

Information Commissioner Bill 2024

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Western Australia

LEGISLATIVE ASSEMBLY

Information Commissioner Bill 2024

A Bill for

An Act —

- **to establish and make provision for the offices of Information Commissioner, Information Access Deputy Commissioner and Privacy Deputy Commissioner; and**
- **to make related and consequential amendments to the *Freedom of Information Act 1992* and other Acts; and**
- **for related purposes.**

The Parliament of Western Australia enacts as follows:

1 **Part 1 — Preliminary**

2 **1. Short title**

3 This is the *Information Commissioner Act 2024*.

4 **2. Commencement**

5 (1) This Act comes into operation as follows —

6 (a) Part 1 — on the day on which this Act receives the
7 Royal Assent (*assent day*);

8 (b) Part 5 (but only section 35) and Part 6 — on the day
9 after assent day;

10 (c) Part 7 Division 4 Subdivision 2 —

11 (i) if the *Criminal Law (Mental Impairment)*
12 *Act 2023* section 325 comes into operation on or
13 before the day on which section 59 of this Act
14 comes into operation under paragraph (d) —
15 immediately after section 59 of this Act comes
16 into operation; or

17 (ii) otherwise — when the *Criminal Law (Mental*
18 *Impairment) Act 2023* section 325 comes into
19 operation;

20 (d) the rest of the Act — on the day on which the *Privacy*
21 *and Responsible Information Sharing Act 2024* Part 2
22 Division 12 comes into operation.

23 (2) Despite subsection (1)(d), if the *Criminal Law (Mental*
24 *Impairment) Act 2023* section 410(2) comes into operation
25 before the day on which Part 7 Division 2 of this Act comes into
26 operation, Part 7 Division 2 of this Act —

27 (a) does not come into operation; and

28 (b) is deleted.

1 **3. Terms used**

2 In this Act —

3 ***eligible person*** means a person who meets the eligibility
4 requirements under section 18;

5 ***freedom of information functions*** has the meaning given in the
6 *Freedom of Information Act 1992* section 97B(1);

7 ***Information Access Deputy Commissioner*** means the person
8 appointed as Information Access Deputy Commissioner under
9 section 9(2);

10 ***information Act*** means —

11 (a) this Act; or

12 (b) the *Freedom of Information Act 1992*; or

13 (c) the *Privacy and Responsible Information Sharing*
14 *Act 2024*;

15 ***Information Commissioner*** means the person appointed as
16 Information Commissioner under section 5(2);

17 ***information official*** means a person who is or has been —

18 (a) the Information Commissioner; or

19 (b) the Information Access Deputy Commissioner; or

20 (c) the Privacy Deputy Commissioner; or

21 (d) a person appointed under section 7, 11 or 15 to act in the
22 office of Information Commissioner, Information
23 Access Deputy Commissioner or Privacy Deputy
24 Commissioner; or

25 (e) a member of staff; or

26 (f) a person engaged to provide services under section 31;

27 ***member of staff*** means —

28 (a) a public service officer appointed or made available
29 under section 29; or

30 (b) a person in relation to whom an arrangement under
31 section 30(1) is in effect;

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1 ***Privacy Deputy Commissioner*** means the person appointed as
2 Privacy Deputy Commissioner under section 13(2);

3 ***privacy functions*** has the meaning given in the *Privacy and*
4 *Responsible Information Sharing Act 2024* section 142(1).

5 **4. Act binds Crown**

6 This Act binds the Crown in right of Western Australia and, so
7 far as the legislative power of the Parliament permits, the Crown
8 in all its other capacities.

1 **Part 2 — Appointment of Information Commissioner**
2 **and Deputy Commissioners**

3 **Division 1 — Information Commissioner**

4 **5. Appointment of Information Commissioner**

- 5 (1) An office called the Information Commissioner is established.
- 6 (2) The Information Commissioner is to be an eligible person
7 appointed by the Governor.
- 8 (3) The office of Information Commissioner is not an office in the
9 Public Service.
- 10 (4) Subject to Division 4, the Information Commissioner holds
11 office for the period, not exceeding 5 years, specified in the
12 instrument of appointment.
- 13 (5) A person who has been appointed as Information Commissioner
14 is eligible for reappointment once.

15 **6. Remuneration and terms and conditions of Information**
16 **Commissioner**

- 17 (1) Subject to the *Salaries and Allowances Act 1975*, the
18 Information Commissioner is entitled to be paid the
19 remuneration determined by the Governor.
- 20 (2) The Information Commissioner's rate of remuneration must not
21 be reduced during a term of office of the Information
22 Commissioner without the Information Commissioner's
23 consent.
- 24 (3) The Governor may determine —
- 25 (a) the leave of absence to which the Information
26 Commissioner is entitled; and
- 27 (b) other terms and conditions of service that apply to the
28 Information Commissioner.

Information Commissioner Bill 2024

Part 2 Appointment of Information Commissioner and Deputy Commissioners

Division 2 Information Access Deputy Commissioner

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1 (4) Remuneration paid to the Information Commissioner under
2 subsection (1) is charged to the Consolidated Account, which
3 this subsection appropriates accordingly.

4 **7. Appointment of person to act as Information Commissioner**

5 The Governor may appoint an eligible person to act in the office
6 of Information Commissioner during a period —

7 (a) when the Information Commissioner is —

8 (i) on leave of absence; or

9 (ii) unable to perform the functions of the
10 Information Commissioner;

11 or

12 (b) when the Information Commissioner is suspended; or

13 (c) when the office of Information Commissioner is vacant.

14 **8. Oath or affirmation of office of Information Commissioner**

15 (1) Before performing the functions of the Information
16 Commissioner for the first time, the Information Commissioner
17 or a person appointed to act in the office of Information
18 Commissioner must take an oath, or make an affirmation, that
19 they will faithfully and impartially perform those functions, and
20 that they will not, except in accordance with an information Act,
21 divulge any information received in the performance of those
22 functions.

23 (2) The oath or affirmation must be administered by the Governor.

24 **Division 2 — Information Access Deputy Commissioner**

25 **9. Appointment of Information Access Deputy Commissioner**

26 (1) An office called the Information Access Deputy Commissioner
27 is established.

28 (2) The Information Access Deputy Commissioner is to be an
29 eligible person appointed by the Governor.

- 1 (3) The Information Access Deputy Commissioner is a deputy of
2 the Information Commissioner.
- 3 (4) The office of Information Access Deputy Commissioner is not
4 an office in the Public Service.
- 5 (5) Subject to Division 4, the Information Access Deputy
6 Commissioner holds office for the period, not exceeding
7 5 years, specified in the instrument of appointment.
- 8 (6) A person who has been appointed as Information Access
9 Deputy Commissioner is eligible for reappointment once.
- 10 **10. Remuneration and terms and conditions of Information**
11 **Access Deputy Commissioner**
- 12 (1) Subject to the *Salaries and Allowances Act 1975*, the
13 Information Access Deputy Commissioner is entitled to be paid
14 the remuneration determined by the Governor.
- 15 (2) The Information Access Deputy Commissioner's rate of
16 remuneration must not be reduced during a term of office of the
17 Information Access Deputy Commissioner without the
18 Information Access Deputy Commissioner's consent.
- 19 (3) The Governor may determine —
20 (a) the leave of absence to which the Information Access
21 Deputy Commissioner is entitled; and
22 (b) other terms and conditions of service that apply to the
23 Information Access Deputy Commissioner.
- 24 (4) Remuneration paid to the Information Access Deputy
25 Commissioner under subsection (1) is charged to the
26 Consolidated Account, which this subsection appropriates
27 accordingly.

Information Commissioner Bill 2024

Part 2 Appointment of Information Commissioner and Deputy Commissioners

Division 2 Information Access Deputy Commissioner

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1 **11. Appointment of person to act as Information Access Deputy**
2 **Commissioner**

3 The Governor may appoint an eligible person to act in the office
4 of Information Access Deputy Commissioner during a period —

5 (a) when the Information Access Deputy Commissioner
6 is —

7 (i) on leave of absence; or

8 (ii) unable to perform the functions of the
9 Information Access Deputy Commissioner;

10 or

11 (b) when the Information Access Deputy Commissioner is
12 suspended; or

13 (c) when the office of Information Access Deputy
14 Commissioner is vacant.

15 **12. Oath or affirmation of office of Information Access Deputy**
16 **Commissioner**

17 (1) Before performing the functions of the Information Access
18 Deputy Commissioner for the first time, the Information Access
19 Deputy Commissioner or a person appointed to act in the office
20 of Information Access Deputy Commissioner must take an oath,
21 or make an affirmation, that they will faithfully and impartially
22 perform those functions, and that they will not, except in
23 accordance with an information Act, divulge any information
24 received in the performance of those functions.

25 (2) The oath or affirmation must be administered by the Governor.

Division 3 — Privacy Deputy Commissioner

13. Appointment of Privacy Deputy Commissioner

- (1) An office called the Privacy Deputy Commissioner is established.
- (2) The Privacy Deputy Commissioner is to be an eligible person appointed by the Governor.
- (3) The Privacy Deputy Commissioner is a deputy of the Information Commissioner.
- (4) The office of Privacy Deputy Commissioner is not an office in the Public Service.
- (5) Subject to Division 4, the Privacy Deputy Commissioner holds office for the period, not exceeding 5 years, specified in the instrument of appointment.
- (6) A person who has been appointed as Privacy Deputy Commissioner is eligible for reappointment once.

14. Remuneration and terms and conditions of Privacy Deputy Commissioner

- (1) Subject to the *Salaries and Allowances Act 1975*, the Privacy Deputy Commissioner is entitled to be paid the remuneration determined by the Governor.
- (2) The Privacy Deputy Commissioner's rate of remuneration must not be reduced during a term of office of the Privacy Deputy Commissioner without the Privacy Deputy Commissioner's consent.
- (3) The Governor may determine —
 - (a) the leave of absence to which the Privacy Deputy Commissioner is entitled; and
 - (b) other terms and conditions of service that apply to the Privacy Deputy Commissioner.

Information Commissioner Bill 2024

Part 2 Appointment of Information Commissioner and Deputy Commissioners

Division 3 Privacy Deputy Commissioner

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- 1 (4) Remuneration paid to the Privacy Deputy Commissioner under
2 subsection (1) is charged to the Consolidated Account, which
3 this subsection appropriates accordingly.

4 **15. Appointment of person to act as Privacy Deputy**
5 **Commissioner**

6 The Governor may appoint an eligible person to act in the office
7 of Privacy Deputy Commissioner during a period —

- 8 (a) when the Privacy Deputy Commissioner is —
9 (i) on leave of absence; or
10 (ii) unable to perform the functions of the Privacy
11 Deputy Commissioner;
12 or
13 (b) when the Privacy Deputy Commissioner is suspended;
14 or
15 (c) when the office of Privacy Deputy Commissioner is
16 vacant.

17 **16. Oath or affirmation of office of Privacy Deputy**
18 **Commissioner**

- 19 (1) Before performing the functions of the Privacy Deputy
20 Commissioner for the first time, the Privacy Deputy
21 Commissioner or a person appointed to act in the office of
22 Privacy Deputy Commissioner must take an oath, or make an
23 affirmation, that they will faithfully and impartially perform
24 those functions, and that they will not, except in accordance
25 with an information Act, divulge any information received in
26 the performance of those functions.
27 (2) The oath or affirmation must be administered by the Governor.

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Division 4 — General provisions about appointment of Information Commissioner and Deputy Commissioners

17. Terms used

In this Division —

Acting Commissioner means a person appointed under section 7, 11 or 15 to act in the office of Information Commissioner, Information Access Deputy Commissioner or Privacy Deputy Commissioner;

Commissioner means the Information Commissioner, Information Access Deputy Commissioner or Privacy Deputy Commissioner.

18. Persons eligible for appointment

A person is eligible for appointment as a Commissioner if the person —

- (a) is or has been a legal practitioner of at least 5 years’ standing; or
- (b) is, in the opinion of the Governor, suitable for appointment as a Commissioner by reason of the person’s legal qualifications and experience, whether in this State or elsewhere.

19. When office becomes vacant

The office of a Commissioner becomes vacant if —

- (a) the period for which the Commissioner holds office expires; or
- (b) the Commissioner —
 - (i) dies; or
 - (ii) resigns under section 20; or
 - (iii) is removed from office under section 21.

Information Commissioner Bill 2024

Part 2 Appointment of Information Commissioner and Deputy Commissioners

Division 4 General provisions about appointment of Information Commissioner and Deputy Commissioners

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1 **20. Resignation**

2 (1) A Commissioner may at any time resign from office by written
3 notice addressed to the Governor.

4 (2) The resignation takes effect on the day on which the notice is
5 given to the Governor or on a later day specified in the notice.

6 **21. Suspension or removal from office**

7 (1) A Commissioner may, at any time, be suspended or removed
8 from office by the Governor on addresses from both Houses of
9 Parliament.

10 (2) The Governor may suspend a Commissioner from office if the
11 Governor is satisfied that the Commissioner —

12 (a) is physically or mentally incapable of performing the
13 duties of their office; or

14 (b) has shown incompetence or neglect in performing those
15 duties; or

16 (c) is, according to the *Interpretation Act 1984* section 13D,
17 a bankrupt or a person whose affairs are under
18 insolvency laws; or

19 (d) has been guilty of misconduct as defined in the
20 *Corruption, Crime and Misconduct Act 2003* section 4.

21 (3) If a Commissioner is suspended under subsection (2), the
22 suspended Commissioner is restored to office unless —

23 (a) a statement of the grounds of suspension is laid before
24 each House of Parliament during the first 7 sitting days
25 of that House following the day of suspension; and

26 (b) each House of Parliament, during the session in which
27 the statement is so laid, and within 30 sitting days after
28 it is so laid, passes an address requesting the removal of
29 the suspended Commissioner from office.

1 **22. Outside employment**

2 A Commissioner must not engage in paid employment outside
3 the Commissioner's functions under a written law without the
4 approval of the Governor.

5 **23. Public service officer appointed as Commissioner**

6 (1) If a person who is a public service officer is appointed as a
7 Commissioner, the person is entitled to retain any accruing and
8 existing rights, including any rights under the *State*
9 *Superannuation Act 2000*, as if service as a Commissioner were
10 a continuation of service as a public service officer.

11 (2) If a person ceases to be a Commissioner and becomes a public
12 service officer, the person's service as a Commissioner is to be
13 regarded as service in the Public Service for the purpose of
14 determining that person's rights as a public service officer and,
15 if applicable, for the purposes of the *State Superannuation*
16 *Act 2000*.

17 (3) Subsection (4) applies to a person if —

18 (a) immediately before the person is appointed as a
19 Commissioner, the person occupies an office under the
20 *Public Sector Management Act 1994* Part 3; and

21 (b) the person serves 1 or more continuous terms of
22 appointment as a Commissioner; and

23 (c) the period of the last of those appointments expires by
24 the passage of time and the person is not again
25 appointed as a Commissioner.

26 (4) The person is entitled to be appointed to an office under the
27 *Public Sector Management Act 1994* Part 3 of at least the
28 equivalent level of classification as the office under that Part
29 referred to in subsection (3)(a).

Information Commissioner Bill 2024

Part 2 Appointment of Information Commissioner and Deputy Commissioners

Division 4 General provisions about appointment of Information Commissioner and Deputy Commissioners

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1 **24. Provisions about Acting Commissioners**

2 (1) The Governor may determine —

3 (a) any remuneration to which an Acting Commissioner is
4 entitled; and

5 (b) any leave of absence to which an Acting Commissioner
6 is entitled; and

7 (c) other terms and conditions of service that apply to an
8 Acting Commissioner.

9 (2) An appointment of an Acting Commissioner under section 7, 11
10 or 15 —

11 (a) may be made at any time and may be terminated at any
12 time by the Governor; and

13 (b) may be expressed to have effect only in the
14 circumstances specified by the Governor.

15 (3) The validity of anything done by, to, or in relation to, a person
16 purporting to act under section 7, 11 or 15 is not to be called
17 into question on the ground that —

18 (a) the occasion for an appointment under that section had
19 not arisen; or

20 (b) there is a defect or irregularity in the appointment; or

21 (c) the appointment had ceased to have effect; or

22 (d) the occasion for the person to act had not arisen or had
23 ceased.

24 (4) Remuneration paid to an Acting Commissioner under
25 subsection (1) is charged to the Consolidated Account, which
26 this subsection appropriates accordingly.

1 **Part 3 — Functions of Information Commissioner and**
2 **Deputy Commissioners**

3 **25. Functions of Information Commissioner**

- 4 (1) The Information Commissioner has the following functions —
- 5 (a) the freedom of information functions;
- 6 (b) the privacy functions;
- 7 (c) any other functions given to the Information
- 8 Commissioner under an information Act or another
- 9 written law.
- 10 (2) The Information Commissioner has all the powers that are
- 11 needed for the performance of the Information Commissioner’s
- 12 functions.

13 **26. Functions of Information Access Deputy Commissioner**

- 14 (1) The Information Access Deputy Commissioner has the
- 15 following functions —
- 16 (a) the freedom of information functions;
- 17 (b) any other functions given to the Information Access
- 18 Deputy Commissioner under a written law.

19 Note for this subsection:

20 The *Freedom of Information Act 1992* section 97B provides for how the

21 Information Access Deputy Commissioner performs the freedom of

22 information functions.

- 23 (2) The Information Access Deputy Commissioner has all the
- 24 powers that are needed for the performance of the Information
- 25 Access Deputy Commissioner’s functions.

26 **27. Functions of Privacy Deputy Commissioner**

- 27 (1) The Privacy Deputy Commissioner has the following
- 28 functions —
- 29 (a) the privacy functions;

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- 1 (b) any other functions given to the Privacy Deputy
2 Commissioner under a written law.

3 Note for this subsection:

4 The *Privacy and Responsible Information Sharing Act 2024*
5 section 142 provides for how the Privacy Deputy Commissioner
6 performs the privacy functions.

- 7 (2) The Privacy Deputy Commissioner has all the powers that are
8 needed for the performance of the Privacy Deputy
9 Commissioner's functions.

10 **28. Delegation**

- 11 (1) The Information Commissioner may delegate to a member of
12 staff any power or duty of the Information Commissioner, other
13 than —

- 14 (a) the power of delegation under this subsection; and
15 (b) any power or duty that cannot be delegated because of
16 the *Privacy and Responsible Information Sharing*
17 *Act 2024* section 143 or the *Freedom of Information*
18 *Act 1992* section 97C.

- 19 (2) The Information Access Deputy Commissioner may delegate to
20 a member of staff any power or duty of the Information Access
21 Deputy Commissioner, other than —

- 22 (a) the power of delegation under this subsection; and
23 (b) any power or duty that cannot be delegated because of
24 the *Freedom of Information Act 1992* section 97C.

- 25 (3) The Privacy Deputy Commissioner may delegate to a member
26 of staff any power or duty of the Privacy Deputy Commissioner,
27 other than —

- 28 (a) the power of delegation under this subsection; and
29 (b) any power or duty that cannot be delegated because of
30 the *Privacy and Responsible Information Sharing*
31 *Act 2024* section 143.

- 1 (4) A delegation under this section must be in writing signed by the
2 person making the delegation.
- 3 (5) A person to whom a power or duty is delegated under this
4 section cannot delegate that power or duty.
- 5 (6) A person exercising or performing a power or duty that has been
6 delegated to the person under this section is taken to do so in
7 accordance with the terms of the delegation unless the contrary
8 is shown.
- 9 (7) Nothing in this section limits the ability of the Information
10 Commissioner, Information Access Deputy Commissioner or
11 Privacy Deputy Commissioner to perform a function through an
12 officer or agent.

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Part 4 — Staff and related provisions

29. Staff

Public service officers may be appointed or made available under the *Public Sector Management Act 1994* Part 3 to support the Information Commissioner, Information Access Deputy Commissioner and Privacy Deputy Commissioner in the performance of their functions.

30. Use of government staff and facilities

- (1) The Information Commissioner may by, arrangement with the relevant employer, make use, either full-time or part-time, of the services of an officer or employee —
 - (a) in the Public Service; or
 - (b) in a State agency; or
 - (c) otherwise in the service of the State.
- (2) The Information Commissioner may, by arrangement with a department of the Public Service or a State agency, make use of any facilities of the department or agency.
- (3) An arrangement under subsection (1) or (2) must be made on terms agreed to by the parties.
- (4) An arrangement made by the Information Commissioner under subsection (1) or (2) may include provision for the Information Access Deputy Commissioner or Privacy Deputy Commissioner to make use of the services of the officer or employee or the facilities.

31. Engagement of service providers

- (1) The Information Commissioner may engage suitably qualified persons to provide services, information or advice to the Information Commissioner, Information Access Deputy Commissioner or Privacy Deputy Commissioner.

- 1 (2) A person engaged by the Information Commissioner under
2 subsection (1) is engaged on the terms and conditions decided
3 by the Information Commissioner.

Part 5 — Miscellaneous

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32. Annual report to Parliament

- (1) As soon as practicable after 30 June in a financial year, the Information Commissioner must —
 - (a) prepare a report on —
 - (i) the operation in the financial year of the *Freedom of Information Act 1992* and the *Privacy and Responsible Information Sharing Act 2024* Part 2 and Schedule 1; and
 - (ii) the operations of the Information Commissioner, Information Access Deputy Commissioner and Privacy Deputy Commissioner in the financial year;
 - and
 - (b) submit the report to the President of the Legislative Council and the Speaker of the Legislative Assembly.
- (2) The annual report must include the following information for the financial year —
 - (a) the information required by the *Freedom of Information Act 1992* section 111;
 - (b) the information required by the *Privacy and Responsible Information Sharing Act 2024* section 146.
- (3) The annual report referred to in subsection (1) may include recommendations of the Information Commissioner as to legislative or administrative changes that could be made to assist in achieving —
 - (a) the objects of the *Freedom of Information Act 1992*; and
 - (b) the objects of the *Privacy and Responsible Information Sharing Act 2024* set out in section 3(a) to (e) of that Act.

-
- 1 (4) The President or Speaker must cause a copy of a report
2 submitted to them under subsection (1) to be laid before the
3 Legislative Council or Legislative Assembly, as the case
4 requires, within 15 sitting days of that House after the report is
5 submitted.

6 Note for this section:

7 The Information Commissioner must also prepare an annual report
8 under the *Financial Management Act 2006*.

9 **33. Secrecy and authorised disclosure and use of information**

- 10 (1) An information official must not, directly or indirectly, record,
11 disclose or use information obtained in the administration of an
12 information Act.

13 Penalty for this subsection: a fine of \$6 000.

- 14 (2) An information official does not commit an offence under
15 subsection (1) if the recording, disclosure or use of the
16 information is authorised under subsection (3).

- 17 (3) The recording, disclosure or use of information to which
18 subsection (1) applies is authorised if the information is
19 recorded, disclosed or used —

- 20 (a) for the purpose of, or in connection with, performing a
21 function under an information Act or another written
22 law; or
23 (b) as permitted or required by an information Act or
24 another written law; or
25 (c) for the purposes of any legal proceedings arising out of
26 the administration of an information Act or another
27 written law; or
28 (d) with the written consent of the person to whom the
29 information relates; or
30 (e) in circumstances prescribed by the regulations.

- 31 (4) Subsection (3) does not affect the operation of the *Freedom of*
32 *Information Act 1992* section 74.

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1 **34. Protection from personal liability**

2 (1) No civil or criminal liability is incurred by an information
3 official for anything that the information official has done, in
4 good faith, in the performance or purported performance of a
5 function under an information Act.

6 (2) The protection given by this section applies even though the
7 thing done as described in subsection (1) may have been
8 capable of being done whether or not this Act had been enacted.

9 (3) Despite subsection (1), the State is not relieved of any liability
10 that it might have for an information official having done
11 anything as described in that subsection.

12 (4) In this section, a reference to the doing of anything includes a
13 reference to an omission to do anything.

14 **35. Regulations**

15 The Governor may make regulations prescribing matters —

16 (a) required or permitted by this Act to be prescribed; or

17 (b) necessary or convenient for giving effect to the purposes
18 of this Act.

Part 6 — Transitional provisions

1
2 **36. Terms used**

3 (1) In this Part —

4 **FOI Act Information Commissioner** means the Information
5 Commissioner appointed under the *Freedom of Information*
6 *Act 1992* section 56;

7 **FOI Act staff member** means a member of staff appointed
8 under the *Freedom of Information Act 1992* section 61(1);

9 **new Information Commissioner** means the Information
10 Commissioner appointed under section 5(2);

11 **transition day** means the day on which Part 2 of this Act comes
12 into operation under section 2(1)(d).

13 (2) A reference in this Part to a provision of the *Freedom of*
14 *Information Act 1992* that is deleted by Part 7 Division 4 of this
15 Act is, on and after transition day, a reference to that provision
16 as in force before transition day.

17 **37. FOI Act Information Commissioner to continue as**
18 **Information Access Deputy Commissioner**

19 (1) A person who, immediately before transition day, is appointed
20 as FOI Act Information Commissioner is, on and from transition
21 day until the expiry of the period of that appointment, taken to
22 be appointed as Information Access Deputy Commissioner
23 under section 9(2) of this Act.

24 (2) A determination in effect under the *Freedom of Information*
25 *Act 1992* section 56(5) or (6) in relation to the person's
26 entitlement to leave of absence, or other terms and conditions of
27 service, as FOI Act Information Commissioner is taken, on and
28 from transition day, to be a determination under section 10(3) in
29 relation to the person's entitlement to leave of absence, or other
30 terms and conditions of service, as Information Access Deputy
31 Commissioner.

s. 38

- 1 (3) The person retains all existing and accruing rights, including
2 any rights under the *State Superannuation Act 2000*, as if the
3 person's appointment as Information Access Deputy
4 Commissioner were a continuation of the person's appointment
5 as FOI Act Information Commissioner.
- 6 (4) Despite section 9(6), the person cannot be reappointed as
7 Information Access Deputy Commissioner following the
8 appointment that is taken to occur under subsection (1) if the
9 reappointment would result in the aggregate period of all of the
10 person's appointments as FOI Act Information Commissioner
11 and Information Access Deputy Commissioner exceeding
12 10 years.
- 13 (5) Section 23(3) and (4) apply to the person as if the person's
14 appointments as FOI Act Information Commissioner were
15 appointments as a Commissioner within the meaning of that
16 section.
- 17 (6) This section does not prevent the person from resigning, or
18 being suspended or removed, from the office of Information
19 Access Deputy Commissioner under Part 2 Division 4.

20 **38. Acting FOI Act Information Commissioner to continue as**
21 **Acting Information Access Deputy Commissioner**

- 22 (1) If an appointment of a person to act in the office of FOI Act
23 Information Commissioner is in force immediately before
24 transition day under the *Freedom of Information Act 1992*
25 section 59, the appointment is, on and from transition day until
26 the expiry of the period of that appointment, taken to be an
27 appointment of the person to act in the office of Information
28 Access Deputy Commissioner under section 11.
- 29 (2) If the appointment to act in the office of FOI Act Information
30 Commissioner is expressed to have effect only in the
31 circumstances specified in the instrument of appointment,
32 subsection (1) applies whether or not those circumstances are
33 applicable immediately before transition day.

1 (3) Subsection (1) does not prevent the termination of the
2 appointment under section 24(2)(a).

3 **39. FOI Act staff members to be appointed as public service**
4 **officers**

5 (1) A person who is an FOI Act staff member immediately before
6 transition day is, on and from transition day, taken to be
7 appointed as a public service officer referred to in section 29.

8 (2) The person's appointment as a public service officer —
9 (a) is to a level of classification that is the same as the
10 substantive level of classification that applied in relation
11 to the person as an FOI Act staff member immediately
12 before transition day; and

13 (b) is —
14 (i) if the person was appointed as an FOI Act staff
15 member for an indefinite period — an
16 appointment as a permanent officer (as defined
17 in the *Public Sector Management Act 1994*
18 section 3(1)); and
19 (ii) if the person was appointed as an FOI Act staff
20 member for a fixed term — an appointment as a
21 term officer (as defined in the *Public Sector*
22 *Management Act 1994* section 3(1)) for the
23 remainder of that fixed term as at transition day;

24 and

25 (c) does not affect the person's remuneration.

26 (3) The person retains all existing and accruing rights, including
27 any rights under the *State Superannuation Act 2000*, as if the
28 person's service as an FOI Act staff member were service as a
29 public service officer.

30 (4) This section does not prevent the person from resigning, or
31 otherwise ceasing to be a public service officer, under the
32 *Public Sector Management Act 1994*.

s. 40

1 **40. Arrangements for use of staff continued**

2 If an arrangement under the *Freedom of Information Act 1992*
3 section 61(4) is in effect immediately before transition day, the
4 arrangement is taken, on and from transition day, to be an
5 arrangement made under section 30(1) by the new Information
6 Commissioner.

7 **41. Things done or started under *Freedom of Information***
8 ***Act 1992* before transition day**

9 (1) Anything done by, to, or in relation to, the FOI Act Information
10 Commissioner before transition day under the *Freedom of*
11 *Information Act 1992* is, to the extent necessary or convenient
12 for the purpose of continuing its effect on and after transition
13 day, taken to have been done by, to, or in relation to, the new
14 Information Commissioner.

15 Examples for this subsection:

- 16 1. If a requirement is made by the FOI Act Information Commissioner
17 before transition day under the *Freedom of Information Act 1992*
18 section 75(1), but has not been complied with before transition day, the
19 requirement is taken to have been made by the new Information
20 Commissioner.
- 21 2. If an application is made to the FOI Act Information Commissioner
22 before transition day under the *Freedom of Information Act 1992*
23 section 35, but is not decided before transition day, the application is
24 taken to have been made to the new Information Commissioner.

25 (2) Anything that the FOI Act Information Commissioner started
26 doing under the *Freedom of Information Act 1992* before
27 transition day may be continued on and after transition day by
28 the new Information Commissioner.

29 Example for this subsection:

30 If the FOI Act Information Commissioner started dealing with a
31 complaint made against an agency's decision under the *Freedom of*
32 *Information Act 1992* section 65 before transition day, the new
33 Information Commissioner may continue dealing with the complaint on
34 and after transition day.

35 (3) Without limiting subsection (1) or (2), anything that the FOI Act
36 Information Commissioner started doing under the *Freedom of*

1 *Information Act 1992* before transition day in the performance
2 of a function that, on and after transition day, is a freedom of
3 information function, may be continued on and after transition
4 day by the Information Access Deputy Commissioner acting in
5 accordance with the *Freedom of Information Act 1992*
6 section 97B.

7 **42. Legal proceedings**

8 (1) This section applies if —

9 (a) the FOI Act Information Commissioner is a party to any
10 legal proceedings arising under, or in relation to the
11 administration of, the *Freedom of Information Act 1992*;
12 and

13 (b) the proceedings have commenced, but not been finally
14 determined, before transition day.

15 (2) On and from transition day, the new Information Commissioner
16 is taken to be a party to the proceedings instead of the FOI Act
17 Information Commissioner.

18 **43. Information and records**

19 At the beginning of transition day, the information and records
20 of the FOI Act Information Commissioner become information
21 and records of the new Information Commissioner and the new
22 Information Commissioner, Information Access Deputy
23 Commissioner and Privacy Deputy Commissioner may hold,
24 record, use or disclose the information and records for the
25 purposes of performing their functions.

26 **44. Application of *Financial Management Act 2006* Part 5
27 Division 3**

28 For the purposes of the *Financial Management Act 2006* Part 5
29 Division 3, the department that before transition day was taken
30 under section 5 of that Act to be constituted by the

s. 45

- 1 administration of the FOI Act Information Commissioner is
2 taken to be abolished at the beginning of transition day.
- 3 **45. Transitional regulations**
- 4 (1) In this section —
5 *specified* means specified or described in regulations;
6 *transitional matter* —
7 (a) means a matter or issue of a transitional nature that
8 arises as a result of the enactment of this Act or the
9 coming into operation of any provisions of this Act or
10 regulations made under it; and
11 (b) includes a savings or application matter.
- 12 (2) If there is not sufficient provision in this Part for dealing with a
13 transitional matter, regulations may prescribe anything required,
14 necessary or convenient to be prescribed in relation to the
15 matter.
- 16 (3) Without limiting subsection (2), regulations made for the
17 purposes of that subsection may provide that specified
18 provisions of an information Act —
19 (a) do not apply to, or in relation to, a specified matter or
20 thing; or
21 (b) apply with specified modifications to, or in relation to, a
22 specified matter or thing.
- 23 (4) If regulations made for the purposes of subsection (2) provide
24 that a specified state of affairs is taken to have existed, or not to
25 have existed, on and from a day that is earlier than the day on
26 which the regulations are published in accordance with the
27 *Interpretation Act 1984* section 41(1)(a) but not earlier than
28 transition day, the regulations have effect according to their
29 terms.

- 1 (5) If regulations made for the purposes of subsection (2) contain a
2 provision of a kind described in subsection (4), the provision
3 does not operate so as —
- 4 (a) to affect in a manner prejudicial to any person (other
5 than the State or an authority of the State) the rights of
6 that person existing before the day of publication of
7 those regulations; or
- 8 (b) to impose liabilities on any person (other than the State
9 or an authority of the State) in respect of anything done
10 or omitted to be done before the day of publication of
11 those regulations.

1

Part 7 — Other Acts amended

2

Division 1 — *Constitution Acts Amendment Act 1899* amended

3

46. Act amended

4

This Division amends the *Constitution Acts Amendment Act 1899*.

5

6

47. Schedule V amended

7

In Schedule V Part 1 Division 2 delete the item relating to the Information Commissioner and insert:

8

9

10

Information Commissioner, Information Access Deputy

11

Commissioner or Privacy Deputy Commissioner

12

appointed under the *Information Commissioner Act 2024*.

13

14

Division 2 — *Criminal Law (Mental Impairment) Act 2023* amended

15

16

48. Act amended

17

This Division amends the *Criminal Law (Mental Impairment) Act 2023*.

18

19

49. Section 410 amended

20

In section 410(2) in the Table in the item for the *Freedom of Information Act 1992* delete “s. 63(3)(aa)”.

21

22

Division 3 — *Financial Management Act 2006* amended

23

50. Act amended

24

This Division amends the *Financial Management Act 2006*.

1 **51. Section 5 amended**

2 (1) In section 5(1):

3 (a) in paragraph (d) delete “Investigations;” and insert:

4

5 Investigations,

6

7 (b) delete paragraph (e).

8 (2) In section 5(2) delete “subsection (1)” and insert:

9

10 subsection (1), or to a department of the Public Service known
11 as the Office of the Information Commissioner,

12

13 **52. Schedule 2 heading replaced**

14 Delete the heading to Schedule 2 and insert:

15

16 **Schedule 2 — Modifications to the Act as to certain**
17 **administrations and the Office of the Information**
18 **Commissioner**

19

[s. 5(2)]

20 **53. Schedule 2 amended**

21 In Schedule 2 delete the item for section 54 and insert:

22

54 54. (1) The accountable authority of —

(a) the agency taken to be constituted under section 5(1)
by the administration of the Legislative Council is the
Clerk of the Legislative Council; or

(b) the agency taken to be constituted under section 5(1)
by the administration of the Legislative Assembly is
the Clerk of the Legislative Assembly; or

- (c) the agency taken to be constituted under section 5(1) by the administration of the Parliamentary Services Department is the Executive Manager (however designated) of the Parliamentary Services Department; or
- (d) the agency taken to be constituted under section 5(1) by the administration of the Parliamentary Commissioner for Administrative Investigations is the chief executive officer of the department of the Public Service principally assisting in the administration of the Parliamentary Commissioner Act 1971; or
- (e) an agency taken to be constituted under section 5(1) by the administration of a body or office that is the subject of regulations referred to in that provision is the person appointed, in writing, by the Treasurer to be the accountable authority of that agency; or
- (f) a department of the Public Service known as the Office of the Information Commissioner is the Information Commissioner appointed under the *Information Commissioner Act 2024*.

1

2 **Division 4 — *Freedom of Information Act 1992* amended**

3 **Subdivision 1 — Main amendments**

4 **54. Act amended**

5 This Subdivision amends the *Freedom of Information Act 1992*.

6 **55. Part 4 Divisions 1 and 2 deleted**

7 Delete Part 4 Divisions 1 and 2.

1 **56. Section 66 amended**

2 (1) In section 66(1):

3 (a) delete paragraph (a) and insert:

4
5 (a) be given in writing to the Information
6 Commissioner; and

7
8 (b) in paragraph (d) delete “regulations; and” and insert:
9
10 regulations.

11
12 (c) delete paragraph (e).

13 (2) In section 66(2) and (3) delete “lodge” and insert:

14
15 make

16
17 (3) In section 66(4) delete “Commissioner may allow a complaint
18 to be lodged” and insert:

19
20 Information Commissioner may allow a complaint to be made
21

22 **57. Section 75 amended**

23 In section 75(2) delete “member of the staff of the
24 Commissioner in the course of the performance of his or her
25 duties as a member of that staff,” and insert:

26
27 member of Commissioner staff in the course of the performance
28 of their duties as a member of Commissioner staff
29

1 **58. Part 4 Division 4 heading deleted**

2 Delete the heading to Part 4 Division 4.

3 **59. Sections 79 and 80 replaced**

4 Delete sections 79 and 80 and insert:

5

6 **79. Commissioner may give notice of officer's conduct**

7 If in dealing with a complaint the Information
8 Commissioner forms the opinion that there is evidence
9 that an officer of an agency has been guilty of a breach
10 of duty, or of misconduct, in the administration of this
11 Act, the Commissioner may take such steps as the
12 Commissioner considers appropriate to bring the
13 evidence to the notice of —

- 14 (a) if the person is the principal officer of the
15 agency but is not a Minister — the Minister
16 responsible for the agency; or
- 17 (b) if the person is the principal officer of a
18 contractor or subcontractor — the Minister to
19 whom the administration of the *Court Security*
20 *and Custodial Services Act 1999*, the *Declared*
21 *Places (Mentally Impaired Accused) Act 2015*
22 or the *Prisons Act 1981* is committed, as is
23 relevant to the case; or
- 24 (c) if the person is a Minister — the Parliament; or
- 25 (d) in any other case — the principal officer of the
26 agency.
27

1 **60. Section 81 amended**

2 In section 81(1) and (2) delete “Commissioner for the purposes
3 of Division 3.” and insert:

4
5 Information Commissioner for the purposes of this Division.
6

7 Note: The heading to amended section 81 is to read:

8 **Disclosure of information and giving of evidence to**
9 **Commissioner**

10 **61. Section 82 deleted**

11 Delete section 82.

12 **62. Section 83 amended**

13 In section 83:

14 (a) delete “Division 3” and insert:

15
16 this Division

17
18 (b) in paragraph (c) before “Commissioner” insert:

19
20 Information
21

1 **63. Part 5A inserted**

2 After section 97 insert:

3

4 **Part 5A — Administration**

5 **97A. Functions of Information Commissioner and**
6 **Information Access Deputy Commissioner under**
7 **this Act**

8 (1) The Information Commissioner has the following
9 functions under this Act —

- 10 (a) to deal with complaints made under Part 4
11 about decisions made by agencies in respect of
12 access applications and applications for
13 amendment of personal information;
- 14 (b) to ensure that agencies are aware of their
15 responsibilities under this Act;
- 16 (c) to ensure that members of the public are aware
17 of this Act and their rights under it;
- 18 (d) to provide assistance to members of the public
19 and agencies on matters relevant to this Act;
- 20 (e) any other function given to the Information
21 Commissioner under this Act.

22 (2) The Information Access Deputy Commissioner also
23 has all the functions of the Information Commissioner
24 under this Act, other than the following —

- 25 (a) giving a direction under section 97B(3);
- 26 (b) any function under section 111 in relation to a
27 report referred to in that section.

28 Note for this section:

29 The *Information Commissioner Act 2024* sections 25 and 26
30 provide for the functions of the Information Commissioner
31 and Information Access Deputy Commissioner generally.

- 1 **97B. Performance of freedom of information functions**
- 2 (1) The functions under this Act that are functions of both
- 3 the Information Commissioner and the Information
- 4 Access Deputy Commissioner are the *freedom of*
- 5 *information functions*.
- 6 (2) A freedom of information function may be
- 7 performed —
- 8 (a) by the Information Commissioner; or
- 9 (b) by the Information Access Deputy
- 10 Commissioner, subject to any direction given
- 11 under subsection (3).
- 12 (3) The Information Commissioner may direct the
- 13 Information Access Deputy Commissioner as to —
- 14 (a) which of the freedom of information functions
- 15 the Information Access Deputy Commissioner
- 16 is to perform; and
- 17 (b) the manner in which the Information Access
- 18 Deputy Commissioner must perform any
- 19 freedom of information function.
- 20 (4) If the Information Access Deputy Commissioner
- 21 performs a freedom of information function —
- 22 (a) the Information Access Deputy Commissioner
- 23 performs the function in the Information
- 24 Access Deputy Commissioner’s own right and
- 25 not on behalf of the Information Commissioner;
- 26 and
- 27 (b) the Information Access Deputy Commissioner
- 28 may perform the function upon the Information
- 29 Access Deputy Commissioner’s own belief or
- 30 state of mind (to the extent that the
- 31 performance or exercise is dependent on the

- 1 belief or state of mind of the Information
2 Commissioner); and
- 3 (c) the performance of the function is as effectual
4 for all purposes as if it were performed by the
5 Information Commissioner; and
- 6 (d) a reference in this Act or another written law to
7 anything done by, to, or in relation to, the
8 Information Commissioner in connection with
9 the function includes a reference to the thing as
10 done by, to, or in relation to, the Information
11 Access Deputy Commissioner; and
- 12 (e) the Information Commissioner is not prevented
13 from performing the same function on another
14 occasion (in relation to a different matter).

15 **97C. Certain functions cannot be delegated**

16 The following functions cannot be delegated by the
17 Information Commissioner or the Information Access
18 Deputy Commissioner under the *Information*
19 *Commissioner Act 2024* section 28 —

- 20 (a) requiring an agency to produce a document for
21 inspection under section 75(1);
- 22 (b) any function under section 76 in relation to
23 dealing with a complaint;
- 24 (c) considering any matter or making any decision
25 in relation to an exemption certificate under
26 section 77.
27

1 **64. Section 111 amended**

2 (1) Delete section 111(1).

3 (2) In section 111(2) delete “The report is to include in relation to
4 each agency — ” and insert:

5
6 Without limiting the *Information Commissioner Act 2024*
7 section 32, the Information Commissioner must include the
8 following information in the annual report required under that
9 section in relation to each agency for the financial year —
10

11 (3) In section 111(2) after each of paragraphs (a) to (k) delete
12 “and”.

13 (4) Delete section 111(3)(a) and insert:

14
15 (a) provide the Information Commissioner with
16 such information as the Commissioner requires
17 for the purposes of this section; and
18

19 (5) Delete section 111(4) and (5).

20 **65. Glossary clause 1 amended**

21 In the Glossary clause 1 insert in alphabetical order:

22
23 *freedom of information functions* has the meaning given in
24 section 97B(1);

25 *Information Access Deputy Commissioner* means the
26 person appointed as Information Access Deputy
27 Commissioner under the *Information Commissioner*
28 *Act 2024* section 9(2);

29 *Information Commissioner* means the person appointed as
30 Information Commissioner under the *Information*
31 *Commissioner Act 2024* section 5(2);

Information Commissioner Bill 2024

Part 7 Other Acts amended

Division 4 Freedom of Information Act 1992 amended

s. 66

1 *member of Commissioner staff* means a member of staff as
2 defined in the *Information Commissioner Act 2024*
3 section 3;
4

5 **66. Various references to “Commissioner” amended**

6 Amend the provisions listed in the Table as set out in the Table.

7 **Table**

Provision	Delete	Insert
s. 13(3) and (4) s. 66(6) s. 68(1) s. 69(2) and (3) s. 70(4), (5) and (6) s. 71(1) and (3) s. 74(2) s. 76(1), (2), (4), (5), (6), (7) and (8) s. 77(1), (4) and (7) s. 78(1), (4) and (5) s. 85(1), (2)(a), (3) and (4) s. 89(3) s. 97(2)	Commissioner	Information Commissioner

Provision	Delete	Insert
s. 13(5) and (7) s. 35(1) s. 48(3) and (4) s. 67(1) and (2) s. 69(4) s. 70(1), (2) and (3) s. 71(2) s. 72(1), (2) and (3) s. 73(1) s. 74(1) s. 75(1) and (2) s. 76(3) s. 77(3) s. 84 s. 85(5) s. 103(c)	Commissioner (1 st occurrence)	Information Commissioner
s. 78(2) s. 87(1)(a), (b) and (c)	Commissioner's	Information Commissioner's

1 **Subdivision 2 — Amendment linked to commencement of *Criminal***
2 ***Law (Mental Impairment) Act 2023***

3 **67. Act amended**

4 This Subdivision amends the *Freedom of Information Act 1992*.

5 **68. Section 79 amended**

6 In section 79(b) delete “(Mentally Impaired Accused)” and
7 insert:

8
9 *(Mental Impairment)*
10

11 **Division 5 — *Parliamentary Commissioner Act 1971* amended**

12 **69. Act amended**

13 This Division amends the *Parliamentary Commissioner*
14 *Act 1971*.

15 **70. Schedule 1 amended**

16 In Schedule 1 delete the item relating to the *Freedom of*
17 *Information Act 1992* and insert:

18
Information Information Commissioner.
Commissioner Act 2024 Information Access Deputy Commissioner.
Privacy Deputy Commissioner.

19 **Division 6 — *State Records Act 2000* amended**

20 **71. Act amended**

21 This Division amends the *State Records Act 2000*.

1 **72. Section 58 amended**

2 Delete section 58(b) and insert:

3

4 (b) the person who is the Information
5 Commissioner, or who is acting in that office,
6 under the *Information Commissioner Act 2024*;
7 and

8

=====

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
Acting Commissioner	17
assent day	2(1)
Commissioner	17
eligible person	3
FOI Act Information Commissioner	36(1)
FOI Act staff member	36(1)
freedom of information functions	3
Information Access Deputy Commissioner	3
information Act	3
Information Commissioner	3
information official	3
member of staff	3
new Information Commissioner	36(1)
Privacy Deputy Commissioner	3
privacy functions	3
specified	45(1)
transitional matter	45(1)
transition day	36(1)