This Bill—

- repeals Part 2 Division 4, and related provisions of the *Freedom of Information Act 1992* (“the FOI Act”);
- gives the State Administrative Tribunal jurisdiction to deal with complaints on an external review under the FOI Act, and confines the jurisdiction of the Information Commissioner on external review to endeavouring to conciliate complaints;
- amends the exemption in subclause 8(1) of Schedule 1 to the FOI Act to confirm that it applies to matter the disclosure of which would found an action for a breach of confidence;
- creates a new exemption to protect matter the disclosure of which is prohibited by the body of traditions, observances and customs of Aboriginal people generally or of a particular community or group of Aboriginal people;
- makes other amendments to address practical difficulties relating to the operation of the FOI Act, including amendments which:
  - clarify when an agency may regard an access application as having been withdrawn,
  - confirm that an agency may delete exempt matter and matter outside the ambit of an access application before providing access to a document,
  - confirm that the protection from civil and criminal liability afforded to agencies and officers under the FOI Act applies even when an agency or officer decides in good faith not to claim that a document is an exempt document or to delete exempt matter from a document;
  - confirm that the Information Commissioner and staff cannot be compelled to disclose confidential information obtained under the FOI Act, except as required by the FOI Act;
  - expand the functions of the Information Commissioner to include conducting reviews of the internal FOI procedures of an agency, and including a power to report on breaches by principal officers of local government authorities and other agencies for which no Minister is directly responsible;
- requires the FOI Act be reviewed every 5 years; and
- makes minor technical amendments to the FOI Act.

**Clause Notes**

**Part 1 – Preliminary**

**Clause 1. Short title**

Provides for this Act to be cited as the *Freedom of Information Amendment Act 2007* (“the Amendment Act”).

**Clause 2. Commencement**

Provides for cl.1 and cl.2 to come into effect on the day on which the Act receives the Royal Assent and for the balance of the Act to come into effect on a day or days fixed by proclamation.
Clause 3. The Act amended

The Act amends the Freedom of Information Act 1992 ("the FOI Act").

Clause 4. Section 6 amended

The effect of the amendment is that Parts 2 and 4 of the FOI Act do not apply to a person’s access to a document if the person can obtain access to the document otherwise than under the FOI Act.

Clause 5. Section 12A inserted

The inserted section permits an individual who has made an application for access to a document to withdraw the application by giving a written notice to the agency.

Clause 6. Section 13A inserted

The inserted section permits an agency to request an individual who has lodged an access application to consult with, or provide further information to, the agency about the application. The agency must not request information as to, or inquire into, the applicant’s reasons for seeking access to the documents the subject of the access application. The purpose of the amendment is to expedite the processing of access applications, by enabling an agency to clarify what documents are sought in the access application.

Clause 7. Section 17 amended

Amends section 17(3) by deleting reference to a “$25, or such greater amount as is prescribed”, and substituting reference to an amount prescribed by regulations or, if no greater amount is prescribed, to $60. Section 17 permits an applicant to request an estimate of the charges that may be payable for dealing with an access application. That estimate often exceeds $25, and as no fee has been prescribed and agencies are entitled by the regulations to charge $30 per hour for dealing with an application, agencies have to provide estimates for almost every application for non-personal information.

Clause 8. Section 19 amended

Repeals subsection 19(4). Subsection 19(4) currently requires an agency, in certain circumstances, to refund any unused portion of an advance deposit paid by an applicant. The section does not address the refund of an application fee paid by the applicant if an application is withdrawn. This may be unfair if the agency has undertaken little or no work in relation to the application. Clause 48 permits regulations to be made to prescribe the extent to which an application fee or advance deposit is to, or may be, refunded in certain circumstances.

Clause 9. Section 20 amended

Inserts section 20(2a). The processing of access applications can consume considerable time and resources of agencies. Section 20(2a) permits agencies to refuse to deal with an access application that is, for example, substantially in the same terms as an application previously made by the same applicant to the agency, or which is frivolous in nature.

Clause 10. Section 23 amended

Repeals section 23(3). This section requires an agency to refuse access to a document that is the subject of an exemption certificate. The provisions of the FOI Act relating to the issuing of exemption certificates are repealed by clause 15.

Clause 11. Section 24 replaced by sections 24 and 24A

Replaces section 24 with new sections 24 and 24A. Applicants often seek access to documents which also contain exempt matter or matter which is outside the ambit of the access application ("irrelevant matter"). Section 24 of the Act presently permits an agency to edit exempt matter from a document before giving access to that document. The Act does not presently permit an agency to edit from a document matter which is outside the
ambit of the access application. If matter in a document which is irrelevant to the access application is not exempt, and the applicant does not agree, in accordance with section 14 of the Act, to reduce the ambit of the application to exclude that matter, the agency must provide access to that irrelevant matter, and must comply with the requirements of the FOI Act (for example in relation to third party consultation) before doing so. The new sections 24 and 24A allow an agency to make and give access to an edited copy of a document from which exempt matter or irrelevant matter has been deleted.

Clause 12. Section 30 amended

Section 30 sets out the matters that must be addressed by an agency in a notice of decision. Section 30 presently requires an agency to state in its decision if access is provided to an edited copy of a document from which exempt matter has been deleted and the grounds on which that matter has been deleted. The inserted paragraph "(ca)" requires an agency to state in its decision if access is provided to an edited copy of a document from which irrelevant matter has been deleted and the grounds on which that matter has been deleted. The inserted paragraph “(da)” requires an agency, if it decides to give access to a document in a way other than the way requested by the applicant, to inform the applicant of the reasons for giving access that other way.

Clause 13. Section 30A inserted

Circumstances may arise where an applicant fails to respond to an agency’s request to consult with, or provide further information to, the agency, or to nominate a person to whom access is to be given under section 28 of the FOI Act, or where an applicant fails to collect documents to which the agency has decided to provide access. There is presently no mechanism in the FOI Act for an agency to regard an access application as having been withdrawn in these situations. This can result in agency files, which may be required for operational or other administrative purposes, being quarantined for indeterminate periods. Section 30A allows an agency to issue a “compliance notice” to an applicant advising the applicant that he or she may be regarded as having withdrawn the access application if he or she does not comply with the agency’s request to consult or provide further information, to nominate a person under section 28, or to obtain access to documents, within 30 days. If the applicant does not comply with the compliance notice within 30 days the agency may regard the applicant as having withdrawn the application and must give the applicant a written notice of that decision including the reasons and the applicant's rights of review and appeal (if any).

Clause 14. Section 32 amended

Section 32 of the FOI Act presently requires an agency not to give access to a document containing personal information about a third party unless steps have been taken to obtain the views of that third party as to whether the document contains matter which is exempt personal information. Third parties include, among others, officers of government agencies. Prescribed personal information about those officers, such as their names and positions, are not exempt under clause 3 of Schedule 1 to the FOI Act. The amendment to section 32(1) removes the requirement to consult in respect of prescribed personal information in relation to a person who is or has been an officer of an agency.

Clause 15. Part 2 Division 4 repealed

Repeals Part 2 Division 4. That Division enables the Premier to sign a conclusive exemption certificate stating that a document contains matter which is exempt under a specified provision of clause 1 or 2 of Schedule 1. The Division has not been used since its enactment.

Clause 16. Section 39 amended

Inserts paragraph (iva) into section 39(2) to provide a right of internal review to a person aggrieved by a decision of an agency to give access to a document in a way other than in the way requested by the applicant.
Inserts paragraph (va) into section 39(2) to provide a right of internal review to a person aggrieved by a decision of an agency to regard an applicant as having withdrawn an access application.

**Clause 17. Section 40 amended**

Section 40(3) presently allows the principal officer of the agency to approve the lodgement of an application for internal review after the expiry of the 30 day time limit. The amendment removes the requirement for the principal officer of the agency to approve that extension of time.

**Clause 18. Section 62A inserted**

Inserts section 62A(1) into Part 4 Division 2. The main function of the Commissioner under the FOI Act as amended by the Amendment Act is to receive and endeavour to resolve complaints by conciliation (see clause 19). This amendment specifies that references to the Commissioner “dealing with” a complaint mean endeavouring to resolve the complaint by conciliation, rather than by determining the complaint. If the Commissioner has already started to deal with a complaint before the commencement of section 18 of the Amendment Act, the Commissioner retains the power to determine the complaint (cl.62A(2)).

This amendment is part of a set of amendments which amend the FOI Act to transfer the external review of decisions under the FOI Act from the Commissioner to the State Administrative Tribunal (“the SAT”). The Commissioner will endeavour to conciliate complaints but will no longer have a role in their determination. Complaints that cannot be resolved by conciliation may be referred to the SAT and the provisions of the *State Administrative Tribunal Act 2004* (“the SAT Act”) then apply.

**Clause 19. Section 63 amended**

Amends section 63(1) to provide that the main function of the Commissioner is to receive and, subject to the Act, deal with complaints.

Inserts a new section 63(1a) to define “conciliation proceedings”.

Includes as a function of the Commissioner the review of the internal procedures of an agency for giving access to documents and for amendment of personal information in documents of the agency – section 63(2)(g).

Extends the power of the Commissioner to report on any breach of duty or misconduct in the administration of the Act, to enable the Commissioner to report to the Parliament on any breach by the principal officer of an agency for which a Minister is not directly responsible – section 63(3).

**Clause 20. Section 64A and 64B inserted**

Section 64A sets out the powers of the Commissioner in respect of a review under section 63(2)(g). These include the power to—

- require a person to give relevant information or a relevant document to the Commissioner;
- require a person to appear before the Commissioner and answer questions; and
- administer an oath or affirmation to a person required to appear before the Commissioner and to examine the person on oath or affirmation.

Section 64B requires the Commissioner to prepare a report as soon as practicable after the completion of any such review and to give a copy to the agency affected. The report may include recommendations and the Commissioner may request the agency to inform him or her of the steps taken or proposed to give effect to the recommendations, or the reasons for not taking or proposing to take such steps.
Clause 21. Section 65 amended

Complaints may be made against an agency’s decision in the circumstances stated in section 65. The inserted paragraphs (ea) and (fa) allow a complaint to be made against a decision to give access to a document in a way other than in the way requested by the applicant, or to regard an applicant as having withdrawn an access application.

Sections 65(5) and (6) provide for a complaint to be made about an alleged contravention of a conciliation requirement and specify who may make such a complaint.

Clause 22. Section 66 amended

Section 66(1)(b) is amended to reflect that a complaint may relate not only to an access or amendment decision but also to an alleged contravention of a conciliation requirement.

The amendments to sections 66(2) and (3) clarify that these subsections only apply to complaints about access and amendment decisions.

Section 66(3a) specifies a time limit of 6 months within which a complaint about an alleged contravention of a conciliation requirement may be lodged.

The amendment to section 66(4) is a consequence of these changes.

Clause 23. Section 67 amended

Section 67(1) paragraphs (c), (d) and (e) set out additional grounds on which the Commissioner may decide not to deal with a complaint. These are where:

• the complainant has not complained to the agency and the Commissioner considers it would be appropriate for the agency to deal with the complaint;
• the complainant has complained to the agency and the Commissioner considers that the agency has adequately dealt with the complaint, is adequately doing so, or has not yet had an adequate opportunity to do so; and
• a complaint about an alleged contravention of a conciliation requirement is, or has been, the subject of an investigation under the Parliamentary Commissioner Act 1971.

The amended section 67(2) requires the Commissioner, if he or she has decided not to deal with a complaint, to notify the complainant of that decision, the reasons for it, and of the right to have the complaint referred to the SAT.

Clause 24. Sections 67A and 67B inserted

Section 67A requires that if the Commissioner has decided not to deal with a complaint for a reason referred to in section 67(1)(c) or (d)(ii) or (iii), the Commissioner must refer the complaint to the agency to be dealt with, and notify the complainant of the referral. The agency is required to deal with the complaint and the complainant is not entitled to make another complaint to the Commissioner about the same alleged contravention unless the agency has notified the complainant that the agency has finished dealing with the initial complaint or 3 months have elapsed since the Commissioner referred the initial complaint to the agency.

Section 67B permits a complainant to require the Commissioner to refer a complaint to the SAT if the Commissioner refuses to deal with the complaint for a reason referred to in section 67(1)(a), (b), (d)(i) or (e). Such a requirement may be made within 21 days of the Commissioner notifying the complainant of his or her refusal to deal with the complaint.

Clause 25. Section 69 amended

The new section 69(1) specifies the parties to conciliation proceedings.

Section 69(4) is amended consistent with changes to the Commissioner’s functions.

Clause 26. Section 70 amended

These amendments reflect the role of the Commissioner in the conciliation of complaints.
Section 70, as amended, sets out the procedure to be followed in conciliation proceedings. The new sections 70(4), (5) and (5a) empower the Commissioner to:

- determine the procedure for conciliation proceedings including the giving of such directions as the Commissioner thinks fit;
- require the parties to appear before the Commissioner; and
- nominate a “conciliator” to deal with the complaint.

The subsections also empower a conciliator to require the parties to appear before him or her, but not to require information or documents to be given or produced.

The new subsections 70(6), (7) and (8) set out who may represent a party in conciliation proceedings.

Clause 27. Section 71 replaced

The new subsections 71(1) and (2) require the Commissioner, if conciliation is successful, to prepare a record of the conciliation proceedings in consultation with the parties setting out the outcome of the proceedings, the terms on which the complaint is resolved, and any “conciliation requirement” to be complied with by the agency.

The new subsection 71(3) requires the Commissioner, if he or she is of the opinion that the complaint cannot be conciliated, that the conciliation has not been successful, or that the nature of the complaint is such that it should be referred to the SAT, to state his or her opinion in writing.

The Commissioner must give a copy of the conciliation proceedings record to each party (s70(4)) and inform the complainant of his or her appeal rights (s70(5)).

Clause 28. Section 74 amended

Section 74(2) is amended to reflect the role of the Commissioner in the conciliation of complaints. The effect is that the Commissioner must not include 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 in the conciliation proceedings record.

Clause 29. Section 75 amended

Section 75 provides for production of documents for inspection. The amendments to subsection 75(1) reflect the role of the Commissioner in the conciliation of complaints.

Subsection 75(2) requires the Commissioner to ensure that a document produced to the Commissioner under subsection 75(1) is not disclosed to persons other than staff of the Commissioner in the performance of their duties. The inserted subsection 75(3) makes this duty subject to section 77 (see clause 30) if the complaint is referred to the SAT.

Clause 30. Sections 76, 77 and 78 replaced

The new section 76 provides that a complainant who has been notified by the Commissioner that a complaint cannot be, or has not been, conciliated may within 21 days require the Commissioner to refer the complaint to the SAT.

If a complaint is referred to the SAT, the new section 77 requires the Commissioner to give to the SAT a statement of the reasons for referring the complaint, and other relevant documents and material in the Commissioner’s possession and control, but not a document that records anything said or done in the conciliation process. Section 77 also clarifies that an organisation’s obligation to provide a statement, documents and material to the SAT under section 24 of the SAT Act is not affected.

Clause 31. Section 79 replaced

The new section 79 permits the Commissioner to delegate to a member of staff any power or duty of the Commissioner under this Act other than a power or duty:

- to decide not to deal with a complaint or to stop dealing with a complaint – section 67(1);
• to refer a complaint to the SAT if the Commissioner decides not to deal with it – section 67B(3);
• to require an agency to produce a document for inspection so the Commissioner can consider if the document contains exempt matter or is a document of the agency – section 75; or
• to refer an unresolved complaint to the SAT – section 76(3).

Section 79(3) proscribes sub-delegation.

Clause 32. Section 81 amended

Extends subsection 81(1) and (2) so that laws relating to secrecy and disclosure of information, or legal professional privilege, do not apply to the disclosure of information to the Commissioner for the purposes of the performance of the Commissioner’s functions under Division 2 (see clauses 19 and 20).

Amends section 81(3) so that, subject to subsections 81(1) and (2), a party to conciliation proceedings has the same privileges in relation to giving evidence and production of documents as a witness in a court.

Clause 33. Section 82 amended

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

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

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

Clause 34. Section 83 amended

Clause 34(a) extends the application of section 83 to include refusal or failure to give information, produce a document or attend before the Commissioner for the purposes of the performance of the Commissioner’s functions under Division 2 (see clauses 19 and 20).

Clauses 34(b) and (c) clarify paragraphs (a) and (b) of section 83.

Clause 35. Section 84 repealed

Repeals section 84 “Costs of parties to complaints”. The costs of parties to a complaint are to be addressed in accordance with the SAT Act.

Clause 36. Part 4 Division 5, heading to Part 4 Division 6 and section 88 replaced

Repeals Part 4 Division 5, the heading to Part 4 Division 6 and section 88; inserts Division 5 and sections 84, 85, 86, 87, 88, and 88A, and Division 6 and sections 88B, 88C, and 88D.

Division 5 — State Administrative Tribunal’s jurisdiction as to complaints

New Division inserted.

Section 84 – Meaning of “complaint jurisdiction”

Defines the term “complaint jurisdiction” to mean the SAT’s original jurisdiction under the SAT Act in relation to a complaint concerning an alleged contravention of a conciliation requirement, and the SAT’s review jurisdiction under the SAT Act in relation to a complaint about an access or amendment decision.
Section 85 – Presiding member of Tribunal

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

Section 86 – Tribunal to ensure non-disclosure of certain matter

Requires the SAT when exercising its complaint jurisdiction to avoid 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 to the FOI Act.

Permits the SAT, in the interests of justice, to permit a solicitor or counsel representing a party to examine a document in dispute, on such terms and conditions as the SAT thinks fit, and in any case, on the condition that the solicitor or counsel does not disclose exempt matter or information as to the existence or non-existence of a document containing matter which is exempt under clause 1, 2 or 5 of Schedule 1 to the FOI Act.

Permits the SAT to receive evidence and hear argument in the absence of the public and any party or person representing a party if it is necessary to do so to prevent the disclosure of exempt matter or information as to the existence or non-existence of a document containing matter which is exempt under clause 1, 2 or 5 of Schedule 1 to the FOI Act.

Proscribes the inclusion of exempt matter, or information as to the existence or non-existence of a document containing matter which is exempt under clause 1, 2 or 5 of Schedule to the FOI Act, in a decision of the SAT or its reasons.

Provides that subsections (1) to (6) apply where the question in issue is whether or not a document is a document of the agency.

Section 87 – Decisions of the Tribunal

Sets out the powers of the SAT in a proceeding in its complaint jurisdiction in relation to an access or amendment decision, and states the date of effect of the SAT’s decision.

The SAT may review any decision that has been made by the agency in respect of the access application or application for amendment and decide any matter in relation to that application that could have been decided by the agency under the Act.

The SAT does not have the power to decide to give access to an exempt document.

Provides that after hearing a complaint relating to an alleged contravention of a conciliation requirement the SAT may:

• dismiss the complaint; or
• find the complaint or part of it substantiated and order that the agency comply with the conciliation requirement within a specified period; or
• find the complaint or part of it substantiated but decline to take further action.

Section 88 – Restrictions under other laws not applicable

Provides that no legal obligation to maintain secrecy or not to disclose information applies to the disclosure of information by an agency to the SAT for the purposes of the exercise by the SAT of its complaint jurisdiction, and provides that legal professional privilege does not apply to an agency’s production of documents or giving of evidence to the SAT in the exercise of its complaint jurisdiction.

Section 88A – Secrecy

Provides that section 157 of the SAT Act applies to any information acquired by the SAT in the performance of functions under or in connection with the FOI Act, and that that obligation of secrecy is not limited to information about the affairs of a person.

Division 6 — Appeals from Tribunal’s decisions as to complaints

New Division inserted.

Section 88B – Terms used in this Division

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Defines “appeal” and “Supreme Court” for the purposes of this Division. An “appeal” means an appeal on a question of law arising out of a decision of the SAT on a complaint.

**Section 88C – Appeal from Tribunal’s decision**

Provides for a party to a proceeding to appeal from a decision of the SAT to the Supreme Court except in respect of the matters listed in section 88C(2). An appeal may only be brought on a question of law and only if the court gives leave (SAT Act section 105). Section 106 of the SAT Act applies to the decision under appeal: an appeal from the SAT’s decision does not affect the operation or implementation of the decision appealed against unless the Supreme Court stays the operation of the decision.

**Section 88D – No access to exempt document**

On an appeal to the Supreme Court, if the Court decides that a document is an exempt document, the Court cannot decide that access is to be given to that document.

**Clause 37. Section 89 amended**

Amends section 89(1) and (2), and repeals 89(3) consistent with the process for appeals to the Supreme Court under the amended Act.

**Clause 38. Section 90 amended**

Permits the Supreme Court, in the interests of justice, to allow a solicitor or counsel representing a party to examine a document in dispute on such terms and conditions as the Court thinks fit and in any case on the condition that the solicitor or counsel does not disclose exempt matter or information as to the existence or non-existence of a document containing matter which is exempt under clause 1, 2 or 5 of Schedule 1 to the FOI Act.

The Court continues to be permitted to receive evidence and hear argument in the absence of the public and any party or representative in order to prevent the disclosure of exempt matter or information as to the existence or non-existence of a document containing matter which is exempt under clause 1, 2 or 5 of Schedule 1 to the FOI Act. The Court continues to be prohibited from including exempt matter or information as to the existence or non-existence of a document containing matter which is exempt under clause 1, 2 or 5 of Schedule 1 to the FOI Act, in its decision or reasons for decision on an appeal.

**Clause 39. Section 91 amended**

Amends subsections 91(1) and (3), and repeals s91(2), consistent with the role of the Supreme Court under the FOI Act as amended.

**Clause 40. Section 92 amended**

Amends subsections 92(1) and 92(2) consistent with the role of the Supreme Court under the FOI Act as amended.

**Clause 41. Section 93 amended**

Amends section 93 consistent with the role of the Supreme Court under the FOI Act as amended.

**Clause 42. Section 98 amended**

For consistency with the *Guardianship and Administration Act 1990*, clause 42 amends section 98(b) to substitute the term “person with a disability” for the term “intellectually handicapped person”, and the term “nearest relative” for the term “closest relative”. The new terms are defined in the Glossary to the Act as having the meanings given in s3(1) of the *Guardianship and Administration Act 1990* (see clause 54(1)(b) of the Amendment Act).

**Clause 43. Section 103 amended**
Deletes section 103(b) consistent with the repeal of provisions dealing with the grant of conclusive exemption certificates by the Premier under Part 2 Division 4 of the FOI Act.

**Clause 44. Section 104 amended**

Amends subsection 104(1) – see note below re clause 46.

**Clause 45. Section 105 amended**

Amends subsection 105 – see note below re clause 46.

**Clause 46. Section 106 amended**

Currently, sections 104 to 106 provide protection against civil or criminal actions which might otherwise arise against agencies or officers of agencies who release documents under the FOI Act. The amendments to these provisions remove any uncertainty that an agency or an officer of an agency will have this protection if an officer of an agency decides, in good faith, to provide access to a document under the FOI Act even though the document is an exempt document, or not to delete exempt matter from a copy of a document.

**Clause 47. Section 111 amended**

Amends the reporting requirements under section 111 of the FOI Act (“Report to Parliament”) consistent with the new functions of the Commissioner and the SAT under the FOI Act as amended.

**Clause 48. Section 112 amended**

Inserts paragraph (c) in section 112(2) to provide for regulations to be made prescribing the matters listed in the inserted paragraph.

**Clause 49. Section 113 replaced**

Replaces section 113 of the FOI Act (“Review of Act”) with a new provision to the effect that the Act is to be reviewed every 5 years rather than every 3 years. This change is consistent with the report on the *Review of the Freedom of Information Act 1992 (WA)* tabled in Parliament in October 1997.

**Clause 50. References to “closest relative” altered**

References in the FOI Act to “closest relative” are replaced with “nearest relative” for consistency with the *Guardianship and Administration Act 1990*. The new term is defined in the Glossary to the Act as having the meaning given in s3(1) the *Guardianship and Administration Act 1990* (see clause 54(1)(b) of the Amendment Act).

**Clause 51. References to “intellectually handicapped person” altered**

References in the Act to “intellectually handicapped person” are replaced with “a person with a mental disability” which term is defined in the Glossary to the Act as having the meaning given in s3(1) the *Guardianship and Administration Act 1990* (see clause 54(1)(b) of the Amendment Act).

**Clause 52. Schedule 1 amended**

(1) Amends references in Schedule 1 clause 5(2) to certain exempt bodies to reflect their contemporary names.

(2) & (3) The Information Commissioner has interpreted the exemption in subclause 8(1) of Schedule 1 to the FOI Act as applying only to matter the disclosure of which would give rise to a breach of confidence for which a legal remedy, and not an equitable remedy, would be available. The amendments to Schedule 1 clauses 8(1) and (3) provide that the exemption will apply to matter the disclosure of which founds any action for a breach of confidence. This makes clear that matter will be subject to the exemption if its disclosure would give rise to an equitable action for a breach of confidence.
(4) Inserts a new exemption into Schedule 1. Clause 16 of Schedule 1 provides a specific exemption for matter if its disclosure to any person or class of person is prohibited by Aboriginal tradition, namely the body of traditions, observances and customs of Aboriginal people generally or of a particular community or group of Aboriginal people. This exemption is subject to a public interest limitation.

Clause 53. Schedule 2 amended

Amends Schedule 2 (“Exempt agencies”) to include the SAT, and amends references to certain other exempt bodies to reflect their contemporary names.

Clause 54. Glossary amended

(1) Amends clause 1 of the Glossary by:
• deleting the definition of “exemption certificate” as that term is no longer used in the FOI Act;
• inserting definitions of the terms listed;
• amending the definition of “Corrective Services”;
• inserting paragraph (da) in the definition of “principal officer” to make clear that the principal officer of a court or tribunal may be declared by the regulations or rules of court, and to preclude any interpretation that the “principal officer” of a court or tribunal is a judicial officer or officer whose functions include judicial functions; and
• amending paragraph (e) of the definition of “principal officer” to exclude a court.

(2) Inserts a new clause 2(5) in the Glossary to allow for any change to the names of those divisions, units or services referred to in clauses 2(2) and (3) of the Glossary to apply to any references in the FOI Act to those divisions, units or services;

(3) & (4) Amends the Glossary to reflect the contemporary names of the entities specified.