Right to Information Bill 2009

Explanatory Notes

Short title

The short title of the Bill is the Right to Information Bill 2009.

Objectives of the Bill

The primary objective of the Bill is to give the public a right of access to information held by government agencies unless, on balance, it is contrary to the public interest to provide the information. The Bill will repeal the *Freedom of Information Act 1992*.

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 objective

The Bill provides a legislative foundation for access to government information, based on the overarching presumption that people have a right to access information held by government unless, on balance, it is contrary to the public interest.

Access applications

The Bill will apply to departments, local governments and public authorities, consistent with the *Freedom of Information Act 1992* but, from commencement of the legislation, will extend to certain government owned corporations, which do not operate in competition with the private sector. All government owned corporations' community service obligations will be subject to the Bill.

To achieve its objective of facilitating access to government information, the Bill sets out a new decision-making framework to guide agencies and Ministers in determining the public interest in dealing with applications for government information. The Bill includes a reduced number of "true" exemptions in comparison to the *Freedom of Information Act 1992*. These exemptions apply in a limited number of circumstances where it has been determined the public interest in exempting the information is so high that no other public interest factor may tip the balance in favour of disclosure.

The exemption for Cabinet information has been reframed to apply to submissions, decisions and briefing notes and other documents which, if disclosed, would reveal a consideration or deliberation of Cabinet. The exemption will apply for a period of ten years, after which people will be able to apply for access under the Bill. The period for automatic open access to Cabinet documents created after commencement of the Bill under the *Public Records Act 2002* will be reduced from 30 years to 20 years. In addition, the Government has commenced proactive administrative release of Cabinet decisions.

The Bill sets out a new public interest test framework which decision-makers will apply when deciding an application for access to information. The public interest test involves weighing up factors favouring disclosure, factors favouring nondisclosure and also lists factors favouring nondisclosure because of a particular harm in disclosure.

The procedural requirements for making and dealing with access applications are set out in the Bill, including the requirement for applications to be made in the approved form and the requirement for the agency or Minister to provide the applicant with a schedule of relevant documents. The processing period for applications will be reduced to 25 business days. The Bill has been developed in conjunction with the Information Privacy 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 Information Privacy Bill if an application is expressed to be for the applicant's own personal information.

The fees and charges for access applications under the Bill will be prescribed under regulation. The Government has announced its intention to retain the time-based charging model currently in operation under the *Freedom of Information Act 1992*. However, the threshold for free processing of applications will increase from two hours to five hours for all applicants. The Bill imposes a duty on the agency or Minister to minimise the charges payable by the applicant and provides for waivers of charges for concession card holders and non-profit organisations in financial hardship.

Applicants will be provided with rights of internal and external review of access decisions, and internal review will become optional. 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.

Information Commissioner

The Bill will vest the Information Commissioner with a range of new powers and functions and establish a new position of Right to Information Commissioner as a deputy to the Information Commissioner. Any of the Information Commissioner's functions and powers under the Bill will be able to be delegated to the Right to Information Commissioner. These functions include monitoring and reporting on agencies' compliance with the legislation, conducting external reviews and providing information and assistance to agencies, applicants and third parties about the operation and administration of the legislation.

Publication schemes and disclosure logs

The Bill clearly sets out the Government's intention that government-held information should be released administratively as a matter of course, unless there is good reason not to release it. Applications under the Bill should be necessary only as a last resort. To support administrative release of information, the Bill requires agencies to publish a publication scheme setting out the classes of information the agency has available and the terms on which it will make the information available, including any charges. It also provides for an agency to include in its disclosure log a document that has been released under the Bill as a result of a request.

As the Bill and the Information Privacy 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.

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. Agencies will be expected to meet these costs 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?

The RTI Bill will provide enhanced powers of entry and search to the Information Commissioner and entitles the Commissioner to full and free access at all reasonable times to the records of an agency (clause 100).

The exercise of this power will be subject to Parliamentary scrutiny and the power 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?

The clause mentioned above (clause 100) permits the Information Commissioner access to documents including those protected by legal professional privilege. Also, clause 106(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. This 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 placed on the Information Commissioner and the Commissioner's staff ensure such information is protected. Under clause 107 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 108 the Information Commissioner must make such directions considered necessary to avoid disclosure of legal professional privilege documents to an access participant. It is an offence under clause 179 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?

Clause 172 provides that a person concerned with the giving of access to a document under the Bill does not commit a criminal offence through giving, or authorising, access. Clause 173 provides a person concerned with publishing a document on a disclosure log, and the Information Commissioner in relation to publication of decisions, do not commit a criminal offence through publishing, or authorising publication. Clause 170 provides the State, an agency, Minister or an officer with protection from actions for defamation or breach of confidence where access to a document was required or permitted by the Bill. Likewise clause 171 provides persons concerned with publishing a document on a disclosure log and the Information Commissioner in relation to publication of external review decisions with protection against actions for defamation or breach of confidence where publication of a document was required or permitted by the Bill. Clause 174 provides an agency, principal officer, Minister, any staff acting under the direction of any of these, a decision-maker, the Information Commissioner or the Commissioner's staff protection from civil liability for acts or omissions under the Bill provided they were done honestly and without negligence. The liability will attach instead to the State. Whilst it is recognised that everyone is equal before the law and each person should be liable for their acts or omissions, it is considered that conferral of immunity as outlined above is appropriate for officers carrying out statutory duties. These clauses re-enact protections in the *Freedom of Information Act 1992* with amendment to take account of the introduction of disclosure logs and the requirement that the Information Commissioner's external review decisions must be published.

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, Australia's Right to Know coalition and the Australian Press Council. 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.

Notes on Provisions

Chapter 1 Preliminary

Part Introductory

Clause 1 sets out the short title of the Bill.

Clause 2 provides for the commencement of the Bill by proclamation.

Clause 3 states the object of the Bill, which is to provide a right of access to information under the government's possession or control 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 publication of information or the giving of access to information otherwise than under the Bill. The principles of the Right to Information reforms emphasise increased proactive and administrative disclosure, with formal application under the Bill intended to be an avenue of last resort.

Clause 5 provides that the Bill does not affect the operation of another Act or administrative scheme for publication of information or access to information whether or not on payment of a charge.

Clause 6 provides that the Bill overrides other Acts prohibiting the disclosure of information. However, schedule 3 of the Bill lists certain enactments where prohibitions on disclosure are of such public interest that the Parliament has determined that the subject matter would constitute exempt information under the Bill.

Clause 7 provides that the Bill does not affect the operation of other Acts regulating the disposal of information, such as the *Public Records Act 2002*.

Clause 8 describes the relationship with applications under this Bill and applications to access and amend personal information under the Information Privacy Bill. If an application is made under the Information Privacy Bill which requests access to information other than the applicant's personal information, then clause 54 of the Information Privacy Bill will apply and the application will be dealt with under the Right to Information Bill upon payment of the application fee.

Clause 9 provides that the Bill binds the State.

Part 2 Interpretation

Clause 10 provides that the dictionary in schedule 6 to the Bill defines particular words used in the Bill.

Clause 11 provides that the documents mentioned in schedule 1 are documents to which the Bill does not apply.

Clause 12 provides a definition of document of an agency as being a document that is in the possession or under the control of the agency.

Clause 13 provides a definition of document of a Minister. The dictionary in schedule 6 defines Minister to include Parliamentary Secretary.

Clause 14 defines an agency as being a department, local government, government owned corporation, subsidiary of a government owned corporation or public authority. Entities to which the Bill does not apply are listed in schedule 2 of the Bill. The dictionary in schedule 6 defines a subsidiary.

Clause 15 provides that a reference to local government includes the Wide Bay Water Corporation.

Clause 16 provides a definition of public authority.

Clause 17 provides that entities mentioned in schedule 2 are entities to which the Bill does not apply or to which the Bill does not apply in relation to a particular function.

Clause 18 provides a definition of terms relating to the timeframes for dealing with an application under the Bill, namely the processing period, revision period and transfer period. The processing period is a period of 25 business days. However, this timeframe does not include a transfer period, time to consult with a third party, the consultation timeframe for a notice that the agency or the Minister intends to refuse to deal with the notice, the revision period after the giving of a charges estimate notice or where the agency or Minister asks for a longer processing time.

Chapter 2 Disclosure other than by application under this Act

Clause 19 provides that information may be accessed other than by application under this Bill and provides examples of such access.

Clause 20 provides that agencies must make copies of policy documents available for public inspection and purchase. "Policy document" is defined in schedule 6. No prejudice may flow from the application of a policy document in certain circumstances where the document was unavailable.

Clause 21 requires agencies to publish a publication scheme. Such a scheme is to set out the classes of information the agency has available and the terms on which it will make the information available including any charges. Publication schemes must comply with any Ministerial guidelines published by the Minister on the Minister's website. This clause does not apply to an excluded entity, being a prescribed entity having public functions under an Act and prescribed by regulation as a public authority pursuant to clause 16. A publication scheme may incorporate information for more than one agency.

The requirement for agencies to prepare publication schemes replaces the previous requirement for statements of affairs to be prepared under the *Freedom of Information Act 1992*.

Clause 22 provides that, without limiting any other way in which an agency may disclose information, it may disclose information under a publication scheme.

Chapter 3 Disclosure by application under this Act

Part 1 Right to access

Clause 23 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. 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.

Part 2 Access application

Clause 24 sets out the application requirements for a person who wishes to obtain access to a document of an agency or document of a Minister, including the requirement to apply in the approved form, pay the application fee and provide sufficient evidence of identity or authorisation to act as an agent.

Clause 25 provides that without limiting clause 24, a parent may apply on behalf of a child. "Parent" and "child" are defined by the clause.

Clause 26 provides that applications may not be made or transferred to the Information Commissioner, the RTI Commissioner or the Privacy Commissioner.

Clause 27 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 processing or access charge applies and no review rights apply in relation to access to such a document.

Clause 28 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 29 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 6 to the Bill.

Part 3 Dealing with application

Division 1 Decision-maker

Clause 30 requires that a principal officer of an agency is to deal with applications to an 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 31 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 32 deals with the circumstance where a purported access application is received and the entity decides that the application is outside the scope of the Bill because one or more of the following applies:

- the document sought is a document to which the Bill does not apply (that is, a document listed in schedule 1 which is excluded from the operation of the Bill);
- the entity from which the document is sought is an entity to which the Bill does not apply (that is, an entity listed in schedule 2 which is wholly or in relation to certain functions excluded from the operation of the Bill);
- the application is made to the Information Commissioner, RTI Commissioner or Privacy Commissioner (to whom applications are not permitted: see clause 26).

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

Clause 33 deals with the circumstance where an access application is made, but it does not comply with one or more of 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 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 34 deals with the circumstance where an access application is made under this Bill and an agency or Minister determines the application could have been made under the Information Privacy Bill. The agency or Minister must contact the applicant within 15 business days after the application is received and inform the person that the application could have been made under the Information Privacy Bill or may be confirmed as an application under this Bill. The applicant may choose to have the application dealt with under the Information Privacy Bill and the application fee is refunded. If the applicant does not, within a reasonable time, request that the application be dealt with under the Information Privacy Bill or if the applicant confirms the application as being under this Bill, then the application will continue to be dealt with under this Bill.

Clause 35 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.

Clause 36 requires an agency or Minister to provide an applicant with a schedule of relevant documents (unless waived by the applicant) and a charges estimate notice. The new procedure of providing applicants with a

schedule of relevant documents will facilitate consultation between applicants and agencies or Ministers regarding the scope of applications.

The clause defines "schedule of relevant documents" to be a schedule setting out a brief description of the classes of relevant documents and the number of documents in each class. An agency or Minister is not obliged to include in the schedule details of exempt information or information the disclosure of which would be contrary to the public interest.

The clause defines charges estimate notice as a written notice which sets out details including the estimate of the amount of any processing or access charge payable (which may be nil), any decision about a request for waiver of charges and the applicant's option to consult with a view to amending the application to reduce the charges. The charges estimate notice also states that the applicant must confirm, amend or withdraw the application within 20 business days of the date of the notice (or longer, by mutual agreement). If the applicant amends the application, the agency or Minister must provide a new charges estimate notice. If the applicant does not confirm, amend or withdraw the application by the end of the applicable period, the application is taken to be withdrawn. A maximum of two charges estimate notices are provided.

Division 3 Contact with relevant third party

Clause 37 sets out the process of consultation with a relevant third party (a government, agency or person) 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, and to advise the third party that the document may be published on a disclosure log.

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 38 provides for the transfer of applications where the transferee agency, to the transferor agency's knowledge, possesses the document sought and where the transferee agency consents to the transfer. If part of an application is transferred which does not relate to personal information of the applicant, a separate application fee is payable.

Part 4 Refusal to deal with application

Clause 39 sets out the Parliament's intention that 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 40 provides the grounds on which an agency or Minister may refuse to deal with an application where all documents applied for are stated to and appear to be comprised of exempt information.

Clause 41 provides that an agency or Minister may refuse to deal with an access application because of its effect on the agency's or Minister's functions, specifically where it would be a substantial and unreasonable diversion of resources for an agency or interfere substantially and unreasonably with the Minister's ability to perform his or her 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.

Clause 42 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. Where an application is amended in

accordance with the above procedure, the opportunity for further amendment to the application under this clause does not apply.

Clause 43 provides for the situation where an application is for the same document or documents sought by the applicant under an earlier application. An earlier application may be an application made under this Bill or the Information Privacy Bill. 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.

Part 5 Decision

Clause 44 explicitly confirms the Parliament's intention that access should be given to documents 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 the discretionary ability of an agency or Minister to give access to a document even if access may be refused under this Bill.

Clause 45 provides that, on consideration of an 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 before access is given. These decisions are known as considered decisions. The applicant is to be given written notice of the decision pursuant to the requirements of clause 54.

Clause 46 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. In these circumstances, the application fee is to be refunded. 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 47 sets out the grounds on which an application for access may be refused. The clause again confirms Parliament's pro-disclosure bias and intention that the grounds of refusal be interpreted narrowly and that access may still be given, even if a ground of refusal applies.

On application, an agency or Minister may refuse access to a document:

- to the extent the document comprises exempt information under clause 48;
- to the extent the document comprises information the disclosure of which would, on balance, be contrary to the public interest under clause 49;
- to the extent the document about a child's personal information is sought by, or on behalf of, the child and disclosure would not be in the best interests of the child under clause 50;
- to the extent the document contains the applicant's relevant healthcare information, disclosure of which would not be in the best interests of the applicant under clause 51;
- because the document is nonexistent or unlocatable under clause 52;
- because other access to the document is available as mentioned in clause 53.

Clause 48 reaffirms the Parliament's pro-disclosure bias and provides that exempt information is information listed in schedule 3 to the Bill. These are the categories of information that the Parliament has determined that it is contrary to the public interest to disclose.

Clause 49 reaffirms the Parliament's pro-disclosure bias and sets out steps to be taken and the factors to be considered in determining whether, on balance disclosure of information would be contrary to the public interest.

Regard is to be had to the factors set out in parts 1 to 4 of schedule 4 to the Bill: part 1 provides a list of factors irrelevant to the determination; part 2 provides a list of factors favouring disclosure; part 3 provides a list of factors favouring nondisclosure; and part 4 provides a list of factors where disclosure could reasonably be expected to cause a public interest harm (known as harm factors).

The factors set out in schedule 4 are to be balanced to determine whether access would be contrary to the public interest. The clause clarifies that the fact that one or more of the relevant factors favouring nondisclosure is a harm factor does not of itself mean that disclosure of the information would be contrary to the public interest.

Power is provided to the Information Commissioner under clause 132 to issue guidelines about, among other things, the application of the public interest test, including examples of the way it should and has been applied.

Clause 50 reaffirms the Parliament's pro-disclosure bias. However, despite provisions of the Bill dealing with the applicant's personal information, the clause reflects the Parliament's view that it would be contrary to the public interest to give access to a child (or their agent) personal information where the disclosure of that information would not be in the child's best interests.

Where a child applies on his or her own behalf, before providing access to information the agency or Minister must consider whether the child has the capacity to understand the information and the context in which it was recorded and make a mature judgment as to what might be in his or her best interests.

Clause 51 reaffirms the Parliament's pro-disclosure bias. However, despite provisions of the Bill dealing with the applicant's personal information, the clause reflects the Parliament's view that it would be contrary to the public interest to give access to a document about the applicant's healthcare information where the disclosure of that information might be prejudicial to their physical or mental health or wellbeing. The agency or Minister may appoint a healthcare professional who is appropriately qualified to make the decision having regard to the physical or mental health or wellbeing of the applicant: see clause 30(5).

Clause 52 sets out the circumstances in which documents are considered to be nonexistent or unlocatable, in order to satisfy the ground of refusal under clause 47. A search of a backup system is not required before access may be refused, but must be undertaken where the agency or Minister considers that the document has been kept in and is retrievable from the backup system.

Clause 53 sets out the circumstances in which other access to a document is considered to be available, including where a charge for access is payable.

Clause 54 requires an agency or Minister to give written notice of decision to an applicant and sets out the required contents of the notice. The notice must include the contents of a prescribed written notice (as set out in clause 191) and additional details, depending on the decision being notified. The notice must include, where access is given, details of any charges payable, the period of time the document may be accessed and, in the case of information other than personal information of the applicant, that the

document may be publicly accessible through a disclosure log. Where access is refused, the notice must detail any processing charges payable and the reasons for refusal (for example, if access is to be given to a copy of a document with exempt information deleted, notice must be given as to the provision under which the information is exempt information and the reason for classifying it in such a way).

Clause 55 provides that, if an application is for a document containing prescribed information, an agency or Minister may give notice which neither confirms nor denies the existence of the document and which states that, assuming the information did exist, access would be refused as exempt 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's or Minister's written notice of a decision under this clause must state the date of decision, name and designation of the decision-maker and any available rights of review.

Part 6 Charging regime

Division 1 Preliminary

Clause 56 provides a definition of processing charge, which is prescribed under regulation.

Clause 57 provides a definition of access charge, which is prescribed under regulation.

Clause 58 obliges an agency or Minister to minimise any charges payable by an applicant.

Clause 59 provides that no processing charge will be charged to the extent that a document contains an applicant's personal information.

Division 2 Payment of charges

Clause 60 provides that prior to being given access to a document the applicant must pay the applicable processing charge and access charge for the application. The processing charge must be paid even if access is refused or if the applicant does not access the documents within the time given for access.

Clause 61 provides that the amount of the processing charge or the access charge cannot be more than those estimated in the charges estimate notice, or where applicable, the new charges estimate notice.

Clause 62 provides that an agency or Minister must refund any processing charge or access charge paid by an applicant that is more than the amount ultimately payable.

Division 3 Waiver of charges

Clause 63 provides that a processing charge or access charge may only be waived as provided under this division.

Clause 64 provides that a processing charge or access charge may be waived if the agency or Minister considers that the likely cost to the agency of estimating, levying the charges and receiving payment would be greater than the amount of the charges.

Clause 65 provides that a processing charge may be waived under clause 93(2). Clause 93(2) allows the Information Commissioner to make conditions on the granting of further time to consider an application which is the subject of external review where a decision has been deemed to be made. One of those conditions may include the refund of an application fee or reduction or waiver of charges.

Clause 66 outlines the circumstances in which an agency or Minister, at the written request of an applicant, must waive access or processing charges. In the case of an individual, the request must be accompanied by a copy of concession card. If 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 charges, the charges must be waived. 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 charges. Charges can be waived for non-profit organisations if the Information Commissioner has awarded financial hardship status to the organisation.

Prescribed written notice of any decision about waiver, unless it has already been communicated in a charges estimate notice or new charges estimate notice, must be provided before the end of the processing period.

Clause 67 empowers the Information Commissioner to determine the financial hardship status of a non-profit organisation. In making the decision regarding financial hardship status, the Information Commissioner must consider the nature and size of the organisation's funding base and its liquidity. While determinations are effective for one year, the relevant non-profit organisation is obliged to advise the Information Commissioner of any significant improvement in its financial circumstances during that period. The financial hardship status of an organisation may be revoked and, if this occurs, the organisation must advise any agency processing an access application of the change in status. An organisation which has had financial hardship status refused cannot reapply to the Information Commissioner unless there has been a substantial deterioration in its financial circumstances or more than one year has elapsed since the date of the Information Commissioner's decision.

Part 7 Giving access

Division 1 Giving access to applicant

Clause 68 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 had been given.

Clause 69 provides for the time within which access may be made where access has been granted. There is no entitlement to access unless the relevant processing and access charges have been paid. The time limit for access is 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. The details of a document to which access has been granted but not obtained may be included in a disclosure log under clause 78. Upon payment of the applicable charge, the document may be accessed by another person.

Clause 70 requires that where 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 clause 49 of the Bill.

Clause 71 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 25 defines "child" and "parent".

Clause 72 provides that access may be deferred in the circumstances relating to the presentation of the information to the Legislative Assembly or the media.

Clause 73 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 74 provides that an agency or Minister may delete exempt information from a copy of a document 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. This clause is

subject to clause 55 which allows an agency to neither confirm nor deny the existence of prescribed information.

Clause 75 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 6 to the Bill. This clause is subject to clause 55 which allows an agency to neither confirm nor deny the existence of prescribed information.

Clause 76 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 77 applies if a principal officer of an agency or Minister refuses access to healthcare information under clause 47(3)(d). 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 decision to disclose to a nominated and approved healthcare professional rather than the applicant may be delegated to a healthcare professional under clause 30(5). 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.

Division 2 Giving access to others

Clause 78 allows an agency or Minister to include a document that does not contain personal information of the applicant and to which access has been granted or details about such a document to be included in a disclosure log. Disclosure logs form a part of an agency's or Minister's website and must comply with any relevant guidelines published by the Minister on the Minister's website.

Nothing about the document may be included in a disclosure log earlier than 24 hours after the applicant accesses the document. Where the applicant does not access the document within the access period, details of the document may then be placed on the disclosure log. The first person to seek access to the document will be required to pay the processing or access charge. Subsequently, but no earlier than 24 hours after the person accesses the document, the document will be made available on the disclosure log for no charge. This clause does not apply to a prescribed entity under clause 16.

Where an agency or Minister grants access to a document and the applicant accesses the document within the relevant access period under clause 69, a copy of the document may be included in the agency's or Minister's disclosure log, or details of the document may be included in the log including how to access the document, for no charge. A document may be placed on a disclosure log no earlier than 24 hours after the applicant accesses it.

Part 8 Internal review

Clause 79 provides definitions of internal review and internal review application for part 8.

Clause 80 provides that a person affected by a reviewable decision may apply to have the decision reviewed by the agency or Minister. 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. "Reviewable decision" is defined in schedule 6 as decisions:

- that an access application is outside the scope of the Bill;
- that an access application does not comply with the requirements for application;
- a decision to disclose documents contrary to the views of a relevant third party or in cases where a relevant third party should have been, but was not, consulted;
- refusing to deal with an application;
- refusing or deferring access to a document;
- about whether an access or processing charge is payable including a decision about waiver of charges;
- giving access subject to deletion of information;
- giving access in a different form than that requested, except if access in the requested form would breach copyright; and
- that are deemed decisions.

Clause 81 provides that an internal review decision, decision made by an agency's principal officer, a decision made by a Minister or a decision setting the charges in a charges estimate notice or new charges estimate notice cannot be internally reviewed.

Clause 82 sets out how to make an application for internal review.

Clause 83 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 84 provides definitions of external review and external review application for part 9.

Clause 85 provides that a person affected by a reviewable decision may have the decision reviewed by the Information Commissioner. "Reviewable decision" is defined in the schedule 6 as decisions:

- that an access application is outside the scope of the Bill;
- that an access application does not comply with the requirements for application;
- a decision to disclose documents contrary to the views of a relevant third party or in cases where a relevant third party should have been, but was not, consulted;
- refusing to deal with an application;
- refusing or deferring access to a document;
- about whether an access or processing charge is payable including a decision about waiver of charges;
- giving access subject to deletion of information;
- giving access in a different form than that requested, except if access in the requested form would breach copyright; and
- that are deemed decisions.

Clause 86 provides that a decision about the amount of a charge under a charges estimate notice may not be externally reviewed.

Clause 87 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.

The section also provides for circumstances where the review is of a decision to disclose information where third party consultation occurred or should have occurred under clause 37. A participant opposing disclosure in an external review of such a decision has the onus of establishing that the information should not be disclosed.

Division 2 Application

Clause 88 sets out how to make an application for external review.

Clause 89 provides for the participants in an external review. These 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 90 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.

Clause 91 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 the application is made.

Clause 92 provides for the Information Commissioner to inform the agency or Minister of an external review application before starting the review.

Clause 93 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, including refund of any application fee or reduction or waiver of any processing charge. Where the agency or Minister does not make a considered decision within the further time allowed, the principal officer or Minister is taken to have made a decision affirming the deemed decision.

Clause 94 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 convey such a decision in writing to the applicant (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 95 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 96 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 87.

Clause 97 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 participant 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 provisions 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 98 provides the Information Commissioner with the power to make preliminary inquiries of the applicant or agency or Minister 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 99 provides the Information Commissioner with the power to require an agency or Minister to provide further and better particulars of the reasons for the decision.

Clause 100 provides the Information Commissioner with a power to require production of documents by an agency or Minister, including those protected by legal professional privilege.

Clause 101 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. This clause does not apply to reviews of decisions refusing to give access under clause 68(1)(e).

Clause 102 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 103 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.

Clause 104 empowers the Information Commissioner to administer an oath or affirmation for the purposes of an examination under clause 103.

Clause 105 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 106 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 a document or the giving of evidence by a member of an agency or Minister for the purposes of a review.

Clause 107 requires the Information Commissioner to ensure a document given to the Commissioner is not disclosed to persons other than the Commissioner's staff, the document's creator or provider (or their representative where the creator or provider is an external review participant) and to return the document at the conclusion of the review.

Clause 108 empowers the Information Commissioner to issue any directions necessary to avoid disclosure of documents to certain external review participants or their representatives 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.

Clause 109 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 that information.

Copies of the decision must first be given to the agency or Minister. If the agency or Minister does not apply for judicial review or appeal to the Queensland Administrative and Civil Tribunal (QCAT) on a question of law within 20 business days of the date of the decision the Information Commissioner can provide a copy of the decision to each other participant and require the agency or Minister to grant access to the document.

Division 5 Decision on external review

Clause 110 provides that the Information Commissioner must make a written decision following an external review, which must include reasons for the decision unless a review is resolved informally. 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 include exempt information or information the disclosure of which would be contrary to the public interest.

Clause 111 allows the Information Commissioner to correct mistakes in decisions.

Division 6 Miscellaneous

Clause 112 provides that costs incurred by a participant in an external review are payable by the participant.

Clause 113 allows for the Information Commissioner to bring evidence of an agency officer's 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 114 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 one of the following applies:

- the repeated applications involve an abuse of process;
- a particular access action involves or would involve an abuse of process;
- a particular access action would be manifestly unreasonable.

The person must be given the opportunity to make oral or written submissions before the 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 115 provides for the variation or revocation of a vexatious applicant declaration.

Part 11 References of questions of law and appeals

Clause 116 provides definitions for part 11.

Clause 117 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 118 which vests the jurisdiction in QCAT.

Clause 118 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. The Tribunal is constituted by 1 judicial member and must exercise its original jurisdiction under the *Queensland Civil and Administrative Tribunal Act 2009* to hear and decide the question of law. The decision is binding on the Information Commissioner.

Clause 119 provides that a participant can appeal the Information Commissioner's decision on an external review to the QCAT appeal tribunal 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 120 allows a non-profit organisation to appeal a decision of the Information Commissioner on its financial hardship status to QCAT.

Clause 121 allows a person to appeal a declaration by the Information Commissioner that the person is a vexatious applicant to QCAT.

Clause 122 requires the rules and procedures applying to QCAT under the *Queensland Civil and Administrative Tribunal Act 2009* to be applied to any activity involving QCAT. Persons may be represented by a lawyer for the purposes of reference of a question of law or an appeal on a question of law.

Chapter 4 Office of the Information Commissioner

Part 1 General

Clause 123 establishes the office of the Information Commissioner, who is to be an officer of the Parliament. The clause also continues in existence the office of the Information Commissioner established under the repealed *Freedom of Information Act 1992*. Continuity of the appointment of the Information Commissioner or the acting Information Commissioner under the repealed *Freedom of Information Act 1992* is provided for by clauses 196 and 197 of the Bill.

Clause 124 provides for the financial accountability of the office of the Information Commissioner.

Part 2 Information Commissioner

Clause 125 provides a general power for the Information Commissioner to do all things necessary or convenient for the performance of the Commissioner's functions.

Clause 126 provides for the independence of the Information Commissioner by stating that the Commissioner is not subject to direction in relation to the exercise of powers in the performance of functions under clauses 128, 129, 130 and 131, nor in relation to the priority to be given to investigations and reviews.

Clause 127 provides that the Information Commissioner controls the Information Commissioner's office.

Clause 128 sets out the support functions of the Information Commissioner.

Clause 129 sets out the decision-making functions of the Information Commissioner.

Clause 130 sets out the external review functions of the Information Commissioner.

Clause 131 sets out the performance monitoring functions of the Information Commissioner.

Clause 132 provides that the Information Commissioner has power to issue guidelines in relation to the Commissioner's functions. Guidelines must be published on the Information Commissioner's website. The clause provides a non-exhaustive list of matters on which the Information Commissioner may issue guidelines.

Clause 133 provides for the budgetary arrangements for the office of the Information Commissioner.

Clause 134 provides that the Information Commissioner is appointed by the Governor in Council under this Bill and not the *Public Service Act 2008*.

Clause 135 provides that a person may only be appointed as Information Commissioner if the Minister has placed press advertisements nationally and has consulted with the parliamentary committee about the process for appointment and the appointment of the person as Commissioner. The advertisement and consultation on process requirements do not apply if a person is being reappointed.

Clause 136 provides that the Information Commissioner holds office for a term of not more than 5 years as stated in the instrument of appointment. A person cannot be reappointed such that the person would hold the office of Information Commissioner for a period of longer than 10 continuous years.

Clause 137 provides that the Information Commissioner is to be paid remuneration and allowances, and hold office, on the terms and conditions decided by the Governor in Council.

Clause 138 provides that the Information Commissioner can take leave in accordance with his or her entitlements with the approval of the Minister.

Clause 139 preserves the rights of a public service officer who is appointed to the office of the Information Commissioner.

Clause 140 sets out the requirements of the oath made by the Information Commissioner.

Clause 141 sets out the restrictions on outside employment by the Information Commissioner.

Clause 142 provides that the Information Commissioner may resign by signed notice to the Minister. The Minister must give the notice to the Governor for information and a copy to the Speaker of the Legislative Assembly and the chairperson of the parliamentary committee. Failure to give the notice to the Governor or copies to the Speaker and parliamentary committee will not invalidate the resignation.

Clause 143 empowers the Governor in Council to appoint an acting Information Commissioner.

Part 3 Staff of the Office of the Information Commissioner

Clause 144 provides that the staff are to be employed under the *Public Service Act 2008*. By virtue of clause 147 of this Bill and clause 141 of the Information Privacy Bill, the RTI Commissioner and the privacy Commissioner are members of the staff of the office of the Information Commissioner. However, clause 144 provides that it does not apply to the RTI Commissioner or the Privacy Commissioner.

Clause 145 provides that the Information Commissioner may delegate to a member of the staff of his or her office any of the Commissioner's powers under this Bill. By virtue of clause 147 of this Bill and clause 141 of the Information Privacy Bill, the RTI Commissioner and the privacy Commissioner are members of the staff of the office of the Information Commissioner.

Clause 146 provides that the staff are not subject to direction by any person (other than the Information Commissioner or a person authorised by the Information Commissioner) about the way in which the Commissioner's powers are exercised.

Part 4 Right to Information Commissioner

Clause 147 establishes the RTI Commissioner who is a member of the staff of the office of the Information Commissioner.

Clause 148 provides for the role and function of the RTI Commissioner. The RTI Commissioner is a deputy to the Information Commissioner, as is the Privacy Commissioner under the Information Privacy Bill 2009. The RTI Commissioner is to perform those functions of the Information Commissioner that are delegated to him or her by the Information Commissioner.

Clause 149 provides that the RTI Commissioner is subject to the Information Commissioner's direction.

Clause 150 provides that the RTI Commissioner is appointed by the Governor in Council under this Bill and not the *Public Service Act 2008*.

Clause 151 provides that a person may only be appointed as RTI Commissioner if the Minister has placed press advertisements nationally and has consulted with the parliamentary committee about the process for appointment and the appointment of the person as Commissioner. The advertisement and consultation on process requirements do not apply if a person is being reappointed.

Clause 152 provides that the RTI Commissioner holds office for a term of not more than 5 years as stated in the instrument of appointment. A person cannot be reappointed such that the person would hold the office of RTI Commissioner for a period of longer than 10 continuous years.

Clause 153 provides that the RTI Commissioner is to be paid remuneration and allowances, and hold office, on the terms and conditions decided by the Governor in Council.

Clause 154 provides that the RTI Commissioner can take leave in accordance with his or her entitlements with the approval of the Minister.

Clause 155 preserves the rights of a public service officer who is appointed to the office of the RTI Commissioner.

Clause 156 sets out the restrictions on outside employment by the RTI Commissioner.

Clause 157 provides that the RTI Commissioner may resign by signed notice to the Minister. The Minister must give the notice to the Governor for information and a copy to the Speaker of the Legislative Assembly and the chairperson of the parliamentary committee. Failure to give the notice to the Governor or copies to the Speaker and parliamentary committee will not invalidate the resignation.

Clause 158 empowers the Governor in Council to appoint an acting RTI Commissioner.

Part 5 Commissioner may be removed or suspended from office

Clause 159 provides a definition of Commissioner for part 5.

Clause 160 sets out the grounds for removal or suspension from office of the Information Commissioner, the RTI Commissioner or the Privacy Commissioner.

Clause 161 sets out the process for removal of an Information Commissioner, RTI Commissioner or Privacy Commissioner.

Clause 162 sets out the process for suspension of an Information Commissioner, RTI Commissioner or Privacy Commissioner.

Clause 163 sets out the process for suspension of an Information Commissioner, RTI Commissioner or Privacy Commissioner if the Legislative Assembly is not sitting.

Clause 164 provides that section 25(1)(b)(i) to (iii) of the *Acts Interpretation Act 1954* does not apply to the removal or suspension of an Information Commissioner, RTI Commissioner or Privacy Commissioner.

Part 6 Proceedings

Clause 165 provides that the Information Commissioner or a member of the Commissioner's staff cannot be compelled to produce an "RTI document" (as defined in the clause) or disclose "RTI information" (as defined) in third party legal proceedings. Third party legal proceedings is defined to exclude actions started by the Information Commissioner, or actions against the Commissioner or a member of the Commissioner's staff arising out of the performance of functions under the Bill.

Clause 166 provides that where a proceeding arising out of the Information Commissioner's functions is instituted by the State, the reasonable costs of a party to the proceeding are to be paid by the State.

Clause 167 gives the Information Commissioner and the RTI Commissioner a right to appear and be heard in any proceeding arising out of the performance of the functions of the Information Commissioner.

Clause 168 provides for intervention by the Attorney-General in any court proceeding arising out of the performance of the functions of the Information Commissioner.

Chapter 5 Protections and offences

Part 1 Protections

Clause 169 provides a definition of access was required or permitted to be given under this Act for the purposes of part 1.

Clause 170 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 or via a disclosure log 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 171 provides the State, an agency, Minister or officer with protection from actions for defamation or breach of confidence for publishing a document in a disclosure log. Protection is also given to the author of a document or another person because they supplied the document to an agency or Minister. The Information Commissioner is also protected in respect of decisions published under clause 110. Publication in a disclosure log or through publication of the Information Commissioner's decision is not authorisation or approval of publication of the document or its contents for the purposes of laws relating to defamation or breach of confidence.

Clause 172 ensures a decision-maker or other person concerned with the giving of access under this Bill does not commit a criminal offence through giving, or authorising, access.

Clause 173 ensures that a person authorising publication of documents in disclosure logs under clause 78 or the Information Commissioner publishing a decision under clause 110 does not commit a criminal offence by authorising or being involved in the publication of the document.

Clause 174 provides an agency, principal officer, Minister, any staff acting under the direction of any of these, a decision-maker, the Information Commissioner or the Information Commissioner's staff with protection from civil liability for acts or omissions under the Bill provided they were done honestly and without negligence.

Part 2 Offences

Clause 175 provides that it is an offence to direct a decision-maker or another person involved in an application to make a decision the decision-maker believes is not the decision that should be made under the Bill. This clause does not apply to directions to the Information Commissioner's staff under clause 146.

The clause also provides an offence of giving a direction to act contrary to the requirements of the Bill.

Clause 176 provides that a person commits an offence when that person knowingly deceives or misleads in order to gain access to a document containing matter relating to the personal information of another person.

Clause 177 provides that a person commits an offence if they provide information to the Information Commissioner that the person knows is false or misleading in a material particular.

Clause 178 provides that a person, after receiving notice, must not fail to give information, produce a document, or attend before the Information Commissioner without reasonable excuse.

Clause 179 requires the Information Commissioner and staff to maintain secrecy with respect to information obtained in the course of their duties. A breach of this requirement is an offence.

Chapter 6 Miscellaneous

Part 1 Archival documents

Clause 180 provides that the Bill does not affect access to documents, under the *Public Records Act 2002*, held by the Queensland State Archives. This clause is stated to not limit clause 4 which concerns the Bill not being intended to prevent publication or access other than under the Bill.

Clause 180 further provides that the *Public Records Act 2002* does not prevent a person obtaining access, under the Bill, to documents held by the Queensland State Archives. This clause is stated to not limit clause 6 which provides that the Bill operates despite prohibitions in other Acts prohibiting the disclosure of information.

Clause 181 provides for the situation where a person places a document in the custody of the Queensland State Archives or a public library and immediately prior to that the document was not a document of an agency or an official document of a Minister. Such a document is available for access by members of the community under this Bill, subject to any conditions the person may have placed on it at the time the document was placed in the

custody of the Queensland State Archives or public library or in accordance with section 23(2) of the repealed *Freedom of Information Act 1992*.

Clause 182 provides for the situation where a document has been placed in the custody of the Queensland State Archives by an agency either before or after the commencement of the clause, and the document is not reasonably available for inspection under the *Public Records Act 2002*. The document is taken to be in the agency's possession or in the possession of an agency which now carries out the functions of that agency, where the second agency is entitled to access to the document.

The clause also provides for the situation where a document has been placed in a place of deposit under the *Libraries Act 1988* by an agency, including Queensland State Archives, or under the *Public Records Act 2002* either before or after the commencement of the clause. The document is taken to be in the agency's possession or in the possession of an agency which now carries out the functions of that agency, where the second agency is entitled to access to the document.

Part 2 Operation of this Act

Clause 183 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 184 provides that the Information Commissioner may make a report to the parliamentary committee on matters relating to a particular external review.

The clause also provides that the Information Commissioner must, as soon as practicable after the end of each financial year, submit a report to the Speaker and the parliamentary committee on the operations of the office of the Information Commissioner for the previous financial year. The requirements for the contents of the report will be prescribed by regulation.

The parliamentary committee may also require the Information Commissioner to report on a particular aspect of his or her functions. Any report submitted to the Speaker or parliamentary committee is to be tabled

in the Legislative Assembly on the next sitting day following the submission.

Clause 185 provides that the Minister must, as soon as practicable after the end of each financial year, table a report in the Legislative Assembly on the operations of the Bill. The requirements for the contents of the report will be prescribed by regulation.

Clause 186 provides for the conduct of strategic reviews of the Information Commissioner. The reviews are to consider the functions of the Information Commissioner and assess whether the functions are being performed economically, effectively and efficiently.

The first strategic review is to be conducted within four years of the commencement of the Bill, with the subsequent reviews conducted at least every five years. Where the parliamentary committee has reported and made recommendations about a strategic review to the Legislative Assembly, the following strategic review is to be conducted five years after the tabling of the Minister's response to the parliamentary committee's report.

Strategic reviews are to be undertaken by a qualified person appointed by and in accordance with terms of reference decided by the Governor in Council. Prior to appointment, the Minister must consult with the parliamentary committee about the appointment of the reviewer and the terms of reference.

Clause 187 provides that the person conducting a strategic review has the powers of an authorised auditor under the *Auditor-General Act 2009* and is subject to legislation as if the person was an authorised auditor.

Clause 188 provides that a proposed report of the strategic review must be given to the Minister and the Information Commissioner before tabling in the Legislative Assembly.

The Information Commissioner may, within 15 business days of receiving the proposed report, provide written comments to the reviewer. If agreement can be reached on a comment made by the Information Commissioner, agreed amendments must be incorporated into the report. If agreement cannot be reached, the comment must be included in the report.

The clause provides that the report must then be given to the Minister and the Information Commissioner and tabled within three sitting days of the Minister's receipt of the report.

Clause 189 provides for the monitoring, reviewing and reporting functions of the parliamentary committee. The parliamentary committee is to decide, in consultation with the Information Commissioner, the statistical information that agencies and Ministers are to provide to the Commissioner for reports on the Bill's operation under clause 131.

Part 3 Other

Clause 190 clarifies that a person's agent is able to do, in accordance with the terms of the agent's authority, anything that the person could do under the Bill. A child's parent is able to do anything under the Bill that the child could do if the child were an adult.

Clause 191 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 192 provides the power for the chief executive to approve forms for use under the Bill.

Clause 193 provides a regulation-making power for the Governor in Council.

Chapter 7 Repeal and transitional provisions

Part 1 Repeal

Clause 194 repeals the *Freedom of Information Act 1992*.

Part 2 Transitional provisions

Clause 195 provides that, if the context permits, a reference to the *Freedom of Information Act 1992* in any Act or document is a reference to this Bill.

Clause 196 provides that a person who was the Information Commissioner immediately before the commencement of clause 123 (which establishes the office of Information Commissioner), continues as the Information Commissioner until an appointment is made under clause 134 (which provides for appointment of the Information Commissioner), and is taken to have satisfied the requirements of the oath under clause 140.

Clause 197 provides that a person who was the acting Information Commissioner immediately before the commencement of clause 143 (which allows the Governor in Council to appoint an acting Information Commissioner), continues as the acting Information Commissioner until an appointment is made under clause 143, and is taken to have satisfied the requirements of the oath under that clause.

Clause 198 preserves the validity of the appointment of the Information Commissioner or RTI Commissioner under the Bill where any part of the recruitment process was undertaken prior to commencement of the Bill.

Clause 199 applies the repealed *Freedom of Information Act 1992* to applications made under that Act that have not been finalised as at the commencement of the clause. An application has not been finalised until a decision is made and either the time for exercising review or appeal rights has ended without such rights being exercised, or any review or appeal in relation to the decision has ended.

Clause 200 continues the application of section 31A of the *Freedom of Information Act 1992* to access to documents granted under that Act, whether access is granted before or after the commencement of the clause. Section 31A concerns time limits in which a person may obtain access to documents where access has been granted.

Clause 201 continues the application of section 18 of the *Freedom of Information Act 1992* to an agency until the agency has published a statement of affairs. Section 18 requires agencies to annually publish information providing up to date information on its affairs.

Clause 202 provides that for clause 43, a first application includes an application under the repealed *Freedom of Information Act 1992*. Clause

43 of the Bill deals with refusal to deal with an application on the ground that the same document or documents was sought by the application under an earlier application.

Clause 203 provides transitional provisions for appeals and reviews to QCAT.

Chapter 8 Amendment of Acts

Part 1 Amendment of Ombudsman Act 2001

Clause 204 provides that this part amends the *Ombudsman Act 2001*.

Clause 205 amends section 16 to insert a new paragraph (h) into subsection (2). This has the effect of providing that the ombudsman may not investigate administrative action taken by the Information Commissioner in performance of the Commissioner's functions under section 128, 129, 130 or 131 of the Bill. Sections 128, 129, 130 and 131 deal with support functions of the Information Commissioner, decision-making functions of the Information Commissioner, external review functions of the Information Commissioner and performance monitoring functions of the Information Commissioner, respectively.

Part 2 Amendment of Public Records Act 2002

Clause 206 provides that this part amends the *Public Records Act 2002*.

Clause 207 amends section 3(b) which provides that a purpose of the Act is to ensure public access to records under the Act is consistent with the *Freedom of Information Act 1992*. The clause replaces the reference to the

repealed *Freedom of Information Act 1992* with a reference to the *Right to Information Act 2009* and the *Information Privacy Act 2009*.

Clause 208 omits and replaces section 16 which provides the meaning of "restricted access period" for the Act. Under section 18 of the Act the archivist must allow an applicant access to a public record if the restricted access period for the public record has ended. Under section 16(1) the restricted access period for documents potentially containing Cabinet matter presently starts on the day the record is made and ends 30 years after the day of the last action on the record. Section 16(1) is omitted and replaced with new subsections (1) and (1A) to provide that the restricted access period for Cabinet matter created on or after commencement of schedule 3 of the Bill will start on the day the record is made and end 20 years after the day of the last action on the record. A consequential amendment is made to section 16(2) to reflect that subsection (1) has been replaced with subsections (1) and (1A).

Section 16(2) defines the restricted access period for public records presently captured by section (1) that also contain potentially exempt matter mentioned in section 44 of the *Freedom of Information Act 1992*. Section 44 deals with matter containing personal affairs information. The reference to section 44 is replaced with a reference to information about the personal affairs of an individual, whether living or dead. The same reference is updated in the same way in section 16(4)(a).

Section 16(2)(a) is omitted and replaced and contains two subparagraphs (i) and (ii) to reflect that Cabinet matter in new section 16(1) now has a restricted access period of 20 years.

Section 16(4)(b) deals with the maximum length of a restricted access period stated in a notice given to the archivist for records classified as containing potentially exempt matter mentioned in section 42, 42A, 43 or 46 of the repealed *Freedom of Information Act 1992*. These references are updated to refer to schedule 3, section 7, 8, 9 or 10 of the *Right to Information Act 2009*.

A consequential amendment is made to section 16(5) to substitute a reference to the repealed *Freedom of Information Act 1992* with a reference to the *Right to Information Act 2009*.

Clause 209 amends section 18(2) which sets out the ways in which an applicant may access a public record where the restricted access period has not ended. Section 18(2)(a) refers to the access under the repealed *Freedom of Information Act 1992*. This reference is updated to refer to

access under the *Information Privacy Act 2009* or the *Right to Information Act 2009*.

Section 18(5) provides that access to a public record may be restricted under a regulation. Under paragraph (a) this may occur where the record is classified as containing matter that is potentially exempt under section 42(1)(g) to (i) or 42A of the repealed *Freedom of Information Act 1992*, and where other additional criteria apply. The references to the repealed provisions are updated to refer to schedule 3, section 9 or 10(1)(h), (i) or (j) of the *Right to Information Act 2009*.

Clause 210 replaces the heading to part 6 (transitional and consequential provisions). This is consequential on the addition of new transitional provisions in new division 2 of part 6, as contained in clause 204.

Clause 211 inserts new division 2 of part 6 to provide transitional arrangements as a consequence of the *Information Privacy Act 2009* and the *Right to Information Act 2009*. Under new section 62 references to the *Freedom of Information Act 1992* or a provision of that Act are taken to continue to apply in relation to anything done, under provisions containing those references, before the commencement of the clause.

Under new section 62A, if a public record is made prior to the commencement of the clause but its restricted access period has not yet been established, then the restricted access period is to be established as though the *Information Privacy Act 2009* and the *Right to Information Act 2009* had not been enacted. The Act, as unamended by this Bill, will therefore apply to determine the restricted access period of such records.

Clause 212 amends the dictionary in schedule 2 to omit the definition of "FOI Act" and to insert definitions of "IP Act" and "RTI Act".

Part 3 Amendment of regulations and other Acts

Clause 213 provides that schedule 5 amends the Acts and regulations that it mentions.

Schedule 1 Documents to which this Act does not apply

The clauses in schedule 1 are a list of documents to which the Bill does not apply, as provided in clause 11. These documents are excluded from the operation of the Bill.

It is intended that all exclusions of the right to apply for access to government documents should be contained within this Bill. The provisions of other Acts and regulations previously excluding the operation of the Bill are listed in schedule 5 for amendment or repeal.

The documents listed in schedule 1 include documents which were excluded by the repealed *Freedom of Information Act 1992* (for example, coronial documents during coronial investigations) and documents previously excluded from the application of the *Freedom of Information Act 1992* by other enactments (for example, documents relating to the *Terrorism (Preventative Detention) Act 2005*). Some references to the documents have been updated or amended with some expansion (for example, documents under the *Crime and Misconduct Act 2001*) and some documents are more correctly identified (for example, Commonwealth security documents).

Clause 1 excludes from the operation of the Bill documents that originated with or were received from certain bodies dealing with security matters. Parts of documents that contain summaries or extracts of information from an intelligence agency document are also excluded. This clause re-enacts (with the addition of the reference to the Defence Imagery and Geospatial Organisation and the summaries and extracts), section 11(1)(j) of the repealed *Freedom of Information Act 1992*.

Clause 2 excludes from the operation of the Bill documents created or received in carrying out activities under the *Terrorism (Preventative Detention) Act 2005*. This clause brings the exclusion of the operation of Freedom of Information legislation by section 7A of the *Terrorism (Preventative Detention) Act 2005* to within the Bill.

Clause 3 excludes from the operation of the Bill certain documents under the *Crime and Misconduct Act 2001*.

Firstly, a document under, or a document to the extent it comprises information about an activity under, chapter 3, part 6, divisions 2 or 3 of the *Crime and Misconduct Act 2001*. Divisions 2 and 3 deal with surveillance

device warrants. This part of the clause re-enacts the effect of the repealed part of section 120 of the *Crime and Misconduct Act 2001*. Section 120, so far as it provides that the *Freedom of Information Act 1992* does not apply to chapter 3, part 6, divisions 2 and 3, is repealed by schedule 5 of the Bill.

Secondly, a document under, or a document to the extent it comprises information about an activity under, chapter 3, part 6A of the *Crime and Misconduct Act 2001*. Part 6A deals with controlled operations and controlled activities for misconduct offences.

Thirdly, a document under, or a document to the extent it comprises information about an activity under, chapter 3, part 6B, divisions 2 to 7 of the *Crime and Misconduct Act 2001*. Divisions 2 to 7 deal with assumed identities. This part of the clause re-enacts the effect of the repealed part of section 146R of the *Crime and Misconduct Act 2001*. Section 146R, so far as it provides that the *Freedom of Information Act 1992* does not apply to chapter 3, part 6B, divisions 2 to 7, is repealed by schedule 5 of the Bill.

Fourthly, a covert search warrant under chapter 3, part 7 of the *Crime and Misconduct Act 2001*.

Fifthly, an additional powers warrant under chapter 3, part 8 of the *Crime and Misconduct Act 2001*.

Lastly, a document mentioned in section 371 of the *Crime and Misconduct Act 2001*. Section 371 deals with warrants and also any recording made or photograph taken under a warrant issued under the repealed *Criminal Justice Act 1989* or the repealed *Crime Commission Act 1997* or a transcript or copy made from information obtained under the warrant. This part of the clause re-enacts the effect of the repealed part of section 371(4) of the *Crime and Misconduct Act 2001*. Section 371(4), so far as it provides that the *Freedom of Information Act 1992* does not apply to documents mentioned in section 371(2), is repealed by schedule 5 of the Bill.

Clause 4 excludes from the operation of the Bill certain documents under the *Police Powers and Responsibilities Act 2000*.

Firstly, a document under, or a document to the extent that it comprises information about an activity under, chapter 10 of the *Police Powers and Responsibilities Act 2000*. Chapter 10 deals with controlled activities.

Secondly, a document under, or a document to the extent that it comprises information about an activity under, chapter 11 of the *Police Powers and Responsibilities Act 2000*. Chapter 11 deals with controlled operations.

Thirdly, a document under, or a document to the extent that it comprises information about an activity under, chapter 12, parts 2 to 7 of the *Police Powers and Responsibilities Act 2000*. Parts 2 to 7 deal with assumed identities. This part of the clause re-enacts the effect of the repealed part of section 281(2) of the *Police Powers and Responsibilities Act 2000*. Section 281(2), so far as it provides that the *Freedom of Information Act 1992* does not apply to chapter 12, parts 2 to 7, is repealed by schedule 5 of the Bill.

Fourthly, a document under, or a document to the extent that it comprises information about an activity under, chapter 13 of the *Police Powers and Responsibilities Act 2000*. Chapter 13 deals with surveillance device warrants. This part of the clause re-enacts the effect of repealed section 325(8) of the *Police Powers and Responsibilities Act 2000*. Section 325(8), which provides that the *Freedom of Information Act 1992* does not apply to chapter 13, is repealed by schedule 5 of the Bill.

Fifthly, a document under, or a document to the extent that it comprises information about an activity under, chapter 18 of the *Police Powers and Responsibilities Act 2000*, provided certain criteria apply. Chapter 18 deals with blood and urine testing of persons suspected of committing sexual or other serious assault offences. The further criteria is that a document is only excluded to the extent that it would enable the identity of a person in relation to whom a disease test order is made or the victim of an offence to which chapter 18 applies, to be revealed. This part of the clause re-enacts the effect of the repealed part of section 539 of the *Police Powers and Responsibilities Act 2000*. Section 539, so far as it provides that the *Freedom of Information Act 1992* does not apply to certain chapter 18 documents, is repealed by schedule 5 of the Bill.

Lastly, a document to the extent it comprises information kept in a register under chapter 21, part 2, division 2 of the *Police Powers and Responsibilities Act 2000*. Division 2 deals with a register of covert acts. This part of the clause re-enacts the effect of the repealed part of section 663 of the *Police Powers and Responsibilities Act 2000*. Section 663, so far as it provides that the *Freedom of Information Act 1992* does not apply to the register under chapter 21, part 2, division 2, is repealed by schedule 5 of the Bill.

Clause 5 excludes from the operation of the Bill a document created under part 5A of the *Police Service Administration Act 1990*. Part 5A deals with alcohol and drug tests for members of the police service. This clause re-enacts the effect of repealed section 5A.22 of the *Police Service Administration Act 1990*. Section 5A.22, which provides that the *Freedom*

of Information Act 1992 does not apply to part 5A, is repealed by schedule 5 of the Bill.

Clause 6 excludes from the operation of the Bill certain documents under the *Public Sector Ethics Act 1994*.

Firstly, a document created or received by the Queensland Integrity Commissioner in relation to advice sought on an issue about a person under section 28(1)(b) of the *Public Sector Ethics Act 1994*. Section 28(1)(b) provides the Commissioner with a function of giving advice to the Premier, if the Premier asks, on issues concerning ethics and integrity, including standard-setting for issues concerning ethics and integrity. Under section 28(2), advice under section 28(1)(b) on an issue about a person may only be given if the person is or has been a "designated person" (a term that is defined by the Act).

Secondly, a document created or received by the Queensland Integrity Commissioner in relation to a conflict of interest issue about which advice has been sought under section 30 of the *Public Sector Ethics Act 1994*. Section 30 enables a designated person to seek advice from the Commissioner about a conflict of interest issue involving a person. A "conflict of interest issue", as defined by the Act, is an issue about a conflict between the person's personal interests and the person's official duties.

This clause re-enacts the effect of repealed section 33A of the *Public Sector Ethics Act 1994*. Section 33A, which provides that the *Freedom of Information Act 1992* does not apply to the types of documents outlined above, is repealed by schedule 5 of the Bill.

Clause 7 excludes from the operation of the Bill a document created or received by the Prostitution Licensing Authority for the *Prostitution Act 1999*. This clause re-enacts the effect of repealed section 137 of the *Prostitution Act 1999*. Section 137, which provides that the *Freedom of Information Act 1992* does not apply to these types of documents, is repealed by schedule 5 of the Bill.

Clause 8 excludes from the operation of the Bill a document of an agency that is a coronial document while a coroner is investigating the death to which the document relates. The clause does not relate to documents given to, or accessed by, the agency under sections 25, 54 or 54A of the *Coroners Act 2003*. This clause re-enacts the effect of section 11C of the repealed *Freedom of Information Act 1992*.

Clause 9 excludes from the operation of the Bill a document created for a root cause analysis of a reportable event under part 4A of the *Ambulance Service Act 1991* or part 4B of the *Health Services Act 1991*. "Root cause analysis" and "reportable event" are defined under sections 36A and 36B of the *Ambulance Service Act 1991* and sections 38G and 38H of the *Health Services Act 1991*. This clause re-enacts the effect of section 11CA of the repealed *Freedom of Information Act 1992*.

Clause 10 excludes from the operation of the Bill certain documents under the *Workers' Compensation and Rehabilitation Act 2003*.

Firstly, a document created or received by the Workers' Compensation Regulatory Authority in carrying out its function of monitoring the financial performance of self-insurers. "Self-insurers" is defined in schedule 6 of the Act. This part of the clause re-enacts the effect of repealed section 379(2) of the *Workers' Compensation and Rehabilitation Act 2003*. Section 379(2), which provides that the *Freedom of Information Act 1992* does not apply to these types of documents, is repealed by schedule 5 of the Bill.

Secondly, a document created or received by WorkCover Queensland in carrying out its commercial activities other than activities about policies, applications for compensation or proceedings for damages. This part of the clause re-enacts the effect of repealed section 475(2) and (3)(a) of the *Workers' Compensation and Rehabilitation Act 2003*. Section 475(2) and (3)(a), which provide that the *Freedom of Information Act 1992* does not apply to these types of documents, is repealed by schedule 5 of the Bill. Section 475(3)(b) is also repealed by schedule 5, however, its effect is not re-enacted in the Bill. The effect of section 475(3)(b) is to exclude WorkCover Queensland's community service obligations which are prescribed by regulation. No such obligations have ever been prescribed.

Clause 11 excludes from the operation of the Bill certain documents under the *Biodiscovery Act 2004*:

- a benefit sharing agreement;
- a record kept by a department about a benefit sharing agreement or proposed benefit sharing agreement;
- a record kept by a department about a collection authority;
- a biodiscovery plan;
- a record kept by a department about a biodiscovery plan; and

- a document identifying the holder of a collection authority under which a sample of native biological material was given to a receiving entity.

The terms "benefit sharing agreement", "collection authority", "biodiscovery plan", "native biological material" and "receiving entity" are defined in the schedule to the Act. This clause re-enacts the effect of repealed section 116 of the *Biodiscovery Act 2004*. Section 116, which provides that the *Freedom of Information Act 1992* does not apply to these types of documents, is repealed by schedule 5 of the Bill.

Clause 12 excludes from the operation of the Bill a document to the extent it comprises confidential commercial information within the meaning of the *Gene Technology Act 2001*. "Confidential commercial information" is defined by the schedule to the Act. This clause re-enacts the effect of repealed section 187(3) of the *Gene Technology Act 2001*. Section 187(3), which provides that the *Freedom of Information Act 1992* does not apply to these types of documents, is repealed by schedule 5 of the Bill.

Clause 13 excludes from the operation of the Bill certain documents relating to matters under the *Sugar Industry Act 1999*.

Firstly, documents connected with the giving of a periodic estimate, the making or granting of an application for exemption or the giving of an annual return, held by the Sugar Authority between 1 July 2004 and 1 January 2006. Secondly, documents connected with the making, or granting of, an application for exemption or the giving of an annual return held by the Sugar Authority between 1 January 2006 and 1 July 2008.

Clause 14 excludes from the operation of the Bill a document to which section 11A of the repealed *Freedom of Information Act 1992* applied. Section 11A concerned certain documents received or brought into existence by government owned corporations.

Clause 15 excludes from the operation of the Bill a document to which section 11B of the repealed *Freedom of Information Act 1992* applied. Section 11B concerned certain documents received or brought into existence by local government corporatised corporations.

Schedule 2 Entities to which this Act does not apply

Part 1 Entities to which this Act does not apply

It is intended that all exclusions of the right to apply to agencies and Ministers for access to documents should be contained within this Bill. Clause 23 of the Bill provides a right of access to documents of an agency or Minister. This right is limited by the exclusion of entities listed in schedule 2 from the operation of the Bill. Part 1 of the schedule excludes the entities in their entirety. Part 2 of the schedule excludes entities in relation to a particular function.

Clause 1 excludes the Governor from the operation of the Bill. This clause re-enacts section 11(1)(a) of the repealed *Freedom of Information Act 1992*.

Clause 2 excludes from the operation of the Bill:

- the Legislative Assembly;
- a member of the Legislative Assembly;
- a committee of a the Legislative Assembly;
- a member of a committee of the Legislative Assembly;
- a parliamentary commission of inquiry; and
- a member of a parliamentary commission of inquiry.

This clause re-enacts section 11(1)(b) of the repealed *Freedom of Information Act 1992*.

Clause 3 excludes from the operation of the Bill the Parliamentary Judges Commission of Inquiry appointed under the expired *Parliamentary (Judges) Commission of Inquiry Act 1988*. This clause re-enacts section 11(1)(c) of the repealed *Freedom of Information Act 1992*.

Clause 4 excludes from the operation of the Bill a commission of inquiry issued by the Governor in Council whether before or after the

commencement of the schedule. This clause re-enacts section 11(1)(h) and (i) of the repealed *Freedom of Information Act 1992*.

Clause 5 excludes from the operation of the Bill the Parliamentary Service established by the *Parliamentary Service Act 1988*. This clause re-enacts section 11(1)(d) of the repealed *Freedom of Information Act 1992*.

Clause 6 excludes from the operation of the Bill a committee declared to be an approved quality assurance committee under section 31(1) of the *Health Services Act 1991*. This clause re-enacts section 11(1)(q) of the repealed *Freedom of Information Act 1992*.

Clause 7 excludes from the operation of the Bill a parents and citizens association under the *Education (General Provisions) Act 2006*. This clause re-enacts section 11(1)(w) of the repealed *Freedom of Information Act 1992*.

Clause 8 excludes from the operation of the Bill a grammar school to which the *Grammar Schools Act 1975* applies. This clause re-enacts section 11(1)(x) of the repealed *Freedom of Information Act 1992*.

Part 2 Entities to which this Act does not apply in relation to a particular function

The clauses in schedule 2, part 2 are a list of entities to which the Bill does not apply in respect of particular functions.

Clause 1 excludes from the operation of the Bill a court, or the holder of a judicial office or other office connected with a court, in relation to the court's judicial functions. "Court" is defined in schedule 6 to include a justice and a coroner. This clause re-enacts section 11(1)(e) of the repealed *Freedom of Information Act 1992*.

Clause 2 excludes from the operation of the Bill a registry or other office of a court, or the staff of a registry or other office of a court in their official capacity, so far as its or their functions relate to the court's judicial functions. This clause re-enacts section 11(1)(f) of the repealed *Freedom of Information Act 1992*.

Clause 3 excludes from the operation of the Bill a tribunal in relation to the tribunal's judicial or quasi-judicial functions. This clause and clause 4 re-enact section 11(1)(fa) of the repealed *Freedom of Information Act 1992*.

Clause 4 excludes from the operation of the Bill a tribunal member or the holder of an office connected with a tribunal, in relation to the tribunal's judicial or quasi-judicial functions. This clause and clause 3 re-enact section 11(1)(fa) of the repealed *Freedom of Information Act 1992*.

Clause 5 excludes from the operation of the Bill a registry of a tribunal, or the staff of a registry of a tribunal in their official capacity, so far as its or their functions relate to the tribunal's judicial or quasi-judicial functions. This clause re-enacts section 11(1)(fb) of the repealed *Freedom of Information Act 1992*.

Clause 6 excludes from the operation of the Bill a quasi-judicial entity in relation to its quasi-judicial functions. This is a new function-based exclusion to ensure that entities that are not named as tribunals (for example, the Family Responsibilities Commission), have similar protections for the performance of their quasi-judicial functions. Clauses 7 and 8 extend this protection in the same manner as for tribunals.

Clause 7 excludes from the operation of the Bill a member of, or the holder of an office connected with a quasi-judicial entity, in relation to the entity's quasi-judicial functions.

Clause 8 excludes from the operation of the Bill the staff of a quasi-judicial entity in their official capacity, so far as their functions relate to the entity's quasi-judicial functions.

Clause 9 excludes from the operation of the Bill the Queensland Treasury Corporation in relation to its borrowing, liability and asset management related functions. This clause re-enacts section 11(1)(m) of the repealed *Freedom of Information Act 1992*.

Clause 10 excludes from the operation of the Bill the adult guardian under the *Guardianship and Administration Act 2000* in relation to an investigation or audit under that Act. This clause re-enacts section 11(1)(o) of the repealed *Freedom of Information Act 1992*.

Clause 11 excludes from the operation of the Bill the Health Rights Commissioner, in relation to the conciliation of health service complaints under part 6 of the repealed *Health Rights Commissioner Act 1991*. This

clause re-enacts part of section 11(1)(p) of the repealed *Freedom of Information Act 1992*.

Clause 12 excludes from the operation of the Bill the Health Quality and Complaints Commission in relation to the conciliation of health service complaints under:

- part 6 of the repealed *Health Rights Commission Act 1991*; or
- chapter 6 of the *Health Quality and Complaints Commission Act 2006*.

This clause re-enacts section 11(1)(pa) of the repealed *Freedom of Information Act 1992*.

Clause 13 excludes from the operation of the Bill CS Energy Limited or a subsidiary of CS Energy Limited in relation to its functions, except so far as they relate to community service obligations.

Clause 14 excludes from the operation of the Bill Ergon Energy Queensland Pty Ltd in relation to its functions, except so far as they relate to community service obligations.

Clause 15 excludes from the operation of the Bill QIC Limited or a subsidiary of QIC Limited in relation to its functions, except so far as they relate to community service obligations.

Clause 16 excludes from the operation of the Bill QR Limited in relation to its freight operations, except so far as they relate to community service obligations.

Clause 17 excludes from the operation of the Bill a subsidiary of QR Limited (other than an entity mentioned in item 18) in relation to its freight operations, except so far as they relate to community service obligations.

Clause 18 excludes from the operation of the Bill ARG Risk Management Ltd, On Track Insurance Pty Ltd or QR Surat Basin Pty Ltd in relation to their functions, except so far as they relate to community service obligations.

Clause 19 excludes from the operation of the Bill Stanwell Corporation Limited or a subsidiary of Stanwell Corporation Limited in relation to its functions, except so far as they relate to community service obligations.

Clause 20 excludes from the operation of the Bill Tarong Energy Corporation Limited or a subsidiary of Tarong Energy Corporation Limited

in relation to its functions, except so far as they relate to community service obligations.

Schedule 3 Exempt information

The clauses in schedule 3 are a list of information which is exempt information. Pursuant to sections 46(3)(a) and 47, access to a document may be refused to the extent that it comprises exempt information.

As stated in clause 44, the types of information listed in schedule 3 represent the types of information the disclosure of which Parliament has considered would, on balance, be contrary to the public interest,

Clause 1 provides an exemption for Cabinet matter created before commencement. Matter created before the commencement of this clause, mentioned in section 36(1) of the repealed *Freedom of Information Act 1992* and not officially published by a decision of Cabinet is exempt information.

This clause continues the effect of section 36 of the repealed *Freedom of Information Act 1992* for documents created before commencement.

Clause 2 provides an exemption for Cabinet information, including Cabinet committee or subcommittee information, created on or after commencement. Information created on or after commencement is exempt information if:

- it has been created for the consideration of Cabinet;
- its disclosure would reveal any consideration of Cabinet or would otherwise prejudice the confidentiality of Cabinet considerations or operations; or
- it has been created in the course of the State's budgetary processes.

Without limiting the general purposive test for exempt information in sub-clause (1), sub-clause (3) sets out documents which are taken to be exempt under the clause, such as Cabinet submissions and briefing notes and drafts of such documents. An attachment to the documents listed in sub-clause (3) may also be considered exempt information provided it falls within the general test in sub-clause (1).

Information falling within this clause has the status of exempt information for 10 years. The time limit is dated as follows:

- for information considered by Cabinet – 10 years from the date the information was most recently considered by Cabinet; or
- for other information – 10 years from the date the information was created.

After the expiration of 10 years, the information is no longer considered exempt for the purposes of clause 2. However, other exemptions or public interest factors may apply.

Cabinet information is not exempt information if it has been published by decision of Cabinet.

Clause 3 provides an exemption for Executive Council information. The clause sets out what information related to Executive Council is exempt information, for example, information created for submission to Executive Council or created for briefing the Governor.

Executive Council information is not exempt information if it has been published by decision of the Governor in Council.

This clause re-enacts section 37 of the repealed *Freedom of Information Act 1992*. However, the ability of the Minister to provide a conclusive certificate under section 37(3) is not re-enacted.

Clause 4 provides an exemption for information briefing an incoming Minister. Information that is created by a department for the purpose of briefing an incoming Minister information is exempt information. Information falling within this clause has the status of exempt information for 10 years from the date of the appointment of the Minister.

Clause 5 provides an exemption for information revealing particular Sovereign communications. Information is exempt information if its disclosure would reveal:

- any communications between the Sovereign and the Sovereign's representative; or
- any communications between the Sovereign, or the Sovereign's representative, and the Premier.

Clause 6 provides an exemption for information the disclosure of which would be contempt of court or Parliament. Information is exempt

information if its public disclosure would, apart from this Bill and any immunity of the Crown:

- be contempt of court;
- be contrary to an order of a commission of inquiry, royal commission or a person having power to take evidence on oath; or
- infringe the privileges of the Queensland Parliament or another Parliament of Australia.

This clause re-enacts section 50 of the repealed *Freedom of Information Act 1992*.

Clause 7 provides an exemption for information subject to legal professional privilege. Information is exempt information if it would be privileged from production in a legal proceeding on a ground of legal professional privilege.

This clause re-enacts section 43 of the repealed *Freedom of Information Act 1992*.

Clause 8 provides an exemption for information the disclosure of which would found an action for breach of confidence. However, information is not exempt if it:

- is deliberative process information; and
- was communicated by a Minister, a member of the staff of or a consultant to a Minister, an officer of an agency, the State or an agency.

"Deliberative process information" is defined by sub-clause (3). The exemption will be applicable therefore only where the information is communicated by an entity outside of Government, or if communicated from within Government, is not deliberative process information.

This clause re-enacts section 46(1)(a) of the repealed *Freedom of Information Act 1992*. Section 46(1)(b), which provided an exemption for confidential communications, appears in clause 8, part 4 of schedule 4 as a harm factor.

Clause 9 provides an exemption for national or State security information. Information is exempt information if its disclosure would reasonably be expected to damage the security of the Commonwealth or a State. (Under the *Acts Interpretation Act 1954* State means a State of the

Commonwealth, and includes the Australian Capital Territory and the Northern Territory.) The security of the Commonwealth and the security of a State are non-exhaustively defined by sub-clauses (2) and (3) respectively.

This clause re-enacts section 42A of the repealed *Freedom of Information Act 1992*. However, the ability of the Minister to provide a conclusive certificate under section 42A(5) is not re-enacted.

Clause 10 provides an exemption for law enforcement or public safety information. Under sub-clause (1) information is exempt if its disclosure could reasonably be expected to:

- prejudice the investigation of a contravention or possible contravention of the law (including revenue law) in a particular case;
- enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained;
- endanger a person's life or physical safety;
- result in a person being subjected to a serious act of harassment or intimidation;
- prejudice a person's fair trial or the impartial adjudication of a case;
- prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law (including revenue law);
- prejudice the maintenance or enforcement of a lawful method of procedure for protecting public safety;
- endanger the security of a building, structure or vehicle;
- prejudice a system or procedure for the protection of persons, property or the environment;
- facilitate a person's escape from lawful custody; or
- prejudice the wellbeing of a cultural or natural resource or the habitat of animals or plants.

However, information will not be exempt under sub-clause (1) if it consists of:

- matter revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law;
- matter containing a general outline of the structure of a program adopted by an agency for dealing with a contravention or possible contravention of the law;
- a report on the degree of success achieved in a program adopted by an agency for dealing with a contravention or possible contravention of the law;
- a report prepared in the course of a routine law enforcement or inspection by an agency whose functions include that of enforcing the law – other than the criminal law or the law relating to misconduct under the *Crime and Misconduct Act 2001*; or
- a report on a law enforcement investigation that has already been disclosed to the person or body the subject of the investigation.

Information is also exempt if it consists of information given in the course of an investigation of a contravention or possible contravention of the law (including revenue law), where the information was given under compulsion under an Act that abrogated the privilege against self-incrimination.

Information is also exempt information if it consists of information obtained, used or prepared for an investigation by the Crime and Misconduct Commission, the former Criminal Justice Commission, the former Queensland Crime Commission or another agency, in the performance of prescribed functions. These prescribed functions are defined in sub-clause (9). Information of this type is not exempt if it consists of information about the applicant and the investigation has been finalised.

Information is also exempt information if it consists of information obtained, used or prepared by Crime Stoppers Queensland Limited or for an investigation by the State Intelligence Group or the State Security Operations Group. Information of this type is not exempt if it consists of information about the applicant and the investigation has been finalised.

This clause re-enacts section 42 of the repealed *Freedom of Information Act 1992*, with the addition of the exemptions for information of the State Intelligence Group, the State Security Operations Group or Crime Stoppers

Queensland Limited information. The reference to disclosure in the public interest under section 42(2) (now clause 10(2)) and the ability of the Minister to provide a conclusive certificate under section 42(3) are not re-enacted.

Clause 11 provides an exemption for investment incentive scheme information. An investment incentive scheme is a scheme to promote projects by providing incentives, such as a tax refund or lump sum. The projects involve investing or expending money with the intention of creating job opportunities or continuing existing jobs. Such projects aim to provide stimulus to the growth of businesses in Queensland in certain sectors. An example is the Queensland Investment Incentives Scheme.

Information is exempt information if its disclosure could reasonably be expected to disclose information about:

- a particular incentive given to or arranged for a relevant person under a contract in relation to an investment incentive scheme; or
- an incentive sought by or proposed for a relevant person whether or not an incentive was in fact given or arranged under an investment incentive scheme.

Information falling within this clause has the status of exempt information for a limited period only. For an incentive given or arranged under a contract, the period ends at the earlier of:

- 1 year after the contract ends; or
- 8 years after the contract begins.

For an incentive sought or proposed but not given or arranged, the period ends 8 years after the last written communication between the department and the relevant person in relation to the incentive.

The term "relevant person" is defined in sub-clause (2) to mean a person who inquires about an investment incentive scheme, a person who makes an application under an investment incentive scheme, or a person who is given an incentive.

After the expiration of the periods, the information is no longer considered exempt for the purposes of clause 2. However, other exemptions or public interest factors may apply.

This clause re-enacts section 47A of the repealed *Freedom of Information Act 1992*, with the addition of the time limits.

Clause 12 provides that information is exempt information if its disclosure is prohibited by a provision of an Act listed in sub-clause (1). Information captured by the provisions listed is therefore exempt information under the Bill. Information captured by provisions other than those listed in sub-clause (1) will not have the status of exempt information. Pursuant to sub-clause (2), information will not be exempt under sub-clause (1) if it is information personal to the applicant.

This clause re-enacts section 48 and schedule 1 of the repealed *Freedom of Information Act 1992*, with the addition of the inclusion of section 41 of the *Child Protection (Offender Prohibition Order) Act 2008*. Clause 12 also includes the exemption under section 39(2) of the repealed *Freedom of Information Act 1992* for information the disclosure of which is prohibited by section 92 of the *Financial Administration and Audit Act 1977*. This has been updated to refer to section 53 of the *Auditor-General Act 2009* which re-enacts section 92. Clause 12 also exempts information contained in a document referred to in section 112(1) of the repealed *Freedom on Information Act 1992.*

Schedule 4 Factors for deciding the public interest

Clause 46 provides that an agency or Minister may refuse access to a document to the extent it comprises information the disclosure of which would, on balance, be contrary to the public interest. Schedule 4 lists the factors to which an agency or Minister is to have regard when deciding whether, on balance, disclosure of information would be contrary to the public interest. Clause 49 sets out the steps that must be taken and schedule 4 sets out the factors to which regard may be had.

Part 1 Factors irrelevant to deciding the public interest

Part 1 of schedule 4 lists factors which are irrelevant to deciding whether, on balance, disclosure of information would be contrary to the public interest.

Clause 1 provides that it is irrelevant to consider that disclosure of the information could reasonably be expected to cause embarrassment to the Government or to cause a loss of confidence in the Government.

Clause 2 provides that it is irrelevant to consider that disclosure of the information could reasonably be expected to result in the applicant misinterpreting or misunderstanding the document.

Clause 3 provides that it is irrelevant to consider that disclosure of the information could reasonably be expected to result in mischievous conduct by the applicant.

Clause 4 provides that it is irrelevant to consider that the person who created the document containing the information was or is of high seniority within the agency.

Part 2 Factors favouring disclosure in the public interest

Part 2 of schedule 4 lists factors which favour disclosure of information.

Clause 1 provides that a factor in favour of disclosure exists where disclosure of the information could reasonably be expected to promote open discussion of public affairs and enhance the Government's accountability.

Clause 2 provides that a factor in favour of disclosure exists if disclosure of the information could reasonably be expected to contribute to positive and informed debate on important issues or matters of serious interest.

Clause 3 provides that a factor in favour of disclosure exists if disclosure of the information could reasonably be expected to inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by the Government in its dealings with members of the community.

Clause 4 provides that a factor in favour of disclosure exists if disclosure of the information could reasonably be expected to ensure effective oversight of expenditure of public funds.

Clause 5 provides that a factor in favour of disclosure exists if disclosure of the information could reasonably be expected to allow or assist inquiry into

possible deficiencies in the conduct or administration of an agency or official.

Clause 6 provides that a factor in favour of disclosure exists if disclosure of the information could reasonably be expected to reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct.

Clause 7 provides that a factor in favour of disclosure exists if the information is the applicant's personal information.

Clause 8 provides that a factor in favour of disclosure exists if the information is the personal information of a child where the agent acting for the child applicant is the child's parent and disclosure of the information is reasonably considered to be in the child's best interests.

Clause 9 provides that a factor in favour of disclosure exists if the information is the personal information of an individual who is deceased and the applicant is an eligible family member of the deceased person. The term "eligible family member" is defined in schedule 6.

Clause 10 provides that a factor in favour of disclosure exists if disclosure of the information could reasonably be expected to advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies.

Clause 11 provides that a factor in favour of disclosure exists if disclosure of the information could reasonably be expected to reveal the reason for a government decision and any background or contextual information that informed the decision.

Clause 12 provides that a factor in favour of disclosure exists if disclosure of the information could reasonably be expected to reveal that the information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant.

Clause 13 provides that a factor in favour of disclosure exists if disclosure of the information could reasonably be expected to contribute to the protection of the environment.

Clause 14 provides that a factor in favour of disclosure exists if disclosure of the information could reasonably be expected to reveal environmental or health risks or measures relating to public health and safety.

Clause 15 provides that a factor in favour of disclosure exists if disclosure of the information could reasonably be expected to contribute to the maintenance of peace and order.

Clause 16 provides that a factor in favour of disclosure exists if disclosure of the information could reasonably be expected to contribute to the administration of justice generally, including procedural fairness.

Clause 17 provides that a factor in favour of disclosure exists if disclosure of the information could reasonably be expected to contribute to the administration of justice for a person.

Clause 18 provides that a factor in favour of disclosure exists if disclosure of the information could reasonably be expected to contribute to the enforcement of the criminal law.

Clause 19 provides that a factor in favour of disclosure exists if disclosure of the information could reasonably be expected to contribute to innovation and the facilitation of research.

Part 3 Factors favouring nondisclosure in the public interest

Part 3 of schedule 4 lists factors which favour nondisclosure of information.

Clause 1 provides that a factor in favour of nondisclosure exists if disclosure of the information could reasonably be expected to prejudice the collective responsibility of Cabinet or the individual responsibility of members to Parliament.

Clause 2 provides that a factor in favour of nondisclosure exists if disclosure of the information could reasonably be expected to prejudice the private, business, professional, commercial or financial affairs of entities.

Clause 3 provides that a factor in favour of nondisclosure exists if disclosure of the information could reasonably be expected to prejudice the protection of an individual's right to privacy.

Clause 4 provides that a factor in favour of nondisclosure exists if the information is the personal information of a child where the agent acting

for the child applicant is the child's parent and disclosure of the information is reasonably considered to not be in the child's best interests.

Clause 5 provides that a factor in favour of nondisclosure exists if the information is the personal information of a deceased person and the applicant is an eligible family member of the deceased person and the disclosure of the information could reasonably be expected to impact on the deceased person's privacy if the deceased person were alive. The term "eligible family member" is defined in schedule 6.

Clause 6 provides that a factor in favour of nondisclosure exists if disclosure of the information could reasonably be expected to prejudice the fair treatment of individuals and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct.

Clause 7 provides that a factor in favour of nondisclosure exists if disclosure of the information could reasonably be expected to prejudice security, law enforcement or public safety.

Clause 8 provides that a factor in favour of nondisclosure exists if disclosure of the information could reasonably be expected to impede the administration of justice generally, including procedural fairness.

Clause 9 provides that a factor in favour of nondisclosure exists if disclosure of the information could reasonably be expected to impede the administration of justice for a person.

Clause 10 provides that a factor in favour of nondisclosure exists if disclosure of the information could reasonably be expected to prejudice the good order of a corrective services facility. The term "corrective services facility" is defined in schedule 6.

Clause 11 provides that a factor in favour of nondisclosure exists if disclosure of the information could reasonably be expected to impede the protection of the environment.

Clause 12 provides that a factor in favour of nondisclosure exists if disclosure of the information could reasonably be expected to prejudice the economy of the State.

Clause 13 provides that a factor in favour of nondisclosure exists if disclosure of the information could reasonably be expected to prejudice the flow of information to the police or another law enforcement or regulatory agency.

Clause 14 provides that a factor in favour of nondisclosure exists if disclosure of the information could reasonably be expected to prejudice intergovernmental relations.

Clause 15 provides that a factor in favour of nondisclosure exists if disclosure of the information could reasonably be expected to prejudice trade secrets, business affairs or research of an agency or person.

Clause 16 provides that a factor in favour of nondisclosure exists if disclosure of the information could reasonably be expected to prejudice an agency's ability to obtain confidential information.

Clause 17 provides that a factor in favour of nondisclosure exists if disclosure of the information could reasonably be expected to prejudice the competitive commercial activities of an agency.

Clause 18 provides that a factor in favour of nondisclosure exists if disclosure of the information could reasonably be expected to prejudice the conduct of investigations, audits or reviews by the ombudsman or auditor-general.

Clause 19 provides that a factor in favour of nondisclosure exists if disclosure of the information could reasonably be expected to prejudice the management function of an agency or the conduct of industrial relations by an agency.

Clause 20 provides that a factor in favour of nondisclosure exists if disclosure of the information could reasonably be expected to prejudice a deliberative process of government.

Clause 21 provides that a factor in favour of nondisclosure exists if disclosure of the information could reasonably be expected to prejudice the effectiveness of testing or auditing procedures.

Clause 22 provides that a factor in favour of nondisclosure exists if disclosure of the information is prohibited by an Act.

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

Part 4 of schedule 4 contains a list of factors for decision-makers to consider that favour nondisclosure of information because of harm in disclosure (known as harm factors). The harm factors reflect Parliament's view that, if the relevant information was disclosed, harm could reasonably be expected to flow from disclosure.

Clause 1 identifies as a harm factor the reasonable expectation that disclosure of the information sought could:

- cause damage to relations between the State and another government; or
- divulge information of a confidential nature that was communicated in confidence by or on behalf of another government.

Information falling within this clause is identified as creating a reasonable expectation of harm for 10 years from the date the information was brought into existence. However, an agency, a Minister or a person who is concerned about the possible release of the information may apply to the Information Commissioner for an extension of the 10 year period. The Information Commissioner may extend the period if the Commissioner considers such an extension to be in the public interest.

This clause re-enacts the subject matter of section 38 of the repealed *Freedom of Information Act 1992* as a factor indicating the reasonable likelihood of harm flowing from disclosure. Section 38 formerly provided an exemption for information affecting relations with other governments.

Clause 2 identifies as a harm factor the reasonable expectation that disclosure of the information sought could prejudice the conduct of an investigation by the ombudsman or audit by the auditor-general.

This clause re-enacts the subject matter of section 39(1)(a) and (b) of the repealed *Freedom of Information Act 1992*. Section 39(1)(a) and (b) provided an exemption for certain information affecting investigations by the ombudsman or audits by the auditor-general. The reference to the

abolished Service Delivery and Performance Commission (for which exemption section 39(1)(c) provided an exemption for certain information) is not retained. The exemption under section 39(2) for information the disclosure of which is prohibited by section 62 of the repealed *Service Delivery and Performance Commission Act 2005* is not retained.

The exemption under section 39(2) for information disclosure of which is prohibited by section 92 of the *Financial Administration and Audit Act 1977* is re-enacted as an exemption in clause 12 of schedule 3 to the Bill by reference to section 53 of the *Auditor-General Act 2009*.

Clause 3 identifies as a harm factor the reasonable expectation that disclosure of the information could have a prejudicial or adverse effect on the operations of agencies. Parliament has indicated its view that disclosure of information could reasonably be expected to cause public interest harm if disclosure could:

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

This clause re-enacts the subject matter of section 40 of the repealed *Freedom of Information Act 1992*. Section 40 provided an exemption for certain information affecting particular operations of agencies.

Clause 4 identifies as a harm factor the reasonable expectation of public interest harm through disclosure of:

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

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

However, the harm does not apply if the information in question:

- appears in an agency's policy document;

- is factual or statistical information;
- is an expert opinion or analysis (other than where such opinion or analysis is commissioned in the course of or for a deliberative process);
- is a report of a body or organisation established within an agency and prescribed by regulation; or
- is a record of a decision or ruling given in the exercise of a power, adjudicative function, statutory function or the administration of a publicly funded scheme.

If public consultation is part of the deliberative processes, then the harm only applies until the public consultation begins.

This clause re-enacts the subject matter of section 41 of the *repealed Freedom of Information Act 1992* with amendment to clarify the harm reasonably expected to flow from disclosure of expert opinion or analysis. Section 41 provided an exemption for certain information disclosing deliberative processes.

Clause 5 provides that the effect of disclosure of information created for ensuring the security or good order of a corrective services facility may result in public interest harm. Disclosure of information could reasonably be expected to cause public interest harm if it resulted in disclosure of information in the possession of information of or created by the department administering the *Corrective Services Act 2006* and is:

- a recording of an offender's telephone call from a corrective services facility;
- an audio recording in a corrective services facility;
- a visual recording in a corrective services facility; or
- a document referring to or containing such a recording.

The word "offender" is defined in the clause. The term "corrective services facility" is defined in schedule 6.

This clause re-enacts the subject matter of section 42AA of the repealed *Freedom of Information Act 1992*. Section 42AA had provided an exemption for certain information disclosing information created for ensuring the security or good order of a corrective services facility.

Clause 6 identifies as a harm factor the reasonable expectation that disclosure of the information sought would disclose personal information

of a person, whether living or dead. However, this does not apply where the information is personal to the applicant. The fact that an applicant has applied for his or her personal information is a factor favouring disclosure under clause 7 of part 2, schedule 4.

This clause re-enacts the subject matter of section 44 of the repealed *Freedom of Information Act 1992*. Section 44 provided an exemption for matter affecting personal affairs. Under clause 6, the term "personal information" rather than "personal affairs" is used.

Clause 7 provides that the effect of disclosure of certain information about trade secrets, business affairs or research may result in public interest harm. The information captured by this clause has also been commonly known as "commercial in confidence information". Disclosure of information could reasonably be expected to cause public interest harm if it resulted in the disclosure of:

- trade secrets of an agency or another person;
- information – other than trade secrets – that has commercial value to an agency or another person, where disclosure could reasonably be expected to destroy or diminish the commercial value of it;
- information – other than trade secrets or the information mentioned directly above - that concerns the business, professional, commercial or financial affairs of an agency or another person, where disclosure could reasonably be expected to have an adverse effect on those affairs or prejudice the future supply of this type of information to government; or
- the purposes or results of research and such disclosure could reasonably be expected to have an adverse effect on the agency or other person by or on whose behalf the research is intended to be, is being, or was, carried out.

The clause does not apply where the information in question is the business, professional, commercial, financial or research information of the person by or on whose behalf an application for access is made.

This clause re-enacts the subject matter of section 45 of the repealed *Freedom of Information Act 1992*. Section 45 provided an exemption for certain information that disclosed trade secrets, business affairs or research.

Clause 8 provides that the effect of disclosure of certain information about confidential communications may result in public interest harm.

Disclosure of information could reasonably be expected to cause public interest harm if:

- the information is of a confidential nature communicated in confidence; and
- disclosure of the information could reasonably be expected to prejudice the future supply of this type of information.

This clause does not apply if the information:

- is deliberative process information; and
- was communicated by a Minister, a member of the staff of or a consultant to a Minister, an officer of an agency, the State or an agency.

"Deliberative process information" is defined by sub-clause (3). The clause will be applicable therefore only where the confidential information is communicated by an entity outside of Government, or, if communicated from within Government, is not deliberative process information.

This clause re-enacts the subject matter of repealed section 46(1)(b) of the repealed *Freedom of Information Act 1992*. Section 46(1)(b) provided an exemption for confidential communications. Section 46(1)(a) which provided an exemption for information the disclosure of which would found an action for breach of confidence is retained in clause 8 of schedule 3 as an exemption.

Clause 9 provides that the effect of the disclosure of certain information affecting the State economy may result in public interest harm. Disclosure of information could reasonably be expected to cause public interest harm if disclosure could:

- have a substantial adverse effect on the ability of the government to manage the economy of the State. (Without limiting the nature of such information, it includes the consideration of a contemplated movement in government taxes, fees or charges or the imposition of credit controls.); or
- expose a person or class of persons to an unfair advantage or disadvantage because of the premature disclosure of information concerning proposed action or inaction of the Legislative Assembly or the government in the course of, or for, managing the economy of the State.

This clause re-enacts the subject matter of section 47 of the repealed *Freedom of Information Act 1992*. Section 47 provided an exemption for certain information affecting the State economy.

Clause 10 provides that public interest harm arises where the disclosure of information could reasonably be expected to have a substantial adverse effect on the State's or an agency's financial or property interests.

Information falling within this clause is identified as creating a reasonable expectation of harm for eight years from the date the information was created. The time period reflects Parliament's view that, after eight years, the reasonable likelihood of harm flowing from disclosure of the information is reduced or lessened.

Apart from the time period, this clause re-enacts the subject matter of section 49 of the repealed *Freedom of Information Act 1992*. Section 49 provided an exemption for certain information affecting State or agency financial or property interests.

Schedule 5 Amendment of Acts and Regulations

Schedule 5 details minor and consequential amendments to other Acts. These amendments give effect to Parliament's intention to locate all legislative provision limiting the operation of right to information legislation within this Bill.

Schedule 6 Dictionary

Schedule 6 provides a dictionary to define key terms in the Bill.