Freedom of Information and Other Legislation Amendment Bill 2005

Explanatory Notes

General Outline

Objectives of the Legislation

The Bill will:

- amend the *Freedom of Information Act 1992* (the FOI Act) and the *Freedom of Information Regulation 1992* (the FOI Regulation) to:
  - — implement the Government Response (the Response) to the Legal, Constitutional and Administrative Review Committee (LCARC) Report No. 32, Freedom of Information in Queensland (the Report); and
  - — make additional amendments to clarify and improve the operation of the FOI regime;
- amend the *Public Sector Ethics Act 1994* to ensure that the FOI Act does not apply to a conflict of interest issue or an ethics or integrity issue about a person;
- amend the *Lotteries Act 1997* to ensure that the FOI Act does not apply to the excluded activities of the Golden Casket Lottery Corporation Limited;
- make consequential amendments to the *Public Records Act 2002,* the *Public Service Act 1996* and the *Public Service Regulation 1996.*

The Bill also contains urgent amendments to the *Legal Profession Act 2004* (LPA), which are unrelated to FOI, to transfer provisions of the *Legal Profession Regulation 2004* into the LPA before they expire on 31 May 2005 The Bill also amends the LPA to enhance the efficiency of the Legal Practice Committee by allowing directions hearings to be conducted by the Chairperson or Deputy Chairperson without having to convene an entire three person Committee.

The Bill will also amend the *Standard Time Act 1894* (STA) to change the definition of Standard Time from Greenwich Mean Time (GMT) to Co-ordinated Universal Time (known as UTC).

Reasons for the objectives and how they will be achieved

Freedom of Information

In March 1999, the Legislative Assembly referred the FOI Act to LCARC for inquiry and report. The Report was tabled on 20 December 2001 and the Response on 13 August 2002.

The Bill gives effect to the Response by enacting a wide range of amendments to clarify the scope of the FOI Act and enhance operational efficiency. They include amendments to address issues which the Response indicated would be the subject of further consideration and amendments to address new issues which have arisen since the tabling of the Response.

Significant features of the Bill are:

- a new exemption for information that could lead to harassment and intimidation;
- a new provision restricting disclosure of certain risk assessment documents to prisoners convicted of serious violent offences;
- clarification and refinement of the process for disclosure of sensitive health care information;
- a new exclusion for the judicial and quasi-judicial functions of listed tribunals;
- ensuring exclusions are subject to appropriate parliamentary scrutiny by relocating appropriate exclusions currently in the *Freedom Of Information Regulation 1992* to the FOI Act and repealing the regulation making power in section 11(q) of the FOI Act which allows for exclusion of agencies by regulation;
- amendment of the *Public Sector Ethics Act 1994* to ensure that the FOI Act does not apply to an ethics or integrity issue about a designated or former designated person or a conflict of interest issue;
- an new exemption for information used, obtained or prepared for investigations in pursuance of the crime and misconduct functions of the Crime and Misconduct Commission;
- an exemption via section 48 of the FOI Act for secret information under the *Witness Protection Act 2000;*

- an exclusion for Golden Casket Lottery Corporation Limited which is a Government Owned Corporation;
- signposting in the FOI Act of all exclusions contained in other legislation;
- amendments to address the potential abuse of the regime by enabling agencies and Ministers to refuse to deal with serial or repeat applications and by enabling the Queensland Information Commissioner to impose conditions on applications by vexatious applicants;
- amendments to the charging regime to clarify and standardize procedures;
- establishment of a new statutory body, the Office of the Information Commissioner.

Legal Profession Act

Section 643 of the LPA provides for the making of regulations for transitional matters for which the LPA does not make sufficient provision. This section and any transitional regulations made under it expire one year after the commencement of the section, that is, on 31 May 2005. Accordingly, sections 33 and 34 of the *Legal Profession Regulation 2004* made under that section will be incorporated into the LPA.

The LPA also provides for the hearing of matters involving the conduct of legal practitioners by an independent body, the Legal Practice Committee. Currently, all matters that come before the Committee require a full Committee to be convened. To ensure efficient management of Committee business, the Bill contains amendments to the LPA to allow for directions hearings of the Legal Practice Committee to be conducted by the Chairperson or Deputy Chairperson

Standard Time Act

The STA establishes standard time in Queensland by reference to Greenwich Mean Time (GMT). GMT is a time scale based on the rotation of the Earth. UTC is a time scale maintained by a network of more than 200 atomic clocks around the world. As a result of irregularities in the Earth's rotation, UTC is the more consistent and accurate time scale.

In 1997, the Commonwealth Government amended the *National Measurement Act 1960* to require the Chief Metrologist to maintain UCT as determined by the International Bureau of Weights and Measures.

In November 2004, the Standing Committee of Attorneys-General agreed to change from GMT to UTC. The amendments set standard time in Queensland at 10 hours in advance of UTC.

Administrative cost to Government of implementation

The implementation of the Bill is not expected to result in any additional administrative costs to Government.

Consistency with Fundamental Legislative Principles

The Bill provides that an offender, whilst subject to a term of imprisonment or a post prison release order, is not entitled to access documents under the FOI regime that are used by the Department of Corrective Services and the Community Corrections Boards for the assessment of risk that such an offender may pose to the community or to the security or good order of a corrective services facility. This is limited to offenders who have been convicted of certain offences, being trafficking or serious violent offences as defined in the Bill.

This may raise issues regarding consistency with Fundamental Legislation Principles in that these offenders are not entitled to receive personal information about themselves. However, it is considered that the public interest outweighs this right of offenders. The public interest being served is the security and good order in corrective services facilities and public safety, as a result of fully informed decisions being made. These decisions impact upon the safety of staff, offenders and the community with the management of offenders in corrective service facilities as well as the release of offenders into the community.

The Bill provides a new exemption relating to information obtained, used or prepared for an investigation by the Crime and Misconduct Commission (CMC) or another agency in the performance of the CMC's crime function and misconduct functions. The exemption also applies to such information obtained, used or prepared by its predecessors, the Criminal Justice Commission and the Queensland Crime Commission.

This exemption is to apply to FOI applications for access that exist at the time of the commencement of the exemption. This raises an issue regarding consistency with the Fundamental Legislative Principles as it affects the rights of existing applicants as the application, to the extent it is for this exempt information, is not being considered in accordance with the law at the time of the application.

It is considered that the public interest is being served as applying the proposed exemption to the existing applications will ensure that sensitive and confidential information, including information relating to major crime investigations, cannot be disclosed under the FOI Act. The CMC has other forms of accountability, audit and scrutiny. The Parliamentary Crime and Misconduct Commissioner and the Parliamentary Crime and Misconduct Committee can investigate matters and in doing so, has complete access to all information of the CMC.

Consultation

Community

During the course of the inquiry resulting in the Report, LCARC consulted extensively with the community. It received 173 submissions and held a number of public hearings.

Government

The former Queensland Information Commissioner and the current Queensland Information Commissioner were consulted on the amendments to the FOI Act.

There has in addition, been extensive consultation across Government agencies.

Notes on Provisions

Chapter 1-preliminary

Clause 1 sets out the short title of the Act.

Clause 2 provides for the commencement of the provisions of the Act.

Chapter 2 – Freedom of Information Amendments

Part 1 - Amendment of *Freedom Of Information Act 1992*

Clause 3 provides that this Part amends the *Freedom of Information Act 1992*.

Clause 4 replaces section 4 (Object of Act) and section 5 (Reasons for enactment of the Act) with a new objects clause. This addresses LCARC finding 4.

Clause 5 amends section 7 by inserting new definitions. It also amends the definition of "document" to include a reference to the definition of "document" in section 36 of the *Acts Interpretation Act 1954* and the definition of "official document of a Minister" or "official document of the Minister" to make it clear that documents of agencies under the Minister's control are not included. This is because applications for access to documents of an agency are properly made to the agency.

Clause 6 omits section 8(2) and replaces it with a new subsection. The amendments make it clear that agencies are required to discharge their obligations under the FOI Act on behalf of bodies which have a relationship to them described in subsection (2).

This implements LCARC finding 24.

Clause 7 amends section 9 to clarify the meaning of "public authority". The clause amends subsection 9(1)(a)(ii) to make it clear the subsection is intended to apply to public authorities that are established by Government under an enactment for a public purpose whether or not the public purpose is stated in the enactment. This implements LCARC finding 25.

The clause also omits section 9(2) as this is already provided for in the new section 8(2).

Clause 8 inserts a new section 9A which provides that the notes in the text of the Act are part of the Act.

Clause 9 amends section 11(1)(e) to reframe the existing exclusion about the judicial functions of a court, the holder of a judicial office or other

office connected with a court. The amendment ensures that the drafting of this exclusion is consistent with that of other exclusions. This implements LCARC finding 208.

The clause inserts sections 11(1)(fa) and (fb) which provides that the FOI Act does not apply to the judicial and quasi-judicial functions of tribunals, tribunal members, the registry of a tribunal or the holder of an office connected with a tribunal. This exclusion applies to tribunals listed in the definition.

The clause inserts section 11(1)(fc) which provides that the FOI Act not apply to the Crime and Misconduct Commission in relation to its misconduct functions and the crime function.

The clause replaces section 11(1)(n) to update the drafting.

The clause repeals the existing regulation making power in section 11(1)(q) and inserts appropriate exclusions that are presently contained in the *Freedom Of Information Regulation 1992.* This implements LCARC finding 214.

The clause also amends section 11(2) to correct the inaccurate references to section 11(1). At present, section 11(1) contains no references to documents in relation to a particular function or activity of a named body, as stated in the existing section 11(2). The amendments remove this confusion by providing that, in subsection (1), a reference to an entity in relation to a particular function or activity means that the Act does not apply to the entity in relation to documents received or brought into existence by it in performing the function or carrying on the activity. This amendment implements LCARC finding 209.

Clause 10 inserts new section 11D which cross-references provisions in other Acts that exclude or limit the operation of the FOI Act. These provisions are listed in Schedule 3 which is included for information purposes to ensure that readers of the FOI Act can ascertain the complete application of the FOI Act. As the provisions listed or to be listed specifically exclude or limit the operation of the FOI Act, such provisions prevail over any possible application of section 16(1) of the FOI Act.

This amendment addresses LCARC finding 216.

This clause inserts new section 11E which prevents certain offenders obtaining access to certain documents used in the assessment of risk to the community or to the security or good order of a corrective services facility. This limitation of access is to ensure that information can be freely provided, can be objective and can be given without fear of reprisal. For

example, psychologists and psychiatrists will be able to make objective evaluations of the risks posed by prisoners without threat of reprisal or intimidation. This will ensure the soundness of decision-making processes, including decisions about the release of offenders to the community, where public safety is the paramount consideration. The provision also applies to intelligence information that falls within the definition of risk assessment document. The provision applies to offenders whilst serving a period or term of imprisonment imposed for the listed offences.

This amendment addresses LCARC finding 179 and 181.

Clause 11 amends section 18 which currently requires agencies to publish an annual statement of affairs containing specified information. The amendment will require agencies to include in their statements of affairs particulars of any reading room or other facility provided by the agency for use by applicants or members of a community and, the publications, documents or other information regularly on display in that reading room or other facility. This information is currently included in section 108 of the annual report on the operation of the FOI Act. This amendment implements LCARC finding 44 that this information should instead be included in agencies' statements of affairs.

Clause 12 amends section 20 which allows a person to serve on an agency's principal officer, a written notice stating that the agency has failed to publish a statement of affairs as required or that the statement of affairs which has been published by an agency is non-compliant. The clause inserts a new subsection (4) which makes it clear that if the principal officer fails to notify the person of his or her decision within 21 days of receiving the notice, the principal officer is taken to have decided that the person's opinion is incorrect.

Clause 13 amends section 22 to make it clear that access can be refused if the documents sought under an FOI application are reasonably available to the applicant (whether or not they are available to the community at large) under a statutory or administrative access scheme.

This implements LCARC finding 32.

The clause also removes section 22(e) which relates to adoption records. This implements LCARC finding 33 in part.

Clause 14 amends section 25 by inserting new subsections (5),(6),(7),(8) and (9). New subsections (5) and (6) make it clear that an application is taken only to apply to documents that are, or may be, in existence on the day the application is received, but an agency or Minister has a discretion

to give access to a document created after the application is made but before it is decided. This addresses LCARC finding 86. New subsection (7) makes it clear that if an agency or Minister gives a person access to a post-application document no processing or access charge is payable and there are no review rights in relation to that document.

New subsections (8) and (9) provide that an applicant for access cannot require an agency or Minister to search for a document from a backup tape. However, this does not prevent an agency or Minister searching for a document on a back-up system if the agency or Minister considers it appropriate. These amendments commence on assent.

Clause 15 replaces section 25. The new section 25(2) requires applications to state an address to which notices under the FOI Act may be sent to the applicant. If being made by an agent, the application must state the name of the applicant and agent. If the document does not concern the applicant's personal affairs, the application must be accompanied by the application fee.

New sections 25(3),(4),(5),(6)and (7) will replace new sections 25 (5),(6),(7),(8) and (9) which were inserted by Clause 14 and commenced on assent.

New section 25A sets out the initial duties of an agency or Minister in relation to an application. Subsection 25A (3), (4) and (5) address the problems that arise when applications or parts of applications relate to documents that are not sufficiently identified, or in relation to which a fee is payable but not provided with the application. In these situations it is often difficult for agencies to comply with the specified timeframes for processing applications. Accordingly, the amendment will make it clear that the statutory time periods for determining an application (the "appropriate period" under section 27) cease to run from the time when the notice is given to the time when the applicant provides the further information required or pays the application fee. This implements LCARC findings 52, 56, 60 and 86.

Clause 16 amends section 26 to ensure that transfers of applications to other agencies may be treated as fresh applications by the transferee agencies. This will enable a transferee agency to charge an application fee to prevent applicants abusing the process by making one application which effectively seeks documents held by many different agencies. As is currently the case, any transfer will be subject to the consent of the transferee agencies.

This implements LCARC finding 57.

Clause 17 amends section 27 which sets out the procedures when an application for access to a document is made to an agency or Minister under the FOI Act. The new section 27(3) makes it clear that agencies and Ministers may delete information which could reasonably be considered not relevant to the application without having to consult with the applicant. Previously the applicant's agreement was required. The new subsection 27(4) provides that the agency or Minister may give access to a document from which irrelevant matter has been deleted only if the agency or Minister considers that the applicant would accept a copy of the document with the information deleted and it is reasonably practicable to give access. The applicant will retain rights of internal and external review if the applicant is not satisfied that the deleted matter was irrelevant having regard to the terms of the access application.

This implements LCARC finding 71.

Clause 18 inserts new section 28B which addresses the situation where applications are made for documents which do not exist or cannot be found. At present, the FOI Act does not contain a provision to enable an agency or Minister to refuse such an application. The new section provides that an agency or Minister may refuse access to a document if all reasonable steps have been taken to find the document and the agency or Minister is satisfied the document:

- has been, or should be, in the agency's or Minister's possession but cannot be found; or
- does not exist.

The clause addresses LCARC finding 96.

It also addresses the issue raised by LCARC in finding 29 as to whether back up systems which do not form part of an agencies' or Ministers' general record keeping systems should be excluded from the scope of the FOI regime altogether. The section makes it clear that unless certain criteria are met, an agency or Minister would not be required to search a back-up system to fulfil their obligation to conduct a reasonable search. Such a search need only be undertaken when the agency or Minister has sufficient evidence to be satisfied that a particular document has been or should be in their possession (for example, a reference to a specific document in another document) and that the document should have been kept under the *Public Records Act* and could not lawfully have been disposed of, and that the document is retrievable from a back-up system. This section will commence on assent.

Clause 19 replaces sections 28 -29D.

The new section 27A qualifies the calculation of the "appropriate period" for the purposes of section 27. It provides that in relation to non-personal affairs applications certain periods of time are to be disregarded for the purposes of calculating the "appropriate period" (as defined in the FOI Act). Under section 27, an agency or Minister is deemed to have refused an application if the applicant has not been notified of a decision under section 34 within the appropriate period or, if consultation with an affected third party under section 51 is required, the appropriate period plus 15 days. Section 27A ensures that for the purposes of calculating the appropriate period the following times are excluded:

- the period beginning on the day on which an applicant provides a copy of a concession card and ending on the day the applicant is notified of the decision or the decision is deemed to have been made;
- the period beginning on the day an applicant is given a preliminary assessment notice until the applicant agrees in writing to pay the relevant charge or pays the deposit and agrees in writing to pay the relevant charge (as applicable) or the applicant is notified that no charges are payable because they have been wrongly assessed or have been waived.

The new section 28 replicates the former section 28(1) and provides that an agency or Minister may refuse access to exempt matter or exempt documents. This amendment has been made for clarity of drafting.

The clause addresses LCARC finding 72.

The new section 28A addresses the situation where applications are made for documents which do not exist or cannot be found. This replaces the new section 28B which commences on assent.

The new section 29 **"Refusal to deal with applications – agency's or Minister's functions"** replicates and amends the old section 28(2)–(5). The amendments clarify that the intention of the section is to enable an agency or Minister to refuse to "deal" with an application, rather than simply to refuse "access" to documents, in specified situations. These are situations where resources would be unreasonably diverted in the processing of applications or where the application relates to entire classes of exempt documents.

This implements LCARC finding 78.

In addition, there are amendments to allow an agency or Minister to refuse to deal with multiple applications by the same person if the agency or Minster considers the work involved in dealing with all the applications would result in a substantial and unreasonable diversion of resources. This is to ensure that applicants cannot subvert the intention of the section by lodging multiple applications for access where the combined effect of the applications would result in a substantial and unreasonable diversion of resources although none of the applications considered individually would.

This implements LCARC finding 76.

Section 29(5) which relates to applications for entire classes of exempt documents is also amended. At present, agencies and Ministers are permitted to refuse an application without having identified any of the relevant documents and without specifying grounds for exemption. The new subsection 29(5) requires agencies and Ministers to identify the provision under which the documents are exempt. This implements the Response to LCARC finding 77.

The new section 29A sets out what an agency or Minister must do before refusing to deal with an application under section 29.

The new section 29B gives agencies and Ministers the power to refuse serial or repeat applications. At present, there is no provision in the FOI Act to address this problem. If an applicant applies to an agency or Minister for access to a document which has been the subject of an earlier application by the same applicant to the same agency or Minister the agency or Minister may refuse to deal with the application (or part of the application) if satisfied that documents sought under the later application are documents sought under the earlier application and the later application has not disclosed any reasonable basis for again seeking access. The refusal must be on one of the specified grounds. These include:

- that the agency or Minister's decision on the earlier application is the subject of an external review which is not complete, or has been the subject of a completed review;
- that a decision as to whether to grant access to the documents under the earlier application had not been made when the later application was made the agency or Minister;
- that the agency or Minister had decided that the FOI Act or part of the FOI Act did not apply to an entity or to a document, that access to the documents may be refused under section 22 or that the agency or

Minister had made a decision that the documents sought under the earlier application were exempt or did not exist;

- that the agency or Minister has refused access under the new section 28A (ie the documents are not locatable or do not exist) . and
- that the agency or Minister has decided the applicant is not entitled to access because of section 11E.

This implements LCARC finding 80.

Clause 20 inserts a new section 31A which imposes a time limit of 60 days (or such additional time as the agency or Minister allows) for obtaining access to documents. At present, the Act does not set a time limit. This causes operational difficulties for agencies which are required to retain operational files in their FOI units in readiness for applicants who have been granted access to documents.

This implements and expands on LCARC recommendation 83.

Clause 21 replaces section 33 which specifies who may deal with an application for access to a document. The new section allows an agency to delegate the power to deal with an application to another agency within the same portfolio.

This implements LCARC finding 91.

Clause 22 amends section 34 which specifies the information that must be contained in the notification of an agency's or Minister's decision on an application for access. The amendments provide that the notice must include information as to the time limit for accessing the document under section 31A and whether a document to which access has been given had irrelevant matter deleted.

Clause 23 inserts a new Part 3, Division 1A, which provides for the fees and charges regime, previously contained in sections 29-29D.

Section 35A sets out the definition of "financial hardship".

Section 35B provides that an applicant applying for documents that do not concern the applicant's personal affairs must pay an application fee at the time an application is made and must pay any processing and access charges (as defined) before being given access to the document. The section makes it clear that processing charges must be paid even if a successful applicant does not seek to obtain access within the statutory time limit or if access is refused. The section also provides that an applicant

must pay a deposit if the agency or Minister considers it appropriate and that the amount of any deposit is to be determined under a regulation.

Section 35C makes it clear that an application fee that may apply cannot be waived. It also provides that a processing or access charge can only be waived as provided for under the Act (ie for financial hardship or as condition on which the QIC allows an agency or Minister further time to deal with an application).

Section 35D provides that the process for assessment of charges is set out in Schedule 4.

Section 35E makes it clear that an applicant is entitled to a refund of monies paid in excess of the amount of processing and access charges ultimately assessed to be payable under the Act.

Clause 24 amends section 42 to create a new exemption to prevent disclosure where it is reasonably expected that such disclosure could subject a person to serious acts of harassment or intimidation. Such harassment or intimidation would be a consequence of, for example, the applicant having knowledge of the content of the information or of the provider of the information. For example, potential disclosure of information provided by a victim about the offence, upon the application of an offender, could constitute harassment or intimidation. Harassment or intimidation includes, for example, the threat of violence. This implements LCARC finding 177.

This clause also amends section 42 to insert a new exemption which exempts information obtained, used or prepared for investigations by the Crime and Misconduct Commission (CMC) or another agency. The exemption is only to apply where the investigation is in performance of the CMC's crime function and misconduct functions. The exemption also applies to such information obtained, used or prepared by its predecessors, the Criminal Justice Commission and the Queensland Crime Commission in the performance of the equivalent functions.

This exemption is to apply to the information obtained, used or prepared in the course of the investigation and the consideration of, and reporting of the investigation.

This exemption does not apply if a person seeks information about themselves, including personal, professional, business and work-related information. However, a person can only receive such information once the investigation has been finalised. For example, and subject to the other exemptions in the FOI Act, a person could receive information about

allegations made against them, information given about them in the course of an interview and conclusions made about them in a report.

By section 114, this exemption is to apply to applications for FOI access made before the commencement of this exemption.

Clause 25 amends section 44 to broaden its application to 'health care information'. It is also more specific about the type of the health care professional either appointed under section 44(4) to make decisions under section 44(3) or nominated and approved under section 44(3) to decide upon the extent and way of disclosure of information to the applicant. The health care professional, who need not necessarily be of the same speciality or profession, must have appropriate qualifications and experience to assess the information in question. This implements LCARC findings 188,189 and 190.

Clause 26 amends section 45(3) to clarify that the research that is finished is included in this exemption. This implements the Response to LCARC finding 191.

Clause 27 amends section 46 to simplify the provision and to remove the reference to an action for breach of confidence. This implements LCARC finding 192.

Clause 28 inserts a new Division 2A - **Children,** containing the new section 50A which applies to applications on behalf of a child. The new section makes it clear that an application which is stated to be made by a parent or guardian on behalf of a child will be treated as an application by the child for the purposes of charging i e personal affairs documents relating to the child will not be subject to charges. The new subsection (3) provides that, despite s 44(2), an agency or Minister may refuse access to the information or parts of the information if it is considered that access would not be in the best interests of the child. If the application is made by the child, the agency or Minister must consider whether the child has the capacity to understand the information and the context in which it was recorded and make a mature judgment as to what might be in his or her best interests.

Clause 29 Amends section 51 which outlines the procedures that must be followed before an agency or Minister gives access to a document that contains matter the disclosure of which may reasonably be expected to be of substantial concern to a government, agency or person. The section currently requires the agency or Minister to take such steps as are reasonably practicable to obtain the views of the third party as to whether or not the matter is exempt matter. Following this, if the agency or Minister considers, contrary to the views of the third party, that the documents

sought are not exempt the agency or Minister must defer giving access to enable the third party to seek review. The section is amended to address the situation where a third party advises the agency or Minister that they no longer object to the release of the document. The amendment will ensure that the agency or Minister will be able to give access to the document without waiting for the expiry of the period in which the third party would be able to seek review.

This implements LCARC finding 98.

The section is also amended by providing a new definition of "person concerned" in relation to a person who has died. At present, the FOI Act only requires consultation with the person's closest relative which is not defined. Agencies have difficulty in deciding who to consult, particularly when all relatives are of the same degree of consanguinity. "Person concerned" is now defined to mean the deceased person's "eligible family member" (which is also defined) or, if two or more people qualify as the deceased person's eligible family member, one of those people. The new definition of "eligible family member" of a deceased person sets out a hierarchy of relatives with whom agencies should take such steps as are reasonably practicable to consult.

This implements LCARC finding 87.

Clause 30 replaces section 52 which confers rights of internal review in relation to decisions made under Part 3.

The new section 52 differs from the existing provision in a number of ways.

The new subsection (1) clarifies the range of decisions in relation to which internal review may be sought. It expressly includes refusals to give applicants access on the grounds that the FOI Act does not apply to the particular agency or to the document.

This implements LCARC finding 104.

The new subsection (2) removes the requirement that the address which must be provided by applicants seeking internal review must be an Australian address. It simply requires that applicants specify an address to which notices can be sent.

This implements LCARC finding 106.

The new subsection (2) also provides that the relevant time limit for applicants to lodge internal review applications does not begin to run until an applicant is given written notice of the decision regarding their application. At present, there is no such requirement.

This implements LCARC finding 108.

The new subsection (5) provides that the reviewer must decide the application as if it were a fresh application under section 25. This is not intended to allow the imposition of charges for internal reviews. The reference to "fresh application" applies to how the reviewer decides the application.

The new subsection (6) increases the time period in which agencies and Ministers must make decisions on internal review applications from 14 days to 28 days.

This implements LCARC finding 109.

The new section 52A sets out who is aggrieved by a decision under section 52. In particular, subsection (3) clarifies that a person who is aggrieved by a decision for the purposes of seeking internal review includes a government or an agency that has or should have been consulted under section 51.

This implements LCARC finding 105.

Clause 31 replaces sections 53 -54.

Section 53 currently enables a person who has had access to documents relating to their personal affairs to apply to the agency or Minister to have that information amended if they believe that it is inaccurate, incomplete, out of date or misleading. The amendment clarifies that the section is intended to apply to information that the person claims is inaccurate, incomplete, out of date or misleading. As the section is presently drafted, it could be construed to mean that it was necessary a determination had previously been made that the information was inaccurate, incomplete, out of date or misleading before the person made the application.

This implements LCARC finding 36.

The new section 53 also contains amendments regarding applications to amend personal information relating to a deceased person. At present, the FOI Act enables the next of kin to make such an application. This creates uncertainty for agencies who are required to decide who qualifies as the deceased person's "next of kin" and therefore entitled to seek an amendment. The section now provides that an "eligible family" member (which has the same meaning as in section 51) or a person the agency or Minister considers has an appropriate interest, is entitled to apply for amendment.

This implements LCARC finding 87.

Section 54 sets out the form of application for amendment of information. Under section 54 applicants are not currently required to provide any reasons in support of their claim that documents are inaccurate, incomplete, out of date or misleading. This means that agencies must make their own enquiries about the accuracy of the information. The amendments require the applicants to specify the information that is claimed to be inaccurate, incomplete, out of date or misleading and the document containing the information. The applicant must also specify the respects in which the applicant claims the information to be inaccurate, incomplete out of date or misleading and the grounds for the applicant's claim. If the applicant claims the information to be inaccurate or misleading, the applicant must specify the amendments that the applicant claims are necessary for the information to be corrected. If the applicant claims the information to be incomplete or out of date, the applicant must specify the other information that is necessary to update it.

This implements LCARC finding 38.

The new section 54A allows transfer of applications for amendment of information in a similar way to the transfer of applications for access. It provides that an agency to which an application has been made (the "original agency") may transfer the application to another agency if the document is held by the original agency but is more closely related to the functions of the other agency, and the other agency consents. If the other agency decides to amend the information, it must advise the original agency of its decision and how it proposes to make the amendment. The original agency must make the same amendments to the document it holds.

This implements LCARC finding 37.

The new section 54B provides that an agency or Minister may refuse to deal with an application for amendment of information if it considers that the work involved would substantially and unreasonably divert the resources of the agency from their use by the agency in the performance of its functions or interfere substantially and unreasonably with the performance by the Minister of the Minister's functions.

This implements LCARC finding 40.

The new section 54C sets out what an agency or Minister must do before refusing to deal with an application under section 54B.

The new section 54D allows an agency or Minister to refuse to deal with an application where the application relates to documents which have been the subject of a previous application.

The new section 54E makes it clear that, without limiting the grounds on which an agency or Minister may refuse to amend information, the grounds include that the agency or Minister is not satisfied that the information is inaccurate, incomplete, out of date or misleading, or that it relates to the personal affairs of the applicant or a deceased person (as the case may be) or if it relates to the personal affairs of a deceased person, that the applicant is entitled to apply for correction or amendment.

This implements LCARC finding 40.

Clause 32 amends section 55 by inserting a new heading which more accurately reflects the content of the provision.

Clause 33 amends section 57 by inserting a new subsection 57 (2) which makes it clear that if the 30 day time limit for deciding an application under section 53 has ended without the applicant being given notice of a decision, the agency or Minister will be deemed to have made a decision refusing to amend the information on the last day of the period.

Clause 34 replaces section 59.

The new section 59 clarifies that an applicant's right to require an agency to add a notation to information applies only to information of the kind referred to in section 53.

This implements LCARC finding 42.

Clause 35 replaces section 60. The new section 60 ensures that the right to internal review of amendment applications also applies to situations where the original decision is made by the delegate of a Minister and not just decisions by agencies.

This implements LCARC finding 101.

The new section also makes it clear that person is not entitled to internal review if a decision is made by a Minister.

This implements LCARC finding 102.

The new section also provides that the address which must be specified in internal review applications need not be an Australian address.

The section makes it clear that the 28 day limit for lodging internal review applications runs from the day that the applicant is given written notice of the original decision. The period for deciding internal review applications is increased from 14 days to 28 days.

These amendments implement LCARC findings 106, 108 and 109.

Clause 36 omits Part 5, Divisions 1-2A.

Clause 37 renumbers Part 5, Divisions 3-5 as Divisions 1-3.

Clause 38 amends section 73(1)(d) by reducing the time in which applicants may seek external review of decisions from 60 days to 28 days. The Commissioner retains power to allow an applicant a longer period of time in which to lodge an application for external review.

This implements LCARC finding 124.

Clause 39 replaces section 74 which currently provides that before starting a review the Commissioner must notify the applicant, relevant agency or Minister and any third party whom the Commissioner considers would be affected by the decision the subject of the review.

The section is amended to address problems that have arisen in implementing this requirement, namely that:

- it is difficult for the Commissioner to determine what "third parties" may be affected by the decision before a review commences;
- the Commissioner must notify third parties even when it is apparent to the Commissioner that the material sought is exempt and should not be released; and
- in some situations the Commissioner is obliged to notify "third parties" of review proceedings that might affect them but is unable, because of other statutory obligations, to provide them with information about the nature of the matter in dispute and how it might affect them. In such cases, the third party is unable to participate in the review in any meaningful way.

Under the new section 74, the Commissioner is required only to inform the agency or Minister concerned.

This addresses LCARC finding 125.

Clause 40 replaces sections 76 and 77.

Section 76(1) enables the Commissioner to obtain and inspect documents for the purpose of fulfilling his or her review function. The section currently refers only to two purposes – to decide if the document is exempt or whether the document is an "official document of a Minister". There are a range of situations where the Commissioner might need to inspect documents in order to fulfil the review function. The new subsection 76(1) addresses this by clarifying the purposes for which the Commissioner may require the production of documents for inspection.

Section 76(2) currently prohibits the Commissioner from disclosing the information produced for inspection to a person other than a staff member of the Office of the Commissioner. This is unduly restrictive. It would prevent the Commissioner from providing a copy of a document to a third party who may have originally provided the document to the agency or Minister. In addition, the Commissioner would be prevented from discussing the document with a third party even if the third party created it.

The amendments address this problem by allowing the Commissioner to disclose a document to a person who created it or provided it to the agency or Minister, or if such a person is a participant in the review, to the participant's representative.

This implements LCARC findings 126 and 127.

Section 77 currently sets out the powers of the Commissioner not to review a decision if satisfied that the application is frivolous, vexatious, misconceived or lacking in substance. The new section 77(1) makes it clear that the Commissioner is entitled to exercise this power in respect of all or part of an application for review. It also empowers the Commissioner not to deal with all or part of an application in various other circumstances i.e., if the applicant fails to comply with a direction given by the Commissioner, if the Commissioner considers the applicant has failed to cooperate in progressing the application without reasonable excuse or if the Commissioner considers the address given in the application is no longer the applicant's address and the applicant has not advised the Commissioner of a new address within a reasonable time.

This implements LCARC finding 117.

Clause 41 replaces section 79 which allows the Commissioner to grant an agency or Minister further time to deal with an application in certain prescribed circumstances. This avoids the operation of the "deemed refusal" provisions in the Act.

Section 79(1) presently does not confer jurisdiction on the Commissioner to conduct a review when the agency or Minister has been granted further time to make a decision under section 79(2), but still has not determined the application within the further time allowed. The new section 79 addresses this by giving the Commissioner this power.

This implements LCARC finding 123.

Clause 42 replaces section 81 which currently provides that, on review, the agency or Minister who made the decision under review has the onus of establishing that the decision was justified. This is not appropriate in

"reverse FOI" procedures where a third party opposes an agency's or Minister's decision to release documents. The current requirements are open to abuse by third parties who may assert documents are exempt merely to delay the release of the documents for as long as possible.

The new section 81(2) therefore provides that in a "reverse FOI" application the onus of justifying non-disclosure is on the participant who opposes the disclosure.

This implements LCARC finding 128.

Clause 43 amends section 83 to omit a cross reference to section 74(2) which has been omitted.

Clause 44 replaces sections 87.and 88. It inserts a new section 86A which creates a new offence of providing information to the Commissioner that the person knows is false or misleading in a material particular. The offence carries a maximum penalty of 100 penalty units.

It also inserts a new section 87 which requires the Commissioner not to disclose "exempt matter" or information of the kind mentioned in section 35 (ie information as to the existence or non existence of a document containing matter that would be exempt matter under sections 36, 37,42 or 42A).

The new section 87 makes it clear that the prohibition applies to a matter that is claimed to be exempt rather than a matter that is found to be exempt by the Commissioner.

In addition, the anomalous reference to an "applicant" has been rectified. At present, the section prevents disclosure to "an applicant" or "applicant's representative". In a "reverse FOI" application, this is inappropriate as the applicant would usually be aware of the matter claimed to be exempt. The new section 87 makes it clear that the object is to prevent disclosure to an "access participant" (as defined) or the "access participant's representative". The section also repeals the existing section 87(3) which is otiose.

This implements LCARC finding 129.

The clause also inserts a new section 87A which provides an exception for a successful challenge to a section 35 notice. The new provision provides that if an agency or a Minister gives a notice under section 35(2) and the Commissioner is satisfied that the document concerned does not include exempt matter under sections 36, 37, 42, or 42A the new section 87(3) does

not apply. Section 87(3) prevents the Commissioner from disclosing matter that is claimed to be exempt or of the kind mentioned in section 35.

However, section 87A(3) provides that section 89, which sets out what the Commissioner must do after conducting a review, does apply with some modifications. The Commissioner is required to first give a copy of the decision only to the agency or Minister and give a copy of the decision to each other participant only if, after 28 days, the Commissioner has not been notified that the agency or Minister has applied for a statutory order of review under the *Judicial Review Act 1991*. If the Commissioner directs that access to the document is to be granted, the agency or Minister must comply with the direction only if, after 28 days, the agency or Minister has not applied for judicial review.

This addresses LCARC finding 120.

The new section 88 sets out the powers of the Commissioner on review. It includes a new subsection 88(2) which expressly confers power on the Commissioner to require the agency or Minister to conduct further searches for a document.

This implements LCARC finding 122.

Clause 45 inserts a new section 89A which clarifies that the Commissioner has the power to correct errors that result from an accidental slip or omission in a written decision of the Commissioner. The new section makes it clear that the Commissioner may make a correction at any time on application by a party or on the Commissioner's own initiative.

This implements LCARC finding 134.

Clause 46 amends section 93 by increasing the maximum penalty for the offence from 20 penalty units to 100 penalty units. This achieves consistency with penalties that apply under other legislation, such as the *Ombudsman Act 2001,* and implements LCARC finding 136.

Clause 47 amends section 94 which creates the offence of failing to produce documents or attend proceedings. The clause increases the maximum penalty from 20 penalty units to 100 penalty units. This achieves consistency with penalties that apply under other legislation such as the *Ombudsman Act 2001* and implements LCARC finding 136.

Clause 48 inserts a new section 96A which provides a mechanism for dealing with applications by vexatious applicants. The Commissioner is empowered to declare a person to be a vexatious applicant if certain criteria are met. The Commissioner must be satisfied that the person has made

repeated FOI applications which involve an abuse of the right of access, amendment or review. The Commissioner may make a declaration subject to certain terms and conditions, including a condition that the person may only make further FOI applications with the written consent of the Commissioner.

Clause 49 inserts a new section 99A which provides that the Commissioner or a member of the Commissioner's staff cannot be compelled to produce an FOI document (as defined in the section) or disclose FOI information (as defined) in third party legal proceedings. Third party legal proceedings is defined to exclude actions started by the Commissioner, or actions against the Commissioner or a member of the Commissioner's staff arising out of the performance of functions under the FOI Act.

This implements LCARC finding 140.

Clause 50 amends section 101 which requires the Commissioner to make a report at the end of each financial year on the operations of the Commissioner during that year. The clause inserts subsection 101(3) which specifies that the Commissioner must include details of external review applications in that report. In relation to each application under section 73, the Commissioner will be required to report the Commissioner's decision and if the decision is that an applicant is not entitled to access, the provision of the Act under which the matter was classified as exempt. Correlative requirements in section 108(4)(c) which required details of applications for external review to be included in the section 108 Annual Report have been removed.

This is a consequential amendment to LCARC finding 20.

Clause 51 inserts a new Part 5A- **Office of the Information Commissioner**.

Division 1 General

The new section 101A establishes the Office of the Information Commissioner.

The new section 101B provides that the Office is a statutory body for the *Financial Administration and Audit Act 1977* and *Statutory Bodies Financial Arrangements Act 1982*.

The new section 101C sets out the functions of the commissioner. These were contained in the previous section 71. The new section clarifies the

scope of the Commissioner's jurisdiction by making it clear that the Commissioner has, *inter alia*, the power to review decisions to grant 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 and decisions to give access in a form other than that applied for by the applicant. The new section also makes it clear that the Commissioner has power to review decisions that the Act does not apply to an entity because it is not an agency or is excluded under specific sections of the Act or another Act or to a document because it is excluded under specific sections of the Act or another Act. The section expressly provides that the Commissioner's functions include investigating and reviewing whether agencies and Ministers have taken reasonable steps to identify and locate documents, making declarations in relation to vexatious applicants and providing information and help to the public on matters relevant to Part 5 and Part 5A of the Act.

This implements LCARC findings 104, 121 and 122.

The new section 101D provides that the Commissioner controls the Office.

The new section 101E provides that the Commissioner is not subject to direction in the exercise of investigation and review powers and the priority to be given to investigations and reviews.

The new section 101F requires the Commissioner to develop and submit a budget for the Office for the Minister's approval each financial year.

Division 2 - Information Commissioner

The new section 101G provides that the Commissioner is appointed by the Governor in Council under this Act and not the *Public Service Act 1996.*

The new section 101H provides that a person may only be appointed as Commissioner if the Minister has placed press advertisements nationally and has consulted with the parliamentary committee about the process of selection for appointment and the appointment of the person as commissioner. These requirements do not apply if a person is being reappointed.

The new section 101I provides that the Commissioner holds office for a term of not more than 3 years as stated in the instrument of appointment.

The new section 101J provides that the Commissioner is to be paid remuneration and allowances, and hold office on the terms and conditions, decided by the Governor in Council.

The new section 101K makes it clear that the Commissioner can take leave in accordance with his or her entitlements with the approval of the Minister.

The new section 101L preserves the rights of a public service officer who is appointed to the office of Commissioner.

The new section 101M sets out the requirements of the oath made by the Commissioner.

The new section 101N sets out the restrictions on outside employment by the Commissioner.

The new section 101O provides that the Commissioner may resign by signed notice to the Minister. The Minister must give the notice to the Governor for information and a copy to the Speaker of the legislative Assembly and the chairperson of the parliamentary committee. Failure to give the notice to the Governor or copies to the Speaker and parliamentary committee will not invalidate the resignation.

The new section 101P empowers the Governor in Council to appoint an acting Commissioner.

Division 3 - Commissioner may be removed or suspended from office

The new section 101Q sets out the grounds for removal or suspension from office of the Commissioner.

The new section 101R sets out the process for removal of a Commissioner.

The new section 101S sets out the process for suspension of a Commissioner from office.

The new section 101T sets out the process for suspension of a Commissioner from office if the Legislative Assembly is not sitting.

The new section 101U provides that the sections 25(1)(b)(i) to (iii) of the *Acts Interpretation Act 1954* does not apply to the removal or suspension of the Commissioner.

Division 4 – Staff of the Office

The new section 101V provides that staff are to be employed under the *Public Service Act 1996.* The independence of the staff is ensured by the new section 101W.

The new section 101W provides that the staff of the office are not subject to direction by any person (other than the Commissioner or a person authorised by the Commissioner) about the way in which the Commissioner's powers of investigation and review are exercised and the priority to be given to investigations and reviews.

Clause 52 amends section 105 to reflect the new definitions in section 7 which makes it clear that for the purposes of an application the applicant is the person on whose behalf an application is made if the application is made by an agent.

Clause 53 amends section 106 which creates the offence of unlawful access by increasing the maximum penalty from 20 penalty units to 100 penalty units.

This implements LCARC finding 136.

Clause 54 amends section 108 which requires the Attorney-General to prepare an annual report on the operation of the Act and table it in the Legislative Assembly. The purpose of these reports is to inform Parliament and the community about the use and administration of the Act. Not all the information which is currently required to be reported is necessary or useful. In some cases, it duplicates information published elsewhere.

The clause deletes some categories which are considered to be of little use in enhancing public understanding of the operation of the Act, such as the names and designations of officers who make decisions on internal review applications and adds some new categories such as the requirement to report on the number of applications for amendment of information and for applications for internal review of amendment decisions. In particular, there will be anew requirement to report on the number of preliminary assessment notices and the number of final assessment notices issued by each agency and minister to enhance transparency in relation to the charging regime.

Clause 55 inserts new Section 108C which strengthens the role of the parliamentary committee in monitoring and reporting on the Office of the Information Commissioner.

Clause 56 amends section 109 which provides for the making of regulations.

Clause 57 inserts new Part 10 which provides for transitional provisions.

New section 113 inserts a definition of "amending Act".

New section 114 provides for the application of amendments to existing applications.

New section 115 sets out transitional arrangements for particular provisions.

New section 116 provides for transitional arrangements in relation to charges.

New section 117 provides that a person who was the Commissioner immediately before the commencement of the new section 101G (which deals with the appointment of the Commissioner) continues as the Commissioner.

New section 118 preserves the rights of current staff members. The section protects the rights of all officers and temporary and casual staff and ensures that all existing and accruing rights and entitlements are preserved. Subsection (1)(b) ensures the continuation of the rights of public service officers who became officers of the Commissioner which were preserved under former section 70D (1). Because the officers are reverting to being officers of the public service under this Bill there is no need to preserve the rights of reversion in former subsections 70D(2)and (3). There are currently no officers of the Commissioner on secondment so there is no need to continue rights preserved under former section 70F. Subsection (2) ensures that temporary and casual employees employed under the FOI Act will continue to be employed as temporary and casual employees under the *Public Service Act*.

New section 119 provides for transitional arrangements in relation to reports under section 108.

New section 120 provides for transitional arrangements in relation to reports under section 100.

New section 121 removes doubt that the amendment of the *Freedom of Information Regulation 1992* by the Act does not affect the power of the Governor in Council to further amend the regulation or repeal it.

Clause 58 amends schedule 1 to remove the references to the *Prostitution Act 1999, Gene Technology Act 2001, Crime and Misconduct Act 2001 , Biodiscovery Act 2004* and the *Public Sector Ethics Act 1994.* With the exception of the *Public Sector Ethics Act 1994* and the *Crime and Misconduct Act 2001*, these references are now included in schedule 3. The reference to the *Crime and Misconduct Act 2001* is being removed as it is superfluous.

This clause also inserts the references to the secrecy provisions in the *Witness Protection Act 2000* into schedule 1. This implements LCARC finding 179.

Clause 59 Amends schedule 2 to include the reference to the Golden Casket Lottery Corporation Limited and the exclusion in the *Lotteries Act 1997.*

Clause 60 inserts new schedule 3, referred to in section 11D, that lists the provisions in other Acts that exclude or limit the operation of the Act.

Clause 61 inserts new schedule 4, referred to in section 35D, which sets out the process for assessment of charges.

Section 1 provides that if an agency or Minster considers that a processing charge or access charge (as defined) is payable the applicant must be given a written notice (a preliminary assessment notice) which*, inter alia*, states the preliminary assessment of the charges.

Section 2 sets out the options for response by the applicant and provides that if the applicant does not respond in one of the specified ways within 30 days the application will be taken to have been withdrawn.

Section 3 makes it clear that an applicant is not entitled to seek internal review of a preliminary assessment notice. However, an applicant does have a right to lodge an objection notice if the applicant contends that the charges have been wrongly assessed or that the processing and access charges should be waived because of financial hardship.

Section 4 provides for the situation where an applicant has lodged an objection notice and the agency or Minister decides that the charges have been wrongly assessed but that some charges are payable. In such cases the agency or Minister must issue a new preliminary assessment notice stating the new deposit that is payable, if any, and stating that the application will

be taken to have been withdrawn if the applicant does not respond in one of the specified ways within 30 days after the notice is given.

Section 5 requires the agency or Minister to give written notice to the applicant if a decision is made that the charges are to be waived because the applicant is in financial hardship.

Section 6 requires the agency or Minister to give written notice to the applicant if an applicant's contention in an objection notice is rejected.

Section 7 provides that if an applicant has not received notice of the agency or Minister's decision within 30 days after lodging an objection notice the agency or Minister is taken to have rejected the applicant's contention on the last day of the 30 day period.

Section 8 sets out a simplified procedure if an applicant submits a concession card before being given a preliminary assessment notice. In such cases, if satisfied that the applicant is the holder of the concession card, the agency or Minister need not issue a preliminary assessment notice but must notify the applicant that the processing and access charges are to be waived.

Section 9 provides for the situation where an applicant who claims to be a concession card holder submits a copy of the card before receiving a preliminary assessment notice but the agency or Minister is not satisfied that the applicant is the holder of the concession card, In such cases, the agency or Minister must issue a preliminary assessment notice but the applicant cannot lodge an objection notice contending that the charges should be waived because of financial hardship.

Section 10 provides that if an agency is a department, decisions on financial hardship claims must be made by a prescribed person.

Section 11 provides for the issue of a final assessment notice. The section makes it clear that processing charges cannot be greater than the amount stated in the preliminary assessment notice but access charges can.

Part 2 – Amendment of Freedom of Information Regulation 1992

Clause 62 provides that this part amends the *Freedom of Information Regulation 1992*.

Clause 63 omits the exclusions in sections 5 and 5A.

Clause 64 replaces sections 7 to 12 which relate to the fees and charges regime for non-personal affairs information. The changes do not fundamentally change the regime but for clarity, charges are now categorised as either processing or access charges. Section 9 provides a new safeguard for applicants by making it clear that if a document is not found in the place where it ought to have been located according to the filing system of the agency or the office of the minister, the applicant is only charged for the amount of time that would have been spent searching or retrieving the document if it had not been misplaced.

Clause 65 replaces the schedule which sets out the charges. The charging rate is unchanged but the schedule distinguishes between processing and access charges.

Part 3 - Lotteries Act 1997

Clause 66 provides that this part amends the *Lotteries Act 1997.*

Clause 67 inserts a new section 225A which ensures that the Act does not apply to documents received or brought into existence by the Golden Casket Lottery Corporation Limited in carrying out its excluded activities.

Part 4 - Public Records Act 2002

Clause 68 provides that this part amends the *Public Records Act 2002.* These amendments are required as a result of the previous insertion into the Act of section 42A regarding matter of national and State security.

Clause 69 inserts this reference to section 42A of the Act into section 16(4)(b) to ensure there is an appropriate restricted access period.

Clause 70 amends section 18 so that public access to information that could be exempt under section 42A and could damage the security of the Commonwealth or a State can be further restricted by regulation.

Part 5 - Public Sector Ethics Act 1994

Clause 71 provides that this part amends the *Public Sector Ethics Act 1994.*

Clause 72 amends section 28(b) to ensure that if advice on ethics and integrity issues is given about a person, it can only be given about a person who is or was a designated person.

Clause 73 amends section 33 to include, in the secrecy provision, information about a ethics issue or an integrity issue about a designated or former designated person arising from section 28(b).

Clause 74 inserts section 33A which applies where advice has been sought under section 28(b) in relation to a person or under section 30. It ensures that the Act does not apply to such an ethics or integrity issue about a person or a conflict of interest issue. This provision is included in schedule 3.

The clause also inserts section 33B which sets out the circumstances where documents about an ethics or integrity issue about a person can be disclosed.

Clause 75 amends sections 34 to clarify the drafting of the definition.

Clause 76 inserts a new definition in the dictionary.

Part 6 - Amendment of Public Service Act 1996

Clause 77 provides that this part amends the *Public Service Act 1996.*

Clause 78 inserts new Part 11, Division 4 containing new section 147 which provides that the amendment of the Public Service Regulation 1997 by the *Freedom of Information and Other Legislation Amendment Act 2005* does not affect the power of the Governor in Council to further amend the regulation or to repeal it.

Clause 79 amends Schedule 1 by specifying the Office of the Information Commissioner as a public service office and the Information Commissioner as the head of the office.

Part 7 - Amendment of Public Regulation 1997

Clause 80 provides that this part amends the *Public Service Regulation 1997.*

Clause 81 omits section 30 which declares the Office of the Information Commissioner to be a government entity under section 21 of the *Public Service Act* and a public sector unit under section 20 of the *Public Service Act*.

Chapter 3 – Other Amendments

Part 1 - Amendment of Legal Profession Act 2004

Clause 82 states that the part amends the *Legal Profession Act 2004.*

Clause 83 makes an amendment of a drafting nature to section 281 which provides for the filing of orders of the Legal Practice Tribunal in the Supreme Court registry and for the orders to be enforceable.

Clause 84 allows the Legal Practice Tribunal to make an order for costs when hearing an appeal against a decision of the Legal Practice Committee.

Clause 85 amends section 470 to allow for directions hearings to be conducted by the Chairperson (or Deputy Chairperson) of the Legal Practice Committee sitting alone.

Clause 86 renames the heading of chapter 8, part 5.

Clause 87 provides for the Legal Practitioners Admissions Board to have custody and control of the records of the previous Solicitors' Board and Barristers' Board. Section 616 of the *Legal Profession Act 2004* provided for the Legal Practitioners Admissions Board to enter into arrangements with the previous Solicitors' Board and Barristers' Board in relation to their records. However the board did not enter into arrangements with the

previous boards before they ceased. Section 34 of the *Legal Profession Regulation 2004* was made as a transitional regulation under section 643 of the Act providing for the new Board to have custody and control of the records of the previous boards. The clause replaces section 34 before it expires on 31 May 2004.

Clause 88 inserts a new part heading and provides that the amendment of the *Legal Profession Regulation 2004* by the *Freedom of Information and Other Legislation Amendment Act 2005* does not affect the power of the Governor in Council to further amend the regulation or to repeal it.

Part 2 – Amendment of Legal Profession Regulation 2004

Clause 89 states that the part amends the *Legal Profession Regulation 2004.*

Clause 90 omits section 33 and 34 of the *Legal Profession Regulation 2004.*

Part 5 - Amendment of Standard Time Act 1894

Clause 91 provides that this part amends the *Standard Time Act 1894*.

Clause 92 amends the long title of the Act.

Clause 93 omits the preamble to the Act.

Clause 94 inserts a new section 3 into the Act which provides that standard time in Queensland is 10 hours in advance of Co-ordinated Universal Time (UTC). The section also inserts a definition of UTC.

Clause 95 inserts a new section 5 transitional provision which provides that the new definition of standard time applies to an instrument even though it was made before the commencement of the amendments.