

Information Privacy Bill 2007

Explanatory Memorandum

General

In general, this Bill —

- regulates the handling of personal information by the public sector;
- regulates the handling of health information by the public and private sectors;
- creates a right to apply for access to, and amendment of, health records held by the private sector; and
- facilitates the exchange of personal or health information held by the public sector in appropriate circumstances.

The Bill —

- establishes a set of Information Privacy Principles governing the handling of personal information by the public sector;
- establishes a set of Health Privacy Principles governing the handling of health information by the public and private sectors;
- provides for the making and approval of information privacy codes of practice and health privacy codes of practice;
- provides for the making of complaints in respect of alleged interferences with privacy and decisions relating to access to and amendment of health records, and establishes processes for the resolution of those complaints;
- establishes the office of Privacy and Information Commissioner, which encompasses the existing office of Information Commissioner;
- enables the offices of Parliamentary Commissioner and Privacy and Information Commissioner to be held concurrently; and
- amends the *Freedom of Information Act 1992* (“the FOI Act”), the *Parliamentary Commissioner Act 1971*, and other Acts as a consequence of the enactment of the Information Privacy Act.

Clause Notes

Part 1 — Preliminary

Clause 1. Short title

The Act may be cited as the *Information Privacy Act 2007*.

Clause 2. Commencement

Clauses 1 and 2 come into operation on the day of Royal Assent while the balance of the Act comes into operation on a day to be fixed by proclamation. Different days may be fixed for different provisions.

Clause 3. Objects of the Act

States the main objects of the Act.

Clause 4. Terms used in the Act

Defines terms used in the Act for the purpose of their interpretation. Among other terms —

“authorised representative” defines who may be an authorised representative in relation to an individual. An “authorised representative” may, for instance, consent to the disclosure of an individual’s personal information to another person (see cl.128), or request access to the health information of an individual where the individual is incapable of making the relevant decision (see cl.53);

“child protection agency” means the Public Service department principally assisting the Minister administering the *Children and Community Services Act 2004*, or a prescribed person, body or office. In certain circumstances a child protection agency does not have to comply with some of the information privacy principles or health privacy principles (cl.11).

“child protection functions” means functions under an enactment prescribed for the purposes of this definition.

“Commissioner” means the person holding the office of Privacy and Information Commissioner established under this Act;

“contractor” means a person/body that handles personal information under a contract between the person/body and a public organisation listed in Schedule 1 to the Act;

“disability” has the meaning given in s.3 of the *Disability Services Act 1993*.

“exempt organisation” means a person, body or office referred to in Schedule 2 including staff.

“handle” in relation to personal or health information, means to collect, hold, use or disclose that information.

“health service” means an activity performed in relation to an individual that is intended or claimed by the organisation performing it, to assess, maintain or improve the individual’s health, or to diagnose or treat the individual’s actual or suspected illness, injury or disability. It also includes: disability services; palliative care services; aged care services; and the dispensing of prescriptions for drugs or medicinal preparations by a pharmacist. The definition does not include a health service or class of health service that is prescribed as an exempt service;

“health service provider” means an organisation to the extent that it provides a “health service” in Western Australia other than a health service provider or class of health service provider that is prescribed as an exempt health service provider;

“information privacy principle” or **“IPP”** means an information privacy principle set out in Schedule 3. **“Health privacy principle”** or **“HPP”** means a health privacy principle set out in Schedule 4 to the Act. In the Act, each principle is referred to by its number. For instance, Health Privacy Principle 1 is described as “HPP 1”. The IPPs and HPPs are broadly consistent, but the HPPs are specifically tailored to health information and the provision of health services;

“law enforcement agency” includes the Western Australian Police, the Australian Federal Police, the police forces of other States and Territories, the Commissioner for Public Sector Standards, the Commissioner for State Revenue, the Corruption and Crime Commission and other specified public bodies that carry out law enforcement or related functions. A law enforcement agency is not required to comply with certain IPPs and HPPs if it believes on reasonable grounds that non-compliance is necessary for the purposes of its or another law enforcement agency’s law enforcement functions (cl.11);

“licensing agency” means a person, body or office prescribed for the purposes of this definition. This permits a person, body, or office to be prescribed as a “licensing agency” either in respect of all, or part, of its functions and activities relating to issuing licences or permits or any other kind of authorisations under legislation.

“mental disability” has the meaning given in s.3(1) of the *Guardianship and Administration Act 1990* — that is, it includes “an intellectual disability, a psychiatric condition, an acquired brain injury and dementia”;

“organisation” includes a public or private organisation;

“private organisation” means an individual, body corporate, partnership, trust, unincorporated association or body other than an exempt organisation or small business operator. Small business operators (those business operators who have an annual turnover of less than \$3,000,000 and who are not health service providers) are not included within the definition of “private organisation” so as not to impose an undue burden on them. The effect is that a small business that is not a health service provider, for instance a hairdresser or sporting organisation, will not be required to comply with the HPPs. However, all health service providers, including small businesses such as medical practitioners and others who provide a health service, must comply with the HPPs. This approach reflects that adopted in the *Privacy Act 1988* (Cth);

“public health agency” means: the department of the Public Service principally assisting the Minister administering the *Health Act 1911*; a board as defined in s.2 of the *Hospitals and Health Services Act 1927*; or a person, body or office prescribed by the regulations

“public organisation” means an organisation referred to in Schedule 1 or a contractor, but does not include an exempt organisation specified in Schedule 2 (for instance, the Corruption and Crime Commission). Consequently, private sector contractors to public organisations must comply with relevant IPPs and HPPs;

“record” means a record of information irrespective of the means (paper, electronic, pictorial etc) by which the information is recorded;

“wellbeing” has the meaning given in s.3 of the *Children and Community Services Act 2004* — that is, “wellbeing of a child includes the care, development, health and safety of the child”;

Clause 4(4) clarifies that a reference in the Act to the Commissioner’s functions includes a reference to functions given to the Information Commissioner under the FOI Act. The Privacy and Information Commissioner appointed under this Act has the functions given to the Commissioner under the FOI Act in addition to functions under this Act.

Clause 5. Meaning of “health information”

Defines **“health information”**. “Health information”—

- includes personal information (defined in cl.6) that is—
 - information or an opinion about: an individual's physical, mental or psychological health; an individual’s disability; an individual’s expressed wishes about the future provision of health services to him or her; or a health service provided to an individual; or
 - collected to provide, or in providing, a “health service”; or
 - collected in connection with the donation of body tissue (defined in cl.5(2)); or
 - genetic information in a form that is, or could be, predictive of the health of an individual or any other individual; but
- does not include—
 - information, or a class of information, prescribed as exempt health information.

Clause 6. Meaning of “personal information”

Defines **“personal information”**. “Personal information” —

- includes information or an opinion about an individual, whether living or dead: whose identity is apparent or can reasonably be ascertained from the information or opinion; or who can be identified by reference to an identifier or identifying feature; but
- does not include information about an individual: who has been dead for more than 30 years; who is included in a witness protection program or subject to witness protection arrangements; arising out of a Royal Commission; contained in an appropriate disclosure of public interest information under the *Public Interest Disclosure Act 2003*; contained in a document containing matter that is exempt matter under clause 1 of

Schedule 1 to the FOI Act; or that is of a class, or contained in a document of a class, prescribed for the purposes of this section.

Clause 7. When information is held

Sets out when personal information or health information is held by an “*entity*” (a public organisation, a private organisation or an exempt organisation) or an “*officer*” of an entity. The entity holds personal information or health information if the information is contained in a document that is in the possession or control of the entity or an officer of the entity whether alone or jointly with other persons or bodies.

Sets out when a health record is held by an entity. An entity holds a health record if the health record is in the possession or under the control of the entity, whether alone or jointly with other persons or bodies. This provision is relevant to determining whether a private organisation holds health records to which an individual may apply for access under the Act.

Clause 8. Related public organisations

Provides that persons are not to be regarded as separate public organisations for the purposes of the Act by reason of holding office as a member or officer of the organisation or holding an office established for the purposes of a public organisation.

Clause 9. Application to courts, registries and judicial officers

Provides that courts and tribunals are only required to comply with the Act in so far as the personal or health information that they handle relates to matters of an administrative nature. Personal or health information which is handled by a court or tribunal and which relates to the performance by the court or tribunal of its judicial functions is not subject to the Act.

Clause 10. Publicly available information

Provides that the Act does not apply to specified types of personal or health information that are regarded as publicly available information, such as personal information contained in public registers which is available for inspection.

Clause 11. Application of certain privacy principles to law enforcement agencies and child protection agencies

Provides that a law enforcement agency (as defined in cl.4) is not required to comply with certain IPPs and certain HPPs if the agency believes on reasonable grounds that the non-compliance is necessary for one or more of its or another law enforcement agency's law enforcement functions.

Provides that a child protection agency (as defined in cl.4) is not required to comply with certain IPPs and certain HPPs if the agency believes on reasonable grounds that the non-compliance is necessary for one or more of its, or another child protection agency's, child protection functions or in connection with proceedings in court.

Clause 12. Relationship to FOI Act and *State Records Act 2000*

Clarifies that this Act does not affect the operation of the FOI Act or the *State Records Act 2000*.

Clause 13. Nature of rights created by this Act

Clarifies that neither the Act nor an approved code of practice creates any cause of action or enforceable right, and that a contravention of the Act or an approved code of practice is not a criminal offence, other than in so far as is expressly provided by the Act.

Clause 14. Act binds the Crown

Provides that the Act binds the Crown.

Part 2 — Personal information privacy

Clause 15. Information privacy principles

States that the IPPs are set out in Schedule 3. If there is an inconsistency between an IPP and an approved code of practice, the code of practice prevails to the extent of the inconsistency. If there is an inconsistency between an IPP and another enactment, the other enactment prevails to the extent of the inconsistency.

Clause 16. Application of information privacy principles

Specifies that the IPPs apply to public organisations (as defined in cl.4), unless this Act or another enactment provides otherwise. The application of an IPP may be modified by an approved code of practice. The IPPs do not apply to health information.

IPP 1 (collection) and IPP 3 (data quality – as it relates to collection) only apply to personal information collected on or after the commencement of this section. IPP 2 (use and disclosure), IPP 3 (as it relates to information used or disclosed), IPP 4 (data security), IPP 5 (openness), IPP 6 (identifiers) and IPP 8 (transborder data flows) apply to all personal information held by a public organisation, irrespective of when it was collected.

Clause 17. Public organisations to comply with information privacy principles

Provides that a public organisation must not do anything, or engage in any practice, that contravenes an IPP that applies to that organisation.

Part 3 — Health information privacy

Clause 18. Health privacy principles

States that the HPPs are set out in Schedule 4. If there is an inconsistency between an HPP and an approved code of practice, the code of practice prevails to the extent of the inconsistency. If there is an inconsistency between an HPP and another enactment, the other enactment prevails to the extent of the inconsistency.

The core elements of the HPPs are consistent with the IPPs. However, the HPPs specifically address issues pertaining to health information (for instance, disclosure of genetic information) and the provision of health services (for instance, making health information available to other health service providers), and have been modified so as to apply to both public and private organisations. (In contrast, the IPPs only apply to public organisations and contractors to public organisations.)

Clause 19. Application of health privacy principles

Specifies that the HPPs apply to both public and private organisations that are health service providers or that collect, hold or use health information unless this Act or another enactment provides otherwise. (As noted above at cl.4, small business operators who have an annual turnover of less than \$3,000,000 who are not health service providers are excluded even if they collect, hold or use health information.)

Provides for the application of an HPP to be modified by an approved code of practice.

Specifies that HPP 1 (collection) and HPP 3 (data quality – as it relates to collection), only apply to health information collected on or after commencement of this section. HPP 2, (use and disclosure), HPP 3 (as it relates to health information used or disclosed), HPP 4 (data security and retention), HPP 5 (openness), HPP 6 (identifiers), HPP 8 (transborder data flows), HPP 9 (transfer or closure of practice), and HPP 10 (making health information available to other health service providers) apply to all health information held irrespective of when it was collected.

Clause 20. Organisations to comply with health privacy principles

Provides that, subject to the transitional arrangements set out in this clause, an organisation must not do any thing, or engage in any practice, that contravenes an HPP that applies to the organisation.

Allows for a transitional period and the extension of that period. This recognises that compliance with HPP 1 or HPP 2 from the first day of commencement may not always be feasible where a contract entered into before the commencement of this section requires the performance of an act or practice that would contravene either of these principles.

Division 2 — Access to health records

Contains provisions relating to the right of an individual to access a health record held by a private organisation. These provisions are modelled on those contained in the FOI Act.

Subdivision 1 — Preliminary

Clause 21. Application of Division

Specifies that this Division does not apply to a health record held by an organisation that is an agency under the FOI Act. If an individual's health record is held by such an agency, the individual already has a right of access to the record under the FOI Act.

Provides that this Division applies to all health records (other than those of an agency under the FOI Act) irrespective of when the health information in the record was collected.

Subdivision 2 — Right of access and access applications

Clause 22. Right of access

Creates a right for an individual to be given access to a health record about that individual that is held by a private organisation. The right of access is not affected by the individual's reasons for wishing to obtain access or an organisation's belief as to those reasons.

Clause 23. Access application

Provides that an individual who wishes to access his or her health record must make an application to the organisation that holds the record. If necessary the organisation must assist the individual to make the application in a manner that complies with the requirements specified in cl.24.

Clause 24. How access application is made

Provides that an access application must be in writing, and specifies the matters that must be addressed in the application. Also allows for an application to include a request that access be given in a particular way, for instance by being given a copy of the health record or by being given a summary (see cl.38).

Clause 25. Withdrawal of access application

Provides that an applicant may withdraw an access application.

Subdivision 3 — Procedure for dealing with access applications

Clause 26. Decisions as to access and charges

Requires an organisation to decide whether to give or refuse access as soon as practicable or before the end of the "*permitted period*" (45 days, subject to extensions or reductions of that period, as agreed between the applicant and the organisation or permitted by the Commissioner) and to notify the applicant in writing of the decision and of any charge

payable. If an access applicant is not notified of the outcome of the application within the permitted period, the applicant is taken to have received written notice that the application has been refused. On application by the applicant, the Commissioner may reduce the time allowed to deal with the access application. On application by the organisation, the Commissioner may grant an extension of time to the organisation to deal with the access application in which case the organisation must notify the applicant of the extension as soon as practicable.

Clause 27. Organisation may request consultation or further information

Provides that an organisation may request the applicant to consult with or provide further information to the organisation about the access application, but must not request or inquire into the applicant's reasons for requesting access.

Clause 28. Ambit of access application may be reduced by agreement

Permits an organisation, with the agreement of the applicant, to deal with the access application as if it related to only the part of the health record that contains information of the kind requested by the applicant.

Clause 29. Charges for access to health records

Provides that an organisation may require an applicant to pay a charge before being given access to a health record. If an applicant is required to pay such a charge, the amount of the charge must be calculated by the organisation in accordance with the principles set out in this clause, or, where those principles require, the charge must be waived. Except where an advance deposit is required under cl.31, an organisation must not require the payment of a charge until it has notified the applicant of the decision to give access to the health record.

Clause 30. Estimate of charges

Requires an organisation, when requested by an access applicant, to provide the applicant with an estimate of the charges that might be payable for dealing with the application and the basis on which the estimate is made. Irrespective of whether or not the applicant has requested an estimate, if the organisation estimates the charges might exceed a prescribed amount (presently set at \$60), the organisation must notify the applicant and ask whether the applicant wishes to proceed.

Clause 31. Advance deposits

Permits an organisation to give a notice to an access applicant requiring the applicant to pay a deposit for dealing with the access application, and sets out the obligations of the organisation if a deposit is required including, if the applicant so requests, discussing means to reduce the charges.

Clause 32. Failure of access applicant to notify intention or pay deposit

Provides that if a notice is given to an access applicant in respect of an estimate of charges and the applicant does not notify the organisation within 30 days that he or she intends to proceed, the applicant is to be taken to have withdrawn the application. Similarly, if a notice is given that the applicant must pay a deposit and the deposit is not paid within 30 days, the applicant is to be taken to have withdrawn the application.

Clause 33. Organisation may refuse to deal with an application in certain cases

Requires an organisation to help an access applicant to change the access application so as to reduce the amount of work needed to deal with it, if that work would divert a substantial and unreasonable portion of the organisation's resources from its other operations.

Permits an organisation to refuse to deal with an application if the work needed to deal with it cannot be sufficiently reduced, or the application is substantially in the same terms as one

already made by the applicant to the organisation. In either case the organisation must notify the applicant in writing stating the reasons for refusal and the applicant's appeal rights.

Clause 34. Giving access

Requires the organisation to give the access applicant access to the health record if it has decided to give access and any charges have been paid.

Clause 35. Refusal of access

Lists the grounds on which an organisation may refuse to give access to a health record. Refusal is subject to cl.36.

Clause 36. Access to edited copy of health record

Allows an organisation to give access to an edited copy of a health record if it is practicable to do so, if the organisation consider the applicant would wish to be given access to an edited copy, and either one or more of the grounds for refusal of access apply to particular matter in the record, or the record contains matter that may reasonably be regarded as being outside the ambit of the application.

Clause 37. Health records that cannot be found or do not exist

Permits an organisation to notify an applicant that access to a health record cannot be given because the requested record cannot be found or does not exist. The sending of such a notice is to be regarded as a decision to refuse access.

Clause 38. Ways in which access may be given

Specifies the ways in which access may be given to a health record. These include: inspection of the record; giving the applicant a copy of the record; giving the applicant a summary of the record; and/or giving an explanation of the health information in the record. However, this does not preclude an organisation giving access in some other way agreed between the organisation and the applicant.

Provides that if access to a health record is given in a way other than that requested by the applicant, any charge imposed by the organisation must not exceed the charge which the applicant would have been required to pay if access had been given in the way requested.

Provides that if all of the health information contained in a health record was collected before the commencement of this Act, access may be given by giving a summary of the information.

Clause 39. Information detrimental to health of access applicant

Provides that it is sufficient for access to information in a health record to be given to a suitably qualified person nominated by the applicant if in the opinion of the organisation the information may have a substantial adverse effect on the physical, mental or psychological health of the applicant. The organisation may withhold access until a person who is, in the opinion of the organisation, suitably qualified, is nominated.

Clause 40. Notice of decision

Specifies the details that must be included in a notice given under cl.26 in respect of a decision as to access to a health record.

Clause 41. Applications may be regarded as having been withdrawn in certain circumstances

Permits an organisation to give an access applicant a "*compliance notice*" advising the applicant that he or she may be regarded as having withdrawn the access application if the applicant does not do certain things, namely providing information or consulting with the

organisation (under cl.27), nominating a suitably qualified person (under cl.39) or obtaining access to a health record. The compliance notice must contain the details specified in the clause.

Allows an organisation to regard an applicant as having withdrawn the application if the applicant has not complied with the requirements of a compliance notice within 30 days. If the organisation decides to regard an access applicant as having withdrawn the application, the organisation must give the applicant a written notice of that decision, which contains the details set out in the clause.

Division 3 — Amendment of health records

Contains provisions relating to the right of an individual to apply for an amendment of a health record held by a private sector organisation. These provisions are modelled on those in the FOI Act.

Subdivision 1 — Preliminary

Clause 42. Application of Division

Specifies that this Division does not apply to a health record held by an organisation if that organisation is an agency under the FOI Act. If an individual's health record is held by such an agency, the individual already has a right to apply for amendment of the record under the FOI Act.

Provides that this Division applies to all health records irrespective of when the health information in the record was collected.

Subdivision 2 — Right to apply for amendment and amendment applications

Clause 43. Right to apply for health record to be amended

Creates a right for an individual to apply for amendment of a health record relating to that individual which is held by a private sector organisation if the record is inaccurate, incomplete, out of date or misleading. If necessary the organisation must assist the individual to make the application so that it complies with the requirements specified in this Division.

Clause 44. How amendment application is made

Provides that an amendment application must be in writing, and specifies the matters that must be addressed in the application. Also provides that the application may include a request that the amendment be made in a particular way or ways, namely by altering, but not by deleting, information in the health record, or by inserting information or a note into the health record.

Subdivision 3 — Procedure for dealing with amendment applications

Clause 45. Decisions as to amendment

Requires an organisation to deal with an amendment application as soon as practicable or before the end of the "*permitted period*" (30 days, subject to extensions or reductions of that period, as agreed between the applicant and the organisation or permitted by the Commissioner) and to notify the applicant in writing of the decision and of any charge payable. If an access applicant is not notified of the outcome of the application within the permitted period, the applicant is taken to have received written notice that the application has been refused. On application by the organisation, the Commissioner may grant an extension of time to the organisation to deal with the amendment application in which case the organisation must notify the applicant as soon as practicable.

Clause 46. Notice of decision

Requires the organisation to give the amendment applicant a notice specifying the date of the decision, who made the decision, and either the details of the amendment made or the reasons for refusal to amend, together with the applicant's appeal rights and right to request a notation or attachment be made to the health record.

Clause 47. How organisation may amend health record

Specifies the ways in which an organisation may decide to amend a health record, namely by altering information in the record (otherwise than by deletion) or by inserting information or a note into the health record. Also specifies what must be included in any note inserted in a health record.

Clause 48. Request for notation or attachment disputing accuracy of health record

Provides for an amendment applicant whose amendment application has been refused to request in writing that the organisation make a notation or attachment to the health record. Such a request may be made irrespective of whether or not the applicant has made a complaint in respect of the organisation's decision.

Requires an organisation to comply with a request for notation or attachment unless the requested notation or attachment is defamatory or unnecessarily voluminous.

Obliges the organisation to give the applicant a written notice of a decision not to comply with a request for notation or attachment.

Clarifies that the organisation may include an edited or abbreviated form of the requested notation or attachment, but this does not constitute compliance with the request.

Clause 49. Other users of health record to be advised of requested amendment

Requires an organisation that gives a health record to another person (including another organisation) to advise the other person if a claim has been made that the record is inaccurate, incomplete, out of date or misleading, and to include or attach particulars of any attachment or notation made to the record under cl.48.

Clause 50. Organisation may give reasons for not amending information

Confirms that an organisation is not prevented from adding to a notation or attachment made under cl.48 the organisation's reasons for deciding not to amend the health record in accordance with the amendment application, or from including them in, or attaching them to, a statement given under cl.49(1).

Clause 51. No charge for application or request

Provides that no fee or other charge is payable in respect of an application or request under this Division.

Division 4 — General

Clause 52. Part not intended to limit access or amendment that is otherwise lawful

Clarifies that this Part is not intended to prevent or discourage the giving of access or the amendment of health records, otherwise than under this Part if that can properly be done or is permitted or required by law to be done.

Clause 53. Application on behalf of an individual

Permits an authorised representative of an individual to make an access application, an amendment application, or a request referred to in HPP 9(2) or 10(1) on behalf of the individual if the individual is incapable of making the application or request.

Specifies when an individual is incapable of making an application or request.

Clause 54. Personal, family or household affairs

Provides that neither this Part of the Act, nor an HPP, applies to health information held by an individual or the handling of health information by an individual only for the purposes of, or in connection with, his/her personal, family or household affairs.

Clause 55. News media

Exempts a “*news medium*” (as defined) from the application of the HPPs and Part 3 of the Act but only in respect of the handling of health information by the news medium in connection with its “*news activities*” (as defined). The provision does not exempt a news medium from complying with the HPPs in other circumstances, for instance, where the news medium holds health information about its staff.

Part 4 — Codes of practice

Provides for the making of codes of practice modifying the application or operation of one or more of the IPPs or HPPs.

Clause 56. Terms used in this part

Defines terms used in Part 4 of the Act.

Clause 57. Information privacy code of practice

Provides that an information privacy code of practice is a code that modifies the application or operation of one or more of the IPPs. An information privacy code of practice may apply to specified personal information or a class thereof, a specified activity or class thereof, and a specified public organisation or class thereof. An information privacy code: must specify the public organisations bound by it; only applies to a public organisation that agrees to be bound by it; must not modify the application or operation of an IPP unless the organisation otherwise would not reasonably be capable of complying with the IPP; and the application or operation of the IPP may be modified only to the extent reasonably necessary to enable compliance.

Clause 58. Health privacy code of practice

Provides that a health privacy code of practice is a code of practice that modifies the application or operation of one or more of the HPPs. A health privacy code of practice may apply to specified health information or a class thereof, a specified activity or class thereof, and a specified organisation or class thereof. A health privacy code: must specify the organisations bound by it; only applies to a public or private organisation that agrees to be bound by it; must not modify the application or operation of an HPP unless the organisation otherwise would be incapable of complying with the HPP; and the application or operation of the HPP may be modified only to the extent reasonably necessary to enable compliance.

Clause 59. Preparation of code of practice by organisation

Provides for a public organisation to prepare an information privacy code and submit it to the Commissioner. Provides for a public or private organisation to prepare a health privacy code and submit it to the Commissioner. Permits consultation with third parties or the public in the preparation of the Code.

Clause 60. Preparation of code of practice by Commissioner

Permits the Commissioner to prepare a code of practice on his or her own initiative. Permits consultation with third parties or the public in the preparation of the Code.

Clause 61. Submission of code of practice to relevant Minister

Provides for the Commissioner to submit a code of practice to the relevant Minister for approval. In the case of an information privacy code the relevant Minister is the Minister administering this Act, and in the case of a health privacy code the relevant Minister is the Minister administering the *Health Act 1911* (see definition of “*relevant Minister*” at cl.56).

Clause 62. Approval of code of practice

Provides for the relevant Minister to approve a code of practice by notice published in the *Gazette* provided the Minister is satisfied that the code of practice complies with the requirements of cl.57 or cl.58, as the case requires.

Clause 63. Publication and operation of approved code of practice

Requires an approved code of practice to be published in the *Gazette*, and specifies when it comes into operation.

Clause 64. Amendment, revocation or replacement of approved code of practice.

Permits the relevant Minister to amend, replace or revoke an approved code of practice by notice published in the *Gazette*, and specifies the date on which a revocation takes effect.

Clause 65. Organisation to comply with applicable code of practice

Provides that an organisation must not contravene an approved code of practice that applies to that organisation.

Clause 66. Register

Requires the Commissioner to keep a register of approved codes of practice, and permits a person to inspect and obtain a copy of or an extract from that register.

Part 5 — Complaints

Provides a process for making and resolving complaints in respect of alleged interferences with privacy or decisions in respect of an application for access to, or amendment of, a health record.

Division 1 — Preliminary

Clause 67. Terms used in this part

Defines terms used in Part 5 of the Act. Among other terms —

“*complainant*” includes the individual who makes a complaint and the individual who makes a complaint on behalf of another individual.

“*protected matter*” is matter contained in a health record that gives rise to a ground for refusal of access to the health record (cl.35).

“*Tribunal*” means the State Administrative Tribunal.

Clause 68. What constitutes an interference with privacy

Specifies when “*an interference with the privacy of an individual*” occurs which may be the subject of a complaint under the Act. An interference with privacy includes: a contravention by a public organisation of any of the IPPs; a contravention by a public or private organisation of any of the HPPs; and a contravention by a public or private organisation of an applicable code of practice.

Division 2 — Complaints and procedures for dealing with them

Clause 69. Complaints

Provides that a complaint may be made to the Commissioner about: an alleged interference with privacy; a decision under the Act by an organisation in respect of access to or amendment of a health record; or an alleged contravention of a conciliation requirement.

Clause 70. Who may make a complaint

Specifies who may make a complaint.

Clause 71. Complaint on behalf of an individual

Permits an authorised representative of an individual (as defined in cl.4) to make a complaint on behalf of the individual if the individual is incapable. Specifies that an individual is incapable if he or she is incapable because of age, illness, physical impairment or mental disability of understanding the general nature and effect of making the complaint, or of making the complaint, despite reasonable assistance.

Clause 72. How and when a complaint can be made

Specifies how, where and the time limits within which, a complaint may be made: a complaint must be in writing, give particulars of the complaint, give an address in Australia to which notices can be sent, give any other information required by regulations, and be lodged at the office of the Commissioner. A complaint must be lodged within 6 months of the complainant becoming aware of the alleged interference with privacy or the alleged contravention of a conciliation requirement, or within 6 months of the complainant's receipt of the organisation's written decision, but the Commissioner may allow a complaint to be lodged at a later date.

Clause 73. Commissioner may decide not to deal with a complaint

Gives the Commissioner a discretion to refuse to deal with a complaint in specified circumstances, for instance, if the complaint is frivolous, vexatious, misconceived or lacking in substance, or the complainant has not first complained about the matter to the respondent. If the Commissioner decides not to deal with the complaint, he or she must notify the complainant of the decision, the reasons for it, and any rights of appeal to the State Administrative Tribunal ("the SAT").

Clause 74. Referral of complaint to respondent in certain circumstances

Requires the Commissioner, if he or she has refused to deal with a complaint, to refer the complaint to the respondent in certain circumstances. Requires the respondent, if the Commissioner has referred a complaint to it, to deal or continue to deal with it. In such circumstances the complainant may not complain again to the Commissioner until the respondent has notified the complainant that the respondent has finished dealing with the complaint, or until 3 months have passed since the complaint was referred to the respondent.

Clause 75. Referral of complaint to Tribunal if Commissioner decides not to deal with it

Provides for the complainant to serve a written notice on the Commissioner requiring the Commissioner to refer the complaint to the SAT if the Commissioner has notified the complainant under cl.73(2) that he or she refuses to deal with the complaint for a reason referred to in cl.73(1)(a), (b), (c), (e)(i), or (f). The notice must be served on the Commissioner within 21 days of the complainant receiving the cl.73(2) notice.

Clause 76. Notification of complaint

Requires the Commissioner to notify the respondent in writing of a complaint unless the Commissioner has decided not to deal with it.

Clause 77. Withdrawal of complaint

Provides for a complainant to withdraw a complaint. A complainant who withdraws a complaint may not make another complaint about the same matter without the prior written permission of the Commissioner.

Clause 78. Parties to conciliation proceedings

Identifies the parties to conciliation proceedings.

Clause 79. Procedure

Sets out the procedure to be followed in conciliation proceedings. Gives the Commissioner the power to obtain information and make investigations and inquiries. Requires conciliation proceedings to be conducted informally and expeditiously and provides that the Commissioner is not bound by the rules of evidence. Permits the Commissioner to determine the procedure for conciliation proceedings and requires the Commissioner to ensure the parties are given a reasonable opportunity to make submissions. Enables the Commissioner to appoint a conciliator to deal with the complaint, and gives a conciliator the power to require the parties to appear before him or her. Provides for a party in conciliation proceedings to appear personally or by an agent other than a solicitor or counsel, or, with the leave of the Commissioner, to be represented by a solicitor or counsel.

Makes evidence of things said or done in the course of conciliation proceedings inadmissible in SAT proceedings. This is intended to encourage open discussion in conciliation proceedings, without the parties fearing that what they say or do may be used against them in SAT proceedings if conciliation is not successful.

Clause 80. Conciliation proceedings record

Requires the Commissioner, if conciliation is successful, to prepare a document (a "*conciliation record*") in consultation with the parties setting out the outcome of the proceedings, the terms on which the complaint is resolved, any "*conciliation requirement*" that must be complied with by the respondent, and to give a copy to each party.

Requires the Commissioner, if he or she is of the opinion that the complaint cannot be conciliated, or conciliation has not been successful or the nature of the complaint is such that it should be referred to the SAT, to prepare and give to each party a document which sets out that opinion and to inform the complainant of his or her appeal rights to the SAT.

Clause 81. Power to obtain information and documents and compel attendance

Gives the Commissioner the power to require any person who has information or a document relevant to the complaint to provide the information or produce the document or appear before the Commissioner. Mirrors the power in s.72 of the FOI Act.

Clause 82. Power to examine

Gives the Commissioner the power to examine witnesses who have been required to attend under cl.81. Mirrors the power in s.73 of the FOI Act.

Clause 83. Commissioner to ensure non-disclosure of certain matter

Requires the Commissioner in dealing with a complaint to ensure non-disclosure of protected matter (defined in cl.67) by reference to the grounds for refusal of access to a health record under cl.35.

Clause 84. Production of certain health records for inspection

Gives the Commissioner the power to require an organisation to produce a health record for inspection so that the Commissioner can consider whether it contains protected matter. Requires the Commissioner to ensure that any such health record is not disclosed and that it is returned to the organisation when the complaint has been dealt with. This obligation is subject to the Commissioner's obligation to provide the Tribunal with the matter set out in cl.86.

Clause 85. Referral of unresolved complaint to Tribunal

Provides that a complainant who has been notified by the Commissioner that a complaint cannot be, or has not been, conciliated, or should be referred to the SAT, may within 21 days require the Commissioner to refer the complaint to the SAT.

Clause 86. Provision of information to Tribunal

Provides that if a complaint is referred to the SAT, the Commissioner must give to the SAT a statement of the reasons for the referral and other documents and material relevant to the SAT's consideration of the complaint. Clarifies that an organisation's obligation to provide a statement, documents and material to the SAT under s.24 of the SAT Act is not affected.

Division 3 — State Administrative Tribunal's jurisdiction as to complaints

Clause 87. Meaning of "complaint jurisdiction"

Defines "*complaint jurisdiction*" to mean the SAT's original jurisdiction under the SAT Act in relation to a complaint of an alleged interference with privacy or alleged contravention of a conciliation agreement, and the SAT's review jurisdiction under the SAT Act in relation to a complaint about an access or amendment decision.

Clause 88. Presiding member of Tribunal

Specifies that a legally qualified member must preside when the SAT is exercising its complaint jurisdiction.

Clause 89. Tribunal to ensure non-disclosure of certain matter

Requires the SAT when exercising its complaint jurisdiction to avoid disclosure of protected matter.

Permits the SAT to allow a solicitor or counsel representing a party to examine a health record on such terms and conditions as the SAT thinks fit including that the solicitor or counsel does not disclose protected matter to a party to the proceeding or to another person.

Permits the SAT to receive evidence and hear argument in the absence of the public and any party or person representing a party in order to prevent the disclosure of protected matter.

Proscribes the inclusion of protected matter in a decision of the SAT or its reasons.

Clause 90. Decisions of the Tribunal

Provides that after hearing a complaint relating to an alleged interference with privacy the SAT may dismiss the complaint, or find the complaint or part of it substantiated and:

- order that the respondent— cease the interference; and/or perform any reasonable act or course of conduct to redress any loss or damage suffered by the complainant; and/or pay compensation to the complainant of up to \$40,000 for any loss or damage suffered as a result of the interference with privacy; or
- decline to take further action.

Provides that after hearing a complaint relating to an alleged contravention of a conciliation requirement the SAT may: dismiss the complaint; or find the complaint or part of it substantiated and order that the respondent comply with the conciliation requirement; or find the complaint or part of it substantiated but decline to take further action.

Enables the SAT, in determining a complaint relating to an access or amendment decision, to review any decision of the organisation and decide any matter in relation to the relevant access or amendment application. These powers are in addition to any other power the SAT has under the SAT Act.

Provides that after hearing a complaint relating to an access or amendment decision the SAT may: affirm the decision under review; vary the decision; or set aside the decision under review and substitute its own decision. For instance, the SAT may order that the organisation must provide access to the health record the subject of the dispute or to an edited copy of that record. Provides that if it is established that a health record contains protected matter, the SAT does not have power to decide that access is to be given to that health record.

Provides that a decision of the SAT has effect from when it is made.

Clause 91. Restrictions under other laws not applicable

Provides that no legal obligation to maintain secrecy or not to disclose information applies to the disclosure of information by an organisation for the purposes of the exercise by the SAT of its complaint jurisdiction.

Division 4 — Appeals

Clause 92. Terms used in this Division

Defines “*appeal*” and “*Supreme Court*” for the purposes of this Division.

Clause 93. Appeal from the Tribunal’s decision

Provides for a party to a proceeding to appeal from a decision of the SAT to the Supreme Court except in respect of certain matters (listed in cl.93(2)). An appeal may only be brought on a question of law and only if the court gives leave (SAT Act s.105). An appeal does not affect the operation or implementation of the decision appealed against unless the Supreme Court stays the operation of the decision (SAT Act s.106).

Clause 94. No access to health record containing exempt matter

Provides that if it is established that a health record contains protected matter, the Supreme Court does not have power to decide that access is to be given to that health record.

Clause 95. Power to impose terms on orders

Provides that an order of the Supreme Court on an appeal may be made on terms and conditions that the Court thinks fit, and that if the appellant is an organisation it bears its own costs.

Clause 96. Court to ensure non-disclosure of certain matter

Requires the Supreme Court in hearing and determining an appeal to avoid disclosure of protected matter. Allows the Court to permit a solicitor or counsel representing a party to examine the health record on the condition that the solicitor or counsel does not disclose the protected matter to a party to the proceeding or to another person. Permits the Court to receive evidence and hear argument in the absence of the public and any party or representative in order to prevent the disclosure of protected matter. Provides that the Court must not include protected matter in its decision or reasons for decision on the appeal.

Clause 97. Production of documents

Provides that for the purposes of hearing and determining an appeal the Supreme Court may require an organisation to produce documents, and obliges the Court to ensure the confidentiality of such documents and arrange for their return to the organisation.

Clause 98. Restrictions under other laws not applicable

Provides that no legal obligation to maintain secrecy or not to disclose information applies to the disclosure of information by an organisation to the Supreme Court on an appeal.

Clause 99. Other procedure

Provides that, unless otherwise provided for, the Supreme Court may determine its procedure on an appeal.

Part 6 — Exchange of information

This Part overrides prohibitions on the disclosure by public organisations of personal and health information, whether those prohibitions result from other statutes, the common law, or ethical or professional obligations, provided the disclosure meets certain criteria, for example, that the disclosure is for the purpose for which the information was collected, or that the disclosure falls within certain specified exceptions to IPP & HPP 2 (Use and disclosure). These exceptions include disclosure: to lessen or prevent a serious threat to an individual's life, or to an individual's or public health, to an individual's or public safety or to an individual's or public welfare; to safeguard or promote the wellbeing of a child or group of children; for law enforcement; for the performance of the licensing functions of a licensing agency; and for the purposes of health research in the public interest. Personal or health information may be disclosed by a public organisation within these circumstances despite any law relating to confidentiality or secrecy, and without any civil or criminal liability, or breach of any common law or ethical duty of confidentiality or professional standards.

Clause 100. Terms used in this part

Defines the meaning of terms used in Part 6 of the Act—

“agency” includes the public organisations listed in Schedule 1 and exempt organisations (for instance, a Minister, the Corruption and Crime Commission, the Ombudsman);

“information” includes health information and personal information;

“prescribed enactment” means an enactment declared by the regulations to be a prescribed enactment for the purposes of this Part.

Clause 101. Construction of certain references for the purposes of this Part

Provides that for the purposes of this Part a reference in specified IPPs and HPPs to an organisation or a public organisation is to be regarded as including a reference to an exempt organisation.

Provides that if the application or operation of any of certain specified IPPs and HPPs is modified by an approved code of practice by which the disclosing agency is bound, a reference in Part 6 to that IPP or HPP is to be regarded as including a reference to each provision of the approved code of practice that modifies the application or operation of that IPP or HPP.

Clause 102. Exchange of information between agencies.

Specifies the circumstances in which an agency may disclose personal information or health information to another agency so as to attract the protection from liability afforded by Part 6.

The circumstances of disclosure include —

- personal information may be disclosed by an agency if the agency reasonably believes that the disclosure is necessary: to lessen or prevent a serious threat to an individual's

life, health, safety or welfare (IPP 2(1)(e)(i)); to safeguard or promote the wellbeing of a child (IPP 2(1)(f)); or for the law enforcement functions of a law enforcement agency (IPP 2(1)(h));

- health information may be disclosed by an agency if the agency reasonably believes that the disclosure is necessary for the purpose of research, or the compilation or analysis of statistics, in the public interest provided certain specified conditions are satisfied (HPP 2(1)(g)); or to lessen or prevent a serious threat to public health, public safety or public welfare (HPP 2(1)(h)(ii)).

Provides that a decision to disclose information under this clause may be made by the principal officer of the agency or by an officer authorised by the principal officer for that purpose.

Clause 103. Exchange of information between agencies and other persons

Permits an agency (as defined in cl.100) with the approval of the Commissioner, to disclose personal or health information held by the agency to a person or body other than an agency, but only in limited circumstances (specified in cl.103(4), (5) and (6)) so as to attract the protection from liability afforded by Part 6. For instance, personal information about an individual may be disclosed to a person or body other than an agency if it is known or suspected that the individual is dead or missing and the disclosure is necessary to identify the individual (IPP 2(3)), or if the disclosure is necessary for the licensing functions of a licensing agency (IPP 2(1)(i)).

Sets out the procedure to be followed by the disclosing agency in applying to the Commissioner for approval for such a disclosure of information, and the criteria to be applied by the Commissioner in determining whether to approve the disclosure of personal information (cl.103(4)) or health information (cl.103(5)). The Commissioner must not approve a disclosure if it contravenes a prescribed enactment or is required or authorised under a prescribed enactment.

Clause 104. Scope of disclosure powers

Provides that cl.102 and cl.103 do not authorise disclosure of information if disclosure of the information contravenes a prescribed enactment or is required or authorised under a prescribed enactment. Clarifies that the powers conferred on an agency by cl.102 and 103 may be exercised despite any enactment relating to confidentiality or secrecy and are in addition to any other powers the agency may have.

Clause 105. Protection from liability for disclosure

Provides that a person who in good faith discloses personal information or health information in accordance with cl.102 or cl.103 does not incur any civil or criminal liability in respect of the disclosure, is not regarded as in breach of any legal duty of confidence or secrecy and is not regarded as a breach of any professional ethics or standards or as unprofessional conduct.

Part 7 — Privacy and Information Commissioner

Establishes the Office of Privacy and Information Commissioner and sets out the functions and powers of that Office.

Division 1 — Office of Privacy and Information Commissioner

Clause 106. Privacy and Information Commissioner

Establishes an office of Privacy and Information Commissioner.

Clause 107. Appointment of Commissioner

Sets out the method and term of appointment of the Commissioner.

Clause 108. Remuneration

Provides for remuneration of the Commissioner to be determined by the Salaries and Allowances Tribunal.

Clause 109. Leave and other conditions of service

Provides for leave and other conditions of service of the Commissioner to be determined by the Governor.

Clause 110. Resignation of Commissioner

Sets down how the Commissioner may resign from office.

Clause 111. Removal and suspension from office

Provides for: the removal or suspension from office of the Commissioner by the Governor on addresses from both Houses of Parliament; and suspension from office of the Commissioner by the Governor if the Commissioner is incapable, has performed incompetently, or has been guilty of misconduct.

Clause 112. Deputy Privacy and Information Commissioner

Establishes an office of Deputy Privacy and Information Commissioner. Permits the appointment of a Deputy Privacy and Information Commissioner by the Governor if the Governor is satisfied that it is necessary or expedient to do so.

Clause 113. Deputy Commissioner may act as Commissioner

Provides that if there is a Deputy Commissioner, the Deputy Commissioner is to act in the office of Commissioner and perform the functions of that office during a period when the Commissioner is absent from duty or unable to perform the functions of the office, is suspended or the office is vacant.

Clause 114. Acting Commissioner

Provides for the appointment by the Governor of an Acting Commissioner to act in the office of Commissioner and perform the functions of that office for a period not exceeding 12 months if the Commissioner is absent from duty or unable to perform the functions of the office, is suspended or the office is vacant.

Clause 115. Oath or affirmation of office - Commissioner, Deputy Commissioner and Acting Commissioner

Requires an appointee to the office of Commissioner, Deputy Commissioner or Acting Commissioner to take an oath or make an affirmation before performing the functions of Commissioner.

Clause 116. Staff of Commissioner

Enables the Commissioner to appoint staff for the performance of the Commissioner's functions and provides for the determination of the remuneration and terms and conditions of service of those staff. Permits the Commissioner to make use of staff of the Public Service or other State instrumentalities.

Clause 117. Oath or affirmation - members of staff

Requires staff of the Commissioner to take an oath or make an affirmation before performance of functions under this Act or the FOI Act.

Clause 118. Rights of officers preserved

Entitles a public service officer appointed as Commissioner, Deputy Commissioner or a member of staff of the Commissioner to retain any accruing and existing rights including any rights to superannuation. Provides that the service of a person who ceases to be Commissioner, Deputy Commissioner or a member of staff of the Commissioner is to be regarded as service in the Public Service for the purposes of determining that person's rights as a public service officer and any superannuation entitlement.

Clause 119. Offices of Commissioner and Parliamentary Commissioner can be held concurrently

Permits a person to be appointed concurrently to the offices of Commissioner and Parliamentary Commissioner. Schedule 5 to this Act sets out matters relevant to a concurrent appointment.

Division 2 — Functions and powers of Commissioner

Clause 120. Functions of Commissioner

Sets out the functions of the Privacy and Information Commissioner. These include—

- to promote understanding of and compliance with the IPPs and HPPs;
- to audit an organisation's records of personal and health information to ascertain whether the records are maintained in accordance with the IPPs, the HPPs or any applicable code of practice;
- to review an organisation's procedures for handling personal or health information to determine whether or not the information is being handled in accordance with the Act;
- to review an organisation's procedures for giving access to or amending health records;
- to review the operation of approved codes of practice;
- to report to the Minister on the privacy implications of proposed legislation;
- to report to the Minister on the privacy implications of developments in data processing and computer technology;
- to make recommendations to the relevant Minister on the need for or desirability of legislative or administrative action in the interests of privacy;
- to assist the public and organisations on matters relevant to the Act; and
- other functions given to the Commissioner under this Act and the FOI Act.

Clause 121. General powers of the Commissioner

Provides that the Commissioner has all the powers necessary to perform the functions of the Commissioner.

Clause 122. Powers relating to audit or review

Sets out the powers of the Commissioner in the exercise of his/her audit or review functions. These include that the Commissioner may give a person a notice requiring the person to provide information or produce a document relevant to the audit or review to the Commissioner. The Commissioner may also give a person a notice requiring that the person appear before the Commissioner and the Commissioner may examine that person under oath or affirmation.

Clause 123. Commissioner to report on audit or review

Requires the Commissioner to prepare a report on an audit or review as soon as practicable after completion and to give a copy to each organisation affected. The report may include recommendations and the Commissioner may request that the organisation inform him or her of the steps taken or proposed to give effect to the recommendations, or its reasons for not taking or proposing to take such steps.

Clause 124. Delegation

Permits the Commissioner to delegate to a Deputy Commissioner or member of staff any power or duty of the Commissioner under this Act or the FOI Act except his or her powers: to submit a code of practice to the relevant Minister for approval – cl.61(1); to decide not to deal with a complaint, or to stop dealing with a complaint – cl.73(1); to refer a complaint to the SAT if the Commissioner decides not to deal with it– cl.75(3); to produce a health record for inspection so the Commissioner can consider if it contains protected matter– cl.84; to refer an unresolved complaint to the SAT– cl.85(3); to approve the disclosure of information held by an agency to a person or body other than an agency– cl.103(1); to not deal with a complaint – FOI Act s.67(1); to refer a complaint to the SAT if the Commissioner decides not to deal with it – FOI Act s.67B(3); to require an agency to produce a document for inspection so the Commissioner can consider whether the document contains exempt matter or is a document of the agency – FOI Act s.75; or to refer an unresolved complaint to the SAT – FOI Act s.76(3). Proscribes sub-delegation.

Division 3 — Reports to Parliament

Clause 125. Annual report under *Financial Management Act 2006* to include certain information

Specifies information that must be included in the annual report of the Commissioner required under Part 5 of the *Financial Management Act 2006*.

Clause 126. Special reports

Permits the Commissioner to prepare a special report on any matter arising in connection with the performance of his or her functions and to submit the report to both Houses of Parliament. Sets out the procedure to be followed in respect of the submission of a special report to a House of Parliament in the event that the House is not sitting.

Part 8 — Miscellaneous

Clause 127. Deceased individuals

Permits an authorised representative or legal representative of a deceased individual to exercise a right or power conferred on that individual under Part 3 or 5 of the Act, or by an IPP or HPP.

Clause 128. Capacity of authorised representative to give consent

Permits an authorised representative of an individual to give consent under any IPP or HPP in respect of the doing of any thing, where the individual is incapable of giving consent. An individual is incapable of giving consent if, despite the provision of reasonable assistance by another person, he or she is incapable of understanding the general nature and effect of giving the consent, or communicating the consent or refusal of consent, by reason of age, illness, physical impairment or mental disability.

Clause 129. Protection from legal action — access to health records

Protects —

- the State, an organisation, an officer or employee of an organisation from an action for defamation or breach of confidence in respect of a decision to give access or the giving of access;
- the author of the health record or any other person who supplies the record to an organisation from an action for defamation or breach of confidence in respect of any publication involved in or resulting from the giving of access; and
- a person who gives access to a health record or a person who provides access to a health record in accordance with that decision from criminal liability,

if the decision to give access to the health record under the Act is made in good faith in the belief that the Act permits or requires the decision to be made.

Clause 130. Restrictions under other laws not applicable

Establishes that no legal obligation to maintain secrecy or not to disclose information applies to disclosure of information by an organisation for the purposes of dealing with a complaint (Part 5 Division 2) or the exercise of the Commissioner's functions and powers under Part 7, Division 2.

Also establishes that legal professional privilege does not apply to the production of documents or the giving of evidence for the purposes of Part 5 Division 2 or Part 7 Division 2.

Provides that, subject to the above, a party to conciliation proceedings or a person who complies with an audit or review requirement has the same privileges in relation to giving evidence and production of documents that he or she would have as a witness in a court.

Clause 131. Confidentiality of information

Provides that except when required for the purposes of legal proceedings arising under or in relation to this Act or the FOI Act, a person who is or has been Commissioner, a Deputy Commissioner or a member of staff (a "*relevant person*") cannot be required to disclose "*confidential information*" (as defined in the clause) in court or judicial proceedings.

Permits the Commissioner, a Deputy Commissioner or an authorised member of the Commissioner's staff to disclose confidential information, other than confidential information that is exempt matter for the purposes of the FOI Act, to the Parliamentary Commissioner, the Deputy Parliamentary Commissioner or an authorised member of the Parliamentary Commissioner's staff if the information concerns a matter that is relevant to the functions of the Parliamentary Commissioner.

Provides that a relevant person who discloses confidential information other than in the circumstances contemplated in this clause, or who takes advantage of confidential information to benefit him/herself or another person, commits an offence.

Clause 132. Protection from liability for wrongdoing

Protects the Commissioner, a Deputy Commissioner or a member of staff from an action in tort for anything done, or omitted to be done, in good faith, by that person in the performance or purported performance of a function under this Act or the FOI Act, and relieves the State of any liability in these circumstances.

Clause 133. Failure to provide information or document or to appear

Creates an offence and establishes penalties for refusal or failure of a person to comply with a requirement to give information to the Commissioner or produce a document to the Commissioner or attend before the Commissioner or a conciliator.

Clause 134. Regulations

Permits the Governor to make regulations. In the case of regulations in respect of fees and charges, requires that regard be had to the need to ensure that fees and charges are reasonable.

Clause 135. Review of the Act

Requires the Minister to conduct a review of the operation and effectiveness of the Act every 5 years and to table a report of the review before both Houses of Parliament.

Part 9 — Amendment of other written laws

Division 1 — *Freedom of Information Act 1992*

Clause 136. The Act amended

Specifies that the amendments in this Division are to the FOI Act.

Clause 137. Part 4 Division 1 repealed

Repeals Part 4 Division 1 of the FOI Act (“Information Commissioner”). Provisions relating to the office of Privacy and Information Commissioner are contained in Part 7 Division 1 of this Act.

Clause 138. Heading to Part 4 Division 2 amended

Amends the heading to Part 4 Division 2 of the FOI Act (“Functions of the Information Commissioner”) as this Act provides that the functions of the former office of Information Commissioner are those of the Commissioner appointed under this Act.

Clause 139. Section 63 amended

Amends s.63 of the FOI Act (“Functions of Commissioner”) to delete reference to the "main" function of the Commissioner, as cl.117 of this Act provides that the functions of the Commissioner appointed under this Act include functions given to the Commissioner under the FOI Act.

Clause 140. Section 64 repealed

Repeals s.64 of the FOI Act (“General powers”) as cl.120 of this Act specifies that the Commissioner appointed under this Act has all the powers necessary to perform his or her functions. These include functions both in respect of this Act and the FOI Act (cl.119).

Clause 141. Heading to Part 4 Division 4 amended

Amends the heading to Part 4 Division 4 of the FOI Act (“General provisions as to the Information Commissioner and staff”) with the effect that the heading refers to the Commissioner appointed under this Act.

Clause 142. Section 79 repealed

Repeals s.79 of the FOI Act (“Delegation”) as cl.123 of this Act permits the Commissioner to delegate powers or duties under this Act or the FOI Act except for certain specified powers and duties.

Clause 143. Section 80 repealed

Repeals s.80 of the FOI Act (“Commissioner and staff not to be sued”) as protection for the Commissioner and staff from liability for wrongdoing is provided by cl.131 of this Act.

Clause 144. Section 82 repealed

Repeals s.82 of the FOI Act (“Secrecy”) as cl.130 of this Act contains an equivalent provision that applies in respect of both this Act and the FOI Act.

Clause 145. Section 111 amended

Amends s.111 of the FOI Act (“Report to Parliament”) to refer to the report referred to in cl.124 of this Act. The report referred to in cl.124 is required to include the matters referred to in s.111 of the FOI Act (cl.124(2)(h)).

Clause 146.Schedule 2 amended

Amends the list of Exempt agencies in Schedule 2 to the FOI Act to include reference to the Commissioner under this Act and to delete reference to the FOI Commissioner as provisions relating to the office of Commissioner are contained in Part 7 Division 1 of this Act.

Clause 147.Glossary amended

Amends the Glossary to the FOI Act by inserting a definition of “Commissioner” which refers to the office of Commissioner established under this Act.

Division 2 — *Parliamentary Commissioner Act 1971*

Clause 148.The Act amended

States the amendments in this Division are to the *Parliamentary Commissioner Act 1971*.

Clause 149.Section 4 amended

Inserts a definition of “*remuneration*” in section 4 (“Definitions”) of the *Parliamentary Commissioner Act 1971*. The amendment is a result of the amendment to s.5 of that Act by cl.150 of this Act.

Clause 150.Section 5 amended

Repeals s.5(5) and s.5(6) of the *Parliamentary Commissioner Act 1971* and inserts a provision that requires the remuneration of the Commissioner and Deputy Commissioner under that Act to be determined by the Salaries and Allowances Tribunal. (The remuneration of the Commissioner and Deputy Commissioner under this Act is to be determined by the Salaries and Allowances Tribunal (cl.108 and cl.112).) Amends s5(7) of the *Parliamentary Commissioner Act 1971* so that it is consistent with cl.109 of this Act. These amendments are consequential on cl.119 and cl.152 of this Act which permit the offices of Parliamentary Commissioner and the Commissioner under this Act to be held concurrently.

Clause 151.Section 7 amended

Amends *Parliamentary Commissioner Act 1971* s.7 by deleting references to “such travelling and other allowances” and substituting a reference to “other terms and conditions of service”.

Clause 152.Section 12A inserted

Inserts a new s.12A into the *Parliamentary Commissioner Act 1971* so that the offices of Parliamentary Commissioner and of the Commissioner under this Act may be held concurrently. In the event of a concurrent appointment, the provisions of Schedule 5 to this Act apply.

Clause 153.Section 22B amended

Amends the *Parliamentary Commissioner Act 1971* s.22B to permit the disclosure of information obtained by the Parliamentary Commissioner, Deputy Parliamentary Commissioner or a member of the Parliamentary Commissioner’s staff in the course of, or for the purpose of, an investigation under that Act, to the Privacy and Information Commissioner, a Deputy Privacy and Information Commissioner, or an authorised member of staff of the Privacy and Information Commissioner if the information concerns a matter relevant to the functions of the Commissioner under this Act.

Clause 154. Section 31 amended

Amends the *Parliamentary Commissioner Act 1971* s.31 to increase the “General penalty” for an offence under that Act from \$1,000 to \$6,000 consistent with the penalty for an offence under cl.131 and cl.133 of this Act.

Clause 155. Schedule 1 amended

Amends Schedule 1 (“Entities, and extent, to which this Act does not apply”) to the *Parliamentary Commissioner Act 1971* by inserting reference to the Privacy and Information Commissioner in place of Information Commissioner.

Division 3 — Other Acts amended

Clause 156. Constitution Acts Amendment Act 1899

Amends the *Constitution Acts Amendment Act 1899* by inserting reference to the Privacy and Information Commissioner (in place of the Information Commissioner).

Clause 157. Financial Management Act 2006

Amends the *Financial Management Act 2006* by inserting references to the Privacy and Information Commissioner and the *Information Privacy Act 2007* (in place of the Information Commissioner and FOI Act).

Clause 158. State Records Act 2000

Amends the *State Records Act 2000* by inserting a provision to the effect that the Privacy and Information Commissioner is a member of the State Records Commission (in place of the Information Commissioner).

Division 4 — Amendment of subsidiary legislation

Clause 159. Power to amend subsidiary legislation

Confers a power on the Governor, on the recommendation of the Minister, to make regulations amending subsidiary legislation under any Act that may be necessary or desirable as a consequence of the enactment of this Act.

Part 10 — Transitional provisions

Clause 160. Terms used in this Part

Defines terms used in Part 10.

Clause 161. Continuation of office

Provides for the office of Privacy and Information Commissioner to be a continuation of the office of Information Commissioner under the FOI Act.

Clause 162. Staff of former Commissioner

Provides for a person who immediately before commencement of this Act was a member of staff of the Information Commissioner under the FOI Act to become a member of staff of the Privacy and Information Commissioner under this Act at commencement on the same terms and conditions.

Clause 163. References to former Commissioner

Provides that a reference in a written law, other document or instrument to the former Information Commissioner may be read as a reference to the Commissioner under this Act.

Schedule 1 — Public organisations

Lists persons, bodies and offices that are “public organisations” for the purposes of the Act.

Schedule 2 — Exempt organisations

Lists persons, bodies and offices that are “exempt organisations” for the purposes of the Act. In general, the Act does not apply to exempt organisations. However the disclosure of information by an exempt organisation, in the circumstances specified in Part 6, may attract the protection from liability for disclosure in cl.104 of this Act.

Schedule 3 — Information privacy principles

IPP 1. Collection

Governs how a public organisation may collect personal information. In general, personal information must only be collected if it is necessary for one or more of the organisation’s functions or activities.

IPP 1(1) limits the collection of personal information to that which is necessary to be collected for one or more of the functions or activities of the organisation.

IPP 1(2) requires a public organisation to collect personal information only by lawful and fair means and not in an unreasonably intrusive way.

IPP 1(3) specifies that where it is reasonable and practicable, collection of personal information must only be from the individual concerned.

IPP 1(4) requires a public organisation to ensure that the person to whom the information relates is made aware of, among other things, the purposes for which the information is collected and to whom the public organisation usually discloses information of that kind, except where making the person aware would pose a serious threat to the life, health, safety, or welfare of any individual.

IPP 1(5) prescribes what a public organisation must do if it collects personal information about an individual from someone else (other than an authorised representative of the individual).

IPP 2. Use and disclosure

Governs the use and disclosure of personal information by public organisations. In general, organisations must only use or disclose personal information for the purpose for which it was collected under IPP 1(1).

IPP 2(1)(a) to (j) set out the circumstances in which an organisation may use or disclose personal information for a purpose other than the purpose for which the information was collected. By way of example, personal information may be used or disclosed for another purpose if: the individual consents – IPP 2(1)(b); or the disclosure is required by law – IPP 2(1)(c); or the organisation reasonably believes that the use or disclosure is necessary for the performance of one or more of the law enforcement functions of a law enforcement agency – IPP 2(1)(h), or for one or more of the licensing functions of a licensing agency – IPP 2(1)(i); or the disclosure is to a person for the purpose of research in relation to the person’s Aboriginal family history – IPP 2(1)(j)(i).

IPP 2(2) requires the organisation to make a record if the use or disclosure is for a purpose other than that for which the information was collected.

IPP 2(3) permits use or disclosure of personal information in limited circumstances if the individual is dead, missing or injured and incapable of consenting.

IPP 2(4) provides that if the disclosure is to a person outside the State, the requirements of IPP 8 must also be met.

IPP 2(5) makes clear that IPP 2 does not prevent the disclosure of personal information by a public organisation to the Minister responsible for the administration of that organisation.

IPP 3. Data quality

Requires a public organisation to take reasonable steps to ensure that the personal information it collects, uses or discloses is accurate, complete and up to date.

IPP 4. Data security

Requires a public organisation to take reasonable steps to ensure that the personal information it holds is protected from misuse, loss and unauthorised access, modification or disclosure, or, subject to the *State Records Act 2000*, is destroyed or de-identified if it is no longer needed.

IPP 5. Openness

Requires public organisations to clearly document their policies on management of personal information and to make those policies available to anyone who asks. The intention of the principle is to promote transparency.

Requires a public organisation to take reasonable steps, on a request by a person, to let that person know, generally, what sort of personal information it holds, for what purposes and how it handles that information.

IPP 6. Identifiers

Imposes limits on public organisations concerning the assignment, adoption, use and disclosure of "identifiers" in relation to individuals.

IPP 6(1) prohibits a public organisation from assigning an identifier unless it is necessary for that organisation to carry out any of its functions efficiently.

IPP 6(2) prohibits a public organisation from adopting an identifier that has been assigned by another public organisation unless it is necessary for the organisation to carry out any of its functions efficiently or the individual has consented to the adoption of the identifier.

IPP 6(3) prohibits a public organisation from using or disclosing an identifier that has been assigned by another public organisation except in the circumstances specified.

IPP 6(4) prohibits a public organisation from requiring an individual to provide an identifier in order to obtain a service unless the provision of the identifier is required or authorised by law or in connection with the purpose (or a directly related purpose) for which the identifier was assigned.

IPP 7. Anonymity

Preserves the right of an individual to remain anonymous when dealing with a public organisation, where this is lawful and practicable.

IPP 8. Transborder data flows

Places limits on the disclosure of personal information by public organisations to persons outside Western Australia.

A public organisation must not disclose personal information outside Western Australia unless the requirements of IPP 2 are satisfied (IPP 2(4)) and one or more of the conditions set out in paragraphs (a) to (g) of IPP 8 apply. For instance, IPP 8 permits a disclosure outside Western Australia if the disclosure is required or authorised by law, the individual consents, the disclosure is necessary for the performance of a contract, or the information is relevant to the functions or activities of the person receiving the information and that

person is subject to a law, administrative scheme or contract which imposes restrictions on the handling of personal information that are substantially similar to the IPPs.

Schedule 4 — Health privacy principles

HPP 1. Collection

Governs the collection of health information by public and private organisations.

HPP 1(1) prohibits the collection of health information about an individual unless the information is necessary for one or more of the functions or activities of the organisation and one or more of the circumstances specified in HPP 1(1) applies, for example: the individual consents to the collection – (HPP 1(1)(a)); the collection is required or authorised by law – (HPP 1(1)(b)); or the collection is necessary to lessen or prevent a serious threat to an individual's life, health, safety or welfare (HPP 1(1)(f)(i)).

HPP 1(2) provides that an organisation must collect health information only by lawful and fair means, and not in an unreasonably intrusive way;

HPP 1(3) requires an organisation to collect health information about an individual only from that individual, if it is reasonable and practicable to do so.

HPP 1(4) provides that if health information is collected from an individual, the collecting organisation must take reasonable steps to inform the individual of: who is collecting the information; the fact that the individual may obtain access to the information; the purpose of the collection; to whom the organisation usually discloses such information; any law requiring collection of the information; and the main consequences if the information is not provided to the organisation.

HPP 1(5) provides that if health information about an individual is collected from a third person, the collecting organisation must take reasonable steps to inform the individual of the matters listed in HPP 1(4) except in certain circumstances, for instance: if making the individual aware would pose a serious threat to the life, health, safety or welfare of any individual.

HPP 2. Use and disclosure

Governs the use and disclosure of health information. In general, an organisation must not use or disclose health information for a purpose other than that for which it was collected.

HPP 2(1) prohibits the use or disclosure of health information for a purpose other than that for which it was collected unless one or more of the circumstances specified in paragraphs (a) to (q) applies. By way of example, health information may be used or disclosed for a purpose other than the purpose for which it was collected if: the use or disclosure is for a purpose related to the purpose for which the information was collected, and the individual would reasonably expect such use or disclosure (HPP 2(1)(a)); the individual consents (HPP 2(1)(b)); the use or disclosure is required or authorised by or under law (HPP 2(1)(c)); the organisation reasonably believes the use or disclosure is necessary to lessen or prevent a serious and imminent threat to an individual's life, health, safety or welfare, or a serious threat to public health or safety (HPP 2(1)(h)); the organisation reasonably believes the use or disclosure is necessary to safeguard or promote the wellbeing of a child or a class or group of children (HPP 2(1)(i)); the information is genetic information about an individual which could be predictive of the health of another individual and the specified other conditions are satisfied (HPP 2(1)(j) and (k)); the organisation suspects that unlawful activity has been, is being, or may be, engaged in (HPP 2(1)(l)); or the organisation believes that the use or disclosure is necessary for one or more of the law enforcement functions of a law enforcement agency (HPP 2(1)(m)) or the licensing functions of a licensing agency (HPP 2(1)(n)).

HPP 2(2) provides that an organisation is not required to inform an individual of the disclosure of their genetic information under HPP 2(1)(k)(ii) if the individual is aware of that disclosure, and prohibits the organisation from informing the individual if to do so could result in a serious threat to the life, health, safety or welfare of any individual.

HPP 2(3) requires the organisation to record any disclosure of health information under the provisions of HPP 2(1)(l), (m) or (n).

HPP 2(4) permits disclosure of health information to another person in circumstances where the individual is incapable of giving consent, and the disclosure is —

- (a) to a relative, carer or authorised representative assisting with the health care of the individual if the disclosure is necessary for the continued provision of that care or a health service; or
- (b) for compassionate reasons and is consistent with the expectations or wishes of the individual; or
- (c) to enable the individual's authorised representative to make decisions about the care of the individual or to perform functions or duties relating to the individual.

HPP 2(5) permits use or disclosure of health information in limited circumstances if the individual is dead, missing or injured and incapable of consenting.

HPP 2(6) provides that the requirements of HPP 8 must be met if the disclosure of health information under HPP 2(1), 2(4) or 2(5) is to a person outside Western Australia.

HPP 2(7) makes clear that HPP 2 does not prevent the disclosure of health information by a public organisation to the Minister responsible for the administration of that organisation.

HPP 3. Data quality

Requires an organisation to take reasonable steps to ensure that the health information it collects, uses or discloses is accurate, complete and up to date.

HPP 4. Data security and data retention

Governs the storage and security of health information by an organisation.

Requires an organisation to take reasonable steps to protect health information it holds from misuse, loss, unauthorised access, modification or disclosure (HPP 4(1)).

Requires a health service provider to retain, and not to destroy or delete, health information about an individual unless the destruction or deletion is required or authorised by law (HPP 4(2)(a)); or if not prohibited by any other law, if the destruction or deletion occurs more than 7 years after the last occasion on which the health service provider provided a health service to the individual, or in the case of a health service provided to a child, the deletion or destruction occurs after the individual reaches 25 years of age (HPP 4(2)(b)).

Requires a health service provider to keep a register of health information that has been deleted, destroyed, or transferred to another person or organisation (HPP 4(3)).

Requires an organisation that is not a health service provider to destroy or permanently de-identify health information if it is no longer needed for the purpose for which it was collected or any other purpose authorised by this Act, or any other law (HPP 4(4)).

In the case of public organisations, the provisions of this clause concerning the destruction, deletion or transfer of health information are subject to the *State Records Act* also applies.

HPP 5. Openness

Requires an organisation to document and make publicly available its policies on the management of health information and how an individual may access, or seek correction of, his or her health records.

Requires an organisation, on request, to inform an individual or his or her authorised representative whether it holds health information relating to that individual, the steps which must be taken to obtain access to that information or to have the information

corrected, and in general terms, the nature of the information, the purpose for which it is used and how the organisation handles the information.

HPP 6. Identifiers

Regulates the assignment, adoption, use or disclosure of “identifiers” in relation to an individual.

Proscribes the assignment of an identifier to an individual unless it is necessary to enable the organisation to carry out any of its functions efficiently.

Provides that a private organisation must not—

- adopt an identifier that has been assigned by another organisation except if the individual consents to the adoption of the identifier, or if the use or disclosure of the identifier is required or authorised by or under law.
- use or disclose an identifier assigned by another organisation unless: the disclosure is required for the purpose for which it was assigned or a purpose referred to HPP 2(1)(c) to (o); or the individual consents to the use or disclosure; or the disclosure is to the public organisation which assigned the identifier to enable it to identify the individual.

Provides that a public organisation must not—

- adopt an identifier that has been assigned by another public organisation unless it is necessary to enable the public organisation to carry out any of its functions efficiently or the individual consents to the adoption of the identifier;
- use or disclose an identifier assigned by another organisation unless: the use or disclosure is necessary to enable the public organisation to carry out any of its functions efficiently; or the use or disclosure is necessary for the public organisation to fulfil its obligations to the other organisation; or the use or disclosure is required for the purpose referred to in HPP 2(1)(c) to (o); or the individual consents to the use or disclosure.

HPP 7. Anonymity

Preserves an individual’s right to anonymity in his or her transactions with an organisation where this is lawful and practicable.

HPP 8. Transborder data flows

An organisation is prohibited from disclosing health information outside the State unless the requirements of HPP 2 are satisfied and one or more of the conditions set out in paragraphs (a) to (g) of HPP 8 apply. For instance, a disclosure outside Western Australia may be made if the disclosure is required or authorised by law; the individual consents; the disclosure is necessary for the performance of a contract, or the information is relevant to the functions or activities of the person receiving the information and that person is subject to a law, administrative scheme or contract which imposes restrictions on the handling of personal information that are substantially similar to the HPPs.

HPP 9. Transfer or closure of the practice of a health service provider

Prescribes what a health service must do with its health records when the practice or business closes, is sold, transferred or amalgamated.

HPP 9(1) sets out what a health service provider, or the provider’s legal representative if the provider is deceased, must do in relation to the health information it holds when the provider’s practice or business closes, or is sold, amalgamated, transferred and the provider will no longer be providing the health service in the new practice or business.

HPP 9(2) provides that in the event that a health service provider’s practice is being sold, amalgamated, transferred or closed down, if an individual requests the health service provider to transfer his or her health information to another practitioner, then the information must be made available to the other practitioner in accordance with HPP 10.

HPP 10. Making health information available to other health service providers

Provides for an individual's health information to be made available to another health service provider in certain circumstances.

HPP 10(1) requires a health service provider, upon written request by the individual or another health service provider authorised by the individual, to give to the other practitioner the individual's health information, or a copy or summary of that health information.

HPP 10(2) regulates the fee that may be charged for the provision of health information to another health service provider.

Schedule 5 — Concurrent appointment as Commissioner and Parliamentary Commissioner

[cl. 118]

Clause 1. Term of office

Provides for the term of office of a person appointed to the offices of Commissioner under this Act and Parliamentary Commissioner ("the offices").

Clause 2. Remuneration and other conditions of service

Provides for the remuneration and other conditions of service of a person appointed to the offices.

Clause 3. Rights preserved

Preserves the rights of a person appointed to the offices.

Clause 4. Resignation from office

Provides that if a person who holds the offices resigns from one of the offices, he or she is to be taken to have resigned from the other office.

Clause 5. Removal or suspension from office

Provides that if a person who holds the offices is removed or suspended from one of the offices, he or she is to be taken to have been removed or suspended from the other office. Makes similar provision in respect of such a person who is restored to one of the offices.

Clause 6. Applications of clauses 7 to 10

Provides that clauses 7 to 10 of Schedule 5 apply during, and in relation to, any period when a person holds the offices.

Clause 7. Deputy Commissioners and Acting Commissioners

Provides that a direction given to a Deputy Commissioner under cl.112(4) of this Act may include a direction as to functions under the *Parliamentary Commissioner Act 1971*, and a direction given to the Deputy Parliamentary Commissioner under the *Parliamentary Commissioner Act* may include a direction as to functions under this Act and the FOI Act. In these circumstances, the Deputy Commissioner or Deputy Parliamentary Commissioner has the powers, obligations, responsibilities and protections conferred on the Deputy Commissioner under the *Parliamentary Commissioner Act*, or under this Act or the FOI Act, as the case may be.

Permits a person to be appointed at the same time to act in the offices of Commissioner under this Act and Parliamentary Commissioner under the *Parliamentary Commissioner Act*.

Clause 8. Functions of staff

Provides for the holder of the offices to authorise a member of the Commissioner's staff appointed under this Act to perform the functions of a member of the Parliamentary Commissioner's staff, and *vice versa*. In these circumstances, the member of the Commissioner's staff has the powers, obligations, responsibilities and protections conferred on a member of the Parliamentary Commissioner's staff under the *Parliamentary Commissioner Act*, and vice versa. An authorization may apply to the performance of functions generally, or may be limited to the performance of functions in specified circumstances.

Clause 9. Delegation

Provides for a delegation to be made—

- under the *Parliamentary Commissioner Act* to a Deputy Commissioner under this Act as if he or she were the Deputy Parliamentary Commissioner, or to a member of the Commissioner's staff appointed under this Act as if he or she were a member of the Parliamentary Commissioner's staff; and
- under this Act to the Deputy Parliamentary Commissioner as if he or she were a Deputy Commissioner, or to a member of the Parliamentary Commissioner's staff as if he or she were a member of the Commissioner's staff.

Clause 10. Confidentiality provisions

Provides that the secrecy provisions set out in —

- s.23 of the *Parliamentary Commissioner Act 1971* apply to information obtained by a Deputy Commissioner or a member of the Commissioner's staff in the course of, or for the purposes of, an investigation under the *Parliamentary Commissioner Act 1971* in the same way that they apply to the Deputy Parliamentary Commissioner or a member of the Parliamentary Commissioner's staff; and
- cl.131 of this Act apply to a person who is or has been the Deputy Parliamentary Commissioner or a member of the Parliamentary Commissioner's staff in the same way that they apply to a person who is or has been a Deputy Commissioner or a member of the Commissioner's staff.
- s.23 of *Parliamentary Commissioner Act 1971* and cl.131 of this Act do not prevent the disclosure of information by the Parliamentary Commissioner, Deputy Parliamentary Commissioner or a member of the Parliamentary Commissioner's staff to the Privacy and Information Commissioner, Deputy Privacy and Information Commissioner and a member of the Privacy and Information Commissioner's staff and vice versa.