an entity has a document under its *control* if the entity has the document in its possession or otherwise has the document under its control.

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

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

17 Meaning of *document otherwise*

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

18 Meaning of *official document of a Minister for ch 3*

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

19 Meaning of *agency* for ch 3

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

20 Meanings of *agency* otherwise

- (1) For this Act, other than for chapter 3, an *agency* means a department or public authority but does not include an entity to which the privacy principles do not apply.
- (2) For this Act—
 - (a) a board, council, committee, subcommittee or other body established by government to help, or to perform functions connected with, an agency is not a separate agency, but is taken to be comprised within the agency; and
 - (b) a reference to an agency includes a reference to a body that is taken to be comprised within the agency.

21 Meaning of *public authority*

- (1) In this Act, *public authority* means any of the following entities—
 - (a) an entity (whether or not incorporated) that—
 - (i) is established for a public purpose under an Act; or
 - (ii) is established by government under an Act for a public purpose, whether or not the public purpose is stated in the Act;
 - (b) an entity (whether or not incorporated) that is created by the Governor in Council or a Minister;
 - (c) another body (whether or not incorporated)—
 - (i) that is—
 - (A) supported directly or indirectly by government funds or other assistance or over

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

Editor's note—

Under the *Acts Interpretation Act 1954*, section 36, *entity* includes a person and an unincorporated body.

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

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

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

23 What it means to *disclose* personal information

An entity (the *first entity*) having control of personal information *discloses* the personal information if—

- (a) it causes another entity to know, or to be able to know, the information; and
- (b) once the other entity knows, or is able to know, the information, the first entity can not exercise direct control over who will know the information in the future.

24 What it means to *use* personal information

(1) An entity *uses* personal information if it—

- (a) manipulates, searches or otherwise deals with the information; or
- (b) takes the information into account in the making of a decision; or
- (c) transfers the information from a part of the entity having particular functions to a part of the entity having different functions; or
- (d) publishes the information in a way that does not identify the individual the subject of the information.

(2) Subsection (1) does not limit what actions may be *use* of the personal information.

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- (3) However, *use* of the personal information does not include the action of disclosing the personal information.

25 References to IPPs and NPPs

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

Chapter 2 Privacy principles

Part 1 Compliance with IPPs by agencies

26 Information Privacy Principles

The Information Privacy Principles are set out in schedule 3.

27 Agencies to comply with IPPs

- (1) An agency, other than the health department, must comply with the IPPs.
- (2) Without limiting subsection (1), the agency—
 - (a) must not do an act, or engage in a practice, that contravenes, or is otherwise inconsistent with a requirement of, an IPP; and
 - (b) must not fail to do an act, or fail to engage in a practice, if the failure contravenes, or is otherwise inconsistent with a requirement of, an IPP.

- (3) An act or practice mentioned in subsection (2) includes any act or practice relating to the agency's collection, storage, handling, accessing, amendment, management, transfer, use or disclosure of personal information.

28 Noncompliance with particular IPPs

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

- (2) In this section—

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

Editor's note—

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

29 Special provision for law enforcement agencies

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

- (a) for the Queensland Police Service or the Crime and Misconduct Commission—the performance of its activities related to the enforcement of laws; or
- (b) for the corrective services department—the containment, supervision and rehabilitation of offenders under the *Corrective Services Act 2006*; or
- (c) for any other law enforcement agency—the performance of its responsibility mentioned in schedule 5, definition *law enforcement agency*, paragraph (d), including the conduct of criminal proceedings started or

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about to be started in a court or tribunal in relation to the responsibility.

Part 2 Compliance with NPPs

30 National Privacy Principles

The National Privacy Principles are set out in schedule 4.

Editor's note—

The principles set out in schedule 4 are called the National Privacy Principles in this Act because of their correspondence to the National Privacy Principles set out in the *Privacy Act 1988* (Cwlth), schedule 3. The NPPs, rather than the IPPs, are applied to the health department under this chapter because of particular arrangements applying nationally to the health department, corresponding entities in other Australian jurisdictions and the private health sector.

31 Health department to comply with NPPs

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

32 Noncompliance with particular NPPs

- (1) The health department is not required to comply with a prescribed NPP in relation to an individual's personal information if the information is related to or connected with personal information of the individual that has previously been published, or provided for the purpose of publication, by the individual.
- (2) In this section—
prescribed NPP means—
 - (a) NPP 2; or
 - (b) NPP 3, but only in relation to use or disclosure of personal information; or
 - (c) NPP 9(4).

Editor's note—

NPP 2 (Limits on use or disclosure of personal information), 3 (Data quality) or 9 (Sensitive information)

Part 3 Transfer of personal information outside Australia

33 Transfer of personal information outside Australia

An agency may transfer an individual's personal information to an entity outside Australia only if—

- (a) the individual agrees to the transfer; or
- (b) the transfer is required or authorised under a law; or
- (c) 2 or more of the following apply
 - (i) the agency reasonably believes that the recipient of the personal information is subject to a law, binding scheme or contract that effectively upholds

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principles for the fair handling of personal information that are substantially similar to the IPPs or, if the agency is the health department, the NPPs;

- (ii) the transfer is necessary for the performance of the agency's functions in relation to the individual;
- (iii) the transfer is for the benefit of the individual but it is not practicable to seek the agreement of the individual, and if it were practicable to seek the agreement of the individual, the individual would be likely to give the agreement;
- (iv) the agency has taken reasonable steps to ensure that the personal information it transfers will not be held, used or disclosed by the recipient of the information in a way that is inconsistent with the IPPs or, if the agency is the health department, the NPPs.

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

34 What is a *service arrangement*

A *service arrangement* is a contract or other arrangement under which an entity (the *contracted service provider* under the service arrangement) agrees or otherwise arranges with an agency (the *contracting agency* under the service arrangement) to provide services, other than as an employee of the contracting agency, either directly to the contracting agency or to an entity on behalf of the contracting agency, for the purposes of the performance of the contracting agency's functions.

35 Binding a contracted service provider to privacy principles

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

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

36 Bound contracted service provider to comply with privacy principles

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

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

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

Part 5 **Provision of information to
Ministers**

38 **Personal information relevant to portfolio responsibilities**

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

Part 6 **Miscellaneous**

39 **Nature of rights created by IPPs and NPPs requirements**

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

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Chapter 3 Access and amendment by application under this Act

Part 1 Legally enforceable rights to access and amendment

40 Right to be given access to particular documents

- (1) Subject to section 47, part 4 and section 64, an individual has a legally enforceable right to be given access under this Act to—
- (a) documents of an agency to the extent they contain the individual's personal information; and
 - (b) official documents of a Minister to the extent they contain the individual's personal information.

Note—

See part 2 for how to exercise this right to access.

- (2) Subsection (1) applies to documents regardless of when they were created.

41 Right to amend personal information in particular documents

- (1) Subject to section 47, part 4 and section 70, an individual has a legally enforceable right under this Act to amend, if incorrect—
- (a) documents of an agency to the extent they contain the individual's personal information; and
 - (b) official documents of a Minister to the extent they contain the individual's personal information.

Note—

See part 2 for how to exercise this right to amend.

- (2) Subsection (1) applies to documents regardless of when they were created.

42 Whether this Act or Right to Information Act will apply

- (1) An individual's application for access to a document in relation to the individual's personal information contained in it can be progressed under this chapter even if the document sought to be accessed contains, as well as the applicant's personal information—
- (a) another individual's personal information; or
 - (b) information that is not the individual's or anyone else's personal information.
- (2) However, if the application, as well as seeking access to a document in relation to the individual's personal information contained in it, is a mixed application—
- (a) the application can not be progressed under this Act; and
 - (b) subject to the payment of the appropriate application fee under the Right to Information Act, the application must be dealt with as an application under that Act.

Part 2 Access and amendment applications

43 Advice before making access or amendment application

If a person wishes to make an application under this chapter to an agency or Minister for access to a document or to amend a document, it is the duty of the agency or Minister to do the following—

[s 44]

- (a) unless paragraph (b) or (c) applies—inform the person how to make the application in a way that complies with section 45 or 46;

Note—

Advice under this paragraph could include advice that the application would more appropriately be made to a different agency or Minister.

- (b) if the document can be provided or amended by the agency or Minister other than under this chapter—inform the person of this and, if reasonably practicable, provide access to or amend the document;
- (c) if the document is reasonably accessible in another way mentioned in the Right to Information Act, section 50 as applied under this Act, or can reasonably be amended in another way—inform the person of the way.

44 Who may be an applicant or agent for access or amendment application

- (1) An access or amendment application can be made only by—
 - (a) if the individual whose personal information is the subject of the document sought to be accessed or amended is living—the individual; or
 - (b) if the individual whose personal information is the subject of the document sought to be accessed or amended is deceased—a person who is duly authorised in law to act in the affairs of the deceased individual.
- (2) For the purposes of the provisions of this chapter applying to access and amendment applications—
 - (a) the individual, whether living or not, is taken to be the *applicant* for the application; and
 - (b) a person who acts on behalf of the applicant, whether living or not, in the making of the application is the *agent* of the applicant.

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- (3) A person can be an agent of an applicant only if the person is duly authorised in law to act for or in relation to the applicant in the making of the application.

Examples of authorised person—

- a person acting under an enduring power of attorney
- a person acting under authority as a guardian
- a person acting under the authority of a will

45 Making access application

- (1) An individual who wishes to obtain access to a document of an agency or an official document of a Minister under this Act to the extent it contains the individual's personal information may make an access application to the agency or Minister.

Note—

Minister is defined to include a Parliamentary Secretary—see schedule 5.

- (2) The access application must—
- (a) be in the approved form; and
 - (b) provide sufficient information concerning the document to enable a responsible officer of the agency or the Minister to identify the document; and
 - (c) state the address to which notices under this Act may be sent to the applicant; and
 - (d) state the name of the applicant and be accompanied by sufficient supporting evidence to establish the applicant's identity; and
 - (e) if the application is being made on behalf of the applicant—
 - (i) state the name of the applicant and the name of the applicant's agent; and
 - (ii) be accompanied by sufficient supporting evidence of the agent's authority.

[s 46]

- (3) The application may be made by electronic communication within the meaning of the *Electronic Transactions (Queensland) Act 2001* to the email address for applications mentioned on the approved form.

Note—

Proof of the agent's identity may accompany the application. In any event, it is required before access is given—see section 77.

46 Making amendment application

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

Note—

Minister is defined to include a Parliamentary Secretary—see schedule 5.

- (2) For subsection (1), the reference to an individual who has had access to a document includes a reference to an individual whose agent has had access to the document.
- (3) Without limiting how an agent may be authorised for this section in relation to an applicant who is deceased, an agent may include—
- (a) an eligible family member of the deceased person; or
 - (b) a person the agency or Minister considers has an appropriate interest in the amendment of the personal information.
- (4) For applying the definition *eligible family member* for the purposes of this section, a person described in the definition is not *reasonably available* if—
- (a) a person of that description does not exist; or
 - (b) a person of that description can not be reasonably contacted; or

- (c) a person of that description is unable or unwilling to act as an eligible family member for this section.
- (5) The amendment application must—
 - (a) be in the approved form; and
 - (b) provide sufficient information concerning the document to enable a responsible officer of the agency or the Minister to identify the document; and
 - (c) state the address to which notices under this Act may be sent to the applicant; and
 - (d) state the name of the applicant and be accompanied by sufficient supporting evidence to establish the applicant's identity; and
 - (e) if the application is being made on behalf of the applicant—
 - (i) state the name of the applicant and the name of the applicant's agent; and
 - (ii) be accompanied by sufficient supporting evidence of the agent's authority; and
 - (f) state the information the applicant claims is inaccurate, incomplete, out-of-date or misleading and the document containing the information; and
 - (g) state the way in which the applicant claims the information to be inaccurate, incomplete, out-of-date or misleading and the grounds for the applicant's claim; and
 - (h) if the applicant claims the information to be inaccurate or misleading—state the amendments the applicant claims are necessary for the information to be accurate or not misleading; and
 - (i) if the applicant claims the information to be incomplete or out-of-date—state the other information the applicant claims is necessary to complete the information or to bring it up-to-date.

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- (6) Subject to requirements of the agency or Minister relating to establishing identity or authorisation, the application may be made by electronic communication within the meaning of the *Electronic Transactions (Queensland) Act 2001* to the email address for applications mentioned on the approved form.

47 Agencies to which access or amendment application may not be made

- (1) An access or amendment application may not be made or transferred to—
- (a) the information commissioner; or
 - (b) 1 of the following agencies—
 - (i) CS Energy Limited ACN 078 848 745;
 - (ii) Ergon Energy Corporation Limited ACN 087 646 062 in relation to its trading activities undertaken by Ergon Energy Queensland Pty Ltd ACN 121 177 802;
 - (iii) QIC Limited ACN 130 539 123;
 - (iv) QR Limited ACN 124 649 967 in relation to a QR subsidiary;
 - (v) a QR subsidiary;
 - (vi) Stanwell Corporation Limited ACN 078 848 674;
 - (vii) Tarong Energy Corporation Limited ACN 078 848 736.
- (2) Subsection (1) does not apply if the access application is for a document in relation to community service obligations within the meaning of the *Government Owned Corporations Act 1993*.
- (3) In this section—
- QR subsidiary*** means any of the following entities—
- ARG Risk Management Ltd

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- Australia Eastern Railroad Pty Ltd ACN 118 274 776
 - Australia Western Railroad Pty Ltd ACN 094 792 275
 - Australian Rail Pty Ltd ACN 118 274 481
 - Australian Railroad Group Employment Pty Ltd ACN 087 891 601
 - AWR Lease Co Pty Ltd ACN 094 792 159
 - CRT Group Pty Ltd ACN 004 935 915
 - Golden Bros. Group Pty Ltd ACN 082 175 700
 - Interail Australia Pty Ltd ACN 087 619 010
 - Logistics Australasia Pty Ltd ACN 004 411 983
 - NHK Pty Ltd ACN 004 541 360
 - QR Intermodal Pty Ltd ACN 114 388 377
 - QR Surat Basin Pty Ltd 122 385 568.

48 Applications on behalf of children

- (1) Without limiting the ability of persons to make applications on behalf of children, an access or amendment application may be made on behalf of a child by a parent or a person having guardianship of the child.
- (2) If an access application for a document is made by or on behalf of a child, then, despite the Right to Information Act, schedule 3, section 12(2) as applied under section 64 of this Act, and the Right to Information Act, schedule 4, part 2, item 8, as applied under section 64 of this Act, the agency or Minister may refuse access to all or part of the child's personal information if the agency or Minister considers access would not be in the best interests of the child.
- (3) If an access application is made by a child other than by an agent, the agency or Minister, in deciding whether to give the child access to all or part of the information, must consider whether the child has the capacity to—

[s 48]

- (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) In this section—

child means an individual who is under 18 years.

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

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

Note—

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

11 Who is a parent

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

Part 3 Dealing with application

Division 1 Interpretation

49 Definitions for pt 3

In this part—

processing period, for an application to an agency or Minister, means 25 business days from the day the application is received by the agency or Minister, however—

- (a) if the application is transferred to the agency or Minister, the transfer period does not count as part of the processing period; and
- (b) if the application involves consultation with a third party under section 55—the processing period is extended to 35 business days from the day the application is received by the agency or Minister; and
- (c) if the applicant agrees with the agency or Minister under section 57 that the processing period is a longer period—the processing period is that longer period.

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.

Division 2 Decision maker

50 Persons who are to make decisions for agencies

- (1) An access or amendment application to an agency is to be dealt with on behalf of the agency by—

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- (a) if the agency is a department, government owned corporation or public authority—the agency’s principal officer; or
- (b) if the agency is a local government—
 - (i) the agency’s principal officer; or
 - (ii) another officer of the agency who the local government, by resolution, nominates.
- (2) A nomination under subsection (1)(b)(ii) may be general or limited to a particular application.
- (3) Under subsection (1)(a), an agency’s principal officer may delegate the power to deal with the application to—
 - (a) another officer of the agency; or
 - (b) if the principal officer of another agency agrees—the principal officer of the other agency.
- (4) The principal officer of the other agency may subdelegate a power delegated to him or her under subsection (3)(b).

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.

51 Persons who are to make decisions for Ministers

An access or amendment application to a Minister may be dealt with by the person the Minister directs, either generally or in a particular case.

Division 3 Contact with applicant

52 Contact after purported application

- (1) This section applies if—

- (a) a person purports to make an application under this chapter to an entity to access or amend a document; and
- (b) 1 of the following applies—
 - (i) the document is not a document for this chapter;
 - (ii) the application purports the entity to be an agency, but the entity is not an agency for this chapter;
 - (iii) under section 47, the application may not be made to the entity.
- (2) The entity is to give written notice to the applicant of the fact that the purported application is not an application under this Act.
- (3) The notice must specify the following—
 - (a) the day on which the decision was made;
 - (b) if subsection (1)(b)(i) applies—the provision of the Right to Information Act, schedule 1 under which the document is, for that Act, a document to which that Act does not apply;
 - (c) if subsection (1)(b)(ii) applies—the provision of the Right to Information Act, schedule 2 under which the entity is, for that Act, an entity to which that Act does not apply;
 - (d) the name and designation of the officer who made the decision;
 - (e) the rights of review given under this Act in relation to the decision, the procedures to be followed for exercising the rights and the time within which an application for review must be made.

53 Contact after purported application for access or amendment that does not comply with requirements for making application

- (1) This section applies if—

[s 54]

- (a) a person purports to make an access application or amendment application for a document to an agency or Minister; and
 - (b) the application does not comply with—
 - (i) for an access application—section 45; or
 - (ii) for an amendment application—section 46.
- (2) The agency or Minister must contact the person within 10 business days after the purported application is received, or, if it is not reasonably practicable to contact the person within that period, as soon as reasonably practicable after that period, and inform the person as required under section 43.
- (3) An agency or Minister must not refuse to deal with the application because it does not comply with section 45(2) or 46(2) without first giving the applicant a reasonable opportunity of consultation with a view to making an application in a form complying with section 45(2) or 46(2).
- (4) If, after consulting under subsection (3), an agency or Minister decides the application does not contain sufficient information to enable a responsible officer of the agency or Minister to identify the document, the agency or Minister must give the applicant written notice of the decision.
- (5) The time between the date of the notice and when the applicant gives the information does not count as part of the processing period.
- (6) However, the applicant is taken to have withdrawn the application if the applicant fails to give the information within 30 business days after the day the notice of a decision under subsection (4) is sent to the applicant.

54 Initial contact after valid application

- (1) This section applies if a person makes an access application for a document to an agency or Minister and it is not an application that must be dealt with under the Right to Information Act.

Note—

If an application is a mixed access application, the application must be dealt with as a mixed access application under the Right to Information Act. See especially section 34(2)(a) of that Act.

- (2) The agency or Minister must contact the applicant within 10 business days after the application is received, or, if it is not reasonably practicable to contact the applicant within that period, as soon as reasonably practicable after that period and—
- (a) if the document can be provided by the agency or Minister other than under this chapter—inform the applicant of this and, if reasonably practicable, provide access to the document; and
 - (b) if the document is reasonably accessible in another way mentioned in the Right to Information Act, section 50 as applied under this Act—inform the applicant of the way; and
 - (c) if the application would have been more appropriately made to another agency or Minister—inform the applicant of the agency or Minister to whom the application has been transferred and the date of the transfer; and

Note—

The agency or Minister must give the applicant written notice under section 56.

- (d) if the agency considers it is not practicable to decide the application within the prescribed time frame—inform the applicant of this and, if reasonably practicable, provide an estimate of when the application will be decided; and
- (e) in all cases except where the application has been transferred—provide the applicant with the name and contact details of the decision maker for the application.

Division 4 Consultation

55 Third party disclosure if disclosure may be of substantial concern

- (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 substantial concern to a government, agency or person concerned (the *concerned third party*) only if the agency or Minister has taken the steps that are reasonably practicable to obtain the views of the concerned third party about whether or not the information is exempt information or information that is personal information other than for the applicant.
- (2) If—
 - (a) the agency or Minister decides, after having sought the views of the concerned third party, that the information is not exempt information or information that is personal information other than for the applicant; and
 - (b) the concerned third party believes that the information is exempt information or information that is personal information other than for the applicant;the agency or Minister must—
 - (c) give written notice to the concerned third party of—
 - (i) the decision of the agency or Minister; and
 - (ii) the reasons for the decision; and
 - (iii) the rights of review given under this Act in relation to the decision; and
 - (iv) the procedures to be followed in exercising those rights; and
 - (v) the time within which an application for review must be made; and
 - (d) give written notice to the applicant of the decision; and

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- (e) defer giving access to the document until after—
 - (i) the agency or Minister is given written notice by the concerned third party that it does not intend to make any application for review under this Act; or
 - (ii) if notice is not given under subparagraph (i) and no application for review under this Act is made by the end of the review period—the end of the review period; or
 - (iii) if an application for review is made by the end of the review period—the application is finally disposed of.
 - (3) In this section—
 - person concerned*, in relation to a person who has died, means the deceased person’s eligible family member, or, if 2 or more persons qualify as the deceased person’s eligible family member, 1 of those persons.
 - review period* means the period within which any application for review under this Act may be made.

Division 5 Transfers and extensions

56 Transfer of access or amendment application

- (1) In this section—
 - agency* includes a Minister.
- (2) An agency to which an access or amendment application has been made (the *original agency*) may transfer the application to another agency if—
 - (a) the document to which the application relates—
 - (i) is not held by the original agency but is, to the original agency’s knowledge, held by the other agency; or

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- (ii) is held by the original agency but is more closely related to the functions of the other agency; and
 - (b) the other agency agrees to the transfer.
- (3) If an agency that transfers an application to another agency holds the document to which the application relates, the agency must give a copy of the document (whether or not in the form of a written document) to the other agency with the application.
- (4) The original agency must give the applicant written notice of the agency to which the application has been transferred and the date of the transfer.
- (5) The original agency is not required to include exempt information in a notice.
- (6) An application that is transferred from 1 agency to another is taken to have been received by the other agency—
 - (a) on the day on which it is transferred; or
 - (b) 10 business days after the day on which it was received by the agency to which it was originally made;whichever is the earlier.
- (7) Section 54(2)(b), (d) and (e) apply to an access application received by the other agency.
- (8) Section 54(2)(b), (d) and (e) apply to an amendment application received by the other agency as if it were an access application.
- (9) If the application is an amendment application and the other agency decides to amend the document to which the application relates—
 - (a) the other agency must advise the original agency of the decision and how, under section 71; and
 - (b) the original agency must make the same amendment to the document it holds.

- (10) Nothing in this chapter requires the original agency to decide an application that has been transferred.
- (11) If—
 - (a) an application is made to an agency for access to or amendment of more than 1 document; and
 - (b) 1 or more of the documents is a document to which subsection (2) applies;this section applies to each of the documents as if separate applications had been made to the agency in relation to each of the documents.

57 Extension of processing period

- (1) An agency or Minister may ask the applicant for an access or amendment application for a further specified period (an *extended processing period*) within which the agency or the Minister may continue to consider the application and make a decision in relation to it.
- (2) A request may be made under subsection (1) despite there being a deemed decision on the application under section 63.
- (3) Additional requests for further specified periods may be made under subsection (1).
- (4) 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 made a written request of the applicant for a further specified period within which to consider the application and make a decision in relation to it; 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.
- (5) If a considered decision is made, the considered decision replaces the deemed decision for the purposes of this chapter.

[s 58]

Note—

The agency or Minister must give notice of the considered decision under section 62 or 67 and the considered decision is potentially subject to internal review in addition to external review.

Part 4 Refusing to deal with application

58 Refusal to deal with application—effect on agency’s or Minister’s functions

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

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- (ii) in consulting with an entity in relation to the application; or
 - (c) in making a copy, or edited copy, of the document; or
 - (d) in notifying any decision on the application.
- (3) In deciding whether to refuse, under subsection (1), to deal with an access or amendment application, an agency or Minister must not have regard to—
- (a) any reasons the applicant gives for applying for access or amendment; or
 - (b) the agency's or Minister's belief about what are the applicant's reasons for applying for access or amendment.
- (4) If—
- (a) an access application is expressed to relate to all documents, or to all documents of a stated class, that contain personal 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;
- then—
- (c) the agency or Minister may refuse to deal with the application without having identified any or all of the documents; and
 - (d) the notice of the agency's or Minister's decision to refuse to deal with the application must identify the provision under which information comprising the documents is exempt information.

59 What an agency or Minister must do before refusing to deal with application under s 58

An agency or Minister may refuse to deal with an access or amendment application under section 58(1) only if—

[s 60]

- (a) the agency or Minister has given the applicant a written notice—
 - (i) stating an intention to refuse to deal with the application; and
 - (ii) advising that, for a consultation period, the applicant may consult with a named officer of the agency or a named member of the staff of the Minister with a view to making an application in a form that would remove the ground for refusal; and
 - (iii) advising that the consultation period ends 15 business days after the day the applicant is given the notice; and
 - (iv) stating the effect of section 60; and
- (b) the agency or Minister has given the applicant a reasonable opportunity to consult with the named officer or member; and
- (c) the agency or Minister has, as far as is reasonably practicable, provided the applicant with any information that would help the making of an application in a form that would remove the ground for refusal.

60 Consultation before refusing to deal with application

- (1) This section applies if an applicant receives a written notice under section 59.
- (2) During consultation, the applicant and named officer or member may agree what is to be the processing period in relation to the application.
- (3) Following consultation, the applicant may give the named officer or member written notice either confirming or amending the application.

Examples of amendments—

- an amendment of the documents to which an access application relates

- an amendment of the application to state that the processing period in relation to the application is to be a period that has been agreed with the named officer or member
- (4) If the application is amended, section 58 applies in relation to the amended application but section 59 and the other provisions of this section do not apply to it.
 - (5) If the applicant fails to consult after being given notice under section 59, the applicant is taken to have withdrawn the application at the end of the consultation period mentioned in section 59(a)(iii).
 - (6) Without limiting subsection (5), the applicant is taken to have failed to consult if, by the end of the consultation period, the applicant has not given the named officer or member written notice under subsection (3).

61 Refusal to deal with application—previous application for same documents

- (1) This section applies if an applicant's access application or amendment application to an agency or Minister (the *later application*) is for the same document or documents sought by the applicant in an earlier application to the same agency or Minister (the *earlier application*).
- (2) However, this section does not apply if the applicant withdrew the earlier application or the earlier application was taken to be withdrawn under this chapter.
- (3) The agency or Minister may, to the extent the later application relates to documents sought, or sought to be amended, under the earlier application, refuse to deal with the later application on a ground mentioned in subsection (4) if—
 - (a) the agency or Minister is satisfied the documents sought, or sought to be amended, under the later application are the documents sought, or sought to be amended, under the earlier application; and

[s 61]

- (b) the later application has not disclosed any reasonable basis for again seeking access to or amendment of the documents.
- (4) The grounds are as follows—
 - (a) the agency's or Minister's decision on the earlier application—
 - (i) is the subject of external review and the review is not complete; or
 - (ii) has been the subject of a completed external review;
 - (b) when the later application was made, the agency or Minister had not decided whether to grant access to or allow amendment of the documents under the earlier application;
 - (c) the agency or Minister has decided the documents sought under the earlier application were documents access to or amendment of which was refused under section 64.
- (5) For subsection (3)(a), the documents sought under the later application are the documents sought under the earlier application even if the documents sought under the later application include the earlier application and documents about the earlier application.

Part 5 Decision

Division 1 Access applications

62 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 65.

63 Deemed decision on access application

- (1) If an applicant is not given written notice of the decision by the end of the processing period for an access application for a document, on the last day of the processing period, the principal officer of the agency or the Minister is taken to have made a decision (a *deemed decision*) refusing access to the document.
- (2) Also, if the processing period is extended under section 57 and there is no considered decision by the end of the extended period, the agency or Minister is taken to have made a decision (also a *deemed decision*) refusing access on the last day of the extended processing period.
- (3) As soon as practicable after a deemed decision is taken to have been made, the principal officer or Minister must give written notice to the applicant stating the decision taken to have been made and specifying—

[s 64]

- (a) the day on which the decision is taken to have been made; and
- (b) the right of review given under parts 8 and 9 in relation to the decision; and
- (c) the procedures to be followed for exercising the right; and
- (d) the time within which an application for review must be made.

64 Grounds on which access may be refused

An agency may refuse access to a document of the agency and a Minister may refuse access to an official document of the Minister in the same way and to the same extent the agency or Minister could refuse access to the document under the Right to Information Act, section 46 were the document to be the subject of an access application under that Act.

Note—

See the Right to Information Act, section 46 (Grounds on which access may be refused). Generally, the grounds for refusal relate to issues concerning exempt information, the public interest, documents being nonexistent or unable to be located and other availability of access to documents. However, see also section 5 (Act not intended to prevent other accessing or amendment of personal information) of this Act.

65 Notification of decision and reasons

- (1) An agency or Minister is to give written notice to an applicant for an access application of—
 - (a) the decision on the application; and
 - (b) if the application relates to a document that is not held by the agency or Minister—the fact that the document is not held by the agency.
- (2) The notice must specify the following—
 - (a) the day on which the decision was made;

- (b) if access to a document is to be given—
 - (i) the period within which the person may access the document under section 76; and
 - (ii) that proof of identity is required under section 77 before access may be given unless the applicant has already given proof of identity;
- (c) if access is to be given to a copy of a document subject to the deletion under section 80 of irrelevant information—the fact that the document is such a copy;
- (d) if access is to be given to a copy of a document subject to the deletion under section 81 of exempt information—
 - (i) the fact that the document is such a copy; and
 - (ii) the provision of the Right to Information Act, schedule 3 under which the information is exempt information; and
 - (iii) the reasons for the decision classifying the information as exempt information;
- (e) if access is to be given to a copy of a document subject to the deletion under section 82 of information the disclosure of which would, on balance, be contrary to the public interest under the Right to Information Act, section 48 as applied under this Act—
 - (i) the fact that the document is such a copy; and
 - (ii) the factors mentioned in the Right to Information Act, schedule 4 to which regard was had under the applied section 48; and
 - (iii) the reasons why disclosure of the information would, on balance, be contrary to the public interest under the Right to Information Act, section 48;
- (f) if access to a document is to be given subject to deferral—

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- (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 79;
- (g) if access to a document is refused—the same information, other than information about a processing charge, that would be required to be given under the Right to Information Act, section 51(2)(g) if access to the document had been refused under that Act;
- (h) the name and designation of the officer who made the decision;
- (i) the rights of review under this Act in relation to the decision, including, to the extent review of the decision is available—
 - (i) the procedures to be followed for exercising the rights and the time within which an internal review application or external review application must be made; and
 - (ii) the designation or classification level of the officer who would conduct an internal review if an internal review application were made.
- (3) An agency or Minister is not required to include any exempt information in the notice.
- (4) This section does not apply in relation to a deemed decision under section 63(1).

66 Information as to existence of certain 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) On an access application for a document containing prescribed information, the agency or Minister concerned may give written notice to the applicant—

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- (a) that the agency or Minister neither confirms nor denies the existence of that type of document as a document of the agency or an official document of the Minister; but
 - (b) that, assuming the existence of the document, it would be a document to which access would be refused under section 64 to the extent it comprised prescribed information.
- (3) A notice under subsection (2) may be given in a schedule of relevant documents.
- (4) If a notice is given under subsection (2)—
- (a) section 65 applies as if the decision to give the notice were the decision on the application mentioned in that section; and
 - (b) the decision to give the notice were a decision refusing access to the document because the document would, if it existed, be comprised of exempt information or be a document comprising personal information that was not personal information for the applicant.
- (5) In this section—
- prescribed information* means—
- (a) exempt information mentioned in the Right to Information Act, schedule 3, section 1, 2, 3, 4, 5, 9 or 10; or
 - (b) information the disclosure of which would, on balance, be contrary to the public interest, under the Right to Information Act, section 46(b).

Division 2 Amendment applications

67 Decision on amendment application

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

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- (a) after considering the application, make a decision (a *considered decision*), whether amendment of the document is to be permitted; and
- (b) give the person written notice of the decision under section 69.

68 Deemed decision on amendment application

- (1) If an applicant is not given written notice of the decision by the end of the processing period for an amendment application, on the last day of the processing period, the principal officer of the agency or the Minister is taken to have made a decision (a *deemed decision*) refusing to amend the document.
- (2) Also, if the processing period is extended under section 57 and there is no considered decision by the end of the extended period, the agency or Minister is taken to have made a decision (also a *deemed decision*) refusing to amend the document on the last day of the extended processing period.
- (3) As soon as practicable after a deemed decision is taken to have been made, the principal officer or Minister must give written notice to the applicant stating the decision taken to have been made and specifying—
 - (a) the day on which the decision is taken to have been made; and
 - (b) the right of review given under parts 8 and 9 in relation to the decision; and
 - (c) the procedures to be followed for exercising the right; and
 - (d) the time within which an application for review must be made.

69 Decision and reasons to be notified

- (1) Section 65(1)(a) and (2)(a), (h) and (i) applies to a decision made under this part refusing to amend a document in the same way it applies to a decision refusing to give access to a document.
- (2) In addition, the decision on the application must include the reasons for the refusal to amend.
- (3) However, subsections (1) and (2) do not apply to a deemed decision under section 68(1).

70 Discretion to amend document

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

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

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71 Amendment of document by alteration or notation

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

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

72 Notation to information

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

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

73 Particular notations required to be added

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

- (b) if the applicant claims the information to be inaccurate or misleading—setting out the amendments the applicant claims are necessary for the information to be accurate or not misleading; and
 - (c) if the applicant claims the information to be incomplete or out-of-date—setting out the information the applicant claims is necessary to complete the information or to bring it up-to-date.
- (3) The agency or Minister must—
 - (a) comply with the requirements of a notice under this section; and
 - (b) give the applicant written notice of the nature of the notation.
- (4) Subsection (3)(a) does not require the agency or Minister to make a notation using the same words as the words provided by the applicant.
- (5) If the agency or Minister decides the information to which the notice relates does not relate to information in relation to which the applicant was entitled to apply to the agency for amendment of the document—
 - (a) subsections (2) and (3) do not apply; and
 - (b) the agency or Minister must give written notice to the applicant of the decision and the reasons for the decision; and
 - (c) section 65(2)(a), (h) and (i) applies to the notice as if the amendment application were an access application.
- (6) If an agency or Minister (the *document holder*) discloses to a person (including an agency or Minister) any information contained in the part of the document the subject of the amendment application, the document holder—
 - (a) must ensure the person is given, when the information is disclosed, a statement—

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- (i) stating that the person, or eligible family member of the person, to whom the information relates claims that the information is inaccurate, incomplete, out-of-date or misleading; and
 - (ii) setting out particulars of the notation added under this section; and
- (b) may include in the statement the reason for the agency's refusal to amend the document.

Part 6 Charges

74 Fees and charges payable by applicant for access or amendment

- (1) No application fee is payable under this Act on the making of an access or amendment application.
- (2) However, a regulation may provide for a charge to be paid by an applicant for an access or amendment application to reimburse an agency or Minister for actual costs incurred by the agency or Minister in providing access to or amending a document.
- (3) When an agency or Minister receives an access or amendment application, the agency or Minister must advise the applicant that a charge may be payable under the regulation.
- (4) The agency or Minister must not give access to or amend a document until the applicant has paid the charge payable under the regulation.

75 Duty in relation to charges

An agency must incur only reasonable costs and must, to the extent practicable, minimise incurring costs in relation to the provision of access to or amendment of a document.

Part 7 Giving access

76 Time limit for access

- (1) This section applies if an applicant for an access application for a document is granted access to the document.
- (2) The person may obtain access to the document—
 - (a) if providing access is deferred under section 79, within—
 - (i) 40 business days after the person is given notice that access is no longer deferred; and
 - (ii) any additional period allowed by the agency or Minister; or
 - (b) otherwise, within—
 - (i) 40 business days after the person is given notice of the agency's or Minister's decision, or the information commissioner's decision, to give the person access to the document; and
 - (ii) any additional period allowed by the agency or Minister.
- (3) If the person does not seek to obtain access to the document within the 40 business days, or any additional period allowed by the agency or Minister, the person's entitlement to access under the application ends.

77 Proof of identity before access to personal information

- (1) An agency or Minister must not provide access to a document containing personal information of the applicant unless the applicant gives the agency or Minister proof of the applicant's identity.
- (2) If an agent is acting on behalf of the applicant, the agency or Minister must also be given proof of the agent's authorisation and identity.

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- (3) The proof of authorisation and proof of identity may accompany the access application for the document or be given to the agency or Minister at any time after the application is made.
- (4) In this section—
proof of identity means the proof of identity prescribed under a regulation.

78 Precautions

- (1) This section applies if—
 - (a) an access or amendment application is made to an agency or Minister for a document containing personal information for a person (the *first person*); and
 - (b) disclosure of the information would, on balance, be contrary to the public interest having regard to the Right to Information Act, section 48 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.

79 Access may be deferred in particular cases

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

- (a) for presentation to the Legislative Assembly or a committee of the Legislative Assembly; or
- (b) for release to the media; or

- (c) solely for inclusion, in the same or an amended form, in a document to be prepared for a purpose mentioned in paragraph (a) or (b);

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

80 Deletion of irrelevant information

- (1) 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, the agency or Minister may delete the irrelevant information from a copy of the document before giving access to the document.
- (2) The agency or Minister may give access to a document by giving access to a copy of the document with the irrelevant information deleted only if the agency or Minister considers, from the application or after consultation with the applicant—
 - (a) the applicant would accept the copy; and
 - (b) it is reasonably practicable to give access to the copy.

81 Deletion of exempt information

Subject to section 66, if—

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

the agency or Minister is to give access accordingly.

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82 Deletion of information contrary to public interest

Subject to section 66, if—

- (a) an application is made for access to a document containing information (the *prescribed information*) the disclosure of which would, on balance, be contrary to the public interest under the Right to Information Act, section 48, as applied under this Act; and
- (b) it is practicable to give access to a copy of the document from which the prescribed information has been deleted; and
- (c) it appears to the agency or Minister concerned (whether from the terms of the application or after consultation with the applicant) that the applicant would wish to be given access to such a copy;

the agency or Minister is to give access accordingly.

83 Access to summary of personal information to third party

- (1) This section applies if, under this Act—
 - (a) an agency or a Minister refuses an applicant access to a document that includes personal information of an individual; and
 - (b) the refusal is lawful.
- (2) Despite the refusal of access, the agency or Minister must take reasonable steps to give the applicant as much as possible of the personal information.
- (3) Reasonable steps may include, for example, any of the following—
 - (a) giving the applicant a summary of the personal information;
 - (b) giving a person other than the applicant (an *intermediary*) a summary of the personal information on conditions of use or disclosure agreed between the

agency or Minister and the intermediary, or between the agency or Minister, the intermediary and the applicant.

- (4) However, if a summary of information under subsection (3) 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.
- (5) Subsection (4) applies whether or not the summary is capable of revealing the identity of the information giver.

84 Relevant health care information to third party

- (1) This section applies if—
 - (a) an access application is made to an agency or Minister for access to a document of the agency or an official document of the Minister that contains relevant health information concerning the applicant; and
 - (b) it appears to the principal officer of the agency or the Minister that the disclosure of the information to the applicant might be prejudicial to the physical or mental health or wellbeing of the applicant.
- (2) The principal officer or Minister may direct that access to the document is not to be given to the applicant but is to be given instead to an appropriately qualified health professional nominated by the applicant and approved by the principal officer or Minister.
- (3) The principal officer or Minister may appoint an appropriately qualified health professional to make a decision under subsection (4) on behalf of the principal officer or Minister.
- (4) A health professional nominated and approved under subsection (2) may decide—
 - (a) whether or not to disclose all or part of the relevant health information contained in the document to the applicant; and

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- (b) the way in which to disclose the information to the applicant.
- (5) In this section—
 - appropriately qualified* means having the qualifications and experience appropriate to assess the relevant health information in the document.
 - relevant health information* means health information provided by a health professional.

85 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 held by the agency; and
 - (ii) the agency could create a written document containing the information using equipment that is

usually available to it for retrieving or collating stored information;

providing a written document created using the equipment.

- (2) Subject to this section and sections 80 to 84, if an applicant has requested access in a particular form, access must be given in that form.
- (3) If giving access in the form requested by the applicant—
 - (a) would interfere unreasonably with the operations of the agency, or the performance by the Minister of the Minister's functions; or
 - (b) would be detrimental to the preservation of the document or, having regard to the physical nature of the document, would be inappropriate; or
 - (c) would involve an infringement of the copyright of a person other than the State;access in that form may be refused and given in another form.
- (4) If an applicant is given access to a document in a form different to the form of access requested by the applicant, the applicant must not be required to pay a charge that is more than the charge that would have been payable if access had been given in the form requested by the applicant.
- (5) Access under subsection (1)(a) to a document to which section 182 or 183 applies must be given by affording the applicant a reasonable opportunity to inspect the document on the premises of the Queensland State Archives or public library or in an office of an agency.
- (6) If a document is more than 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.

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

Part 8 Internal review

86 Definitions for pt 8

In this part—

internal review means review under this part.

internal review application means an application for internal review.

87 What is internal review

- (1) A person who is aggrieved by a decision that is subject to internal review may have the decision reviewed by the agency dealing with the relevant access or amendment application.
- (2) On an internal review of a decision, the reviewer must make a new decision as if the original decision had not been made.
- (3) An internal review application must not be decided by—
 - (a) the person who dealt with the original access or amendment application; or
 - (b) a person who is less senior than that person.

88 Decisions subject to internal review

- (1) Subject to subsection (2), any decision under this chapter is subject to internal review.
- (2) The following decisions are not subject to internal review—
 - (a) a decision on an internal review application; or

- (b) a decision by an agency's principal officer; or
- (c) a decision by a Minister.

89 Who may apply for internal review

- (1) To apply for internal review of a decision, the applicant must be a person aggrieved by the decision.
- (2) A person is aggrieved by a decision if the decision relates to an access or amendment application made by the person for a document and is to the effect that—
 - (a) a document is not a document of an agency under the Right to Information Act; or
 - (b) an entity is not an agency under the Right to Information Act; or
 - (c) an entity to which an access application is purportedly made is an entity to which an access application may not be made or transferred because of section 47(1); or
 - (d) the agency or Minister refuses, under part 4 to deal with the application; or
 - (e) the agency or Minister refuses to give the applicant access to the document or allow its amendment; or
 - (f) access to the document is to be given to the applicant subject to deferral under section 79; or
 - (g) access to the document is to be given to the applicant subject to the deletion of information under section 80, 81 or 82; or
 - (h) under a regulation under part 6, a charge is payable in relation to the actual costs incurred by the agency or Minister and the applicant considers the charge is wrongly assessed.
- (3) For subsection (2)(h), it does not matter whether the charge has already been paid.

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- (4) Also, a person, including a government or agency, (the *aggrieved person*) is aggrieved by a decision if the decision relates to an access application by another person for a document and—
 - (a) the agency or Minister dealing with the access application should have taken, but has not taken, the steps that are reasonably practicable to obtain the views of the aggrieved person under section 55 about whether or not the document contained exempt information; or
 - (b) the agency or Minister dealing with the access application has obtained the views of the aggrieved person under section 55 but the agency's decision is not in accordance with the views.
- (5) Also, a person (the *aggrieved person*) is aggrieved by a decision if—
 - (a) the decision relates to an access application by another person for a document; and
 - (b) 2 or more persons, including the aggrieved person, qualify as a person concerned under section 55 in relation to a deceased person; and
 - (c) the agency or Minister obtained the views of 1 of the persons and that person was of the view that the information contained in the document was not personal information for the deceased person; and
 - (d) the agency or Minister did not obtain the views of the aggrieved person and the aggrieved person is of the view that the information contained in the document is personal information for the deceased person.

90 Making application for internal review

An application for internal review of a decision must—

- (a) state an address to which notices under this Act may be sent to the applicant; and

- (b) be made within 20 business days after the day on which written notice of the decision was given to the applicant or within the further time the agency's principal officer or the Minister allows (whether before or after the end of the 20 business days); and
- (c) either be—
 - (i) lodged at an office of the agency or the Minister; or
 - (ii) sent by electronic communication within the meaning of the *Electronic Transactions (Queensland) Act 2001* to the email address for the agency.

91 When internal review application to be decided

- (1) An agency or Minister must decide an internal review application, and notify the applicant of the decision, as soon as possible.
- (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 that is the same as the original decision.

Part 9 External review

Division 1 Preliminary

92 Definitions for pt 9

In this part—

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

external review application means an application for external review.

93 What is external review

If a decision under this Act is stated to be subject to external review, a person affected by the decision may have the decision reviewed by the information commissioner.

94 Decisions subject to external review

Any of the following decisions are subject to external review—

- (a) a decision that a document is not a document of an agency under the Right to Information Act;
- (b) a decision a document doesn't fall within the terms of an access application under section 45 or an amendment application under section 46;
- (c) a decision that an entity is not an agency under the Right to Information Act;
- (d) a decision a document was not in existence on the day an access application was made;
- (e) a decision—
 - (i) to disclose a document contrary to the views of a concerned third party obtained under section 55; 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 concerned third party under section 55;
- (f) a decision purportedly refusing to deal with an application under part 4;

- (g) a decision purportedly refusing access to a document under section 64;
- (h) a decision purportedly deferring providing access to a document under section 79;
- (i) a decision about whether a charge is payable in relation to access to a document;
- (j) a decision purportedly giving access to documents subject to the deletion of information under section 80, 81 or 82;
- (k) a decision giving access to a document of a kind applied for by the applicant but not to all documents of the kind applied for by the applicant;
- (l) 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;
- (m) a decision refusing to allow the amendment of a document.

95 Onus

- (1) On an external review, the agency which 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 information commissioner should give a decision adverse to the person who wishes to obtain access to the document.
- (3) In this section—
disclosure decision means—

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- (a) a decision to disclose a document or information contrary to the views of a concerned third party obtained under section 55; 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 concerned third party under section 55.

Division 2 Application

96 Applying for external review

- (1) An application for external review must—
 - (a) specify an address of the applicant to which notices may be sent under this Act; and
 - (b) give particulars of the decision for review; and
 - (c) be made within 20 business days from the day on which written notice of the decision is given to the applicant, or within the longer period the information commissioner allows; and
 - (d) either be—
 - (i) lodged at an Office of the Information Commissioner; or
 - (ii) sent by electronic communication within the meaning of the *Electronic Transactions (Queensland) Act 2001* to the email address for the information commissioner.
- (2) The application may contain particulars of the basis on which the applicant disputes the decision under review.

97 Participants in external review

- (1) The applicant and the agency or Minister concerned are participants in an external review.

- (2) Any person affected by the decision the subject of the external review (including a government agency or persons whose views were required to be sought under section 55 before the decision was made), may apply to the information commissioner to participate in the external review.
- (3) The information 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

98 Early resolution of external review application

- (1) If an external review application is made to the information commissioner, the information 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 information commissioner decides not to deal with, or to further deal with, the external review application under section 104.
- (3) The information commissioner may suspend an external review at any time to allow the participants in the external review to negotiate a settlement.

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

If an application is made for external review of a deemed decision of an agency's principal officer or a Minister under section 63 or 68, the information commissioner must inform the agency or Minister of the application as soon as practicable after it is made.

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100 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.

101 Preliminary inquiries

If an external review application has been made to the information commissioner, the 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 or the agency or Minister concerned.

102 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 under section 63 in relation to an access application or under section 68 in relation to an amendment application; and
 - (b) the agency or Minister applies to the information commissioner to allow the agency or Minister further time to deal with the access or amendment application.
- (2) The information commissioner may allow the agency or Minister further time to deal with the access or amendment application subject to the conditions the commissioner considers appropriate, including, for an access application, a condition that any charge that was required to be paid must be reduced or waived.

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- (3) If the application for external review relates to an access application, and the agency or Minister does not deal with the access application and notify the applicant of a considered decision under section 65 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.
 - (4) If the application for external review relates to an amendment application, and the agency or Minister does not deal with the amendment application and notify the applicant of a considered decision under section 65, as applied under section 69, 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.

103 Inspection by information commissioner of documents from agency or Minister

- (1) If an external review application has been made to the information commissioner, the commissioner may require an agency of Minister to produce a document for inspection for the purpose of enabling the commissioner to decide—
 - (a) whether the document is a document of the agency or an official document of the Minister; or
 - (b) if the application for external review relates to an access application—
 - (i) whether the document falls within the terms of an access application under section 45; or
 - (ii) for an agency mentioned in section 47 and claiming the document is not a document in relation to community service obligations within the meaning of the *Government Owned Corporations Act 1993* (a *non-CSO*

- document*)—whether the document is a non-CSO document; or
- (iii) whether, for the purposes of section 61, the later application for access to a document has disclosed any reasonable basis for again seeking access to the document; or
 - (iv) whether the document was in existence on the day the access application was made; or
 - (v) whether the document is a document to which access may be refused under section 64; or
 - (vi) whether a charge is payable in relation to access to the document; or
- (c) if the application for external review relates to an amendment application—
- (i) whether the document falls within the terms of an amendment application under section 46; or
 - (ii) whether, for the purposes of section 61, the later application for amendment of a document has disclosed any reasonable basis for again seeking to amend the document.
- (2) The information commissioner must do all things necessary to ensure a document produced under subsection (1)—
- (a) is not disclosed to a person other than—
 - (i) a member of the staff of the Office of the Information Commissioner in the course of performing duties as a member of the staff; or
 - (ii) a person who created the document or who provided the document or information in the document to the agency or Minister; or
 - (iii) if a person mentioned in subparagraph (ii) is a participant in the review—the participant’s representative; and

- (b) is returned to the agency or Minister at the end of the review.

104 Information commissioner may decide not to review

- (1) The information commissioner may decide not to deal with, or not to further deal with, all or part of an external review application if—
 - (a) the commissioner is satisfied the application, or the part of the application, is frivolous, vexatious, misconceived or lacking substance; or
 - (b) the applicant for external review fails to comply with a direction given by the commissioner; or
 - (c) the commissioner considers the applicant for external review has failed to cooperate in progressing the external review application, or the part of it, without reasonable excuse; or
 - (d) the commissioner considers the address the applicant for external review stated in the application is no longer an address at which the applicant is contactable and the applicant has not, within a reasonable time, advised the commissioner of a new address of the applicant to which notices may be sent under this Act.
- (2) If the information 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

105 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 are to be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act and a proper consideration of the matters before the information commissioner allows; and
 - (c) the information 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 information commissioner may, during an external review, give directions as to the procedure to be followed on the external review.

106 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 commission for assistance in relation to the review.

Examples—

- 1 The information commissioner may request that a participant provide further and better particulars of a matter.
 - 2 The information commissioner may request that an agency or Minister specifically indicate in a written document the words the agency or Minister considers is exempt information.
- (2) Subsection (1) applies even if the participant asked for assistance does not have the onus under section 95.

107 Requirement to provide 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 agency or Minister was required to provide a statement to the applicant of the reasons for the decision; and
 - (c) the information commissioner considers that the statement is not adequate.
- (2) The information commissioner may require the agency or Minister to provide to the applicant and the commissioner an additional statement, as soon as practicable, but in any case within 20 business days, containing further and better particulars in relation to the matters set out in the first statement.

108 Conduct of reviews

- (1) Subject to subsection (2), 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 is to be conducted in public unless the commissioner decides.
- (2) The information commissioner may, for the purposes of an external review, obtain information from any persons, and make any inquiries, the commissioner considers appropriate.
- (3) In conducting an external review, the information commissioner must—
 - (a) adopt procedures that are fair, having regard to the obligations of the commissioner under this Act; and
 - (b) ensure that each participant has an opportunity to present the participant's views to the commissioner;

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

- (4) If the information commissioner gives a participant an opportunity to appear before the commissioner, the participant may, with the commissioner's approval, be represented by another person.
- (5) If—
 - (a) the information 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 substantial concern to the person.

109 Right to access documents

For an external review of a decision, the information commissioner is entitled to full and free access at all reasonable times to the documents of the agency concerned.

110 Power to require access for information commissioner in particular form

- (1) If a document relevant to an external review is one—
 - (a) by which words are recorded in a way in which they are capable of being reproduced in the form of sound; or
 - (ii) in which words are contained in the form of shorthand writing or in codified form;

the information commissioner may require the agency or Minister concerned to provide the commissioner with a written transcript of the words recorded or contained in the document.

- (2) If—
- (a) the access application relevant to the external review relates to information that is not contained in a written document held by 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 information commissioner may require the agency or Minister to provide the commissioner with a written document created using the equipment.

111 Power to require making of search

- (1) In the conduct of an external review of a decision to refuse access to a document under the Right to Information Act, section 46, as applied under section 64 of this Act, the information commissioner may require the agency or Minister concerned to conduct a particular further search, or further searches, for a document.
- (2) In this section—
- conduct further searches*, for a document, includes make inquiries to locate the document.

112 Power to obtain information and documents and compel 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 body corporate, by an officer of the body corporate; or

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- (b) to produce the document to the commissioner.
- (2) The notice must state—
 - (a) the place at which the information or document is to be given or produced to the information commissioner; and
 - (b) a reasonable time at which, or a reasonable period within which, the information or document is to be given or produced.
- (3) If the information 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.

113 Power to examine witnesses

- (1) The information commissioner may administer an oath or affirmation to a person required under section 112 to attend before the commissioner and may examine the person on oath or affirmation.

Note—

A person must not fail to comply with the notice—see section 179.

- (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 information to the information commissioner the person knows to be false or misleading—see section 178.

114 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.

115 Information commissioner to ensure nondisclosure of particular matter

- (1) On an external review relating to an access application, the information commissioner may give the directions the commissioner considers necessary to avoid the disclosure to an access participant or an access participant's representative of—
 - (a) information that is claimed to be exempt information; or
 - (b) information that is otherwise claimed to be prescribed information under section 66.
- (2) The information 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 of that kind.
- (3) The information commissioner must not, in a decision on an external review or in reasons for a decision on an external review, include information of a kind mentioned in subsection (1).
- (4) In this section—

access participant means a participant other than—

 - (a) the agency or Minister who made the decision under review; or

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- (b) a participant who created the document concerned or who provided the document concerned to the agency or Minister who made the decision under review.

116 Exception for successful challenge of s 66(2) notice

- (1) This section applies if an agency or Minister gives a notice under section 66(2) and the information commissioner is satisfied that the document concerned does not include prescribed information.
- (2) Section 115(3) does not apply.
- (3) Section 118 applies except that the information 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 decision is given to the agency or Minister, 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 121 (*appealed on a question of law*).
- (4) Further, if the information commissioner directs that access to the document is to be granted, the agency or Minister must comply with the direction only if, at the end of 20 business days after the decision is given to the agency or Minister, the agency or Minister has not applied for judicial review or appealed on a question of law.
- (5) In this section—
prescribed information means—

- (a) exempt information mentioned in the Right to Information Act, schedule 3, section 1, 2, 3, 4, 5, 9 or 10; or
- (b) information the disclosure of which would, on balance, be contrary to the public interest under the Right to Information Act, section 48 as applied under this Act.

117 Additional powers of information commissioner on external review

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

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.

Division 5 Decision on external review

118 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) The information commissioner must include in the decision the reasons for the decision.
- (3) The information commissioner must give a copy of the decision to each participant.
- (4) If—
 - (a) a document is to be released because of the external review; and
 - (b) the information commissioner has notified a person under section 108(5) and the person did not become a participant in the review;the commissioner must take reasonable steps to notify the person of the release.
- (5) The information commissioner must arrange to have decisions and reasons for decisions published.
- (6) However, subsection (5) does not require the information 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 information the disclosure of which the commissioner considers, having regard to the Right to Information Act, schedule 4, would be contrary to the public interest.

119 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 information commissioner, on application by a party or on the commissioner's own initiative, may at any time correct the error.

Division 6 Miscellaneous

120 Costs of external review

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

121 Disciplinary action

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.

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Part 10 Vexatious applicants

122 Vexatious applicants

- (1) The information commissioner may declare in writing that a person is a vexatious applicant.
- (2) The information commissioner may make the declaration on the commissioner's own initiative or on the application of 1 or more agencies.
- (3) The information commissioner may make a declaration only if the commissioner is satisfied—
 - (a) that—
 - (i) the person has made repeated applications under this Act in relation to an agency or agencies; and
 - (ii) the repeated applications involve an abuse of the right of access, amendment or review under this Act; or
 - (b) an access application, amendment application, internal review application or external review application made by the person—
 - (i) clearly does not have any serious purpose or value; or
 - (ii) was made for the purpose, or has the effect, of—
 - (A) harassing or intimidating an individual or an employee or employees of an agency or agencies; or
 - (B) unreasonably interfering with the operations of an agency or agencies; or
 - (iii) is manifestly unreasonable.
- (4) For subsection (3)(a)(ii), repeated applications involve an abuse of the right of access, amendment or review if, for example, the applications were made for the purpose, or have had the effect, of—

- (a) harassing or intimidating an individual or an employee or employees of an agency or agencies; or
 - (b) unreasonably interfering with the operations of an agency or agencies.
- (5) If 1 or more agencies have applied for the declaration, the agency or agencies have the onus of establishing that the information commissioner should make the declaration.
 - (6) The information commissioner must not make a declaration in relation to a person without hearing the person or giving the person an opportunity of being heard.
 - (7) A declaration has effect subject to the terms and conditions, if any, stated in the declaration.
 - (8) Without limiting the conditions that may be stated, a declaration may include a condition that the vexatious applicant may make an access application, an amendment application, an internal review application or an external review application only with the written permission of the information commissioner.
 - (9) In this section—
agency includes a Minister.

123 Declaration may be varied or revoked

- (1) The information commissioner may vary or revoke a declaration made under section 122.
- (2) The information 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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Part 11 References of questions of law and appeals

124 Reference of questions of law to Supreme Court

- (1) The information commissioner may, at the request of a participant in an external review or on the commissioner's own initiative, refer a question of law arising on an external review to the Supreme Court.
- (2) The Supreme Court has jurisdiction to hear and decide a question of law referred to it under this section.
- (3) If a question of law is referred to the Supreme Court under this section, the information commissioner must not make a decision on the external review while the reference is pending.
- (4) If the Supreme Court decides a question of law referred to it under this section, the information commissioner is bound by the decision.
- (5) This section expires on the commencement of section 125.

125 Reference of questions of law to Queensland Civil and Administrative Tribunal

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

126 Appeal to Queensland Civil and Administrative Tribunal on question of law

- (1) A participant in an external review may, by notice in the approved form, appeal to QCAT against a decision of the information commission on the external review on a question of law only.
- (2) The notice of appeal must, unless QCAT orders otherwise—
 - (a) be filed in the QCAT registry within 28 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.
- (3) QCAT has jurisdiction to hear and decide the appeal.

127 Appeal to Queensland Civil and Administrative Tribunal on vexatious applicant declaration

- (1) A person subject to a declaration made under section 122 may, by notice in the approved form, appeal to QCAT against the decision of the information commissioner to make the declaration.
- (2) The notice of appeal must, unless QCAT orders otherwise—
 - (a) be filed in the QCAT registry within 28 business days after the date of the decision appealed from; and
 - (b) be served on the information commissioner and the agency that applied for the declaration.
- (3) QCAT has jurisdiction to hear and decide the appeal.

Chapter 4 Information Commissioner and Privacy Commissioner

Part 1 Functions of information commissioner under this Act

128 Role of information commissioner under this Act

The information commissioner's role under this Act is to promote the privacy principles, monitor adherence to them and generally support applicants of any type under this Act, and all agencies, Ministers and bound contracted service providers to the extent they are subject to the operation of this Act.

129 Functions of information commissioner under this Act

- (1) In addition to the particular functions of the information commissioner provided for in other provisions of this Act, the information commissioner has the following functions under this Act—
 - (a) on the commissioner's own initiative or otherwise—
 - (i) to conduct reviews into personal information handling practices of relevant entities, including technologies, programs, policies and procedures, to identify privacy related issues of a systemic nature generally or to identify particular grounds for the issue of compliance notices; and
 - (ii) if considered appropriate, to report to the Speaker on the findings of any review;
 - (b) lead the improvement of public sector privacy administration in Queensland by taking appropriate action to—

- (i) promote understanding of and compliance with the privacy principles; and
 - (ii) provide best practice leadership and advice, including by providing advice and assistance to relevant entities on the interpretation and administration of this Act; and
 - (iii) conduct compliance audits to assess relevant entities' compliance with the privacy principles; and
 - (iv) initiate privacy education and training, including education and training programs targeted at particular aspects of privacy administration, and education and training programs to promote greater awareness of the operation of this Act in the community and within the public sector environment; and
 - (v) comment on any issues relating to the administration of privacy in the public sector environment;
- (c) issue guidelines about any matter relating to the information commissioner's functions, including guidelines on how this Act should be applied and on privacy best practice generally.
- (2) In this section—
- relevant entity* means an agency or bound contracted service provider that is subject to the privacy principles.

130 Guidelines under Right to Information Act

To remove any doubt, it is declared that guidelines issued under the Right to Information Act, section 127 may include guidelines relating to the information commissioner's functions under this Act.

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

131 Staff subject only to direction of information commissioner

- (1) The staff of the Office of the Information Commissioner are not subject to direction by any person, other than the information commissioner or a person authorised by the information commissioner, about—
 - (a) the way in which the information commissioner’s powers in relation to reviews are to be exercised; or
 - (b) the priority to be given to reviews.
- (2) Subsection (1) has effect despite the *Public Service Act 2008*.

132 Delegation

The information commissioner may delegate to a member of the staff of the Office of the Information Commissioner all or any of the information commissioner’s powers under this Act.

Part 3 Privacy Commissioner

133 The Privacy Commissioner

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

134 Role and function of privacy commissioner

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

135 Privacy commissioner subject to direction of information commissioner

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

136 Appointment

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

137 Procedure before appointment

- (1) A person may be appointed as privacy commissioner only if—
 - (a) the Minister has placed press advertisements nationally calling for applications from suitably qualified persons to be considered for appointment; and
 - (b) the Minister has consulted with the parliamentary committee about—
 - (i) the process of selection for appointment; and
 - (ii) the appointment of the person as privacy commissioner.

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

138 Term of appointment

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

139 Remuneration and conditions

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

140 Leave of absence

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

141 Preservation of rights if public service officer appointed

- (1) A public service officer who is appointed to the office of privacy commissioner or who is appointed to act in the office is entitled to retain all existing and accruing rights as if service in the office were a continuation of service as a public service officer.

- (2) If the person stops holding the office for a reason other than misconduct, the person is entitled to be employed as a public service officer.
- (3) The person is to 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.

142 Oath before performing duties

- (1) Before performing the duties of office, the privacy 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.

143 Restriction on outside employment

- (1) The privacy commissioner must not, without the Minister's prior approval in each particular case—
 - (a) hold any office of profit other than that of privacy commissioner; or
 - (b) engage in any remunerative employment or undertaking outside the duties of the office.
- (2) Contravention of subsection (1) is misconduct under the Right to Information Act, section 158(a).

144 Resignation

- (1) The privacy commissioner may resign by signed notice given to the Minister.
- (2) As soon as practicable after the notice is given to the Minister, the Minister must—

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- (a) give the notice to the Governor for information; and
- (b) give a copy of the notice to—
 - (i) the Speaker of the Legislative Assembly; and
 - (ii) the chairperson of the parliamentary committee.
- (3) Failure to comply with subsection (2) does not affect the effectiveness of the resignation.

145 Acting privacy commissioner

- (1) The Governor in Council may appoint a person to act as privacy commissioner—
 - (a) during a vacancy in the office; or
 - (b) during any period, or during all periods, when the privacy commissioner is absent from duty or from Australia or is, for another reason, unable to perform the duties of the office.
- (2) The acting privacy commissioner is appointed under this Act and not the *Public Service Act 2008*.
- (3) Before performing the duties of office, the acting privacy commissioner must make an oath or affirmation to the effect that he or she will faithfully and impartially perform the duties of the office.
- (4) The oath must be administered by the Speaker.
- (5) The *Acts Interpretation Act 1954*, section 25(1)(b)(iv) and (v) does not apply to the office of acting privacy commissioner.

Part 4 Proceedings

146 Third party proceedings

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

- (2) In this section—

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

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

third party legal proceedings means a legal proceeding other than—

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

147 Costs in proceedings

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

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148 Information commissioner and privacy commissioner may appear in proceedings

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

149 Intervention by Attorney-General

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

Part 5 Waiving or modifying privacy principles obligations in the public interest

150 Waiver or modification approval

- (1) An agency may apply to the information commissioner for an approval under this section.
- (2) The commissioner may give an approval that waives or modifies the agency's obligation to comply with the privacy principles—
 - (a) if it is a temporary approval—for the period of the approval's operation; or

- (b) otherwise—until the approval is revoked or amended.
- (3) The information commissioner may give an approval under this section only if the commissioner is satisfied that the public interest in the agency’s compliance with the privacy principles is outweighed by the public interest in waiving or modifying the agency’s compliance with the privacy principles to the extent stated in the approval.
- (4) While an approval is in force, the agency to which it applies does not contravene this Act in relation to the privacy principles if it acts in accordance with the approval.
- (5) If the information commissioner gives an approval under this section—
 - (a) the commissioner must ensure that a copy of the approval is published on the commissioner’s website on the internet while the approval is in force; and
 - (b) if it is practicable to do so, the agency the subject of the approval must ensure that a copy of the approval is published on the agency’s website on the internet.
- (6) In this section—

agency includes a bound contracted service provider.

Part 6 Compliance notices

151 Compliance notice

- (1) The information commissioner may give an agency a notice (*compliance notice*) if the information commissioner is satisfied on reasonable grounds that the agency—
 - (a) has done an act or engaged in a practice in contravention of the agency’s obligation to comply with the privacy principles; and
 - (b) the act or practice—

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- (i) is a serious or flagrant contravention of the obligation; or
 - (ii) is of a kind that has been done or engaged in by the agency on at least 5 separate occasions within the last 2 years.
- (2) A compliance notice may require an agency to take stated action within a stated period for the purpose of ensuring compliance with the obligation.

152 Extension of time for compliance

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

153 Agency must comply with notice

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

Maximum penalty—100 penalty units.

154 Appeal to Queensland Civil and Administrative Tribunal

- (1) An agency given a compliance notice under this part may apply to QCAT for a review of the decision to give it the notice.
- (2) QCAT has jurisdiction to—
 - (a) hear the application; and
 - (b) if it decides to review the decision to give the notice—review the decision.

155 Parties to QCAT proceeding

- (1) The agency given a compliance notice and the information commissioner are both parties to—
 - (a) an application to QCAT to review the decision to give the notice; and
 - (b) any review by QCAT of the decision.
- (2) QCAT may at any time join an individual as a party to the proceeding before QCAT if QCAT considers the individual is affected by the decision to give the compliance notice.
- (3) QCAT's joining of an individual to the proceeding before QCAT may be on the initiative of QCAT or on the application of the individual.

156 How QCAT may dispose of review

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

- (a) confirm the information commissioner's decision to give the compliance notice;
- (b) confirm the information commissioner's decision to give a compliance notice but substitute a compliance notice that is in different terms from the compliance notice given;

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- (c) reverse the decision to give a compliance notice;
- (d) revoke the giving of the compliance notice and give the information commissioner directions about the issuing of a replacement compliance notice.

Chapter 5 Privacy complaints

Part 1 Making privacy complaints

157 What is a *privacy complaint*

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

158 Privacy complaint may be made or referred to information commissioner

- (1) An individual whose personal information is, or at any time has been, held by a relevant entity may make a privacy complaint to the information commissioner.
- (2) Also, a privacy complaint may be referred to the information commissioner by any of the following entities—

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

159 Requirements for privacy complaint

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

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

Part 2 Dealing with privacy complaints

160 Preliminary action

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

161 Information commissioner may decline to deal with or to deal further with complaint

- (1) The information commissioner may decline to deal with a privacy complaint made or referred to the commissioner if—
 - (a) the act or practice the subject of the complaint does not relate to the personal information of the complainant; or
 - (b) the requirements under part 1 for making a complaint under the complaints management system of the respondent have not been fully satisfied; or
 - (c) the commissioner reasonably believes the complaint is frivolous, vexatious, misconceived or lacking in substance; or
 - (d) there is a more appropriate course of action available under another Act to deal with the substance of the complaint; or

- (e) although the complainant made a complaint to the respondent as required under part 1, in the circumstances, the respondent has not yet had an adequate opportunity to deal with the complaint; or
 - (f) 12 months have elapsed since the complainant first became aware of the act or practice the subject of the complaint.
- (2) The information commissioner may decline to continue dealing with a privacy complaint made or referred to the commissioner if—
- (a) the complainant does not comply with a reasonable request made by the commissioner in dealing with the complaint; or
 - (b) the commissioner is satisfied on reasonable grounds that the complainant, without a reasonable excuse, has not cooperated in the commissioner's dealing with the complaint, or part of the complaint; or
 - (c) the commissioner considers the address the complainant stated in making the privacy complaint is no longer the address at which the complainant can be contacted, and the complainant has not, within a reasonable time, advised the commissioner of a new address to which notices may be sent under this Act.

162 Referral of privacy complaint to other entity

- (1) If the subject of a privacy complaint could be the subject of a complaint under the *Ombudsman Act 2001*, the information commissioner may refer the complaint to the ombudsman.
- (2) If the subject of a privacy complaint could be the subject of a complaint under the *Health Quality and Complaints Commission Act 2006*, the information commissioner may refer the complaint to the Health Quality and Complaints Commission under that Act.

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

Part 3 Mediation of privacy complaints

163 Attempting resolution through mediation

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

164 Certification of mediated agreement

- (1) This section applies if, after mediation of a privacy complaint, the complainant and the respondent for the complaint agree on a resolution of the complaint.
- (2) The complainant or the respondent may ask the information commissioner to prepare a written record of the agreement.
- (3) A request under subsection (2) must be made within 30 days after the agreement is reached under subsection (1).
- (4) If a request is made under subsection (2), the information commissioner must take all reasonable steps to—
 - (a) prepare a written record of the agreement; and

- (b) have the record signed by both the complainant and the respondent; and
- (c) certify the agreement.

165 Filing of certified agreement with Queensland Civil and Administrative Tribunal

- (1) The complainant or respondent to a privacy complaint the subject of a certified agreement under this part may file a copy of the agreement with QCAT.
- (2) QCAT may make orders necessary to give effect to the certified agreement if, within 7 days after the agreement is filed with QCAT, neither the complainant nor the respondent advises QCAT that the party wishes to withdraw from the agreement.
- (3) However, QCAT may make an order under subsection (2) only if it is satisfied that implementation of the order is practicable and that the order is consistent with an order QCAT may make under the QCAT Act.
- (4) An order under subsection (2) becomes, and may be enforced as, an order of QCAT under the QCAT Act.

Part 4 Referral of privacy complaints to QCAT

166 Application of pt 4

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

- (a) it does not appear to the commissioner reasonably likely that resolution of the complaint could be achieved through mediation; or

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- (b) mediation of the complaint is attempted under this chapter but a certified agreement for the resolution of the complaint is not achieved.

167 Advice to parties

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

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

168 Referral to Queensland Civil and Administrative Tribunal

- (1) The information commissioner must refer the privacy complaint to QCAT if asked to do so by the complainant.
- (2) QCAT has jurisdiction to hear the complaint.

169 Parties to QCAT proceeding

- (1) The complainant and respondent for a privacy complaint the information commissioner refers to QCAT are both parties to the proceeding before QCAT.
- (2) QCAT may at any time join the information commissioner as a party to the proceeding before QCAT.
- (3) QCAT's joining of the information commissioner as a party to the proceeding before QCAT must be because QCAT considers that—
 - (a) the commissioner ought to be bound by, or have the benefit of, an order of QCAT; or
 - (b) the commissioner's interests as information commissioner are affected by the proceeding; or

- (c) there is another reason making it desirable that the commissioner be joined as a party.
- (4) QCAT's joining of the information commissioner as a party to the proceeding before QCAT may be on the initiative of QCAT or on the application of any person, including the complainant, the respondent or the information commissioner.

170 How QCAT may dispose of complaint

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

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

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

Chapter 6 Protection and offences

Part 1 Protection

171 Meaning of *access was required or permitted by this Act*

In this part, *access was required or permitted by this Act* in relation to a person if—

- (a) access was required because the person to whom access was given had a legally enforceable right to be given access under section 40(1) and had made an access application; or
- (b) access was permitted because the person had made an access application and, despite section 64, access was not refused.

172 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 by this Act to be given; or

- (b) the access was authorised by a decision maker in the genuine belief that the access was required or permitted to be given by this Act;
- then—
- (c) no action for defamation or breach of confidence lies against the State, an agency, a Minister or an officer because of the authorising or giving of the access; and
 - (d) no action for defamation or breach of confidence in relation to any publication involved in, or resulting from, the giving of the access lies against the author of the document or another person because of the author or another person having supplied the document to an agency.
- (2) The giving of access to a document (including an exempt document) because of an access application must not be taken for the purposes of the law relating to defamation or breach of confidence to constitute an authorisation or approval of the publication of the document or its contents by the person to whom access is given.

173 Access—protection in respect of offences

If access has been given to a document and—

- (a) the access was required or permitted by this Act to be given; or
- (b) the access was authorised by a decision maker in the genuine belief that the access was required or permitted to be given by this Act;

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

174 Publication—protection in respect of offences

If—

- (a) a document has been published; and
- (b) the publication was required under section 118 or authorised by the information commissioner in the genuine belief that the publication was required under section 118;

then, neither the person authorising publication nor any other person concerned in the publication of the document commits a criminal offence merely because of authorising or being concerned in the publication.

175 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 person acting under the direction of an agency, an agency's principal officer or a Minister;
- (e) a bound contracted service provider;
- (f) the information commissioner;
- (g) a member of the information commissioner's staff.

Part 2 Offences

176 **Direction to act in particular way**

- (1) A person (the *relevant person*) commits an offence if the relevant person gives, either orally or in writing—
 - (a) a direction to a person required to make a decision in relation to an application under this Act to make a decision the person believes is not the decision required to be made under this Act; or
 - (b) a direction to a person who is an employee or officer of the agency involved in an application under this Act or an employee of a Minister involved in an application under this Act to act contrary to the requirements of this Act.

Maximum penalty—100 penalty units.

- (2) Subsection (1) does not apply to the information commissioner or a person authorised by the information commissioner in relation to a direction that may be given to a member of the staff of the office under section 131.

177 **Offence of unlawful access**

A person who, in order to gain access to a document containing another person's personal information knowingly deceives or misleads a person exercising powers under this Act, commits an offence.

Maximum penalty—100 penalty units.

178 **False or misleading information**

- (1) A person must not give information to the information commissioner, or a member of the commissioner's staff, that

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

179 Failure to produce documents or attend proceedings

A person given notice under section 112 or 188 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.

180 Secrecy

If a person who is or has been the information commissioner or a member of the staff of the Office of the Information Commissioner, otherwise than for the purposes of this Act or a proceeding arising under this Act, discloses any information that the person obtained in the course of the performance of functions under this Act or takes advantage of that

information to benefit himself or herself or another person, the person commits an offence.

Maximum penalty—100 penalty units.

Chapter 7 Miscellaneous provisions

Part 1 Relationship of this Act to other Acts

181 Operation of Public Records Act 2002

- (1) Without limiting section 5, 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 9, the *Public Records Act 2002* does not prevent a person obtaining access to a document in the custody of Queensland State Archives to which a person may obtain access under this Act.

182 Non-official documents in Queensland State Archives etc.

- (1) A document that—
 - (a) has been placed in the custody of Queensland State Archives or a public library by a person; and
 - (b) was not, immediately before being placed in that custody—
 - (i) a document of an agency; or
 - (ii) an official document of a Minister within the meaning of chapter 3;

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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 at the time the document was placed in the custody of the Queensland State Archives or public library.

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

183 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, 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

184 **Annual report by information commissioner**

- (1) The information commissioner must, as soon as practicable after the end of each financial year, submit to the Speaker and parliamentary committee a report of the operations of the information commissioner under this Act during the year.
- (2) Without limiting subsection (1), a report under the subsection must include, for the financial year to which it relates, details of the following—
 - (a) the number of privacy complaints received under this Act and the outcome of the information commissioner’s consideration of the complaints;
 - (b) the results of any compliance audits conducted by the information commissioner;
 - (c) any compliance notices given under this Act;
 - (d) guidelines issued by the information commissioner in relation to any of the commissioner’s functions;
 - (e) the making of any approvals under chapter 4, part 5.
- (3) The parliamentary committee may require the information commissioner to prepare and submit to the committee a report on a particular aspect of the performance of the commissioner’s functions.
- (4) If a report of the information commissioner is submitted to the Speaker or the parliamentary committee, the Speaker or chairperson of the committee must cause the report to be tabled in the Legislative Assembly on the next sitting day after it is submitted.
- (5) An annual report under this part may be included as part of an annual report the information commissioner is required to submit under the Right to Information Act.

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185 Report to Legislative 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 Legislative Assembly.
- (2) A report under subsection (1) must include, in relation to the financial year to which it relates, particulars of the matters prescribed under a regulation.

186 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 information commissioner's functions under this Act;
- (b) to report to the Legislative Assembly on any matter concerning the information commissioner, the information commissioner's functions or the performance of the information commissioner's functions that the committee considers should be drawn to the Legislative Assembly's attention;
- (c) to decide, in consultation with the information commissioner, the statistical information (including statistical information about giving access to information other than on an access application) agencies are to provide to the information commissioner for the report under section 185;
- (d) to examine each annual report tabled in the Legislative Assembly under this Act and, if appropriate, to comment on any aspect of the report and to make recommendations;
- (e) to report to the Legislative Assembly any changes to the functions, structures and procedures of the Office of the Information Commissioner the committee considers desirable for the more effective operation of this Act;

- (f) the other functions given to the parliamentary committee by this Act.

Note—

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

Part 3 Other

187 **Actions by authorised representative**

- (1) Without limiting a person's ability to take any action under this Act on behalf of another, an action that an individual may take under this Act may be taken on behalf of the individual by a person who is the authorised representative of the individual if—
 - (a) the individual is incapable of taking the action; and
 - (b) the taking of the action is reasonably necessary for the lawful performance of the person's duties in relation to the individual.
- (2) A person is the ***authorised representative*** of an individual if the person is—
 - (a) a custodial parent of the individual or a guardian of the individual, if the individual is a child; or
 - (b) an attorney for the individual under an enduring power of attorney; or
 - (c) a guardian of the individual under the *Guardianship and Administration Act 2000*; or
 - (d) another person empowered under a law to perform functions as an agent in the best interests of the individual.

188 Power of information commissioner for compliance notices and privacy complaints

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

189 Rules and procedures of QCAT

- (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) In this section—

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

190 Approval of forms

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

191 Regulation-making power

The Governor in Council may make regulations under this Act.

Chapter 8 Transitional provisions

192 Delayed filing of certified agreement with QCAT

(1) This section applies if—

- (a) a privacy complaint becomes the subject of a certified agreement under chapter 5 before QCAT comes into existence; and
- (b) the complainant or respondent for the complaint wishes to file a copy of the agreement with QCAT.

(2) The agreement must be filed within 28 days after QCAT comes into existence.

193 Delayed referral of privacy complaint to QCAT

- (1) This section applies if the information commissioner is required under chapter 5 to refer a privacy complaint to QCAT before QCAT comes into existence.
- (2) The commissioner must refer the privacy complaint to QCAT within 28 days after QCAT comes into existence.

Schedule 1 Documents to which the privacy principles do not apply

section 14

1 Covert activity

a document to the extent it contains personal information—

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

2 Witness protection

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

3 Disciplinary actions and misconduct

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

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

4 Whistleblowers

a document to the extent it contains personal information—

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

5 Cabinet and Executive Council

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

6 Commissions of inquiry

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

7 Other

a document that is—

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

Schedule 2 Entities to which the privacy principles do not apply

section 22

Part 1 Entities to which the privacy principles do not apply

- 1 the Parliamentary Judges Commission of Inquiry appointed under the expired *Parliamentary (Judges) Commission of Inquiry Act 1988*
- 2 a commission of inquiry issued by the Governor in Council whether before or after the commencement of this schedule
- 3 a parents and citizens association under the *Education (General Provisions) Act 2006*

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

- 1 a court, or the holder of a judicial office or other office connected with a court, in relation to the court's judicial functions
- 2 a registry or other office of a court, or the staff of a registry or other office of a court in their official capacity, so far as its or their functions relate to the court's judicial function
- 3 a tribunal in relation to the tribunal's judicial or quasi-judicial functions

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- 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

Schedule 3 Information Privacy Principles

section 26

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

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

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

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

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

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

4 IPP 4—Storage and security of personal information

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

5 IPP 5—Obtaining information about documents containing personal information

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

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

6 IPP 6—Access to documents containing personal information

- (1) An agency having control of a document containing personal information must give an individual the subject of the personal information access to the document if the individual asks for access.
- (2) An agency is not required to give an individual access to a document under subsection (1) if, under a law of the State that provides for access by persons to documents, the agency is authorised or required to refuse to give the access to the individual.

7 IPP 7—Amendment of documents containing personal information

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

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

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

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

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

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

10 IPP 10—Limits on use of personal information

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

Example for paragraph (e)—

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

paragraph, it would be appropriate to transfer the personal information into the new system.

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

11 IPP 11—Limits on disclosure

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

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

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

Schedule 4 National Privacy Principles

section 30

1 NPP 1—Collection of personal information

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

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

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

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

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

- (ii) the enforcement of laws relating to the confiscation of the proceeds of crime;
- (iii) the protection of the public revenue;
- (iv) the prevention, detection, investigation or remedying of seriously improper conduct;
- (v) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of the orders of a court or tribunal.

Notes—

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

- (ii) the disclosure is made for compassionate reasons; and
 - (c) the disclosure is not contrary to any wish—
 - (i) expressed by the individual before the individual became unable to give or communicate consent; and
 - (ii) of which the health professional is aware, or of which the health professional could reasonably be expected to be aware; and
 - (d) the disclosure is limited to the extent reasonable and necessary for a purpose mentioned in paragraph (b).
- (4) For subsection (3), a person is *responsible* for an individual if the person is—
- (a) a parent of the individual; or
 - (b) a child or sibling of the individual who a health professional believes has capacity; or
 - (c) a spouse or de facto partner of the individual; or
 - (d) a relative of the individual who is a member of the individual's household; or
 - (e) a guardian of the individual; or
 - (f) a person exercising an enduring power of attorney granted by the individual that is exercisable in relation to decisions about the individual's health; or
 - (g) a person who has sufficient personal interest in the health and welfare of the individual; or
 - (h) a person nominated by the individual to be contacted in case of emergency.

Note—

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

- (5) Despite subsection (1), the department may disclose an individual's sensitive information under subsection (1) to an entity if the information may be used for a commercial

purpose involving the entity's marketing of anything to the individual, but only if—

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

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

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

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

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

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

3 NPP 3—Data quality

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

4 NPP 4—Data security

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

Note—

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

5 NPP 5—Openness

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

6 NPP 6—Access to documents containing personal information

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

- (2) The department is not required to give an individual access to a document under subsection (1) if, under a law of the State that provides for access by persons to documents, the department is authorised or required to refuse to give the access to the individual.

7 NPP 7—Amendment of documents containing personal information

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

8 NPP 8—Anonymity

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

9 NPP 9—Sensitive information

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

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

- (ii) by a designated person with the approval of the chief executive of the department; or

Note—

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

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

Schedule 5 Dictionary

section 11

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

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

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

agency—

- (a) for chapter 3—has the meaning given by section 19; or
- (b) otherwise—has the meaning given by section 20, but for chapter 6 and chapter 7, part 1, includes an agency for chapter 3.

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

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

applicant, in relation to an application, means—

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

approved form means a form approved under section 190.

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

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

- (b) under the service arrangement, the contracted service provider is required to comply with the privacy principles as if it were the contracting agency.

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

compliance notice see section 151.

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

contracted service provider see section 34.

contracting agency see section 34.

control see section 15.

coroner see the *Coroners Act 2003*.

corrective services department means the department in which the *Corrective Services Act 2006* is administered.

court includes a justice and a coroner.

decision maker, for an access or amendment application, means a person authorised under section 50 to deal with the application on behalf of an agency or under section 51 to deal with the application on behalf of a Minister.

department, for the NPPs, means the health department.

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

disclose, personal information, see section 23.

document see section 13.

document—

- (a) of an agency, for chapter 3—see section 16; or
(b) otherwise—see section 17.

document to which the privacy principles do not apply see section 14.

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
- (b) a person of that description can not be reasonably contacted; or
- (c) a person of that description is unable or unwilling to act as the person concerned.

entity to which the privacy principles do not apply see section 22.

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

external review see section 92.

external review application see section 92.

function includes a power.

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

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

health information, about an individual, means—

- (a) personal information about the individual that includes any of the following—
 - (i) the individual's health at any time;
 - (ii) a disability of the individual at any time;
 - (iii) the individual's expressed wishes about the future provision of health services to the individual;
 - (iv) a health service that has been provided, or that is to be provided, to the individual; or
- (b) personal information about the individual collected for the purpose of providing, or in providing, a health service; or
- (c) personal information about the individual collected in connection with the donation, or intended donation, by the individual of any of the individual's body parts, organs or body substances.

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

health service means—

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

- (b) the dispensing on prescription of a drug or medicinal preparation by a pharmacist.

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

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

internal review see section 86.

internal review application see section 86.

IPP means an Information Privacy Principle stated as a section of schedule 3.

law enforcement agency means—

- (a) the Queensland Police Service under the *Police Service Administration Act 1990*; or
- (b) the Crime and Misconduct Commission under the *Crime and Misconduct Act 2001*; or
- (c) the corrective services department; or
- (d) any other agency, to the extent it has responsibility for—
 - (i) the performance of functions or activities directed to the prevention, detection, investigation, prosecution or punishment of offences and other breaches of laws for which penalties or sanctions may be imposed; or
 - (ii) the management of property seized or restrained under a law relating to the confiscation of the proceeds of crime; or
 - (iii) the enforcement of a law, or of an order made under a law, relating to the confiscation of the proceeds of crime; or
 - (iv) the execution or implementation of an order or decision made by a court or tribunal.

Minister includes a Parliamentary Secretary.

mixed access application see section 10(3).

NPP means a National Privacy Principle stated as a section of schedule 4.

Office of the Information Commissioner means the Office of the Information Commissioner under the Right to Information Act.

officer, in relation to an agency, includes—

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

official document, of a Minister, for chapter 3, see section 18.

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

personal information see section 12.

principal officer means—

- (a) in relation to a department—the chief executive of the department; or
- (b) in relation to a local government—the chief executive officer (however described) of the government; or
- (c) in relation to a government owned corporation—the principal officer (however described) of the government owned corporation; or
- (d) in relation to a public authority for which a regulation declares an office to be the principal office—the holder of the office; or
- (e) in relation to another public authority—
 - (i) if it is an incorporated body that has no members—the person who manages the body's affairs; or
 - (ii) if it is a body (whether or not incorporated) that is constituted by 1 person—the person; or

- (iii) if it is a body (whether or not incorporated) that is constituted by 2 or more persons—the person who is entitled to preside at a meeting of the body at which the person is present.

privacy commissioner means the Privacy Commissioner appointed under this Act.

privacy complaint see section 157.

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

processing period, for an access or amendment application, see section 49.

publication includes a book, magazine or newspaper.

public authority has the meaning given by section 21.

public library includes—

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

QCAT means the Queensland Civil and Administrative Tribunal under the *Queensland Civil and Administrative Tribunal Act 2009*.

QCAT Act means *Queensland Civil and Administrative Tribunal Act 2009*.

relevant entity, for chapter 5, see section 157.

respondent, for a privacy complaint, see section 157.

responsible Minister means—

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

- (c) in relation to a council constituted under the *Local Government (Aboriginal Lands) Act 1978*—the Minister administering that Act; or
- (d) in relation to another local government—the Minister administering the *Local Government Act 2008*; or
- (e) in relation to a government owned corporation—the Minister administering the Act under which the government owned corporation is established; or
- (f) in relation to a public authority mentioned in section 21(1)(a) or in section 21(1)(c)(i)(B) and 21(1)(c)(ii)—the Minister administering the Act by or under which the public authority is established; or
- (g) in relation to a public authority mentioned in section 21(1)(d)—the Minister administering the Act by which the office is established; or
- (h) in relation to any other public authority—the Minister declared by regulation to be the responsible Minister in relation to the public authority.

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

sensitive information, about an individual, means—

- (a) personal information about the individual that includes any of the following—
 - (i) the individual’s racial or ethnic origin;
 - (ii) the individual’s political opinions;
 - (iii) the individual’s membership of a political association;
 - (iv) the individual’s religious beliefs or affiliations;
 - (v) the individual’s philosophical beliefs;
 - (vi) the individual’s membership of a professional or trade association;
 - (vii) the individual’s membership of a trade union;
 - (viii) the individual’s sexual preferences or practices;

- (ix) the individual's criminal record; or
- (b) health information about the individual.

service arrangement see section 34.

use, personal information, see section 24.

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