Information Privacy Bill 2009

Explanatory Notes

Short Title

The short title of the Bill is the Information Privacy Bill 2009.

Objectives of the Bill

The primary objectives of the Bill are to provide for the fair collection and handling of personal information in the public sector and to provide a right for individuals to access and amend their personal information held by public sector entities.

Reasons for the Bill

In September 2007, the Premier of Queensland commissioned an independent panel, chaired by Dr David Solomon AM, to undertake a comprehensive review of Queensland's freedom of information legislation. The resulting report, *The Right to Information: Reviewing Queensland's Freedom of Information Act* (the Solomon Report), delivered in June 2008, proposed a rethink of the framework for access to information in Queensland.

The report contained 141 recommendations for information policy and legislation reform, including that there be a new legislative framework for access to information, namely:

- a *Right to Information Act*, with a clearly stated object of providing a right of access to information held by government unless, on balance, it is contrary to the public interest to provide that information; and
- privacy legislation, to provide access and amendment rights for personal information, in addition to privacy obligations in relation to the collection and handling of personal information in the public sector.

The Government response to the Solomon Report supported in full, in part, or in-principle all but two of the report's recommendations and committed to the introduction of new legislation by mid-2009. The Right to Information Bill 2009 and the Information Privacy Bill 2009 give legislative effect to the Government's response to the Solomon Report.

Achievement of the objectives

The Bill achieves the policy objectives by:

- providing a mechanism by which individuals can access and amend their own personal information held by relevant public sector agencies;
- setting out the privacy principles to which public sector agencies must adhere by codifying, with minor amendments, the current administrative privacy regime provided for in *Information Standard 42: Information Privacy* (IS42) and *Information Standard 42A: Information Privacy for the Queensland Department of Health* (IS42A); and
- establishing the role of Privacy Commissioner (as a deputy to the Information Commissioner).

Access and amendment of personal information

The Bill has been developed in conjunction with the Right to Information Bill and provides for consistent procedural requirements for applications to access and amend personal information. To facilitate this process, applications will be able to be transferred to the Right to Information Bill if an application is expressed to be for information other than the applicant's own personal information upon payment of the application fee.

As chapter 3 of the Bill transfers existing access and amendment rights currently provided under the *Freedom of Information Act 1992*, the scope of chapter 3 reflects the Right to Information Bill. This includes departments, local governments, public authorities and certain government owned corporations and their subsidiaries.

Applicants will be provided with rights of internal and external review of access and amendment decisions consistent with the Right to Information Bill. The Information Commissioner may refer questions of law to the Supreme Court or the proposed Queensland Civil and Administrative Tribunal (QCAT) and applicants may appeal to QCAT on questions of law

following commencement of operations of QCAT, proposed for December 2009.

Privacy principles

The obligation to comply with privacy principles will apply to Ministers (including Parliamentary Secretaries) in their official capacity, departments and public authorities. The privacy principles will apply to local governments one year after commencement of the Bill, in view of the fact that councils are not currently subject to privacy regulation and will therefore require a transitional period within which to ensure compliance with the legislation. Where an agency contracts with a service provider to deliver services on the agency's behalf, the contract is required to bind the service provider to comply with the privacy principles.

All agencies subject to the Bill, other than the Department of Health, will be required to comply with the Information Privacy Principles set out in schedule 3, and the Department of Health will be required to comply with the National Privacy Principles set out in schedule 4. This maintains the current framework of the administrative privacy regime under IS42 and IS42A. The Government will continue to participate in consideration of uniform privacy principles at a national level, but has determined that the current framework should be retained pending any agreement on a nationally uniform approach to privacy.

Privacy oversight

The Bill will vest the Information Commissioner with a range of new powers and functions in overseeing the privacy legislation. A new Privacy Commissioner role will be established as a deputy to the Information Commissioner and any of the Information Commissioner's functions and powers will be able to be delegated to the Privacy Commissioner.

The Bill will create a new right to lodge complaints where an agency has breached its privacy obligations in relation to the individual's personal information. The Information Commissioner must take all reasonable steps to mediate complaints, but where mediation is unsuccessful, QCAT will have jurisdiction to hear complaints and make orders for remedies, including payment of compensation of up to $100,000. In order to stage the implementation of the legislation, the complaints function will commence concurrently with the commencement of operations of QCAT proposed for December 2009.

The Information Commissioner will also be empowered to conduct reviews of systemic privacy issues within the public sector, issue compliance notices to agencies found in breach of the privacy principles and decide requests to modify application of the privacy principles where there is an overriding public interest in doing so.

As the Bill and the Right to Information Bill implement significant reforms, both Bills provide that a review of the operation of the legislation must commence within two years. The review will examine the practical application of the legislation in order to identify and resolve any issues arising during implementation.

Alternative ways of achieving objectives

An alternative option to the Bill would be to retain the existing framework for access and amendment of personal information through the *Freedom of Information Act 1992* and maintain the administrative privacy regime.

However, the Government has indicated its clear commitment to Freedom of Information reform and creating a new framework for access to government information with a presumption towards disclosure. This is only possible through legislative amendment.

It is also considered desirable for Queensland to introduce appropriate legislative safeguards to the handling of personal information within the public sector, consistent with the majority of other Australian jurisdictions, through privacy legislation.

Estimated cost for government implementation

The Government is continuing to consider the financial implications of introducing the Right to Information reforms. There will be implementation costs for the Office of the Information Commissioner to undertake new or expanded functions under the legislation. Implementation of the legislation may require resources in terms of training and changes to agency business practices, which will be met from within existing budget allocations.

Consistency with Fundamental Legislative Principles

The Bill is generally consistent with fundamental legislative principles.

Does the Bill confer power to enter premises?

Consistent with the Right to Information Bill, the Bill will provide enhanced powers of entry and search to the Information Commissioner and entitle the Commissioner to full and free access at all reasonable times to the records of an agency (clause 113). The exercise of these powers will be subject to Parliamentary scrutiny and is considered essential to ensure accountability and transparency in the administration of the Bill.

Does the Bill have sufficient regard to the rights and liberties of individuals?

Clause 113 permits access to documents including those protected by legal professional privilege. Clause 118(2) provides that legal professional privilege does not apply to the production of documents or the giving of evidence by a member of an agency or Minister for the purposes of external review. The abrogation of the right to claim legal professional privilege is justified as being necessary to ensure the Information Commissioner has the ability to properly consider and determine external reviews. Obligations are placed on the Information Commissioner and the Commissioner's staff ensure such information is protected. Under clause 120 the Information Commissioner must ensure information or documents provided are not disclosed other than to specified persons and documents must be returned at the end of an external review. Additionally, under clause 120 the Information Commissioner must make such directions considered necessary to avoid disclosure to an access participant. Also, it is an offence under clause 188 for the Information Commissioner or a staff member to disclose information obtained in performance of functions under the Bill.

The right of a person to take legal action over a wrong is an essential common law right. The right of access to government-held information is a cornerstone of the Bill. Under the Bill, the Information Commissioner can make a vexatious applicant declaration which may include conditions that prohibit a person from making an access application, internal review application or external review application without the permission of the Information Commissioner. The breaches of the fundamental legislative principles are considered to be justified to prevent an applicant from making repeated access or review applications that are vexatious in nature and unreasonably divert public resources. The Bill provides for safeguards against any potential loss of rights. Vexatious applicant declarations can only be made by the Information Commissioner when satisfied that the person has met the threshold test. It must be established that the person has

made repeated applications that involve an abuse of process or a manifestly unreasonable action. The Information Commissioner cannot make a vexatious applicant declaration until the person has the opportunity to be heard. In addition, a person with a vexatious applicant declaration against him or her has the opportunity to apply to the Information Commissioner to vary or set aside the order. The Information Commissioner's declaration is reviewable by the Queensland Civil and Administrative Tribunal.

Does the Bill confer immunity from proceedings or prosecutions?

Clauses 181 and 182 provide that in certain circumstances a person concerned with the granting of access to a document or publication of a document under the Bill does not commit a criminal offence. Clause 179 provides protection against actions for defamation or breach of confidence against the State, an agency (including a Minister) or an officer where access to a document was required or permitted by the Bill or was authorised in the genuine belief that access was required or permitted by the Bill. Likewise clause 180 provides protection against actions for defamation or breach of confidence against the State, an agency, Minister, an officer or the Information Commissioner where publication of a document was required or permitted by the Bill. Clause 183 provides that certain persons including an agency, Minister, an officer, a decision maker or the Information Commissioner, incur no civil liability for acts or omissions done or omitted to be done honestly and without negligence under, or for the purposes of, the Bill. The liability will attach instead to the State. It is submitted that conferral of immunity as outlined above is appropriate for persons carrying out statutory functions.

Does the Bill have sufficient regard to the institution of Parliament?

Clause 157 provides that an agency may apply to the Information Commissioner to waive or modify the agency's obligation to comply with the privacy principles. Such approvals may be granted only if the Commissioner is satisfied that there is an overriding public interest in doing so. While an approval is in force, the agency to which it applies does not contravene the legislation in relation to the privacy principles if it acts in accordance with the approval. It is considered necessary that the Bill allow a mechanism for a waiver of privacy principle obligations to provide flexibility in balancing the interests of protection of individuals' personal information against other emerging public interests. The waiver process is similar to public interest determinations issued under privacy legislation in the Commonwealth, New South Wales, Tasmania and Northern Territory.

To ensure that this mechanism has sufficient regard to the institution of Parliament, the provision requires that the approval be publicly notified by gazette notice and tabled in the Legislative Assembly. This recognises the important role of Parliamentary scrutiny by ensuring that the notice is subject to the possibility of disallowance by the Parliament.

Consultation

The Government released exposure drafts of the Right to Information Bill and the Information Privacy Bill for public consultation for a period of almost four months from 4 December 2008 until 31 March 2009. The Premier wrote to key stakeholders, such as Government Owned Corporations, local governments, universities and the media inviting submissions on the Bills.

Over 40 submissions were received from stakeholders including Government Owned Corporations, the Local Government Association of Queensland, the Queensland Law Society, the Queensland Council for Civil Liberties, the Office of the Federal Privacy Commissioner and the Australian Privacy Foundation. All Government departments were also consulted on the exposure draft Bills and during drafting of the final Bills.

All submissions received have been considered in finalising the drafting of the Bill.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another state. However, other jurisdictions, including the Commonwealth, New South Wales and Tasmania have announced proposed reforms to their Freedom of Information legislation which are generally consistent with Queensland's Right to Information reforms, including providing the avenue to access and amend personal information through privacy legislation.

The introduction of privacy legislation in Queensland will align with the majority of other jurisdictions (the Commonwealth, New South Wales, Victoria, Tasmania and the Northern Territory) which have existing legislative safeguards regarding the handling of personal information in the public sector. Consideration of proposals for the development of uniform privacy principles will continue at a national level, but the introduction of the Bill will provide Queensland with a legislative basis for privacy regulation in advance of the national agenda.

Notes on Provisions

Chapter 1 Preliminary

Part 1 Introductory

Clause 1 establishes the short title as the *Information Privacy Act 2009*.

Clause 2 provides for commencement of the Bill by proclamation.

Clause 3 provides that the primary object of the Bill is to provide for:

- the fair collection and handling in the public sector environment of personal information; and
- a right for individuals to access and amend their personal information unless, on balance, it is contrary to the public interest to do so.

Clause 4 provides that the Bill is not intended to prevent or discourage the giving of access to, or allowing the amendment of, documents by means other than the Bill. The principles of the Right to Information reforms emphasise increased proactive and administrative disclosure, with formal application under the Bill intended to become an avenue of last resort.

Clause 5 provides that the Bill does not affect the operation of another Act and chapter 3 does not affect an administrative scheme that requires personal information to be made available, or enables an individual to access or to amend their personal information. Any administrative scheme providing access to personal information following commencement of the Bill should comply with the privacy principles.

Clause 6 provides that the Bill applies to the collection of personal information, regardless of when it came into existence, and to the storage, handling, accessing, amendment, management, transfer, use and disclosure of personal information regardless of when it was collected.

Clause 7 provides that the provisions of chapter 3 relating to access and amendment applications override the provisions of other Acts (except for

the Right to Information Bill) prohibiting the disclosure of personal information. Subject to this, subclause (2) provides that the Bill 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.

Clause 8 provides that the Bill does not affect the provisions of other Acts regulating the disposal of information such as the *Public Records Act 2002*.

Clause 9 describes the relationship of the Bill to the Right to Information Bill. If an application is made under this Bill which requests access to information other than the applicant's personal information, then clause 54 of the Bill will apply and the application will be dealt with under the Right to Information Bill upon payment of the application fee.

Clause 10 provides that the Bill binds the State.

Part 2 Interpretation

Clause 11 provides that schedule 5 defines particular words used in the Bill.

Clause 12 sets out the meaning of "personal information", which is consistent with the definition contained in the *Privacy Act 1988* (Cth).

Clause 13 sets out the meaning of "document" of an agency for chapter 3, which is the same as a document of an agency under the Right to Information Bill.

Clause 14 sets out the meaning of "document" of a Minister for chapter 3, which is the same as a document of a Minister under the Right to Information Bill.

Clause 15 sets out the meaning of "document" otherwise, for the purposes of application of the privacy principles and related provisions.

Clause 16 defines a "document to which the privacy principles do not apply" as the documents listed in schedule 1 of the Bill.

Clause 17 defines an "agency" for chapter 3 which is the same as an agency under the Right to Information Bill.

Clause 18 defines an "agency" for the purposes of application of the privacy principles and related provisions as being a Minister, a department, a local government or a public authority, but not including an entity listed in schedule 2. However, clause 202 of the Bill provides for delayed application to local government for a period of one year after commencement.

Clause 19 defines "entity to which the privacy principles do not apply" as the entities listed in schedule 2 of the Bill.

Clause 20 provides that the Bill, other than chapter 3, applies to a Minister only in relation to the Minister's capacity as a Minister in relation to the affairs of an agency.

Clause 21 sets out the meaning of "public authority".

Clause 22 sets out the meaning of "processing period" and "transfer period" for chapter 3.

Clause 23 defines what it means to "disclose" and "use" personal information for the purposes of the privacy principles.

Clause 24 defines "control" of a document for the purposes of the privacy principles.

Clause 25 explains references in the Bill to the Information Privacy Principles (IPPs) contained in schedule 3 of the Bill and the National Privacy Principles (NPPs) contained in schedule 4 of the Bill.

Chapter 2 Privacy principles

Part 1 Compliance with IPPs by agencies

Clause 26 refers to schedule 3, which sets out the IPPs.

Clause 27 provides that an agency, other than the Department of Health, must comply with the IPPs. Subclause (2) provides that an agency must not do something that contravenes or is otherwise inconsistent with an IPP

and must not fail to do something if the failure contravenes or is otherwise inconsistent with an IPP. Subclause (3) provides that the requirements of this clause apply to any act or practice relating to the agency's collection, storage, handling, accessing, amendment, management, transfer, use or disclosure of personal information.

Clause 28 provides that an agency is not required to comply with IPP 8, 9, 10 or 11 in relation to information connected to an individual's personal information which has previously been published to the public by the individual concerned.

Clause 29 sets out when a law enforcement agency, including the Queensland Police Service and the Crime and Misconduct Commission, may be satisfied on reasonable grounds that non-compliance with IPP 2, 3, 9 , 10 or 11 is necessary.

Part 2 Compliance with NPPs

Clause 30 refers to schedule 4, which sets out the NPPs. Carrying over from IS42A, the NPPs, rather than IPPs, apply to the Department of Health to account for the unique nature of personal information in the health context and to provide greater consistency with national arrangements that apply to the health sector across Australia.

Clause 31 provides that the Department of Health must comply with the NPPs. Subclause (2) provides that the Department of Health must not do something that contravenes or is otherwise inconsistent with an NPP and must not fail to do something if the failure contravenes or is otherwise inconsistent with an NPP. Subclause (3) provides that the requirements of this clause apply to any act or practice relating to the department's collection, storage, handling, accessing, amendment, management, transfer, use or disclosure of personal information.

Clause 32 provides that the Department of Health is not required to comply with NPP 2, 3 or 9(4) in relation to information connected to an individual's personal information which has previously been published to the public by the individual concerned.

Part 3 Transfer of personal information outside Australia

Clause 33 sets out the circumstances where an agency may transfer an individual's personal information to an entity outside Australia.

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

Clause 34 defines "service arrangement" for the purposes of this part as a contract or other arrangement for services entered into after the commencement of the Bill. Subclause (2) provides that the services must be for the purposes of the performance of one or more of the contracting agency's functions, the services must be provided either directly to the contracting agency or to another entity on the contracting entity's behalf, and not be provided in the capacity of an employee.

Clause 35 provides that an agency entering into a service arrangement with a contracted service provider must take all reasonable steps to ensure that, under the arrangement, the contracted service provider is required to comply with the IPPs or NPPs and with part 3 (Transfer of personal information outside Australia). This is subject to the qualifications in subclauses (2) and (3).

Clause 36 provides that a bound contracted service provider under a service arrangement must comply with the IPPs or NPPs and with part 3 (Transfer of personal information outside Australia) in relation to the discharge of its obligations under the arrangement as if it were the contracting agency. Subclause (2) states that this obligation continues to apply to bound contracted service providers after the service arrangement ends. Subclause (3) provides that a bound contracted service provider's compliance may be enforced under the Bill as if it were an agency.

Clause 37 provides that if the contracting agency did not take the steps required of it under clause 35, the obligations that would have attached to the bound contracted service provider instead attach to the contracting agency.

Part 5 Provision of information to Ministers

Clause 38 provides that an agency does not contravene the requirement under the Bill that it comply with the IPPs or the 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

Clause 39 provides that, except as provided for under procedures set out in the Bill, an obligation imposed on an entity under part 1, 2 or 3 does not give rise to any civil cause of action or operate to create in any person any legal right enforceable in a court or tribunal.

Chapter 3 Disclosure and amendment by application under this Act

Part 1 Right to access and amendment

Clause 40 provides that, subject to the Bill, a person has a right to be given access to documents of an agency and documents of a Minister to the extent the documents contain the individual's personal information. The rights and the manner in which these rights may be exercised are set out in the Bill. An application may be made for documents which came into existence before the commencement of the Bill, although the application will be taken to apply only to documents in existence on the day the application is received.

Clause 41 provides that, subject to the Bill, a person has a right to amend, if inaccurate, incomplete, out-of-date or misleading, documents of an agency and documents of a Minister to the extent the documents contain the individual's personal information. The rights and the manner in which these rights may be exercised are set out in the Bill. An application may be made in relation to documents regardless of when they were created.

Clause 42 provides that personal information may be accessed other than by application under this chapter and provides examples of such access.

Part 2 Access and amendment applications

Clause 43 sets out the application requirements for an individual who wishes to obtain access to a document of an agency or document of a Minister to the extent the document contains the individual's personal information, including the requirements to make the application in the approved form and provide sufficient evidence of identity or authorisation to act as an agent.

Clause 44 sets out the application requirements for an individual who wishes to amend personal information contained in a document of an agency or a document of a Minister because the individual claims the information is inaccurate, incomplete, out-of-date or misleading. The requirements include requirements to make the application in the approved form and provide sufficient evidence of identity or authorisation to act as an agent.

Clause 45 provides particular requirements for access or amendment applications made by a parent on behalf of a child.

Clause 46 provides that access or amendment applications may not be made or transferred to the Information Commissioner, the RTI Commissioner or the Privacy Commissioner unless it is an application to the Information Commissioner in relation to personal information of the staff of the Office of the Information Commissioner.

Clause 47 provides that an access application is taken only to apply to documents that are or may be in existence on the day the application is received. A document created after receipt of an application but before

notification of the decision on the application may nevertheless be disclosed to an applicant. No access charge applies and no review rights apply in relation to access to such a document.

Clause 48 provides that an access application is taken not to be for metadata unless specifically requested. Access to metadata does not need to be provided unless it is reasonably practicable. The clause also provides an inclusive definition of metadata.

Clause 49 provides that an access application does not require an agency or Minister to search for a document in a backup system. This does not preclude an agency or Minister from searching a backup system for a document if considered appropriate. "Backup system" is defined in the dictionary in schedule 5 to the Bill.

Part 3 Dealing with application

Division 1 Decision maker

Clause 50 requires that a principal officer of an agency is to deal with access or amendment applications to the agency. However, the principal officer may delegate to an officer within that agency or, except in the case of a local government, to the principal officer of another agency upon agreement. The second principal officer may subdelegate that decision making power. The clause further provides that decisions on applications for access to healthcare information of the applicant may only be delegated to an appropriately qualified healthcare professional.

Clause 51 sets out which persons are to deal with applications received by Ministers. An application may be dealt with by the person the Minister directs either generally or in a particular case. The clause further provides that decisions on applications for access to healthcare information of the applicant may only be delegated to an appropriately qualified healthcare professional.

Division 2 Preliminary contact with applicant

Clause 52 deals with the circumstance where an access or amendment application is received and the entity decides that the application is outside the scope of the Bill because:

- the document is not a document of an agency for this chapter;
- the entity is not an agency for this chapter;
- the application is made to the Information Commissioner, RTI Commissioner or Privacy Commissioner.

Within 10 business days after the application is received, the entity is to give written notice to the applicant of the decision that the application is out of scope.

Clause 53 deals with the circumstance where an access or amendment application is made, but it does not comply with the application requirements. The agency or Minister must make reasonable efforts to contact the applicant within 15 business days after the application is received to inform the applicant of what requirements have not been met. If, after giving the applicant a reasonable opportunity to consult to remedy the application, the agency or Minister decides that the application is not valid, it must give prescribed written notice of this decision within 10 days. If the application requirements are met, the application is taken to be valid.

Clause 54 applies if, on its face, an access application purportedly made under this Bill should have been made under the Right to Information Bill because the application is for access to a document other than to the extent it contains the applicant's personal information. The agency or Minister must make reasonable efforts to contact the applicant within 15 business days after the application is received and inform the applicant that—

- the application is not an application that can be made under this Bill; and
- the application could have been made under the Right to Information Bill upon payment of the application fee payable under that Bill; and
- the applicant may consult with the agency or Minister with a view to making an application under this Bill by changing the application; or having the application dealt with under the Right to Information Bill by paying the application fee.

An agency or Minister must not refuse to deal with an application purportedly made under this Bill without first giving the applicant a reasonable opportunity to consult. If the application fee is paid, the applicant is taken to have made the application under the Right to Information Bill on the date of the payment. If, after the opportunity to consult is given and any consultation happens, the applicant does not either change the application, or pay the fee:

- the applicant is taken to have confirmed the application as an application made under this Bill; and
- the agency or Minister must again consider whether the application is an application that can be made under this Bill and, within 10 days of deciding that matter, give the applicant prescribed written notice of the decision.

Clause 55 provides for extensions of the processing period. At any time before the processing period expires, the agency or Minister may ask the applicant for further time to consider the application. An agency or Minister may continue to consider an application with a view to making a considered decision, only if the agency or Minister has requested an extension to the processing period, and the applicant has not refused the request or notified the agency or Minister that he or she has applied for review. Additional requests for further time to consider the application may be made in the same manner. If a decision is subsequently made, it replaces any decision that would have been deemed to be made as a consequence of not deciding the application within the processing period.

Division 3 Contact with relevant third party

Clause 56 sets out the process of consultation with relevant third parties (governments, agencies or persons) where disclosure of information could reasonably be expected to be of concern. Consultation must be undertaken to obtain the views of the third party about whether documents may fall outside the scope of the Bill, or whether information may be exempt or contrary to the public interest to disclose.

Where the agency or Minister considers, contrary to the views of the third party, that the information may be released, the agency or Minister is to inform the third party and the applicant of this decision. The third party is informed of the rights of review under the Bill and the agency or Minister

must defer access to the document until review rights have either expired or are exhausted.

Division 4 Transfers

Clause 57 provides for the transfer of access or amendment applications where the transferee agency, to the transferor agency's knowledge, possesses the document sought and where the transferee agency consents to the transfer.

Part 4 Refusal to deal with access or amendment application

Clause 58 sets out the Parliament's intention that access or amendment applications should be dealt with unless it would not be in the public interest. Despite the circumstances in which it is considered not to be in the public interest to deal with an application as set out in this part, an agency or Minister may deal with the application in accordance with the Parliament's stated pro-disclosure bias.

Clause 59 provides the grounds on which an agency or Minister may refuse to deal with an access application where all documents applied for are stated to and appear to be comprised of exempt information.

Clause 60 provides that an agency or Minister may refuse to deal with an access or amendment application for the reason of its effect on the agency's or Minister's functions. The clause lists factors to which the agency or Minister may have regard, and factors to which the agency or Minister may not have regard, in deciding to refuse to deal with an application on this basis. The agency or Minister must give the applicant written notice of the decision to refuse to deal with the application.

Clause 61 requires that, prior to refusing to deal with an access application under the preceding clause, the applicant must be provided with an opportunity to consult with the agency or Minister with a view to making the application in a form which would remove the ground for refusal. The applicant is to confirm or amend the application within the consultation

period (10 business days or longer by mutual agreement), or the application will be taken to have been withdrawn.

Clause 62 provides for the situation where an application is for the same document or documents sought by the applicant under an earlier application. The agency or Minister may refuse to deal with the later application where the application does not reveal any reasonable basis for seeking the document again. The clause outlines the circumstances in which the agency or Minister can refuse to deal with the later application.

Clause 63 provides for the situation where an application for amendment relates to the same amendment sought by the applicant under an earlier application. The agency or Minister may refuse to deal with the later application for amendment where the application does not reveal any reasonable basis for seeking amendment of the document again. The clause outlines the circumstances in which the agency or Minister can refuse to deal with the later application.

Part 5 Decision

Division 1 Access applications

Clause 64 expressly confirms the Parliament's intention that access should be given to documents upon application unless disclosure would, on balance, be contrary to the public interest. The purpose of part 5 is to assist an agency or Minister with the assessment of the public interest. The clause also notes that an agency or Minister has the discretion to give access to a document even if access may be refused under this Bill.

Clause 65 provides that, on consideration of an access application, the agency or Minister is to make a decision about whether to provide access to a document and if access is to be given, whether any charge is payable. These decisions are known as considered decisions. The applicant is to be given written notice of the decision pursuant to the requirements of clause 68.

Clause 66 provides that, where an applicant has not been given written notice of a considered decision by the last day of the processing period, the agency or Minister is taken to have refused the application. These

decisions are known as deemed decisions. Written notice of a deemed decision must be given to the applicant as soon as practicable after a deemed decision is taken to have been made.

Clause 67 provides that an agency may refuse access to a document of the agency and a Minister may refuse access to a document of the Minister in the same way and to the same extent the agency or Minister could refuse access to the document under the Right to Information Bill, clause 47 (Grounds on which access may be refused).

Clause 68 requires an agency or Minister to give written notice of a decision to an applicant and sets out the required contents of the notice. The notice must include where access is given, details of any charges payable, the period of time the document may be accessed. Where access is refused, the notice must detail the reason for refusal including, where applicable, reasons why disclosure of the information would be contrary to the public interest under the Right to Information Bill.

Clause 69 allows an agency or Minister to neither confirm nor deny the existence of a document containing prescribed information. Prescribed information is defined in the dictionary in schedule 6 as specified categories of exempt information, or personal information the disclosure of which would be contrary to the public interest. The agency or Minister may give written notice of a decision under this clause.

Division 2 Amendment applications

Clause 70 provides that, on consideration of an amendment application, the agency or Minister is to make a decision about whether amendment of a document is permitted. This is a considered decision. The applicant is to be given written notice of the decision pursuant to the requirements of clause 73.

Clause 71 provides that, where an applicant has not been given written notice of a considered decision by the last day of the processing period, the agency or Minister is taken to have refused the application. These decisions are known as deemed decisions. Written notice of a deemed decision must be given to the applicant as soon as practicable after a deemed decision is taken to have been made.

Clause 72 provides that the agency or Minister may refuse to amend a document where the agency or Minister is not satisfied that the personal

information is inaccurate, incomplete, out of date or misleading; the information sought to be amended is personal information of the applicant; or, that an agent is suitably authorised to make the application. The agency or Minister may also refuse to amend a document where the agency or Minister is not satisfied that the document does not form part of a functional record that is available for use in the ordinary performance of the agency or Minister's functions.

Clause 73 the agency or Minister is to provide prescribed written notice to the applicant of the decision made for the amendment application including providing reasons where the amendment is not permitted. An agency or Minister is not required to provide any exempt information or any contrary to public interest information in the notice. This clause does not apply to a deemed decision under clause 71(1).

Clause 74 provides that the agency or Minister may amend a document by altering the personal information or notation.

Clause 75 provides that when an agency or Minister adds a notation to personal information the notation must state how the information is inaccurate, out of date, incomplete or misleading and, if applicable, set out the information that is required to make it complete and up to date.

Clause 76 provides that an applicant may, by written notice, require particular notations to be added to personal information where an agency or Minister refuses to amend the document.

Part 6 Charging regime

Division 1 Preliminary

Clause 77 provides a definition of access charge, which is prescribed under regulation.

Clause 78 obliges an agency or Minister to minimise any charges payable by an applicant.

Division 2 Payment of charges

Clause 79 provides that prior to being given access to a document the applicant must pay the applicable access charge for the application.

Division 3 Waiver of charges

Clause 80 provides that an access charge may only be waived as provided under this division.

Clause 81 provides that an access charge may be waived if the agency or Minister considers that the likely cost to the agency of estimating the charges and receiving payment would be greater than the amount of the charges.

Clause 82 outlines the circumstances in which an agency or Minister, at the written request of an applicant, can waive an access charge. In the case of an individual, the request must be accompanied by a copy of a concession card, and the agency or Minister considers the applicant is a concession card holder and not making the application on behalf of another person for the purpose of avoiding a charge. The agency or Minister has discretion to determine whether a concession card holder may be making an application of behalf of another person for the purpose of avoiding a charge.

Part 7 Giving access

Clause 83 sets out the forms of access for a document which may be given to the applicant. If the forms of access sought would interfere unreasonably with the operations of the agency or the performance of the Minister's functions, would be detrimental to the preservation of the document or involve copyright infringement, access in the form requested may be refused and access provided in another form. The provision does not limit the giving of access in another form agreed to by the applicant. However, if access is given in a form other than the form of access requested, the charge payable cannot be greater than would have been payable if the requested form of access was given.

Clause 84 provides for the time within which access may be made in the circumstances where access has been granted. There is no entitlement to access unless the relevant access charge has been paid. The time limit for access is generally 40 business days from the date of the decision granting access or any additional time allowed by the agency or Minister. Where access is deferred, the time limit for access is 40 business days after the applicant receives notice that access is no longer delayed or any additional time allowed by the agency or Minister. If a person does not seek access within the relevant time limit, the right to access under that application ends.

Clause 85 requires that where certain personal information is intended to be provided to an applicant or agent, the agency or Minister must first ensure that the person who receives the information is indeed the applicant or the agent. The type of personal information to which this clause applies is personal information, the disclosure of which to a person other than the applicant or agent, would on balance be contrary to public interest under section 49 of the *Right to Information Bill*.

Clause 86 requires an agency or Minister to ensure that, where an application for a child's personal information is made on behalf of a child, that information is only received by the child's parent. Clause 45 defines child and parent.

Clause 87 provides that access may be deferred for a reasonable period in particular circumstances where the document must first be prepared for release.

Clause 88 provides that an agency or Minister may delete information from a copy of a document that is irrelevant to an application before giving the applicant the copy of the document. This is only permissible where the agency or Minister considers, from the application or from consultation with the applicant, that the applicant would accept such a copy and it is reasonably practicable to give access to the copy.

Clause 89 provides that an agency or Minister may delete information from a copy of a document that is exempt information before giving the applicant the copy of the document. This is only permissible where the agency or Minister considers, from the application or from consultation with the applicant, that the applicant would wish to be given access to such a copy and it is reasonably practicable to give access to the copy.

Clause 90 provides that an agency or Minister may delete information from a copy of a document that is contrary to public interest information before

giving the applicant the copy of the document. This is only permissible where the agency or Minister considers, from the application or from consultation with the applicant, that the applicant would accept such a copy and it is reasonably practicable to give access to the copy. Contrary to public interest information is defined in schedule 5 to the Bill.

Clause 91 provides for the circumstances where an agency or Minister has refused access to a document that includes the personal information of the applicant. Despite the refusal, the agency or Minister must consider giving the person or the person's intermediary (a person nominated by the applicant and approved by the agency or Minister) a summary of the personal information. A summary may be provided to an intermediary 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. Where the summary would include information provided in confidence to the agency or Minister by a person other than the applicant or contains the personal information of a person other than the applicant, the summary must not be given without consultation with and the consent of the information giver or other person. This proviso is applicable whether or not the summary reveals the identity of the information giver or other person.

Clause 92 applies if a principal officer of an agency or Minister refuses access to healthcare information under section 47 of the Right to Information Bill. It permits a Minister or the principal officer of an agency to direct that access to a document be given to an appropriately qualified healthcare professional nominated by the applicant and approved by the Minister or principal officer, rather than giving access to the applicant. This clause applies where the document for which application is made contains health information provided by a health professional, the disclosure of which might be prejudicial to the physical or mental health or wellbeing of the applicant. The nominated and approved healthcare professional to whom the information is disclosed may decide whether or not to disclose all or part of the health information and the way in which to disclose.

Part 8 Internal review

Clause 93 provides definitions of internal review and internal review application.

Clause 94 provides that a person affected by a decision that is subject to internal review may apply to have the decision reviewed by the agency or Minister. Reviewable decisions are listed in the dictionary at schedule 5.

Internal review is not, however, a prerequisite for external review. The reviewer decides the application as if the original decision had not been made. The reviewer cannot be the person who made the original decision and must not be less senior than that person.

Clause 95 provides that an internal review decision, a decision made by an agency's principal officer or a decision made by a Minister cannot be internally reviewed.

Clause 96 sets out how to make an application for internal review.

Clause 97 provides that an agency or Minister must decide an internal review and notify the applicant of the decision as soon as possible. However, if no notification is provided within 20 business days of the application being made, the agency or Minister is taken to have made the same decision as the original decision. As soon as practicable after a decision is made or taken to be made, prescribed written notice of the decision must be given to the applicant.

Part 9 External review

Division 1 Preliminary

Clause 98 provides definitions of external review and external review application.

Clause 99 provides that a person affected by a decision that is reviewable under the Bill may apply to have the decision reviewed by the Information Commissioner. Reviewable decisions are listed in the dictionary at schedule 5.

Clause 100 provides that the agency or Minister whose decision is under review has the onus of establishing the decision was justified or that the Information Commissioner should give a decision adverse to the applicant.

Division 2 Application

Clause 101 sets out how to make an application for external review.

Clause 102 provides that the participants in an external review are the applicant, agency or Minister and, where the Information Commissioner allows, a person affected by the decision the subject of the external review.

Division 3 After application made

Clause 103 provides that the Information Commissioner must attempt early resolution of an external review application and promote its settlement, unless the Commissioner decides not to deal with the application. The Information Commissioner may suspend an external review at any time to allow for negotiation for a settlement. Any settlement agreement replaces the decision being externally reviewed.

Clause 104 provides for the Information Commissioner to inform the agency or Minister of an external review application for a deemed decision as soon as practicable after it is made.

Clause 105 provides for the Information Commissioner to inform the agency or Minister of an external review application before starting the review.

Clause 106 applies where a deemed decision is the subject of an external review. Where an agency or Minister applies, the Information Commissioner may allow the agency or Minister further time in which to decide the application. This may be subject to conditions set by the Information Commissioner. Where the agency or Minister does not make a considered decision within the further time allowed, the agency or Minister is taken to have made a decision affirming the deemed decision.

Clause 107 sets out the grounds upon which the Information Commissioner may decide not to deal with, or not to further deal with, all or part of an external review application. The Information Commissioner

must advise the applicant of its decision in writing (unless the applicant is not contactable) and any other person informed by the Commissioner of the external review.

Division 4 Conduct of external review

Clause 108 sets out the procedure on an external review, including, for example that the Information Commissioner is not bound by the rules of evidence. The Information Commissioner may give directions on procedure.

Clause 109 requires any participant to a review to comply in a timely way with a reasonable request for assistance made by the Information Commissioner. This applies regardless of whether the participant has the onus under clause 100.

Clause 110 provides, unless the Information Commissioner decides otherwise, making oral submissions or the giving of oral evidence during an external review must be conducted in public. The Information Commissioner is obliged to ensure procedural fairness and an opportunity for the applicant to present their views, although this need not be in person. Where personal appearances are allowed, the Information Commissioner may permit a participant to be represented by another person. The provision also requires the Information Commissioner to notify persons of the likely release of documents affecting them if they were not notified of the review.

Division 4A Powers of Information Commissioner on external review

Clause 111 provides the Information Commissioner with the power to make preliminary inquiries of the applicant or agency or Minster with a view to determining whether the Commissioner has the power to review a matter or whether the Commissioner may decide not to review a matter.

Clause 112 provides the Information Commissioner with the power to require any agency or Minister to provide further particulars or details of the reasons for the decision.

Clause 113 provides the Information Commissioner is entitled to full and free access to the documents of the agency or Minister.

Clause 114 allows the Information Commissioner to require an agency or Minister to provide a written transcript of an audio file or a codified or shorthand document. Where the review relates to information held by the agency but not in written form, the Information Commissioner can require an agency or Minister to create a written document using equipment usually available for retrieving or collating that type of stored information.

Clause 115 provides the Information Commissioner, in reviewing a decision to refuse access, with a power to require an agency or Minister to conduct further searches for a document, including making inquiries to locate the document.

Clause 116 provides the Information Commissioner with a power to, by notice, require a person to produce relevant information they may have in writing or to attend in person to answer questions about the information. The Commissioner can also require a person to produce documents. The clause requires the Information Commissioner to ensure that the document is not disclosed to persons other than the Commissioner's staff, document's creator or their representative and to return the document at the conclusion of the review.

Clause 117 empowers the Information Commissioner to administer an oath or affirmation.

Clause 118 empowers the Information Commissioner to review any decision by an agency or Minister in relation to an access application and decide any matter in relation to an access application that could have been made by the agency or Minister under the Bill. The Commissioner does not, however, have power to grant access to an exempt or contrary to public interest document.

Clause 119 provides that confidentiality provisions of an Act or rule of law do not apply to the provision of information to the Information Commissioner for the purposes of an external review. Participants in an external review have the same privileges as they would have in a court proceeding. However, legal professional privilege is not applicable to the production of document or the giving of evidence by a member of an agency or Minister for the purposes of a review.

Clause 120 provides that the Information Commissioner must do all things necessary to ensure proper disclosure and return of documents.

Clause 121 empowers the Information Commissioner to issue any directions necessary to avoid disclosure of documents to an access participant or their representative that are claimed to be exempt or contrary to public interest documents or that the Information Commissioner considers may be protected by legal professional privilege. If necessary this may include hearing evidence or argument in the absence of an access participant or their representative. The Information Commissioner's decision or reasons for decision must not contain information claimed to be exempt or contrary to public interest information. The clause defines access participant.

Clause 122 provides that where an applicant challenges a notice neither confirming nor denying the existence of a document that would, if it existed, contain prescribed information, and the Information Commissioner is satisfied it does not contain prescribed information, then the decision and reasons may contain reference to the information.

Division 5 Decision on external review

Clause 123 provides that the Information Commissioner must make a written decision following an external review, which must include reasons for the decision. Copies are provided to the participants and the decision must be published. Publication is not required to the extent that the decision or reasons for decision includes exempt information or information the disclosure of which would be contrary to the public interest.

Clause 124 allows the Information Commissioner to correct mistakes in decisions.

Division 6 Miscellaneous

Clause 125 provides that costs incurred by a participant in external review are payable by the participant.

Clause 126 allows for the Information Commissioner to bring evidence that an agency's officer has committed a breach of duty or misconduct in the administration of the Bill to the attention of the principal officer of the agency, or where the evidence relates to the principal officer or a person

subject to the direction of the Minister, to the attention of the responsible Minister. Responsible Minister is defined in the clause.

Part 10 Vexatious applicants

Clause 127 empowers the Information Commissioner to declare a person a vexatious applicant, but only if the Commissioner is satisfied that:

- the person has repeatedly engaged in access applications and the repeated applications involve an abuse of process; or
- a particular access action involves or would involve an abuse of process; or
- a particular access action would be manifestly unreasonable.

The person must be given the opportunity to make oral or written submissions before the Information Commissioner makes any declaration. The declaration may contain terms and conditions including requiring the Information Commissioner's written permission before the person can make an access application or application for internal or external review. The clause defines relevant terms.

Clause 128 provides for the variation or revocation of a vexatious applicant declaration.

Part 11 References of questions of law and appeals

Clause 129 defines judicial member and appeal tribunal.

Clause 130 preserves the jurisdiction of the Supreme Court to determine questions of law referred by the Information Commissioner either on the Commissioner's own initiative or at the request of a participant until the commencement of clause 131 which will vest the jurisdiction in the Queensland Civil and Administrative Tribunal (QCAT).

Clause 131 provides the Information Commissioner can, in an external review, refer a question of law to QCAT either on the Commissioner's own initiative or at the request of a participant. QCAT is constituted by one judicial member and must exercise its original jurisdiction under the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act) to hear and decide the question of law and the decision is binding on the Information Commissioner.

The Information Commissioner must not make the decision on external review whilst the reference of the question of law to QCAT is pending.

Clause 132 provides that a participant can appeal the Information Commissioner's decision on an external review to QCAT but only on a question of law. Unless QCAT orders otherwise, the notice of appeal must be filed within 20 business days of the decision the subject of the appeal and be served on all other participants as soon as possible. Appeals are by way of rehearing.

Clause 133 allows a person to appeal a declaration that the person is a vexatious applicant to QCAT.

Chapter 4 Information Commissioner and Privacy Commissioner

Part 1 Functions of Information Commissioner under this Act

Clause 134 provides that the Information Commissioner is not subject to direction.

Clause 135 sets out the performance monitoring and support functions of the Information Commissioner under this Bill.

Clause 136 sets out the decision making functions of the Information Commissioner under this Bill.

Clause 137 sets out the external review functions of the Information Commissioner under this Bill.

Clause 138 declares that guidelines issued under the Right to Information Bill may include guidelines relating to the Information Commissioner's functions under this Bill.

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

Clause 139 states that 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 the Bill.

Clause 140 provides that the staff of the Information Commissioner are not subject to direction by any person other than the Information Commissioner in relation to the performance of the Information Commissioner's functions under the Bill.

Part 3 Privacy Commissioner

Clause 141 provides that there is to be a Privacy Commissioner who is a member of the staff of the Information Commissioner.

Clause 142 provides that the principal role of the Privacy Commissioner is that of deputy to the Information Commissioner, with particular responsibility for matters relating to the Information Commissioner's functions under the Bill.

Clause 143 states that the Privacy Commissioner is subject to the direction of the Information Commissioner.

Clause 144 provides that the Privacy Commissioner is appointed by the Governor in Council under the Bill and not the *Public Service Act 2008*.

Clause 145 sets out the procedure to be followed for appointment of the Privacy Commissioner including advertising nationally for applications and consulting with the parliamentary committee regarding the process for appointment and appointment of a person as Privacy Commissioner.

Clause 146 sets out the term of appointment for the Privacy Commissioner.

Clause 147 provides that the remuneration and allowances for the Privacy Commissioner are decided by the Governor in Council and, other than as provided for in this Bill, on the terms and conditions decided by the Governor in Council.

Clause 148 provides that the Minister may grant a leave of absence to the Privacy Commissioner.

Clause 149 provides for the preservation of a public service officer's existing and accruing employee entitlements if appointed to the office of Privacy Commissioner.

Clause 150 provides for restrictions on outside employment for the Privacy Commissioner unless the Minister provides prior approval.

Clause 151 provides that the Privacy Commissioner may resign by signed notice given to the Minister. The Minister must give the notice to the Governor for information and a copy of the notice to the Speaker and the chairperson of the parliamentary committee. Failure to give the notice will not invalidate the resignation.

Clause 152 provides that the Governor in Council may appoint a person to act as Privacy Commissioner during a vacancy in the office or when the Privacy Commissioner is absent from duty or from Australia or unable to perform the duties of the office.

Part 4 Proceedings

Clause 153 provides that the Information Commissioner can not be compelled to produce a privacy document or disclose privacy information in third party legal proceedings.

Clause 154 provides that the State is to pay the reasonable costs of a party to a proceeding started by the State arising out of the performance of the functions of the Information Commissioner under the Bill.

Clause 155 provides that 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 the Bill.

Clause 156 provides that the Attorney-General may intervene on behalf of the State in a proceeding arising out of the functions of the Information Commissioner under the Bill.

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

Clause 157 provides that an agency (a Minister, department, local government or public authority) may apply to the Information Commissioner for approval to waive or modify its obligations to comply with the privacy principles. Approval may only be given under this clause if the Information 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 obligation to comply with the privacy principles.

The Information Commissioner's approval must be notified by gazette notice and sections 49 to 51 of the *Statutory Instruments Act 1992* applies to the notice as if it were subordinate legislation. This recognises the important role of parliamentary scrutiny by providing that the notice is tabled in the Parliament and subject to the possibility of disallowance under section 50 of the *Statutory Instruments Act 1992*. The Information Commissioner and the relevant agency must also ensure that a copy of the gazette notice is published on the Commissioner's and agency's website.

Part 6 Compliance notices

Clause 158 provides that the Information Commissioner may give an agency (a Minister, department, local government or public authority), a

compliance notice if satisfied on reasonable grounds that the agency has done an act or engaged in a practice that is a serious or flagrant contravention of its obligations to comply with the privacy principles or the act or practice has been done or engaged in on at least five separate occasions within the last two years. The compliance notice may require an agency to take a stated action within a stated period of time to ensure compliance with its obligations.

Clause 159 provides that an agency may ask the Information Commissioner for an extension of time in order to take the action stated in the compliance notice. The Information Commissioner may extend the time for compliance if satisfied that it is not reasonably practicable for the agency to take the action stated within the required time and the agency gives an undertaking to take the stated action within the extended period.

Clause 160 provides that an agency must take all reasonable steps to comply with a compliance notice. The maximum penalty is 100 penalty units for an agency failing to comply with a compliance notice.

Clause 161 provides that an agency may apply to QCAT for a review of the decision to give it the compliance notice.

Clause 162 provides that the parties to the application to QCAT to review the decision to give the compliance notice and any review are the agency and the Information Commissioner. QCAT may also join another party to a proceeding subject to the QCAT Act.

Clause 163 provides that, upon review, QCAT may make any of the following orders: an order confirming the Information Commissioner's decision to give the compliance notice to the agency; an order confirming the decision to give the notice but substituting different terms; an order reversing the decision to give the notice; or an order revoking the giving of the notice and giving the Information Commissioner directions about the issuing of a replacement notice.

Chapter 5 Privacy complaints

Part 1 Making privacy complaints

Clause 164 provides that a privacy complaint is a complaint by an individual about an act or practice of a relevant entity, that is a breach of its obligation under the Bill to comply with the privacy principles, or other requirements in accordance with the Bill. A relevant entity is a Minister, department, local government, public authority or a bound contracted service provider. Clause 209 further provides that a complaint may be made only about a breach which happened after commencement.

Clause 165 provides that 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. A privacy complaint may also be referred to the Information Commissioner by other specified complaint entities such as the Ombudsman or the Health Quality and Complaints Commission. The Information Commissioner must advise the relevant entity the subject of the complaint as soon as practicable after receiving a privacy complaint.

Clause 166 sets out the requirements for a privacy complaint made or referred to the Information Commissioner. The Information Commissioner must give reasonable help to an individual making a privacy complaint to put the complaint in written form. An individual must make a complaint pursuant to the relevant complaints management system of a relevant entity before making a privacy complaint to the Information Commissioner.

Part 2 Dealing with privacy complaints

Clause 167 provides that the Information Commissioner may make preliminary inquiries to decide whether the Commissioner is authorised to deal with a privacy complaint.

Clause 168 sets out when the Information Commissioner may decline to deal, or continue to deal, with a privacy complaint.

Clause 169 provides that in certain circumstances the Information Commissioner may refer a privacy complaint to other specified complaint entities such as the Ombudsman, or the Health Quality and Complaints Commission.

Clause 170 makes specific provision for the Information Commissioner to enter into an arrangement with the Ombudsman in relation to dealing with privacy complaints under the Bill and administrative actions under the *Ombudsman Act 2001*.

Part 3 Mediation of privacy complaints

Clause 171 provides that the Information Commissioner must consider whether the privacy complaint could be resolved through mediation and, if applicable, to attempt to resolve the complaint through mediation.

Clause 172 provides that if mediation of a privacy complaint is successful the complainant and the respondent may ask the Information Commissioner to prepare a written record of the agreement. The agreement is to be signed by the complainant and the respondent and certified by the Information Commissioner.

Clause 173 provides that the complainant or respondent may file the certified agreement with the QCAT. The complainant and the respondent may withdraw from the certified agreement within five business days after filing the agreement with QCAT. If the parties do not withdraw, QCAT may make orders to give effect to the certified agreement. An order made by QCAT under this clause may be enforced as an order of QCAT under the *QCAT Act.*

Part 4 Referral of privacy complaints to QCAT

Clause 174 provides that part 4 applies where the Information Commissioner does not consider that resolution of the privacy complaint

could be achieved through mediation, or mediation is attempted but is unsuccessful.

Clause 175 provides that the Information Commissioner must give written notice to both the complainant and the respondent for the privacy complaint advising that this part applies and that the Commissioner will, if asked by the complainant, refer the privacy complaint to QCAT for hearing.

Clause 176 provides that the Information Commissioner must refer the privacy complaint to QCAT if asked to do so by the complainant and that QCAT has jurisdiction to hear the complaint pursuant to its original jurisdiction.

Clause 177 provides that the complainant (the applicant for the purposes of the QCAT proceeding) and respondent for a privacy complaint are both parties to a QCAT proceeding. QCAT may also join another party to a proceeding subject to the *QCAT Act*.

Clause 178 sets out the orders that may be made by QCAT after the hearing of a privacy complaint.

Chapter 6 Protection and offences

Part 1 Protection

Clause 179 provides the State, an agency, Minister or officer with protection from actions for defamation or breach of confidence where access is required or permitted, or given by the decision maker in the genuine belief access is required or permitted, under the Bill. Protection is also given to a document's author or any other person because they supplied the document to an agency or Minister. Granting of access to a document following an application is not, for the purposes of laws relating to defamation or breach of confidence, authorisation or approval of publication of the document or its content by the person granted access.

Clause 180 provides for further protection from actions for defamation or breach of confidence if a chapter 3 document has been published and the publication was required under clause 123.

Clause 181 ensures that a decision maker or other person concerned with the giving of access under this Bill does not commit a criminal offence simply through giving, or authorising, access.

Clause 182 ensures that, if a publication was required in relation to an external review decision under clause 123 or authorised by the Information Commissioner in the genuine belief that publication was required under clause 123, the person authorising publication and anyone involved in the publication does not commit a criminal offence simply by authorising or being involved in the publication of the document.

Clause 183 provides an agency, principal officer, any staff acting under the direction of an agency or principal officer, a decision maker, the Information Commissioner or the Information Commissioner's staff with protection from civil liability for acts or omissions under the Bill, as long as they were done honestly and without negligence.

Part 2 Offences

Clause 184 provides that it is an offence to give a person a direction to make a decision or deal with an application contrary to the requirements of the Bill. This offence provision does not apply to a direction given to a member of staff by the Information Commissioner or a person authorised by the Information Commissioner under clause 140. The maximum penalty for this offence is 100 penalty units.

Clause 185 provides that it is an offence for a person to knowingly deceive or mislead a person exercising powers under the Bill in order to gain access to a document containing another person's personal information. The maximum penalty for this offence is 100 penalty units.

Clause 186 provides that it is an offence for a person to knowingly give false or misleading information to the Information Commissioner or the Information Commissioner's staff. The maximum penalty for this offence is 100 penalty units.

Clause 187 provides that it is an offence for a person given notice under clause 116 or 197 to fail to give information, produce a document or attend before the Information Commissioner without reasonable excuse. Clause 116 gives the Information Commissioner powers to obtain information and documents and to compel attendance before the Commissioner in relation to external review. Clause 197 gives the Information Commissioner powers to obtain information and to compel attendance before the Commissioner in relation to compliance notices and privacy complaints. The maximum penalty for this offence is 100 penalty units.

Clause 188 provides that it is an offence for a person who is or has been the Information Commissioner or a member of the Information Commissioner's staff to disclose any information (other than for the purposes of the Bill) or take advantage of that information for personal benefit or for the benefit of another person. The maximum penalty for this offence is 100 penalty units.

Chapter 7 Miscellaneous provisions

Part 1 Relationship of this Act to other Acts

Clause 189 provides that the Bill does not affect the provisions of the *Public Records Act 2002* with respect to giving access to documents by the Queensland State Archives. This clause also provides that the *Public Records Act 2002* does not prevent a person obtaining access to a document from the Queensland State Archives under the Bill.

Clause 190 provides that a document placed by a person in the custody of the Queensland State Archives or a public library is available for access by members of the community subject to any restrictions or conditions imposed by the person at the time. This provision applies unless when the document was placed in the archives or the library the document was a document of an agency or a document of a Minister.

Clause 191 provides that a document is taken to be in an agency's possession, or in the possession of an agency whose functions are most closely related to an agency that no longer exists, if the document has been placed in the custody of the Queensland State Archives and is not reasonably available for inspection under the *Public Records Act 2002* or if the document has been placed in a place of deposit under the *Libraries Act 1988* or the *Public Records Act 2002*. This clause does not apply to a Minister or a local government.

Part 2 Operation of this Act

Clause 192 requires the Minister to arrange for a review of the operation of the Bill to start no later than two years after commencement of this clause. As soon as practicable after completion, a report on the review must be tabled with the Legislative Assembly.

Clause 193 provides for reporting obligations of the Information Commissioner, including the requirement to submit a report to the Speaker and the parliamentary committee about the information commissioner's operations as soon as practicable after the end of each financial year. The dictionary in schedule 5 of the Bill defines the parliamentary committee as the Law, Justice and Safety Committee of the Legislative Assembly.

Clause 194 provides that the Minister administering the Act is to prepare a report and table it in the Legislative Assembly after the end of each financial year. The requirements for the report may be prescribed under regulation. The report may be included as part of an annual report prepared pursuant to the Right to Information Act.

Clause 195 sets out the functions of the parliamentary committee for purposes of the Bill.

Part 3 Other

Clause 196 clarifies that a person's agent is able to act for the person under the terms of the authorisation as an agent and a child's parent is able to act for a child.

Clause 197 provides the Information Commissioner with powers to obtain information and to compel attendance and administer oaths or affirmations in relation to compliance notices and privacy complaints.

Clause 198 provides that anything done under the Bill involving QCAT must be done in accordance with QCAT rules and procedures.

Clause 199 makes general provision for the requirements for the contents of a prescribed written notice of a decision. If prescribed written notice of a decision must be given, the notice must state the decision, the reasons for the decision, the name and designation of the person making the decision, as well as details of any rights of review including procedures to be followed and any relevant timeframes.

Clause 200 provides that the chief executive may approve forms for use under the Bill.

Clause 201 provides that the Governor in Council may make regulations under the Bill.

Chapter 8 Transitional provisions

Clause 202 defers the application of the Bill—apart from chapter 3 (Disclosure and amendment by application under this Act) and other provisions of the Act that apply for the purposes of chapter 3—to local government until one year after the commencement of this clause. This will allow local governments a transitional period to put in place suitable arrangements for appropriate collection and handling of personal information before being formally required to comply with the privacy principles.

Clause 203 provides that, where context permits, a reference to the *Freedom of Information Act 1992* in an Act or document is a reference to this Bill.

Clause 204 preserves the validity of the appointment of a Privacy Commissioner where any part of the recruitment process was undertaken prior to commencement of the Bill.

Clause 205 provides that for sections 62 and 63, a first application includes an application under the repealed *Freedom of Information Act 1992*. Clause 62 of the Bill deals with refusal to deal with an application on the ground that the same document or documents was sought by the applicant under an earlier application.

Clause 206 provides that, if a certified agreement is made before QCAT comes into existence and the complainant or respondent wishes to file a copy of the agreement with QCAT, the agreement must be filed within 20 business days of QCAT coming into existence.

Clause 207 reflects the Government's intention that the ability to lodge privacy complaints will commence concurrently with the operations of QCAT.

Clause 208 provides that, if the Information Commissioner is required to refer a privacy complaint to QCAT before QCAT comes into existence, the Commissioner must do so within 20 business days of QCAT coming into existence.

Clause 209 clarifies that an individual may make a privacy complaint only about an entity's actions done after chapter 5 commences.

Clause 210 provides for the continuing application of relevant information standards to certain existing contracts and other arrangements.

Clause 211 states that the privacy principles do not apply to actions and practices necessary for the performance of a contract entered into before the commencement of this provision.

Schedule 1 Documents to which the privacy principles do not apply

Schedule 1 sets out the documents to which the privacy principles do not apply including in relation to covert activity, witness protection,

disciplinary actions and misconduct, whistleblowers, Cabinet and Executive Council and commissions of inquiry.

Schedule 2 Entities to which the privacy principles do not apply

Schedule 2 sets out the entities to which the privacy principles do not apply and the entities to which the privacy principles do not apply in relation to a particular function, consistent with the framework of the Right to Information Bill.

Part 1 lists the entities to which the privacy principles do not apply, including the Legislative Assembly (including Members of Parliament and Parliamentary Committees), commissions of inquiry, parents and citizens associations, grammar schools and government owned corporations and their subsidiaries. Exclusions for commissions of inquiry and parents and citizens association maintain current exclusions under IS42, while other exclusions are required due to the change in scope of application brought about by the application of the Bill to public authorities as defined in clause 21 of the Bill. The Legislative Assembly is excluded to ensure that the Bill does not infringe on the privileges of Parliament, and government owned corporations are excluded to ensure no inconsistency arises with the *Privacy Act 1988* (Cth) given government owned corporations are subject to that Act.

Part 2 lists the entities to which privacy principles in relation to a particular function, including courts, tribunals and other entities and associated office holders and registries in relation to judicial, or quasi-judicial functions. These exclusions maintain current exclusions under IS42.

Schedule 3 Information Privacy Principles

Schedule 3 is referred to in clause 26 of the Bill. Schedule 3 sets out the Information Privacy Principles (IPPs) with which an agency (a Minister, Parliamentary Secretary, local government, public authority and department, except for the Department of Health) must comply under clause 27. The IPPs are adapted from the *Privacy Act 1988* (Cth) and codify, with some amendments, the IPPs set out under IS42.

The IPPs give effect to the Bill's object of fair collection and handling of personal information by providing the framework under which agencies must operate in collecting, storing, managing, transferring, using and disclosing personal information. The IPPs provide for limited 'exceptions' to facilitate the business of government within the reasonable expectations of the community.

IPP 1 provides that an agency must not collect personal information in a manner that is unlawful or unfair. This requirement applies whether or not the information was requested from the individual concerned or another party. Collection of personal information for inclusion in a document or generally available publication must be for a lawful purpose directly related to the agency's functions and be necessary for, or directly related to, that purpose.

IPP 2 applies when an agency asks an individual directly to provide their own personal information for inclusion in a document or a generally available publication. If an agency asks an individual for their personal information, it must (at the time of collection, or as soon as reasonably practicable after the collection) take reasonable steps to advise the individual why it is collecting the information, any applicable legal authority to collect the information and to whom it may provide the information. IPP 2(5) recognises that there are emergency situations where notifying an individual (e.g. during delivery of emergency treatment) would have limited practical benefit and would not be within the reasonable expectation of the individual concerned.

IPP 3 applies when an agency requests personal information for inclusion in a document or a generally available publication from the individual concerned or another party. The agency must take reasonable steps to ensure that the information is relevant to the agency's reason for collecting it and it is up-to-date and complete. IPP3(3)(b) also requires that an agency must not intrude unreasonably on the personal affairs of the individual concerned, in terms of both the extent of the collection and the manner of collection.

IPP 4 obliges an agency with control of a document containing personal information to protect the document against loss, unauthorised access, use, modification, disclosure or any other misuse. This includes taking reasonable steps, such as security safeguards appropriate to the circumstances, to prevent unauthorised use or disclosure where a document containing personal information is provided to another person in connection with the provision of a service to the agency.

IPP 5 reflects that, in order to be able to exercise rights in relation to the personal information that an agency holds about them, an individual must be able to find out the existence, purpose and method of access of documents containing their personal information. IPP 5(2) does not require agencies to make details about personal information holdings known where the agency is authorised or required by law to refuse access to such details.

IPP 6 sets out the right of individuals to access their personal information held by an agency. Chapter 3 of the Bill provides one formal mechanism through which individuals may exercise this right, however an agency may also provide access to personal information through other legislative or administrative access mechanisms. Any administrative processes must, in the absence of lawful authority, take account of the privacy principles when determining whether to give a person access.

IPP 7 sets out the right of individuals to amend their personal information held by an agency where such information is believed to be inaccurate, incomplete, out-of-date or misleading. Chapter 3 of the Bill provides a formal mechanism through which individuals may exercise this right.

IPPs 6 and 7 do not override existing legislative provisions governing an individual's ability to access or amend their own personal information, including those in chapter 3 of the Bill. A refusal to provide access to or amend personal information under such provisions would not be taken to be a breach of the IPPs.

IPP 8 requires that an agency must take reasonable steps to ensure that personal information is accurate, up-to-date and complete, before using it.

IPP 9 requires that an agency must only use personal information for a purpose to which it is directly relevant.

IPP 10 places limitations on the use of personal information by an agency. Generally, personal information should only be used for the purpose for which it was collected unless the use:

- is one to which the individual has expressly or impliedly agreed (IPP 10(1)(a));
- will mitigate a serious threat to an individual's or the public's life, health, safety or welfare (IPP 10(1)(b));
- is authorised or required by law (IPP 10(1)(c));

- is necessary for a purpose of a law enforcement agency (and proper notation of the use is made) (IPP 10(1)(d) and 10(2));
- is for a purpose directly related to the original purpose (IPP 10(1)(e)), such as to plan improvements to the government service for which the information was originally collected; or
- fulfils the stated requirements relating to research or analysis undertaken in the public interest (IPP 10(1)(f)).

IPP 11 places limitations on the disclosure of personal information by an agency. Generally, the information should not be disclosed except directly to the individual concerned unless the disclosure:

- is one which the individual is or is reasonably likely to have been made aware of, usually through a collection notice in accordance with IPP 2 (IPP 11(1)(a));
- is one to which the individual has expressly or impliedly agreed (IPP 11(1)(b));
- will mitigate a serious threat to an individual's or the public's life, health, safety or welfare (IPP 11(1)(c));
- is authorised or required by law (IPP 11(1)(d));
- is necessary for a purpose of a law enforcement agency (and proper notation of the disclosure is made) (IPP 11(1)(e) and 11(2)); or
- fulfils the stated requirements relating to research or analysis undertaken in the public interest (IPP 11(1)(f)).

IPP 11(3) requires an agency disclosing personal information under IPP 11(1) to take all reasonable steps to ensure the receiving entity will only use or disclose that information for the specific purpose for which it was disclosed. IPP 11(4) sets out the prerequisites that must be met before an agency may disclose information which may be used for marketing purposes.

Schedule 4 National Privacy Principles

Schedule 4 is referred to in clause 30 of the Bill. Schedule 4 sets out the National Privacy Principles (NPPs) with which the Department of Health must comply under clause 31. The NPPs are adapted from the *Privacy Act*

1988 (Cth) and codify, with some amendments, the NPPs set out under the current administrative privacy regime, *Information Standard 42A: Information Privacy for the Queensland Department of Health*. The NPPs are specific to the Department of Health in order to provide ongoing continuity of practice and consistency with private sector health providers bound by the Commonwealth NPPs.

The NPPs give effect to the Bill's object of fair collection and handling of personal information by providing the framework under which the Department of Health must operate in collecting, storing, managing, transferring, using and disclosing personal information. The NPPs provide for limited 'exceptions' to facilitate the business of government within the reasonable expectations of the community, and provide for particular requirements in relation to two subsets of personal information: "sensitive information" and "health information", as defined in the dictionary in schedule 5 of the Bill.

NPP 1 governs the manner and extent of collection of personal information by the department and requires that the collection of personal information must be necessary for the functions and activities of the department as well as fair, lawful and not unreasonably intrusive to the individual.

When personal information is collected, reasonable steps must be taken to ensure the individual is properly notified about relevant elements of that collection, except where the information is collected from a third party for the purposes of social, medical or family medical history taking, notification would pose a threat to an individual, or where the information is required under a statutory collection. Where reasonable and practicable, personal information should only be collected from the individual directly.

NPP 2 sets out the general rule that personal information may only be used or disclosed for the primary purpose of collection. There are limited exceptions to this rule, which allow for use or disclosure for a secondary purpose, where the purpose:

- is related to the primary purpose of collection (directly related, in the case of sensitive information) and the individual concerned would reasonably expect such a use or disclosure to occur (NPP 2(1)(a));
- is one to which the individual has consented (NPP 2(1)(b));
- fulfils the stated requirements for a research or analysis purpose relevant to public health or safety (NPP 2(1)(c));

- will mitigate a serious threat to an individual's or the public's life, health, safety or welfare (NPP 2(1)(d));
- is required to investigate or report unlawful activity (2(1)(e));
- is required or authorised under law (NPP 2(1)(f)); or
- is necessary for a purpose of a law enforcement agency (and proper notation of the use or disclosure is made) NPP (2(1)(g) and 2(2)).

However, NPP 2(3) authorises disclosure of an individual's personal information to a person responsible for the individual, where all stated requirements are satisfied. This provision relates to individual incapacity or inability to consent and what may reasonably be done to communicate personal information to appropriate individuals in such cases. NPP 2(5) sets out the prerequisites that must be met before non-sensitive personal information may be used for marketing purposes.

NPP 3 requires that reasonable steps be taken to ensure that personal information collected, used or disclosed is subject to quality control, that is, as far as possible, the information must be accurate, complete and up-to-date.

NPP 4 obliges the department to take reasonable steps, such as security safeguards appropriate to the circumstances, to protect the document against loss, unauthorised access, use, modification, disclosure or any other misuse. NPP 4(2) requires the de-identification of personal information if it is no longer needed for any of the uses or disclosures permissible under NPP 2. Despite this, NPP 4(2) does not override existing requirements for records retention and disposal within the *Public Records Act 2002*.

NPP 5 requires that a document containing clear policies about the management of personal information is made available upon request. If requested, general details about the types of personal information held by the department should be made available, including details about the purpose(s) to which the information is put and how such information is collected, stored, used and disclosed.

NPP 6 sets out the right of individuals to access their personal information held by the department. Chapter 3 of the Bill provides one formal mechanism through which individuals may exercise this right, however the department may also provide access to personal information through other legislative or administrative access mechanisms. Any administrative processes must, in the absence of lawful authority, take account of the privacy principles when determining whether to give a person access.

NPP 7 sets out the right of individuals to amend their personal information held by the department where such information is believed to be inaccurate, incomplete, out-of-date or misleading. Chapter 3 of the Bill provides one formal mechanism through which individuals may exercise this right.

NPPs 6 and 7 do not override existing legislative provisions governing an individual's ability to access or amend their own personal information, including those in chapter 3. A refusal to provide access to or amend personal information under such provisions would not be taken to be a breach of the NPPs.

NPP 8 requires that, where lawful and practicable, individuals should have the option of not identifying themselves when entering into transactions with the department.

NPP 9 places additional restrictions on the collection of personal information which is sensitive information, as defined in the dictionary in schedule 5. NPP 9(1) requires that the department not collect sensitive information, unless the collection:

- is one to which the individual has consented (NPP 9(1)(a));
- is required by law (NPP 9(1)(b));
- will prevent or lessen a serious threat to any individual's life, health, safety or welfare, and the relevant individual is incapable of giving consent or unable to communicate consent (NPP 9(1)(c)); or
- is necessary to establish, exercise or defend a legal or equitable claim (NPP 9(1)(d)); or
- is a social, family or medical history, or other relevant information about necessary for the provision of a health service to an individual (NPP 9(1)(e).

NPP 9(2) allows collection of health information where it is necessary to provide a health service and the individual would reasonably expect the collection to occur for that purpose or the collection is required or authorised by law.

NPP 9(3) allows collection of health information for public health or safety research or statistical analysis or the management, funding or monitoring of a health service under specified circumstances. Where health information is collected for the purposes in NPP 9(3), the department is obliged, prior to disclosing the information, to take reasonable steps to de-identify the

information so the individual cannot be identified upon disclosure or in the future.

Schedule 5 Dictionary

Schedule 5 provides a dictionary to define key terms in the Bill.