

INFORMATION COMMISSIONER BILL 2024

EXPLANATORY MEMORANDUM

INTRODUCTION

The Information Commissioner Bill 2024 (**the Bill**) is proposed to —

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

The new Information Commissioner will be responsible for overseeing privacy and freedom of information matters in Western Australia under the *Freedom of Information Act 1992* and the Privacy and Responsible Information Sharing Bill 2024, supported by the Information Access Deputy Commissioner and the Privacy Deputy Commissioner.

Please note the following terms are used within this Explanatory Memorandum:

- **FM Act** means the *Financial Management Act 2006*;
- **FOI Act** means the *Freedom of Information Act 1992*;
- **PRIS Bill** means the Privacy and Responsible Information Sharing Bill 2024;
- **PSM Act** means the *Public Sector Management Act 1994*,

and a reference "the Commissioners" is a reference to the Information Commissioner, Information Access Deputy Commissioner and Privacy Deputy Commissioner unless the context provides otherwise.

PART 1 PRELIMINARY

Clause 1. Short title

This clause provides that the Bill will be called the *Information Commissioner Act 2024*.

Clause 2. Commencement

This clause sets out when different provisions of the Bill will commence.

Subclause (1) provides that:

- Part 1 comes into operation of the day on which the Bill receives the Royal Assent;
- clause 35 and Part 6 comes into effect on the day after the Bill receives the Royal Assent;
- Part 7 Division 4 Subdivision 2 comes into effect on the later of the day that section 325 of the *Criminal Law (Mental Impairment) Act 2023* comes into operation or immediately after clause 59 comes into operation; and
- the remainder of the Bill comes into operation on the day on which Part 2 Division 12 of the PRIS Bill comes into operation.

Subclause (2) provides that if section 410(2) of the *Criminal Law (Mental Impairment) Act 2023* comes into operation before the day on which Part 7 Division 2 of the Bill comes into operation, then Part 7 Division 2 does not come into operation and is deleted.

Clause 3. Terms used

This clause sets out the definitions of terms used throughout the Bill, namely:

- *eligible person*;
- *freedom of information functions*;
- *Information Access Deputy Commissioner*;
- *Information Commissioner*;
- *information Act*;
- *information official*;
- *member of staff*;
- *Privacy Deputy Commissioner*; and
- *privacy functions*.

Clause 4. Act binds Crown

This clause provides that the Bill binds the Crown.

PART 2 APPOINTMENT OF INFORMATION COMMISSIONER AND DEPUTY COMMISSIONERS

This Part contains clauses 5 to 24 and provides for the establishment and appointment of three Commissioners: the Information Commissioner; the Information Access Deputy Commissioner; and the Privacy Deputy Commissioner.

Division 1 Information Commissioner

Clause 5. Appointment of Information Commissioner

This clause establishes an office called the Information Commissioner. The Information Commissioner is to be an eligible person appointed by the Governor, holds office for a period not exceeding 5 years and is only eligible for reappointment once.

The term *eligible person* means a person who meets the eligibility requirements under clause 18.

This clause also clarifies that the office of Information Commissioner is not an office in the Public Service.

Clause 6. Remuneration and terms and conditions of Information Commissioner

This clause provides for the remuneration and terms and conditions of appointment for the Information Commissioner.

Subject to the *Salaries and Allowances Act 1975*, the Governor may determine the remuneration the Information Commissioner is entitled to. The Information Commissioner's rate of remuneration must not be reduced during a term of office without their consent. Remuneration paid to the Information Commissioner is charged to the Consolidated Account.

The Governor may also determine the leave of absence and other terms and conditions of service for the Information Commissioner.

Clause 7. Appointment of person to act as Information Commissioner

This clause provides for the appointment of an Acting Information Commissioner by the Governor when the Information Commissioner is on leave of absence, unable to perform their functions, suspended, or when the office of Information Commissioner is vacant.

Clause 8. Oath or affirmation of office of Information Commissioner

This clause requires the Information Commissioner (or an Acting Information Commissioner) to take an oath, or make an affirmation, of office before performing the functions of that office for the first time. The oath or affirmation is administered by the Governor.

Division 2 Information Access Deputy Commissioner

Clause 9. Appointment of Information Access Deputy Commissioner

This clause establishes an office called the Information Access Deputy Commissioner. The Information Access Deputy Commissioner is to be an eligible person appointed by the Governor, and is a deputy of the Information Commissioner. The Information Access Deputy Commissioner holds office for a period not exceeding 5 years and is only eligible for reappointment once.

The term *eligible person* means a person who meets the eligibility requirements under clause 18.

This clause also clarifies that the office of Information Access Deputy Commissioner is not an office in the Public Service.

Clause 10. Remuneration and terms and conditions of Information Access Deputy Commissioner

This clause provides for the remuneration and terms and conditions of appointment for the Information Access Deputy Commissioner.

Subject to the *Salaries and Allowances Act 1975*, the Governor may determine the remuneration the Information Access Deputy Commissioner is entitled to. The Information Access Deputy Commissioner's rate of remuneration must not be reduced during a term of office without their consent. Remuneration paid to the Information Access Deputy Commissioner is charged to the Consolidated Account.

The Governor may also determine the leave of absence and other terms and conditions of service for the Information Access Deputy Commissioner.

Clause 11. Appointment of person to act as Information Access Deputy Commissioner

This clause provides for the appointment of an Acting Information Access Deputy Commissioner by the Governor when the Information Access Deputy Commissioner is on leave of absence, unable to perform their functions, suspended, or when the office of Information Access Deputy Commissioner is vacant.

Clause 12. Oath or affirmation of office of Information Access Deputy Commissioner

This clause requires the Information Access Deputy Commissioner (or an Acting Information Access Deputy Commissioner) to take an oath, or make an affirmation, of office before performing the functions of that office for the first time. The oath or affirmation is administered by the Governor.

Division 3 Privacy Deputy Commissioner

Clause 13. Appointment of Privacy Deputy Commissioner

This clause establishes an office called the Privacy Deputy Commissioner. The Privacy Deputy Commissioner is to be an eligible person appointed by the Governor, and is a deputy of the Information Commissioner. The Privacy Deputy Commissioner holds office for a period not exceeding 5 years and is only eligible for reappointment once.

The term *eligible person* means a person who meets the eligibility requirements under clause 18.

This clause also clarifies that the office of Privacy Deputy Commissioner is not an office in the Public Service.

Clause 14. Remuneration and terms and conditions of Privacy Deputy Commissioner

This clause provides for the remuneration and terms and conditions of appointment for the Privacy Deputy Commissioner.

Subject to the *Salaries and Allowances Act 1975*, the Governor may determine the remuneration the Privacy Deputy Commissioner is entitled to. The Privacy Deputy Commissioner's rate of remuneration must not be reduced during a term of office without their consent. Remuneration paid to the Privacy Deputy Commissioner is charged to the Consolidated Account.

The Governor may also determine the leave of absence and other terms and conditions of service for the Privacy Deputy Commissioner.

Clause 15. Appointment of person to act as Privacy Deputy Commissioner

This clause provides for the appointment of an Acting Privacy Deputy Commissioner by the Governor when the Privacy Deputy Commissioner is on leave of absence, unable to perform their functions, suspended, or when the office of Privacy Deputy Commissioner is vacant.

Clause 16. Oath or affirmation of office of Privacy Deputy Commissioner

This clause requires the Privacy Deputy Commissioner (or an Acting Privacy Deputy Commissioner) to take an oath, or make an affirmation, of office before performing the functions of that office for the first time. The oath or affirmation is administered by the Governor.

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

Clause 17. Terms used

This clause sets out the definitions of terms used throughout this Division, namely:

- *Acting Commissioner*, meaning someone appointed to act in the office of the Information Commissioner, Information Access Deputy Commissioner or Privacy Deputy Commissioner; and
- *Commissioner*, meaning the substantive Information Commissioner, Information Access Deputy Commissioner or Privacy Deputy Commissioner.

Clause 18. Persons eligible for appointment

This clause sets out the eligibility requirements for a person to be appointed as a Commissioner.

To be eligible for appointment, a person must have been (or be) a legal practitioner of at least 5 years' standing or be considered suitable for appointment by the Governor by reason of their legal qualifications and experience whether in the State or elsewhere.

The term *legal practitioner* is defined in section 5 of the *Interpretation Act 1984*.

Clause 19. When office becomes vacant

This clause provides for the circumstances in which the office of a Commissioner becomes vacant. An office becomes vacant if:

- the period for which the Commissioner holds office expires, or
- the Commissioner:
 - dies;
 - resigns under clause 20; or
 - is removed from office under clause 21.

Clause 20. Resignation

This clause provides that a Commissioner may resign at any time by written notice to the Governor, and the resignation takes effect on the day it is accepted by the Governor or a later day specified in the notice.

Clause 21. Suspension or removal from office

The clause sets out the circumstances in which a Commissioner may be suspended or removed from office by the Governor.

Subclause (1) provides that the Governor may suspend or remove a Commissioner from office on addresses from both Houses of Parliament.

Subclause (2) provides that the Governor may suspend a Commissioner from office (without addresses from both Houses of Parliament) if the Governor is satisfied that the Commissioner:

- is physically or mentally incapable to perform their duties; or
- has shown incompetence or negligence in performing those duties; or
- is a bankrupt or a person whose affairs are under insolvency laws according to section 13D of the *Interpretation Act 1984*; or

- has been guilty of misconduct as defined in section 4 of the *Corruption, Crime and Misconduct Act 2003*.

Where a Commissioner has been suspended under subclause (2), the suspended Commissioner is restored to office unless a statement of the grounds of suspension is laid before each House of Parliament during the first 7 sitting days of that House following the day of suspension and each House of Parliament passes an address within 30 sitting days of the notice being laid requesting the removal of the Commissioner from office.

Clause 22. Outside employment

This clause prohibits a Commissioner from engaging in paid employment outside of their functions, except with the approval of the Governor.

Clause 23. Public service officer appointed as Commissioner

This clause sets out the transferral of rights and entitlements between the office of a Commissioner and a public service officer in the Public Service, as well as conferring a right of return for a public service officer who is appointed as a Commissioner.

Subclause (1) provides that a public service officer who is appointed as a Commissioner retains any accruing and existing rights under the *State Superannuation Act 2000*, as if service as a Commissioner is a continuation of service as a public service officer.

Subclause (2) provides that if a Commissioner becomes a public service officer, their service as a Commissioner is considered as service in the Public Service for the purposes of determining their rights as a public service officer, including for the purposes of the *State Superannuation Act 2000*, if applicable.

Subclause (3) provides that subclause (4) applies to a person if:

- they occupied an office under Part 3 of the PSM Act immediately before being appointed as a Commissioner; and
- they served 1 or more continuous terms as a Commissioner; and
- their last appointment expired by the passage of time.

Subclause (4) provides that a person to whom subsection (3) applies is entitled to be appointed to an office of at least the equivalent level of classification they occupied immediately before their appointment as a Commissioner.

Clause 24. Provisions about Acting Commissioners

This clause provides for the remuneration and terms and conditions of appointment for an Acting Commissioner.

The Governor may determine the remuneration and the leave of absence an Acting Commissioner is entitled to, and any other terms and conditions that apply to an Acting Commissioner.

The Governor may also make or terminate an appointment of an Acting Commissioner at any time, and specify the circumstances in which an appointment has effect.

This clause also operates to ensure that the validity of anything done by, to or in relation to, an Acting Commissioner cannot be called into question on the grounds that:

- the occasion for their appointment under the relevant section had not arisen;

- there is a defect or irregularity in their appointment;
- the appointment had ceased to have effect; or
- the occasion for the person to act had not arisen.

Remuneration paid to an Acting Commissioner is charged to the Consolidated Account.

PART 3 FUNCTIONS OF INFORMATION COMMISSIONER AND DEPUTY COMMISSIONERS

This Part contains clauses 25 to 28 and sets out the functions of the three Commissioners. It also provides for when any the Commissioners can delegate their powers or duties.

Clause 25. Functions of Information Commissioner

This clause sets out the Information Commissioner's functions. The Information Commissioner has the freedom of information functions, the privacy functions and any other functions given to the Information Commissioner under an information Act or another written law.

The terms *freedom of information functions*, *information Act* and *privacy functions* are defined in clause 3.

This clause also confers on the Information Commissioner all of the powers needed to perform their functions.

Clause 26. Functions of Information Access Deputy Commissioner

This clause sets out the Information Access Deputy Commissioner's functions. The Information Access Deputy Commissioner has the freedom of information functions and any other functions given to them under a written law.

This clause also confers on the Information Access Deputy Commissioner all of the powers needed to perform their functions.

Clause 27. Functions of Privacy Deputy Commissioner

This clause sets out the Privacy Deputy Commissioner's functions. The Privacy Deputy Commissioner has the privacy functions and any other functions given to them under a written law.

This clause also confers on the Privacy Deputy Commissioner all of the powers needed to perform their functions.

Clause 28. Delegation

This clause sets out when the Commissioners may delegate their powers or duties to members of staff.

Each Commissioner may delegate any power or duty to a staff member other than the power of delegation itself, or a power or duty that cannot be delegated due to the operation of clause 143 of the PRIS Bill or section 97C of the FOI Act.

Delegations must be made in writing and signed by the person making the delegation. The person to whom a power or duty is delegated cannot delegate that power or duty.

This clause further provides that a person exercising or performing a delegated power or duty, is taken to do so in accordance with the terms of the delegation, unless the contrary is shown. Nothing in this clause limits the ability of a Commissioner to perform a function through an officer or agent.

PART 4 STAFF AND RELATED PROVISIONS

This Part contains clauses 29 to 31, which cover staff and related provisions.

Clause 29. Staff

This clause provides that public services officers can be appointed or made available under Part 3 of the PSM Act to support the Information Commissioner, Information Access Deputy Commissioner and Privacy Deputy Commissioner in the performance of their functions.

Clause 30. Use of government staff and facilities

This clause enables the Information Commissioner to make arrangements with a relevant employer to make use of the services of an officer or employee of the Public Service or a State agency or otherwise in the service of the State, or make use of any facilities of a department of the Public Service or a State agency.

An arrangement 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.

Clause 31. Engagement of service providers

This clause enables the Information Commissioner to appoint suitably qualified persons to provide services, information or advice to the Information Commissioner, Information Access Deputy Commissioner or Privacy Deputy Commissioner.

PART 5 MISCELLANEOUS

This Part contains clauses 32 to 35 and deals with miscellaneous matters.

Clause 32. Annual report to Parliament

This clause imposes an obligation on the Information Commissioner to provide a report annually to Parliament. The Information Commissioner must report on the operation of the FOI Act, Part 2 and Schedule 1 of the PRIS Bill, and the operations of each of the Commissioners in the preceding financial year and submit the report to the Presiding Officer of each House of Parliament.

Subclause (2) requires the report to include the specific information referred to in section 111 of the FOI Act and clause 146 of the PRIS Bill.

Subclause (3) provides that the annual report may include recommendations of the Information Commissioner as to the legislative or administrative changes that could be made to help the objects of the FOI Act, or the objects set out in clause 3(a) to (e) of the PRIS Bill, be achieved.

The annual report is required to be laid before each House of Parliament by the relevant presiding officer within 15 sitting days of being submitted.

The annual report required by this clause is in addition to any report that is required to be submitted under the FM Act.

Clause 33. Secrecy and authorised disclosure and use of information

This clause introduces an offence for the unauthorised recording, use or disclosure of information obtained in the administration of an information Act by the Commissioners, an Acting Commissioner, their staff and any person engaged to provide services under clause 31, each an *information official*.

Subclause (1) provides that an information official must not, directly or indirectly, record, disclose or use information obtained in the administration of an information Act. The penalty for this offence is a fine of \$6,000.

The term *information Act* is defined in clause 3.

Subclauses (2) and (3) provide that the recording, disclosure or use of information to which subclause (1) applies is authorised if the information is recorded, disclosed or used:

- for the purpose of, or in connection with, performing a function under an information Act or another written law; or
- as permitted or required by an information Act or another written law; or
- for the purposes of any legal proceedings arising out of the administration of an information Act or another written law; or
- with the written consent of the person to whom the information relates; or
- in circumstances prescribed by the regulations.

Subclause (4) provides that subclause (3) does not affect the operation of section 74 of the FOI Act. Section 74 of that Act requires the Information Commissioner to do certain things in order to prevent the disclosure of exempt matter or information as to the existence or non-existence of a document containing matter exempt under clause 1, 2 or 5 of Schedule 1, and prohibits the inclusion of exempt matter in any decision on a complaint or reasons for decision.

Clause 34. Protection from personal liability

This clause provides protection from certain liability for the Commissioners, an Acting Commissioner, their staff and any person engaged to provide services under clause 31, each an *information official*.

Subclause (1) provides protection from any civil or criminal liability for anything that an information official has done, in good faith, in the performance or purported performance of a function under an information Act. However, this does not relieve the State of any liability that it might have.

Subclause (2) provides, in effect, that the protection from liability applies even though the thing done may have been capable of being done whether or not the Bill had been enacted.

Subclause (4) ensures that the protection from liability also applies in respect of an omission to do anything.

Clause 35. Regulations

This clause provides the Governor with the power to make regulations prescribing matters required or permitted by the Bill to be prescribed, or where necessary or convenient for giving effect to the purposes of the Bill.

PART 6 TRANSITIONAL PROVISIONS

This Part contains clauses 36 to 45 and deals with matters of a transitional nature that will arise upon the commencement of the Bill.

Clause 36. Terms used

This clause sets out the definitions of terms used throughout this Part, namely:

- **FOI Act Information Commissioner**, meaning the Information Commissioner appointed under the section 56 of the FOI Act (as that section is in force before transition day);
- **FOI Act staff member**, meaning a member of staff appointed under section 61(1) of the FOI Act (as that section is in force before transition day);
- **new Information Commissioner**, meaning the Information Commissioner appointed under clause 5(2) of the Bill; and
- **transition day**, meaning the day on which Part 2 of the Bill comes into operation under clause 2(1)(d).

Clause 37. FOI Act Information Commissioner to continue as Information Access Deputy Commissioner

This clause transitions the existing FOI Act Information Commissioner into the office of Information Access Deputy Commissioner.

Subclause (1) provides that a person who is appointed as FOI Act Information Commissioner immediately before transition day is taken to be appointed as Information Access Deputy Commissioner under clause 9(2) from transition day until the expiry of the period of that appointment.

Subclause (2) transitions the leave of absence and terms and conditions of service of the existing FOI Act Information Commissioner to be the leave of absence and terms and conditions of service for the Information Access Deputy Commissioner under clause 10(3), and subclause (3) preserves any existing and accruing rights, including under the *State Superannuation Act 2000*.

Subclause (4) provides that the existing FOI Act Information Commissioner whose appointment is transitioned under this clause cannot be reappointed as Information Access Deputy Commissioner if the effect of the reappointment is that they would hold office for a period exceeding 10 years.

Subclause (5) applies the right of return for public service officers in clause 23(3) and (4) to the Information Access Deputy Commissioner once transitioned under this clause, with the effect that any right of return that exists under the FOI Act is preserved.

This clause does not prevent the person from resigning, or being suspended or removed, from the office of Information Access Deputy Commissioner under Part 2 Division 4.

Clause 38. Acting FOI Act Information Commissioner to continue as Acting Information Access Deputy Commissioner

This clause provides for any acting appointment as FOI Act Information Commissioner under section 59 of the FOI Act to continue as an acting appointment as Information Access Deputy Commissioner on and from transition day until the expiry of the period of that appointment.

An appointment transitioned under this clause may still be terminated under clause 24(2)(a).

Clause 39. FOI Act staff members to be appointed as public service officers

This clause provides that members of staff appointed under section 61(1) of the FOI Act immediately before transition day are, from transition day, taken to be appointed as a public service officer referred to in clause 29.

The person's appointment is to a level of classification that is the same as the substantive level of classification that applied in relation to the person as an FOI Act staff member immediately before transition day and does not affect the person's remuneration.

This clause it intended to ensure that FOI Act staff members are not disadvantaged as part of any transition to being public service officers.

Clause 40. Arrangements for use of staff continued

This clause provides for the continuation of any arrangements that are in place, relating to the receipt of services from officers and employees employed in the Public Service or in a State instrumentality or otherwise in the service of the Crown by the FOI Act Information Commissioner, under section 61(4) of the FOI Act from transition day.

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

This clause provides for things done by, to, or in relation to, the FOI Act Information Commissioner before transition day to be transitioned as if they were things done by, to, or in relation to, the new Information Commissioner on and after transition day.

The clause ensures that anything started by the FOI Act Information Commissioner prior to transition day may now be continued by the Information Commissioner.

Clause 42. Legal proceedings

This clause deals with legal proceedings to which the FOI Act Information Commissioner is a party and that have been commenced and remain on foot prior to transition day, and substitutes the new Information Commissioner as the party in place of the FOI Act Information Commissioner on and from transition day.

Clause 43. Information and records

This clause transfers custodianship of information and records held by the FOI Act Information Commissioner to the new Information Commissioner and provides for their use, recording and disclosure by the Commissioners for the purposes of the performance of their functions at the beginning of transition day.

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

This clause abolishes the department that was taken to exist under section 5 of the FM Act from transition day.

Clause 45. Transitional regulations

This clause provides for the making of regulations that are necessary or convenient to be prescribed in order to deal with *transitional matters* (as that term is defined in subclause (1)) if there is not sufficient provision in this Part of the Bill to deal with such.

PART 7 OTHER ACTS AMENDED

This Part contains clauses 46 to 72 and provides for the amendment of various Acts to give effect to the broader purposes and provisions of the Bill.

Division 1 *Constitution Acts Amendment Act 1899* amended

Clause 46. Act amended

This clause provides that this Division amends the *Constitution Acts Amendment Act 1899*.

Clause 47. Schedule V amended

This clause provides that in Schedule V Part 1 Division 2 of the *Constitution Acts Amendment Act 1899*, the current item for the Information Commissioner is deleted and replaced with "Information Commissioner, Information Access Deputy Commissioner or Privacy Deputy Commissioner appointed under the *Information Commissioner Act 2024*".

Section 34(1)(a) of the *Constitution Acts Amendment Act 1899* provides that a person is disqualified for membership of the Legislature if he, relevantly, holds any office mentioned in Part 1 of Schedule V.

The effect of the amendments is that Schedule V Part 1 Division 2 will be extended to apply to the Information Commissioner, Information Access Deputy Commissioner and Privacy Deputy Commissioner.

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

Clause 48. Act amended

This clause provides that this Division amends the *Criminal Law (Mental Impairment) Act 2023*.

Clause 49. Section 410 amended

This clause provides that in the Table in section 410(2) of the *Criminal Law (Mental Impairment) Act 2023*, "s. 63(3)(aa)" is to be deleted from the item for the FOI Act.

Division 3 *Financial Management Act 2006* amended

Clause 50. Act amended

This clause provides that this Division amends the FM Act.

Clause 51. Section 5 amended

This clause:

- deletes section 5(1)(e) of the FM Act; and
- amends section 5(2) to refer to a department of the Public Service known as the Office of the Information Commissioner.

The effect of these amendments is that the modifications in Schedule 2 to the FM Act will apply to a department of the Public Service known as the Office of the Information Commissioner.

Clause 52. Schedule 2 heading replaced

This clause deletes and replaces the current heading to Schedule 2 of the FM Act.

Clause 53. Schedule 2 amended

This clause deletes the item for section 54 in Schedule 2 to the FM Act and inserts a new item in substantially the same terms, with the addition of a new paragraph (f) which provides that the accountable authority of "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*".

Division 4 Freedom of Information Act 1992 amended

Subdivision 1 Main amendments

Clause 54. Act amended

This clause provides that this Subdivision amends the FOI Act. The amendments modernise language contained within the FOI Act and make changes consequential upon the introduction of the Bill.

Clause 55. Part 4 Divisions 1 and 2 deleted

This clause deletes Part 4 Divisions 1 and 2 of the FOI Act.

This amendment is required as the matters currently provided for in those provisions of the FOI Act are now dealt with in the substantive provisions of this Bill and proposed Part 5A to the FOI Act (which is being inserted by clause 63 of this Bill).

Clause 56. Section 66 amended

This clause amends section 66 of the FOI Act concerning the form of complaints so that the language is consistent with the PRIS Bill.

Clause 57. Section 75 amended

This clause replaces the words "member of the staff of the Commissioner in the course of the performance of his or her duties as a member of that staff", in section 75(2) of the FOI Act with the words "member of Commissioner staff in the course of the performance of their duties as a member of Commissioner staff".

This amendment ensures reference is made to the defined term *member of Commissioner staff*, which is to be inserted in the Glossary to the FOI Act in accordance with clause 65 of the Bill.

Clause 58. Part 4 Division 4 heading deleted

This clause deletes the heading to Part 4 Division 4 of the FOI Act.

Clause 59. Sections 79 and 80 replaced

This clause deletes sections 79 and 80 of the FOI Act and replaces them with a new section 79.

Proposed section 79 enables the Information Commissioner to bring evidence to the notice of the principal officer of an agency, the Minister or the Parliament (as appropriate), if the Commissioner forms the opinion that there is evidence that an officer of an agency has been guilty of a breach of duty, or of misconduct, in the administration of the FOI Act.

Clause 60. Section 81 amended

This clause amends section 81 of the FOI Act by deleting "Commissioner for the purposes of Division 3" in subsection (1) and (2), and inserting "Information Commissioner for the purposes of this Division".

This amendment ensures reference is made to the defined term *Information Commissioner*, which is to be inserted in the Glossary to the FOI Act in accordance with clause 65 of the Bill.

Clause 61. Section 82 deleted

This clause deletes section 82 of the FOI Act.

Section 82 of the FOI Act is being deleted as clause 33 of this Bill now prohibits an information official from, directly or indirectly, recording, disclosing or using information obtained in the administration of an information Act.

Clause 62. Section 83 amended

This clause deletes "Division 3" in section 83 of the FOI Act, and inserts "this Division". This clause also amends paragraph (c) to refer to "Information Commissioner".

This amendment ensures reference is made to the defined term *Information Commissioner*, which is to be inserted in the Glossary to the FOI Act in accordance with clause 65 of the Bill.

Clause 63. Part 5A inserted

This clause inserts a new Part 5A into the FOI Act after section 97 of that Act, titled "Part 5A — Administration". Part 5A is comprised of proposed sections 97A, 97B and 97C.

Proposed section 97A sets out the functions of the Information Commissioner and the Information Access Deputy Commissioner under the FOI Act.

Proposed section 97A(1) provides that the Information Commissioner has the following functions under the FOI Act:

- to deal with complaints about decisions by agencies in relation to access to and amendment of personal information;
- to ensure agencies are aware of their responsibilities under the FOI Act;

- to ensure that members of the public are aware of the FOI Act and their rights under it;
- to provide advice and assistance to members of the public and agencies on matters relevant to the FOI Act;
- and other functions that is expressed to be given to “the Commissioner” under the FOI Act.

Proposed section 97A(2) provides that the Information Access Deputy Commissioner also has all the functions of the Information Commissioner under the FOI Act, other than:

- giving a direction under section 97B(3);
- any function relating to a report under section 111.

Proposed section 97B deals with the performance of functions by the Information Commissioner and Information Access Deputy Commissioner. Those functions that are functions of both the Information Commissioner and Information Access Deputy Commissioner are defined as the *freedom of information functions*.

Proposed section 97B(2) provides that a freedom of information function may be performed by the Information Commissioner or the Information Access Deputy Commissioner (subject to any direction given under subsection (3)).

Proposed section 97B(3) provides that the Information Commissioner may direct the Information Access Deputy Commissioner as to which of the freedom of information functions to perform, and the manner in which they must be performed. Subsection (4) provides for how the Information Access Deputy Commissioner performs a freedom of information function.

Proposed section 97C provides that specific functions cannot be delegated by the Information Commissioner or Information Access Deputy Commissioner under clause 28 of this Bill, namely:

- requiring an agency to produce a document under section 75(1) of the FOI Act;
- any function under section 76 of the FOI Act in relation to dealing with a complaint;
- considering any matter or making any decision in relation to an exemption certificate under section 77 of the FOI Act.

Clause 64. Section 111 amended

Subclause (1) deletes section 111(1) of the FOI Act.

Subclause (2) deletes in section 111(2) of the FOI Act the words "The report is to include for each agency — " and inserts the words "Without limiting the *Information Commissioner Act 2024* section 31, the Information Commissioner must include the following information in the annual report required under that section in relation to each agency for the financial year —".

Subclause (3) amends each of paragraphs (a) to (k) to section 111(2) of the FOI Act to include the word "and".

Subclause (4) deletes section 111(3)(a) of the FOI Act and inserts a new paragraph (a) with the words "provide the Information Commissioner with such information as the Commissioner requires for the purposes of this section; and".

Subclause (5) deletes section 111(4) and (5) of the FOI Act.

Clause 65. Glossary clause 1 amended

This clause amends clause 1 of the Glossary to the FOI Act to insert definitions for the following terms:

- *freedom of information functions*;
- *Information Access Deputy Commissioner*;
- *Information Commissioner*; and
- *member of Commissioner staff*.

Clause 66. Various references to "Commissioner" amended

This clause provides for the deletion of the term "Commissioner" and its replacement with the term "Information Commissioner" where appropriate.

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

Clause 67. Act amended

This clause provides that this Subdivision amends the FOI Act.

Clause 68. Section 79 amended

This clause deletes the reference to "(Mentally Impaired Accused)" in section 79(b) of the FOI Act and inserts "(Mental Impairment)".

Division 5 Parliamentary Commissioner Act 1971 amended

Clause 69. Act amended

This clause provides that this Division amends the *Parliamentary Commissioner Act 1971*.

Clause 70. Schedule 1 amended

This clause amends Schedule 1 to the *Parliamentary Commissioner Act 1971* by deleting the item relating to the FOI Act and replacing it with a reference to the *Information Commissioner Act 2024* and the Information Commissioner, Information Access Deputy Commissioner and Privacy Deputy Commissioner.

Section 13(2)(n) of the *Parliamentary Commissioner Act 1971* provides that that Act does not apply to any department or authority specified in Schedule 1 but if the extent to which that Act does not apply in respect of a department or authority has been set out in the item in Schedule 1 relating to that department or authority then that Act does not apply to that extent.

The effect of this amendment is that the *Parliamentary Commissioner Act 1971* does not apply to each of the Commissioners.

Division 6 State Records Act 2000 amended

Clause 71. Act amended

This clause provides that this Division amends the *State Records Act 2000*.

Clause 72. Section 58 amended

This clause deletes section 58(b) of the *State Records Act 2000* and inserts "the person who is the Information Commissioner, or who is acting in that office under the *Information Commissioner Act 2024*".

The effect of this amendment is that the Information Commissioner becomes a member of the State Records Commission established under the *State Records Act 2000*.