

## Information Privacy Bill 2007

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**Defined Terms**



Western Australia

LEGISLATIVE ASSEMBLY

## **Information Privacy Bill 2007**

**A Bill for**

**An Act to —**

- **provide for the privacy of personal information and health information held by certain persons and bodies; and**
  - **provide for access to, and amendment of, health records held by certain persons and bodies; and**
  - **authorise the disclosure in certain circumstances of personal information or health information held by government agencies; and**
  - **establish the office of Privacy and Information Commissioner; and**
  - **amend the *Freedom of Information Act 1992*, the *Parliamentary Commissioner Act 1971* and other Acts as a consequence of the enactment of this Act,**
- and for related purposes.**

The Parliament of Western Australia enacts as follows:

## Part 1 — Preliminary

### 1. Short title

This is the *Information Privacy Act 2007*.

### 2. Commencement

5 This Act comes into operation as follows:

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

### 10 3. Objects of Act

The main objects of this Act are —

- 15 (a) to promote and protect the privacy of personal information through the establishment of principles to be observed by persons and bodies in the public sector when collecting, holding, using or disclosing such information; and
- (b) to promote and protect the privacy of health information through the establishment of principles to be observed by persons and bodies in the public sector and the  
20 private sector when collecting, holding, using or disclosing such information; and
- (c) to facilitate the sharing, in appropriate circumstances, of personal information or health information held by persons and bodies in the public sector.

### 25 4. Terms used in this Act

- (1) In this Act, unless the contrary intention appears —  
“**access applicant**” means the individual by whom or on whose behalf an access application has been made;

**“access application”** means an application made under section 23(1);

**“Acting Commissioner”** means a person appointed to act in the office of Commissioner under section 114;

5 **“amendment applicant”** means the individual by whom or on whose behalf an amendment application has been made;

**“amendment application”** means an application made under section 43(1);

10 **“applicable code of practice”**, in relation to an organisation, means an approved code of practice by which the organisation is bound;

**“approved code of practice”** means a code of practice approved under section 62 as in force from time to time;

**“authorised representative”** means —

15 (a) in relation to an individual other than a deceased individual, a person who —

(i) is a guardian of the individual appointed under law; or

20 (ii) has parental responsibility for the individual; or

(iii) is otherwise empowered under law to perform any functions or duties as an agent of or in the best interests of the individual;

and

25 (b) in relation to a deceased individual, a person who immediately before the individual’s death was a person to whom paragraph (a)(i), (ii) or (iii) applied;

**“child”** means a person who is under 18 years of age;

**“child protection agency”** means —

30 (a) the department of the Public Service principally assisting the Minister administering the *Children and Community Services Act 2004* in its administration; or

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(b) a person, body or office prescribed for the purposes of this definition;

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

5 **“Commissioner”** means the person holding the office of Privacy and Information Commissioner established by section 106;

**“complaint”** means a complaint referred to in section 69;

**“contractor”** means —

10 (a) a person or body (other than a person or body referred to in Schedule 1) to the extent that the person or body handles personal information under a contract —

15 (i) between the person or body and a person, body or office referred to in Schedule 1; and

(ii) entered into after the commencement of Part 2;

or

20 (b) a subcontractor to a person or body to whom or which paragraph (a) applies to the extent that the subcontractor handles personal information referred to in that paragraph;

**“contravene”** includes to fail to comply with;

25 **“Corruption and Crime Commission”** means the Corruption and Crime Commission established under the *Corruption and Crime Commission Act 2003*;

**“court”** includes a tribunal;

30 **“Deputy Commissioner”** means a person holding the office of Deputy Privacy and Information Commissioner established by section 112;

**“disability”** has the meaning given in the *Disability Services Act 1993* section 3;

**“document”** means —

- (a) any record; or
- (b) any part of a record; or
- (c) any copy, reproduction or duplicate of a record; or
- 5 (d) any part of a copy, reproduction or duplicate of a record;

**“exempt organisation”** means a person, body or office referred to in Schedule 2 and includes staff under the control of the person, body or office;

10 **“FOI Act”** means the *Freedom of Information Act 1992*;

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

**“health information”** has the meaning given in section 5;

15 **“health privacy principle”** or **“HPP”** means a health privacy principle set out in Schedule 4;

**“health record”** means a document that contains health information;

**“health service”** means —

- 20 (a) an activity performed in relation to an individual that is intended or claimed (expressly or otherwise) by the organisation performing it —
  - (i) to assess, maintain or improve the individual’s health; or
  - 25 (ii) to diagnose the individual’s illness, injury or disability; or
  - (iii) to treat the individual’s illness, injury or disability or suspected illness, injury or disability;

or

- 30 (b) a disability service, palliative care service or aged care service; or

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(c) the dispensing on prescription of a drug or medicinal preparation by a pharmacist,

but does not include a health service, or a class of health service, that is prescribed as an exempt health service or to the extent that it is prescribed as an exempt health service;

**“health service provider”** means an organisation that provides a health service in Western Australia to the extent that it provides a health service, but does not include a health service provider, or a class of health service provider, that is prescribed as an exempt health service provider or to the extent that it is prescribed as an exempt health service provider;

**“identifier”** means an identifier (usually a number) assigned by an organisation to an individual uniquely to identify the individual for the purposes of the operations of the organisation but does not include an identifier that consists only of the individual’s name;

**“illness”** means a physical, mental or psychological illness and includes a suspected illness;

**“information privacy principle”** or **“IPP”** means an information privacy principle set out in Schedule 3;

**“judicial office”** includes an office as a member of a tribunal;

**“law enforcement agency”** means —

- (a) the Australian Crime Commission established by the *Australian Crime Commission Act 2002* (Commonwealth); or
- (b) the board established under the *Criminal Law (Mentally Impaired Accused) Act 1996* section 41; or
- (c) the board established under the *Sentence Administration Act 2003* section 102; or
- (d) the board established under the *Young Offenders Act 1994* section 151; or

- 
- 5
- (e) the Commissioner for Public Sector Standards appointed under the *Public Sector Management Act 1994*; or
- (f) the Commissioner for State Revenue; or
- (g) the Corruption and Crime Commission; or
- (h) the department of the Public Service principally assisting the Minister administering the *Police Act 1892* in its administration; or
- 10 (i) the department of the Public Service principally assisting the Minister administering the *Sentence Administration Act 2003* Part 8 in its administration; or
- (j) the Director of Public Prosecutions appointed under the *Director of Public Prosecutions Act 1991*; or
- 15 (k) the Police Force of Western Australia, the Australian Federal Police or the police force of another State or a Territory; or
- (l) a person, body or office prescribed by the regulations for the purposes of this definition,

20 and, in relation to a health privacy principle, includes the Office of Health Review established under the *Health Services (Conciliation and Review) Act 1995* and a registration board;

25 **“law enforcement functions”** means functions that relate to one or more of the following —

- (a) the prevention, detection, investigation, prosecution or punishment of criminal offences or breaches of a law imposing a penalty or sanction;
- 30 (b) the enforcement of laws relating to the confiscation of the proceeds of crime;
- (c) the protection of public revenue;
- (d) the prevention, detection, investigation or remedying of seriously improper conduct;

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(e) the preparation for, or conduct of, proceedings before a court or implementation of the orders of a court;

**“legal representative”**, in relation to a deceased individual, means a person who is an executor or administrator of the deceased individual’s estate;

5

**“licensing agency”** means a person, body or office prescribed for the purposes of this definition;

**“licensing functions”** means functions that relate to —

10

(a) the grant, suspension or cancellation of licences, registrations, permits or other authorisations (however described); or

(b) the administration of a licensing scheme, registration scheme or similar scheme;

**“member of staff”** means —

15

(a) a person appointed under section 116(1); or

(b) a person whose services are used under section 116(4);

**“mental disability”** has the meaning given in the *Guardianship and Administration Act 1990* section 3(1);

20

**“organisation”** means a public organisation or a private organisation;

**“Parliamentary Commissioner”** means the Parliamentary Commissioner for Administrative Investigations appointed under the *Parliamentary Commissioner Act 1971*;

25

**“parliamentary secretary”** means —

(a) the parliamentary secretary of the Cabinet; or

(b) a parliamentary secretary holding office under the *Constitution Acts Amendment Act 1899* section 44A;

**“personal information”** has the meaning given in section 6;

30

**“private organisation”** means —

(a) an individual; or

(b) a body corporate; or



- (c) a partnership; or
- (d) a trust; or
- (e) an unincorporated association or body,

that is not a public organisation, an exempt organisation or a small business operator (within the meaning given in the *Privacy Act 1988* (Commonwealth) section 6D);

**“public health agency”** means —

- (a) the department of the Public Service principally assisting the Minister administering the *Health Act 1911* in its administration; or
- (b) a board as defined in the *Hospitals and Health Services Act 1927* section 2; or
- (c) a person, body or office prescribed by the regulations for the purposes of this definition;

**“public organisation”** means —

- (a) a person, body or office referred to in Schedule 1; or
- (b) a contractor,

but does not include an exempt organisation;

**“public service officer”** has the meaning given in the *Public Sector Management Act 1994* section 3(1);

**“record”** means any record of information however recorded and includes the following —

- (a) any paper or other material, including affixed papers on which there is writing;
- (b) any map, plan, diagram or graph;
- (c) any drawing, pictorial or graphic work, or photograph;
- (d) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;

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(e) any article or material from which sounds, images or writing can be reproduced whether or not with the aid of some other article or device;

5 (f) any article on which information has been stored or recorded, either mechanically, magnetically or electronically;

**“registration board”** means a body that is listed in the *Health Services (Conciliation and Review) Act 1995* Schedule 1;

**“relative”** of an individual means —

- 10 (a) the individual’s spouse or de facto partner; or  
(b) a parent, step-parent or grandparent of the individual; or  
(c) a child, step-child or grandchild of the individual; or  
15 (d) a brother, sister, step-brother or step-sister of the individual;

**“remuneration”** has the meaning given in the *Salaries and Allowances Act 1975* section 4(1);

**“wellbeing”** has the meaning given in the *Children and Community Services Act 2004* section 3.

20 (2) A reference in this Act to an IPP followed by a designation is a reference to the provision with that designation in Schedule 3.

(3) A reference in this Act to an HPP followed by a designation is a reference to the provision with that designation in Schedule 4.

25 (4) A reference in this Act to the Commissioner’s functions includes a reference to functions given to the Commissioner under the FOI Act.

**5. Meaning of “health information”**

(1) Health information is —

- 30 (a) information or an opinion about —  
(i) the physical, mental or psychological health (at any time) of an individual; or

- 
- 5 (ii) a disability (at any time) of an individual; or  
(iii) an individual's expressed wishes about the future  
provision of health services to him or her; or  
(iv) a health service provided, or to be provided, to  
an individual,  
that is also personal information; or  
(b) other personal information collected to provide, or in  
providing, a health service; or  
10 (c) other personal information about an individual collected  
in connection with the donation, or intended donation,  
by the individual of his or her body tissue; or  
(d) other personal information, including genetic  
information, about an individual in a form which is, or  
could be, predictive of the health of the individual or  
15 any other individual.

(2) In subsection (1)(c) —

**“body tissue”** includes an organ or part of the human body or a  
substance extracted from, or from a part of, the human  
body.

20 (3) Health information does not include information, or a class of  
information, that is prescribed as exempt health information.

## 6. Meaning of “personal information”

(1) Personal information is information or an opinion, whether true  
or not, and whether recorded in a material form or not, about an  
25 individual, whether living or dead —

- (a) whose identity is apparent or can reasonably be  
ascertained from the information or opinion; or  
(b) who can be identified by reference to an identifier or an  
identifying particular such as a fingerprint, retina print  
30 or body sample.

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(2) Personal information does not include —

(a) information about an individual who has been dead for more than 30 years; or

(b) information about an individual who —

5

(i) is included in a witness protection program as defined in the *Witness Protection (Western Australia) Act 1996* section 3(1); or

(ii) is the subject of witness protection arrangements made under another written law;

10

or

(c) information about an individual arising out of a Royal Commission established under the *Royal Commissions Act 1968*; or

15

(d) information about an individual that is contained in an appropriate disclosure of public interest information made under the *Public Interest Disclosure Act 2003*; or

(e) information about an individual that is contained in a document containing matter that is exempt matter under the FOI Act Schedule 1 clause 1; or

20

(f) information about an individual that is of a class, or is contained in a document of a class, prescribed for the purposes of this subsection.

**7. When information is held**

(1) In this section —

25

**“entity”** means a public organisation, a private organisation or an exempt organisation;

**“officer”** of an entity includes —

(a) the principal officer of the entity; and

(b) a director of the entity; and

30

(c) a member of the entity; and

(d) a person employed in, by, or for the purposes of, the entity.

- 5 (2) For the purposes of this Act, an entity holds personal information or health information if the information is contained in a document that is in the possession or under the control of the entity, whether alone or jointly with other persons or bodies, including a document to which the entity is entitled to access and a document in the possession or under the control of an officer of the entity in his or her capacity as such an officer.
- 10 (3) For the purposes of this Act, an entity holds a health record if the health record is in the possession or under the control of the entity, whether alone or jointly with other persons or bodies, including a health record to which the entity is entitled to access and a health record in the possession or under the control of an officer of the entity in his or her capacity as such an officer.
- 15

#### **8. Related public organisations**

A person is not to be regarded as a separate public organisation by reason of —

- 20 (a) holding office as a member or other officer of a public organisation; or
- (b) holding an office established for the purposes of a public organisation.

#### **9. Application to courts, registries and judicial officers**

- 25 (1) Nothing in this Act applies to the handling of personal information or health information by a court unless the information relates to matters of an administrative nature.
- (2) For the purposes of this Act a registry or other office of a court and the staff of such a registry or other office are part of the court.
- 30 (3) A person holding a judicial office or other office pertaining to a court, being an office established by the written law establishing

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the court, is not a public organisation and is not included in a public organisation.

**10. Publicly available information**

5 Nothing in this Act applies to personal information or health information contained in a document that is —

- (a) available for purchase by the public or free distribution to the public; or
- (b) available for inspection (whether for a fee or charge or not) under a written law; or
- 10 (c) a State archive to which a person has a right to be given access under the *State Records Act 2000* Part 6 despite the FOI Act; or
- (d) publicly available library material held by public organisations for reference purposes; or
- 15 (e) made or acquired by an art gallery, museum or library and preserved for public reference or exhibition purposes.

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

20 (1) A law enforcement agency does not have to comply with IPP 1, IPP 2, IPP 6, IPP 8, HPP 1, HPP 2, HPP 6 or HPP 8 if it believes on reasonable grounds that the non-compliance is necessary for the purposes of one or more of its, or any other law enforcement agency's, law enforcement functions.

25 (2) A child protection agency does not have to comply with IPP 1, IPP 2, IPP 6, IPP 8, HPP 1, HPP 2, HPP 6 or HPP 8 if it believes on reasonable grounds that the non-compliance is necessary —

- 30 (a) for the purposes of one or more of its, or any other child protection agency's, child protection functions; or
- (b) in connection with the conduct of proceedings commenced, or about to be commenced, in any court.

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

Nothing in this Act affects the operation of the FOI Act or the *State Records Act 2000*.

**13. Nature of rights created by this Act**

5 Except to the extent expressly provided by this Act —

(a) nothing in this Act or an approved code of practice gives rise to a cause of action or creates an enforceable right; and

10 (b) a contravention of this Act or an approved code of practice does not give rise to an offence.

**14. Act binds Crown**

This Act binds the Crown in right of the State and, so far as the legislative power of the State permits, the Crown in its other capacities.

## **Part 2 — Personal information privacy**

### **15. Information privacy principles**

- (1) The information privacy principles are set out in Schedule 3.
- 5 (2) If there is an inconsistency between an IPP and an approved code of practice, the code of practice prevails to the extent of the inconsistency.
- (3) If there is an inconsistency between an IPP and another enactment, the other enactment prevails to the extent of the inconsistency.

### **10 16. Application of information privacy principles**

- (1) The information privacy principles apply to a public organisation unless this Act or another enactment expressly provides otherwise.
- 15 (2) The application of an IPP to a public organisation may be modified by an approved code of practice.
- (3) The information privacy principles do not apply to personal information that is also health information.
- (4) IPP 1 and IPP 3 (so far as it relates to the collection of personal information) apply only in relation to the collection of personal information on or after the commencement of this section.
- 20 (5) IPP 2, IPP 3 (so far as it relates to personal information used or disclosed), IPP 4, IPP 5, IPP 6 and IPP 8 apply in relation to personal information held by a public organisation regardless of whether the organisation holds the information as a result of collection occurring before, on or after the commencement of  
25 this section.



**17. Public organisations to comply with information privacy principles**

A public organisation must not do any thing, or engage in any practice, that contravenes an IPP that applies to the public organisation.

5

## **Part 3 — Health information privacy**

### **Division 1 — Health privacy principles**

#### **18. Health privacy principles**

- (1) The health privacy principles are set out in Schedule 4.
- 5 (2) If there is an inconsistency between an HPP and an approved code of practice, the code of practice prevails to the extent of the inconsistency.
- (3) If there is an inconsistency between an HPP and another enactment, the other enactment prevails to the extent of the inconsistency.
- 10

#### **19. Application of health privacy principles**

- (1) The health privacy principles apply to an organisation that is a health service provider or collects, holds or uses health information unless this Act or another enactment expressly provides otherwise.
- 15
- (2) The application of an HPP to an organisation may be modified by an approved code of practice.
- (3) HPP 1 and HPP 3 (so far as it relates to the collection of health information) apply only in relation to the collection of health information on or after the commencement of this section.
- 20
- (4) HPP 2, HPP 3 (so far as it relates to health information used or disclosed), HPP 4, HPP 5, HPP 6, HPP 8, HPP 9 and HPP 10 apply in relation to health information held by an organisation regardless of whether the organisation holds the information as a result of collection occurring before, on or after the commencement of this section.
- 25

**20. Organisations to comply with health privacy principles**

(1) In this section —

**“transitional period”** means —

- 5
- (a) the period that ends on the second anniversary of the commencement of this section; or
  - (b) any extension of that period under subsection (4) in relation to a specified contract.

10

(2) An organisation must not do any thing, or engage in any practice, that contravenes an HPP that applies to the organisation.

(3) Subsection (2) does not apply to the doing of any thing, or the engaging in of any practice, by an organisation that, but for this subsection, would constitute a contravention of HPP 1 or HPP 2, if —

- 15
- (a) doing the thing or engaging in the practice is necessary for the performance of a contract to which the organisation is a party that was entered into by the organisation before the commencement of this section; and
  - 20 (b) the thing is done or the practice is engaged in before the end of the transitional period.

(4) On the application of an organisation before the expiry of the transitional period, the Commissioner may extend that period in relation to a specified contract if he or she is satisfied that the organisation is doing its best —

- 25
- (a) to comply with HPP 1 or HPP 2 consistent with its obligations under the contract; and
  - (b) to seek to have the contract renegotiated to enable the organisation to comply fully with HPP 1 or HPP 2.

**Division 2 — Access to health records**

**Subdivision 1 — Preliminary**

**21. Application of Division**

- 5 (1) This Division does not apply to a health record held by an organisation if the organisation is an agency for the purposes of the FOI Act.
- (2) This Division applies to a health record held by an organisation regardless of whether the health record contains health information collected before or after the commencement of this Division.
- 10

**Subdivision 2 — Right of access and access applications**

**22. Right of access**

- 15 (1) Subject to and in accordance with this Division, an individual has a right to be given access to a health record relating to the individual that is held by an organisation.
- (2) Subject to this Division, an individual's right to be given access is not affected by —
- (a) any reasons the individual has for wishing to obtain access; or
- 20 (b) an organisation's belief as to what are the individual's reasons for wishing to obtain access.

**23. Access application**

- 25 (1) An individual who wishes to obtain access to a health record relating to the individual that is held by an organisation may make an application to the organisation.
- (2) If the circumstances of the individual require it, the organisation must take reasonable steps to help the individual make an access application in a manner that complies with this Division.

- 5 (3) In particular, if an access application does not comply with the requirements of section 24 the organisation must take reasonable steps under subsection (2) to help the individual to change the application so that it complies with those requirements.

**24. How access application is made**

- 10 (1) An access application must —
- (a) be in writing; and
  - (b) give enough information to enable the health record to be identified; and
  - (c) give an address in Australia to which notices under this Division can be sent; and
  - (d) give any other information or details required under the regulations; and
  - 15 (e) be accompanied by any application fee payable under the regulations.
- (2) An access application may request that access to the health record be given in a particular way described in section 38.

**25. Withdrawal of access application**

20 An access applicant may withdraw an access application by giving a written notice to that effect to the organisation.

**Subdivision 3 — Procedure for dealing with access applications**

**26. Decisions as to access and charges**

- (1) In this section —

25 **“permitted period”** means the period of 45 days after the relevant access application is received or such other period as is agreed between the organisation and the access applicant or allowed by the Commissioner under subsection (4) or (5).

- (2) Subject to this Subdivision, an organisation must deal with an access application as soon as is practicable (and, in any event, before the end of the permitted period) by —
- (a) considering the application and deciding —
- 5 (i) whether to give or refuse access to the requested health record; and
- (ii) any charge payable for dealing with the application;
- and
- 10 (b) giving the access applicant written notice of the decision in accordance with section 40.
- (3) If an access applicant does not receive notice under subsection (2)(b) within the permitted period the organisation is taken to have refused, at the end of that period, to give access to
- 15 the health record and the access applicant is taken to have received written notice of that refusal on the day on which that period ended.
- (4) On the application of an access applicant, the Commissioner may reduce the time allowed to an organisation to comply with subsection (2).
- 20 (5) On the application of an organisation, the Commissioner, on being satisfied that the organisation has attempted to comply with subsection (2) within 45 days but that it is impracticable, in the circumstances, for it to comply within that time, may allow
- 25 the organisation an extension of time to comply on such conditions as the Commissioner thinks fit.
- (6) If an extension of time is allowed under subsection (5) the organisation must give written notice of the extension to the access applicant as soon as is practicable.

30 **27. Organisation may request consultation or further information**

- (1) In order to deal with an access application the organisation may in a written notice given to the access applicant request the

applicant to consult with, or provide further information to, the organisation about the application.

(2) A notice under subsection (1) must —

- (a) give details of the access application; and
- (b) state that the notice is given under this section; and
- (c) state the name and designation of the officer of the organisation who must be consulted or informed.

(3) An organisation is not allowed under subsection (1) —

- (a) to request the access applicant to provide information as to the access applicant's reasons for wishing to obtain access to the requested health record; or
- (b) to inquire as to those reasons in the course of consultation.

## **28. Ambit of access application may be reduced by agreement**

If it is apparent from the terms of an access application that the access applicant seeks information of a certain kind contained in a health record held by the organisation, the organisation may, with the agreement of the access applicant, deal with the access application as if it were an application relating only to that part of the health record that contains information of that kind.

## **29. Charges for access to health records**

(1) Any charge that is required to be paid by an access applicant before access to a health record is given, must be calculated by an organisation in accordance with the following principles or, where those principles require, must be waived —

- (a) a charge may be made for the time taken to search for the health record to which access is requested but any such charge —
  - (i) must be fixed on an hourly rate basis; and

- (ii) must not cover additional time, if any, spent by the organisation in searching for a health record that was lost or misplaced;
- 5 (b) a charge may be made for the reasonable costs incurred by an organisation in —
- (i) supervising the inspection of a health record; or
- (ii) giving a copy of a health record; or
- (iii) giving a summary or explanation of the information contained in a health record;
- 10 (c) a charge must be waived or be reduced if the access applicant is impecunious;
- (d) a charge must not exceed such amount as may be prescribed from time to time.
- (2) Subject to section 31, an organisation must not require payment
- 15 of a charge before it notifies the access applicant of its decision to give access to a health record.

**30. Estimate of charges**

- (1) When making an access application the access applicant may
- 20 request an estimate of the charges that might be payable for dealing with the application.
- (2) If a request is made under subsection (1) the organisation must notify the access applicant of its estimate, and the basis on which its estimate is made, as soon as is practicable.
- (3) If the organisation estimates that the charges for dealing with
- 25 the access application might exceed the prescribed amount then, whether or not a request has been made under subsection (1), the organisation must give the access applicant a notice that —
- (a) sets out its estimate, and the basis on which its estimate is made; and
- 30 (b) asks whether the access applicant wishes to proceed with the application; and



(c) gives details of the effect of section 32(1)(b).

(4) Unless a greater amount is prescribed by regulation, \$60 is the “prescribed amount” for the purposes of subsection (3).

**31. Advance deposits**

5 (1) An organisation may, in a notice given to an access applicant under section 30(3), require the applicant to pay a deposit of a prescribed amount or at a prescribed rate on account of the charges for dealing with the access application.

10 (2) If payment of a deposit is required, the organisation must, at the request of the access applicant, discuss with the applicant practicable alternatives for changing the access application or reducing the anticipated charges, including reduction of the charges if the applicant waives, either conditionally or unconditionally, the need for compliance by the organisation with the time limit imposed by section 26(2).

15 (3) If payment of a deposit is required, the notice referred to in subsection (2) must also give details of —

(a) the rights of the access applicant under Part 5 and the procedure to be followed to exercise those rights; and

20 (b) the effect of section 32(2)(b).

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

(1) If an organisation has given an access applicant a notice under section 30(3) —

25 (a) the period commencing on the day on which the notice was given, and ending on the day on which the organisation is notified that the applicant intends to proceed with the access application, is to be disregarded for the purposes of section 26(1); and

30 (b) if intention to proceed is not notified within 30 days (or such further time as the organisation allows) after the day on which the notice was given, the applicant is to be taken to have withdrawn the access application.

- (2) If the notice referred to in subsection (1) requires the access applicant to pay a deposit —
- (a) the period commencing on the day on which the notice was given, and ending on the day on which the deposit is paid, is to be disregarded for the purposes of section 26(1); and
- (b) if the deposit is not paid within 30 days (or such further time as the organisation allows) after the day on which the notice was given, the applicant is to be taken to have withdrawn the access application.
- (3) Any period during which the requirement to pay a deposit is the subject of proceedings under Part 5 is to be disregarded for the purposes of subsection (2)(b).

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

- (1) If an organisation considers that the work involved in dealing with the access application would divert a substantial and unreasonable portion of the organisation's resources away from its other operations, the organisation must take reasonable steps to help the access applicant to change the application to reduce the amount of work needed to deal with it.
- (2) If after help has been given to change the access application the organisation still considers that the work involved in dealing with the application would divert a substantial and unreasonable portion of the organisation's resources away from its other operations, the organisation may refuse to deal with the application.
- (3) An organisation may refuse to deal with an access application if the application is substantially in the same terms as one already made by the access applicant to the organisation.
- (4) If, under subsection (2) or (3), an organisation refuses to deal with an access application, it must give the access applicant written notice of the refusal without delay.

(5) The notice must give details of —

5

- (a) the reasons for the refusal and the findings on any material questions of fact underlying those reasons, referring to the material on which those findings are based; and
- (b) the rights of the access applicant under Part 5 and the procedure to be followed to exercise those rights.

**34. Giving access**

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If an organisation decides to give access to a health record and the charges imposed for dealing with the access application have been paid, the organisation must give the access applicant access to the health record.

**35. Refusal of access**

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Subject to section 36, an organisation may refuse access to a health record on one or more of the following grounds —

20

- (a) giving access would pose a serious threat to the life, health, safety or welfare of any individual;
- (b) giving access would have an unreasonable impact on the privacy of any other individual;
- (c) the health record —

25

- (i) relates to existing or anticipated legal proceedings between the organisation (or a person insured by the organisation) and the access applicant, and the health record would not be accessible by the process of discovery in those proceedings; or
- (ii) is otherwise subject to legal professional privilege;

30

- (d) giving access would reveal the intentions of the organisation in relation to negotiations, other than about the provision of a health service, with the access

applicant in such a way as to expose the organisation unreasonably to disadvantage;

- (e) giving access would be unlawful;
- (f) refusal of access is required or authorised by or under law;
- (g) giving access would be likely to prejudice an investigation of possible unlawful activity;
- (h) giving access would be likely to prejudice a function performed by or on behalf of a law enforcement agency.

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10 **36. Access to edited copy of health record**

(1) If an access application requests access to a health record and —

(a) one or more of the grounds referred to in section 35 apply to particular matter contained in the health record; and

15

(b) it is practicable for the organisation to edit a copy of the health record so as to delete that matter; and

(c) the organisation considers (either from the terms of the application or after consultation with the access applicant) that the applicant would wish to be given access to an edited copy,

20

the organisation must make and give access to an edited copy.

(2) If an access application requests access to a health record and —

(a) the health record contains matter that may reasonably be regarded as being outside the ambit of the application; and

25

(b) it is practicable for the organisation to edit a copy of the health record so as to delete that matter; and

(c) the organisation considers (either from the terms of the application or after consultation with the access applicant) that the applicant would wish to be given access to an edited copy,

30

the organisation may make and give access to an edited copy.

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

- (1) An organisation may advise an access applicant, by written notice, that it is not possible to give access to a health record if —
- 5 (a) all reasonable steps have been taken to find the health record; and
- (b) the organisation is satisfied that the health record —
- 10 (i) is in the organisation's possession but cannot be found; or
- (ii) does not exist.
- (2) For the purposes of this Act the sending of a notice under subsection (1) in relation to a health record is to be regarded as a decision to refuse access to the health record.

**38. Ways in which access can be given**

- 15 (1) Subject to subsection (3), access to a health record may be given to an access applicant in one or more of the following ways —
- (a) by giving a reasonable opportunity to inspect the health record;
- (b) by giving a copy of the health record;
- 20 (c) by giving a summary of the health information contained in the health record;
- (d) by giving an explanation of the health information contained in the health record.
- (2) If an access applicant has requested that access to a health record be given in a particular way described in subsection (1) and access is given in some other way, the applicant is not
- 25 required to pay a charge in respect of the giving of access that is greater than the charge that the applicant would have been required to pay if access had been given in the way that was
- 30 requested.

(3) If a health record contains only health information collected before the commencement of this Division, access to the health record may be given to an access applicant by giving a summary of that information.

5 (4) This section does not prevent an organisation from giving access to a health record in any way agreed on between the organisation and an access applicant.

**39. Information detrimental to health of access applicant**

10 If a health record to which an organisation has decided to give access contains information that, in the opinion of the organisation, may have a substantial adverse effect on the physical, mental or psychological health of the access applicant —

- 15 (a) it is sufficient compliance with this Division if access to the health record is given to a suitably qualified person nominated in writing by the access applicant; and
- (b) the organisation may withhold access until a person who is, in the opinion of the organisation, suitably qualified is nominated.

20 **40. Notice of decision**

The notice that an organisation gives an access applicant under section 26(2)(b) must give details of —

- (a) the day on which the decision was made; and
- 25 (b) the name and designation of the person who made the decision; and
- (c) if the decision is that access is to be given to an edited copy of a health record under section 36(1) or (2) —
- (i) the fact that access is to be given to an edited copy; and
- 30 (ii) the grounds on which matter has been deleted; and

- 5
- 10
- 15
- (d) if the decision is to give access to a health record in a way other than the way requested by the access applicant — the reasons for giving access that other way; and
  - (e) if the decision is to give access to a health record in the manner referred to in section 39 — the arrangements to be made for giving access to the record; and
  - (f) if the decision is to refuse access to a health record — the grounds for the refusal and the findings on any material questions of fact underlying those grounds, referring to the material on which those findings were based; and
  - (g) if the decision is that the access applicant is to pay a charge to the organisation — the amount of the charge and the basis on which the amount was calculated; and
  - (h) the rights of the access applicant under Part 5 and the procedure to be followed to exercise those rights.

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

- 20
- 25
- 30
- (1) An organisation may in a written notice given to an access applicant (a “**compliance notice**”) advise the applicant that the applicant may be regarded by the organisation as having withdrawn the access application if the applicant does not —
    - (a) comply with a request of the organisation contained in a notice under section 27(1), to consult with, or provide further information to, the organisation about the access application; or
    - (b) nominate a suitably qualified person under section 39; or
    - (c) obtain access to the requested health record,within the period of 30 days after the day on which the compliance notice was given to the applicant.

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- (2) Subsection (1)(c) applies if the access applicant has been given notice under section 26(2)(b) of the organisation's decision to give access to the requested health record.
- (3) A compliance notice must —
- 5 (a) give details of the access application; and
- (b) state that the notice is given under this section and that failure to comply with it may result in the applicant being regarded as having withdrawn the access application; and
- 10 (c) in the case of a notice under subsection (1)(a), give details of the notice under section 27(1) that it refers to; and
- (d) in the case of a notice under subsection (1)(b), state the name and designation of the officer of the organisation
- 15 who must be consulted or informed; and
- (e) in the case of a notice under subsection (1)(c), state the name and designation of the officer of the organisation from whom access to the health record is to be obtained.
- (4) An organisation may regard an access applicant as having
- 20 withdrawn the access application if, within the period of 30 days after the day on which the organisation gave the applicant a compliance notice, the applicant does not —
- (a) in the case of a notice under subsection (1)(a), comply with the request referred to in the notice; or
- 25 (b) in the case of a notice under subsection (1)(b), nominate a suitably qualified person under section 39; or
- (c) in the case of a notice under subsection (1)(c), obtain access to the requested health record.
- (5) If an organisation decides to regard an access applicant as
- 30 having withdrawn the access application, the organisation must give the applicant a written notice of that decision.



- (6) The notice under subsection (5) must give details of —
- (a) the day on which the decision was made; and
  - (b) the name and designation of the person who made the decision; and
  - 5 (c) the reasons for deciding to regard the access applicant as having withdrawn the access application; and
  - (d) the rights of the access applicant under Part 5 and the procedure to be followed to exercise those rights.

### **Division 3 — Amendment of health records**

#### **Subdivision 1 — Preliminary**

#### **42. Application of Division**

- (1) This Division does not apply to a health record held by an organisation if the organisation is an agency for the purposes of the FOI Act.
- 15 (2) This Division applies to a health record held by an organisation regardless of whether the health record contains health information collected before or after the commencement of this Division.

#### **Subdivision 2 — Right to apply for amendment and amendment applications**

#### **43. Right to apply for health record to be amended**

- (1) An individual has a right to apply to an organisation for amendment of a health record relating to the individual that is held by the organisation if the health record is inaccurate, incomplete, out of date or misleading.
- 25 (2) If the circumstances of the individual require it, the organisation must take reasonable steps to help the individual make an amendment application in a manner that complies with this Division.

- 5 (3) In particular, if an amendment application does not comply with the requirements of section 44 the organisation must take reasonable steps under subsection (2) to help the individual to change the application so that it complies with those requirements.

**44. How amendment application is made**

- 10 (1) An amendment application must —
- (a) be in writing; and
  - (b) give enough information to enable the health record to be identified; and
  - (c) give details of the matters in relation to which the amendment applicant believes the health record is inaccurate, incomplete, out of date or misleading; and
  - 15 (d) give the amendment applicant's reasons for holding that belief; and
  - (e) give details of the amendment that the amendment applicant wishes to have made; and
  - (f) give an address in Australia to which notices under this Division can be sent; and
  - 20 (g) give any other information or details required under the regulations.
- (2) For the purposes of subsection (1)(e) the amendment application must state whether the amendment applicant wishes the amendment to be made by —
- 25 (a) altering information contained in the health record (otherwise than by deletion); or
  - (b) inserting information into the health record; or
  - (c) inserting a note into the health record,
- or in 2 or more of those ways.

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**Subdivision 3 — Procedure for dealing with amendment applications**

**45. Decisions as to amendment**

(1) In this section —

5                   “**permitted period**” means the period of 30 days after the  
                  relevant amendment application is received or such other  
                  period as is agreed between the organisation and the  
                  amendment applicant or allowed by the Commissioner  
                  under subsection (4).

10           (2) Subject to this Subdivision, an organisation must deal with an  
          amendment application as soon as is practicable (and, in any  
          event, before the end of the permitted period) by —

          (a) considering the application and deciding whether to  
              amend the health record; and

15           (b) giving the amendment applicant written notice of the  
              decision in accordance with section 46.

          (3) If an amendment applicant does not receive notice under  
              subsection (2)(b) within the permitted period the organisation is  
              taken to have refused, at the end of that period, to amend the  
              health record and the amendment applicant is taken to have  
20           received written notice of that refusal on the day on which that  
              period ended.

          (4) On the application of an organisation, the Commissioner, on  
              being satisfied that the organisation has attempted to comply  
              with subsection (2) within 30 days but that it is impracticable, in  
25           the circumstances, for it to comply within that time, may allow  
              the organisation an extension of time to comply on such  
              conditions as the Commissioner thinks fit.

          (5) If an extension of time is allowed under subsection (4) the  
30           organisation must give written notice of the extension to the  
              access applicant as soon as is practicable.

**46. Notice of decision**

The notice that an organisation gives an amendment applicant under section 45(2)(b) must give details of —

- (a) the day on which the decision was made; and
- 5 (b) the name and designation of the person who made the decision; and
- (c) if the decision is to amend the health record — details of the amendment made; and
- 10 (d) if the decision is to refuse to amend the health record —
  - (i) the reasons for the refusal and the findings on any material questions of fact underlying those reasons, referring to the material on which those findings were based; and
  - 15 (ii) the rights of the amendment applicant under Part 5 and the procedure to be followed to exercise those rights; and
  - (iii) the right to request that a notation or attachment be made to the health record and the procedure to be followed to exercise that right.

20 **47. How organisation may amend health record**

(1) If an organisation decides to amend a health record it may make the amendment by —

- (a) altering information contained in the health record (otherwise than by deletion); or
- 25 (b) inserting information into the health record; or
- (c) inserting a note into the health record,

or in 2 or more of those ways.

(2) If the organisation inserts a note into the health record the note must —

- 30 (a) give details of the matters in relation to which the health record is inaccurate, incomplete, out of date or misleading; and

- (b) if the health record is incomplete or out of date — set out whatever information is needed to complete it or bring it up to date.

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

- 10 (1) If an organisation decides not to amend a health record in accordance with an amendment application, the amendment applicant may, in writing, request the organisation to make a notation or attachment to the health record —
  - 15 (a) giving details of the matters in relation to which the applicant claims the health record is inaccurate, incomplete, out of date or misleading; and
  - 15 (b) if the amendment applicant claims the health record is incomplete or out of date — setting out the information that the applicant claims is needed to complete it or bring it up to date.
- 20 (2) A request may be made under this section whether or not the amendment applicant has made a complaint in respect of the organisation's decision under Part 5.
- 20 (3) The organisation must comply with the request unless it considers that the notation or attachment that the amendment applicant has requested to be made to the health record is defamatory or unnecessarily voluminous.
- 25 (4) If the organisation decides not to comply with the request it must give the amendment applicant written notice of its decision giving details of —
  - 30 (a) the reasons for the decision and the findings on any material questions of fact underlying those reasons, referring to the material on which those findings were based; and
  - (b) the rights of the amendment applicant under Part 5 and the procedure to be followed to exercise those rights.

- 5 (5) This section does not prevent the organisation from making the requested notation or attachment in an edited or abbreviated form, but the making of an edited or abbreviated notation or attachment does not constitute compliance with the request for the purposes of subsection (4).

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

- 10 (1) If after a request is made under section 48 the organisation gives the health record to another person (including another organisation) the organisation must give that other person a statement that a claim has been made under this Division that the health record is inaccurate, incomplete, out of date or misleading.
- 15 (2) If a notation or attachment has been made under section 48 particulars of the notation or attachment must be included in or attached to the statement given under subsection (1).

**50. Organisation may give reasons for not amending information**

20 This Division does not prevent the organisation from adding to a notation or attachment made under section 48 the organisation's reasons for deciding not to amend the health record in accordance with the amendment application, or from including those reasons in, or attaching them to, a statement given under section 49(1).

25 **51. No charge for application or request**

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

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**Division 4 — General**

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

5 Nothing in this Part is intended to prevent or discourage the giving of access to health records, or the amendment of health records, otherwise than under this Part if that can properly be done or is permitted or required by law to be done.

**53. Application on behalf of an individual**

10 (1) In this section —

**“application”** means —

- (a) an access application; or
- (b) an amendment application; or
- (c) a request referred to in HPP 9(2) or 10(1).

15 (2) If an individual is incapable of making an application, an application may be made on his or her behalf by an authorised representative of the individual.

(3) For the purposes of subsection (2), an individual is incapable of making an application if he or she is incapable by reason of age, illness, physical impairment or mental disability of —

- 20 (a) understanding the general nature and effect of making the application; or
- (b) making the application,

despite the provision of reasonable assistance by another person.

**54. Personal, family or household affairs**

25 Nothing in this Part or an HPP applies to —

- (a) the handling of health information by an individual; or
- (b) health information held by an individual,

only for the purposes of, or in connection with, his or her personal, family or household affairs.

**55. News media**

(1) In this section —

**“news activity”** means —

- 5 (a) the gathering of news for the purposes of dissemination to the public or any section of the public; or
- 10 (b) the preparation or compiling of articles or programmes of or concerning news, observations on news or current affairs for the purposes of dissemination to the public or any section of the public; or
- 15 (c) the dissemination to the public or any section of the public of any article or programme of or concerning any news, observations on news or current affairs;

**“news medium”** means any organisation whose business, or whose principal business, consists of a news activity.

(2) Nothing in the health privacy principles applies to the handling of health information by a news medium in connection with its news activities.

20 (3) Nothing in this Part or HPP 5(2) applies to health information held by a news medium in connection with its news activities.



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## Part 4 — Codes of practice

### 56. Terms used in this Part

In this Part, unless the contrary intention appears —

5 “**code of practice**” means an information privacy code of practice or a health privacy code of practice;

“**health privacy code of practice**” means a code of practice referred to in section 58;

“**information privacy code of practice**” means a code of practice referred to in section 57;

10 “**relevant Minister**” means —

- (a) in relation to an information privacy code of practice, the Minister administering this Act; and
- (b) in relation to a health privacy code of practice, the Minister administering the *Health Act 1911*.

### 15 57. Information privacy code of practice

(1) An information privacy code of practice is a code of practice that modifies the application or operation of any one or more of the information privacy principles.

20 (2) An information privacy code of practice may apply in relation to any one or more of the following —

- (a) any specified personal information or class of personal information;
- (b) any specified activity or class of activity;
- (c) any specified public organisation or class of public organisation.

25 (3) An information privacy code of practice must specify —

- (a) the public organisations that are bound (either wholly or to a limited extent) by it; or
  - (b) a way of determining the public organisations that are so bound.
- 30

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- (4) An information privacy code of practice can only apply to a public organisation if the organisation has agreed to be bound by the provisions of the code.
- 5 (5) An information privacy code of practice must not modify the application or operation of an IPP in relation to a public organisation unless —
- (a) the organisation is not otherwise reasonably capable of complying with the IPP; and
- 10 (b) the application or operation of the IPP is modified only to the extent reasonably necessary to enable the organisation to comply with the IPP.
- (6) An information privacy code of practice may be expressed to have effect for a period specified in the code.

**58. Health privacy code of practice**

- 15 (1) A health privacy code of practice is a code of practice that modifies the application or operation of any one or more of the health privacy principles.
- (2) A health privacy code of practice may apply in relation to any one or more of the following —
- 20 (a) any specified health information or class of health information;
- (b) any specified activity or class of activity;
- (c) any specified organisation or class of organisation.
- (3) A health privacy code of practice must specify —
- 25 (a) the organisations that are bound (either wholly or to a limited extent) by it; or
- (b) a way of determining the organisations that are so bound.
- 30 (4) A health privacy code of practice can only apply to an organisation if the organisation has agreed to be bound by the provisions of the code.

- 5 (5) A health privacy code of practice must not modify the application or operation of an HPP in relation to an organisation unless —
- (a) the organisation is not otherwise reasonably capable of complying with the HPP; and
  - (b) the application or operation of the HPP is modified only to the extent reasonably necessary to enable the organisation to comply with the HPP.
- 10 (6) A health privacy code of practice may be expressed to have effect for a period specified in the code.

**59. Preparation of code of practice by organisation**

- (1) A public organisation may prepare an information privacy code of practice and submit it to the Commissioner.
- 15 (2) An organisation may prepare a health privacy code of practice and submit it to the Commissioner.
- (3) In preparing a code of practice an organisation may —
- (a) consult with any person or body it considers appropriate; and
  - (b) seek comment from members of the public.

20 **60. Preparation of code of practice by Commissioner**

- (1) The Commissioner may prepare a code of practice.
- (2) In preparing a code of practice the Commissioner may —
- (a) consult with any person or body the Commissioner considers appropriate; and
  - 25 (b) seek comment from members of the public.

**61. Submission of code of practice to relevant Minister**

- (1) The Commissioner may submit to the relevant Minister for approval a code of practice —
- (a) submitted to the Commissioner under section 59; or

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- (b) prepared by the Commissioner under section 60.
- (2) Before submitting a code of practice referred to in subsection (1)(a) the Commissioner —
  - (a) may consult with any person or body the Commissioner considers appropriate; and
  - (b) must have regard to the extent to which members of the public have been given an opportunity to comment on the code of practice.

**62. Approval of code of practice**

- (1) The relevant Minister may, by notice published in the *Gazette*, approve a code of practice submitted under section 61(1) or refuse to approve it.
- (2) The relevant Minister must not give approval unless he or she is satisfied that the code of practice complies with the requirements of section 57 or 58, as the case requires.

**63. Publication and operation of approved code of practice**

An approved code of practice —

- (a) must be published in the *Gazette*; and
- (b) comes into operation on the day on which it is so published or on any later day specified in it.

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

- (1) The relevant Minister may, by notice published in the *Gazette*, approve the amendment, replacement or revocation of an approved code of practice.
- (2) Sections 59, 60, 61, 62(2) and 63 apply in relation to an amendment or replacement of an approved code of practice as if references in them to a code of practice were references to an amendment or replacement.

- (3) If the revocation of an approved code of practice is approved under subsection (1), the revocation takes effect on the day on which the notice is published in the *Gazette* or on any later day specified in the notice.

5 **65. Organisation to comply with applicable code of practice**

An organisation must not do any thing, or engage in any practice, that contravenes an applicable code of practice.

**66. Register**

- 10 (1) The Commissioner must keep a register of approved codes of practice.
- (2) The register is to be kept in the form and manner determined by the Commissioner.
- (3) A person may during business hours —
- 15 (a) inspect the register; and
- (b) obtain a copy of, or an extract from, any part of the register on payment of the prescribed fee, if any.

## Part 5 — Complaints

### Division 1 — Preliminary

#### 67. Terms used in this Part

In this Part —

- 5       **“access decision”** means a decision —
- (a) to give access to an edited copy of a health record; or
  - (b) to refuse access to a health record; or
  - (c) to give access to a health record in a way other than  
in the way requested by the access applicant; or
  - 10       (d) to give access to a health record in the manner  
referred to in section 39 or withhold access under that  
section; or
  - (e) to regard, under section 41, an access applicant as  
having withdrawn an access application; or
  - 15       (f) to impose a charge or require the payment of a  
deposit in relation to an access application;
- “amendment decision”** means a decision —
- (a) not to amend a health record in accordance with an  
amendment application; or
  - 20       (b) not to comply with a request by an amendment  
applicant to make a notation or attachment to a health  
record;
- “complainant”**, in relation to a complaint, means the individual  
by or on whose behalf the complaint is made;
- 25       **“conciliation proceedings”** means proceedings conducted by  
the Commissioner to deal with a complaint;
- “conciliation proceedings record”** means a document prepared  
under section 80(1) or (3);
- 30       **“conciliation requirement”** has the meaning given in  
section 80(1)(b);

**“conciliator”** has the meaning given in section 79(5)(b);

**“deal with”** a complaint means, in the case of the Commissioner, to endeavour to resolve the complaint by conciliation;

5 **“protected matter”** means matter contained in a health record that gives rise to a ground for refusal of access to the health record under section 35;

**“respondent”** means —

- 10 (a) in the case of a complaint about an alleged interference with privacy, the organisation that is alleged to have done the act or engaged in the practice to which the complaint relates; or
- 15 (b) in the case of a complaint about an access decision or an amendment decision, the organisation that made the decision; or
- (c) in the case of a complaint about an alleged contravention of a conciliation requirement, the organisation that is alleged to have contravened the requirement;

20 **“Tribunal”** means the State Administrative Tribunal.

## 68. What constitutes an interference with privacy

For the purposes of this Part an interference with the privacy of an individual occurs if —

- 25 (a) a public organisation does any thing or engages in any practice in relation to personal information about the individual that contravenes the obligation in section 17; or
- (b) an organisation does any thing or engages in any practice in relation to health information about the individual that contravenes the obligation in section 20; or
- 30 (c) an organisation does any thing or engages in any practice in relation to personal information or health

information about the individual that contravenes the obligation in section 65.

**Division 2 — Complaints and procedure for dealing with them**

**69. Complaints**

- 5 A complaint may be made to the Commissioner about —
- (a) an alleged interference with the privacy of an individual;  
or
  - (b) an access decision; or
  - (c) an amendment decision; or
  - 10 (d) an alleged contravention of a conciliation requirement.

**70. Who may make a complaint**

- (1) A complaint about an alleged interference with the privacy of an individual may be made by the individual concerned.
- (2) A complaint about an access decision may be made by the  
15 access applicant.
- (3) A complaint about an amendment decision may be made by the amendment applicant.
- (4) A complaint about an alleged contravention of a conciliation requirement may be made by the person who was the  
20 complainant in the conciliation proceedings to which the relevant conciliation proceedings record relates.

**71. Complaint on behalf of an individual**

- (1) If an individual is incapable of making a complaint, a complaint  
25 may be made on his or her behalf by an authorised representative of the individual.
- (2) For the purposes of subsection (1), an individual is incapable of making a complaint if he or she is incapable by reason of age, illness, physical impairment or mental disability of —  
30
  - (a) understanding the general nature and effect of making the complaint; or



(b) making the complaint,  
despite the provision of reasonable assistance by another person.

**72. How and when a complaint can be made**

- (1) A complaint must —
- 5 (a) be in writing; and
- (b) give particulars of the alleged interference with privacy, access decision, amendment decision or alleged contravention of a conciliation requirement, as the case requires; and
- 10 (c) give an address in Australia to which notices under this Act can be sent; and
- (d) give any other information or details required under the regulations; and
- (e) be lodged at the office of the Commissioner.
- 15 (2) A complaint about an alleged interference with privacy may be lodged within 6 months after the day on which the complainant first became aware of the alleged interference.
- (3) A complaint about an access decision or amendment decision may be lodged within 6 months after the complainant received
- 20 written notice of the decision.
- (4) A complaint about an alleged contravention of a conciliation requirement may be lodged within 6 months after the day on which the complainant first became aware of the alleged contravention.
- 25 (5) The Commissioner may allow a complaint to be lodged after the period mentioned in subsection (2), (3) or (4) has expired.

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

(1) The Commissioner may, at any time after receiving a complaint, decide not to deal with the complaint, or to stop dealing with the complaint, because —

- 5 (a) it was lodged after the expiry of the period mentioned in section 72(2), (3) or (4) or any further period allowed by the Commissioner under section 72(5); or
- (b) it does not relate to a matter the Commissioner has power to deal with; or
- 10 (c) it is frivolous, vexatious, misconceived or lacking in substance; or
- (d) the complainant has not complained to the respondent about the alleged interference with privacy, access decision, amendment decision or alleged contravention of a conciliation requirement and the Commissioner considers that it would be appropriate for the respondent to deal with the complaint; or
- 15 (e) the complainant has complained to the respondent about the alleged interference with privacy, access decision, amendment decision or alleged contravention of a conciliation requirement and the Commissioner considers that the respondent —
- 20 (i) has dealt adequately with the complaint; or
- (ii) is dealing adequately with the complaint; or
- 25 (iii) has not yet had an adequate opportunity to deal with the complaint;

or

- 30 (f) in the case of an alleged interference with privacy or alleged contravention of a conciliation requirement, the complainant has made a complaint about the alleged interference or alleged contravention to the Parliamentary Commissioner and that complaint is, or has been, the subject of an investigation under the *Parliamentary Commissioner Act 1971*.

- (2) If the Commissioner decides not to deal with the complaint, or to stop dealing with the complaint, the Commissioner must inform the complainant, by notice in writing, of —
- (a) the decision; and
  - 5 (b) the reasons for the decision; and
  - (c) the rights, if any, of the complainant under section 75.

**74. Referral of complaint to respondent in certain circumstances**

- (1) If —
- 10 (a) the Commissioner has given a complainant a notice under section 73(2); and
  - (b) the reason for the Commissioner’s decision is a reason referred to in section 73(1)(d) or (e)(ii) or (iii),
- the Commissioner must —
- 15 (c) refer the complaint to the respondent and ask the respondent to deal with, or continue to deal with, the complaint; and
  - (d) notify the complainant in writing of the referral.
- (2) If a complaint is referred under subsection (1) —
- 20 (a) the respondent must deal with, or continue to deal with, the complaint (the “**initial complaint**”); and
  - (b) the complainant is not entitled to make another complaint to the Commissioner about the alleged interference with privacy, access decision, amendment
  - 25 decision or alleged contravention of a conciliation requirement that is the subject of the initial complaint unless —
  - (i) the respondent has notified the complainant in writing that the respondent has finished dealing
  - 30 with the initial complaint; or

- (ii) a period of 3 months has elapsed since the referral of the initial complaint.

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

- 5 (1) If —
- (a) the Commissioner has given a complainant a notice under section 73(2); and
  - (b) the reason for the Commissioner’s decision is a reason referred to in section 73(1)(a), (b), (c), (e)(i) or (f),
- 10 the complainant may require the Commissioner to refer the complaint to the Tribunal.
- (2) A requirement under subsection (1) is to be made by notice in writing served on the Commissioner within the period of 21 days after the complainant receives the notice under
- 15 section 73(2).
- (3) On receipt of a notice under subsection (2), the Commissioner must refer the complaint to the Tribunal.

**76. Notification of complaint**

20 The Commissioner must notify the respondent in writing of a complaint unless a decision not to deal with it has been made under section 73.

**77. Withdrawal of complaint**

- (1) A complainant may withdraw a complaint by notice in writing served on the Commissioner.
- 25 (2) If a complaint is withdrawn, the Commissioner must notify the respondent in writing of the withdrawal.
- (3) A complainant who withdraws a complaint is not entitled to make another complaint in respect of the same alleged interference with privacy, access decision, amendment decision

or alleged contravention of a conciliation requirement without the prior written permission of the Commissioner.

**78. Parties to conciliation proceedings**

- 5 (1) Each of the following is a party to conciliation proceedings —
- (a) the complainant;
  - (b) the respondent.
- 10 (2) Without limiting section 79(1), if the Commissioner is satisfied that another person or body might be affected by the outcome of conciliation proceedings the Commissioner may obtain information or receive submissions from that person or body.

**79. Procedure**

- 15 (1) In order to deal with a complaint the Commissioner may obtain information from such persons and sources, and make such investigations and inquiries, as the Commissioner thinks fit.
- 20 (2) Conciliation proceedings are to be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act and a proper consideration of the matters before the Commissioner permit, and the Commissioner is not bound by rules of evidence.
- (3) The Commissioner must ensure that the parties to conciliation proceedings are given a reasonable opportunity to make submissions to the Commissioner.
- 25 (4) The Commissioner may determine the procedure for conciliation proceedings and may give such directions and do such other things as the Commissioner thinks fit in order to deal with the complaint.
- (5) Without limiting subsection (4), the Commissioner may —
- (a) require the parties, or either of them, to appear before the Commissioner, either separately or together; or

- (b) nominate a person (a **“conciliator”**) to deal with the complaint.
- (6) A conciliator —
- 5 (a) may require the parties, or either of them, to appear before the conciliator, either separately or together; but
- (b) does not have power to require information or documents to be given or produced.
- (7) If a party is required or permitted to appear in conciliation proceedings, the party —
- 10 (a) is entitled to appear personally or by an agent other than a solicitor or counsel; or
- (b) may, by leave of the Commissioner, be represented by a solicitor or counsel.
- (8) No person other than a solicitor or counsel is entitled to demand or receive any fee or reward for representing a party in
- 15 conciliation proceedings.
- (9) If the complaint is referred to the Tribunal, evidence of anything said or done in conciliation proceedings is not admissible before the Tribunal.

20 **80. Conciliation proceedings record**

- (1) If a complaint is resolved by conciliation the Commissioner, in consultation with the parties to the conciliation proceedings, must prepare a document that sets out —
- 25 (a) the terms on which the complaint is resolved; and
- (b) any requirement that is to be complied with by the respondent (a **“conciliation requirement”**).
- (2) Without limiting subsection (1)(b) a conciliation requirement may consist of —
- 30 (a) a requirement to do a particular thing within a particular period; or
- (b) a requirement not to do a particular thing.

- (3) If the Commissioner is of the opinion that —
- (a) a complaint cannot be resolved by conciliation; or
  - (b) his or her endeavours to resolve a complaint by conciliation have not been successful; or
  - (c) the nature of a complaint is such that it should be referred to the Tribunal,

the Commissioner must prepare a document that includes a statement of the Commissioner's opinion under paragraph (a), (b) or (c).

- (4) The Commissioner must give a copy of a document prepared under subsection (1) or (3) to each party to the conciliation proceedings.
- (5) If the Commissioner has given a complainant a copy of a document prepared under subsection (3), the Commissioner must inform the complainant in writing of the complainant's rights under section 85.

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

- (1) If the Commissioner has reason to believe that a person has information or a document relevant to a complaint, the Commissioner may give to the person a written notice requiring the person —
- (a) to give the information to the Commissioner in writing signed by the person or, in the case of a body corporate, by an officer of the body corporate; or
  - (b) to produce the document to the Commissioner.
- (2) A notice given by the Commissioner under subsection (1) must state —
- (a) the place at which the information or document is to be given or produced to the Commissioner; and

(b) the time at which, or the period within which, the information or document is to be given or produced.

5            (3) If the Commissioner has reason to believe that a person has information relevant to a complaint, the Commissioner may give to the person a written notice requiring the person to appear before the Commissioner at a time and place specified in the notice to answer questions relevant to the complaint.

**82. Power to examine**

10            (1) The Commissioner may administer an oath or affirmation to a person required under section 81 to appear before the Commissioner and may examine such a person on oath or affirmation.

15            (2) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the answers the person will give will be true.

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

20            (1) In dealing with a complaint the Commissioner must give such directions and do such things as the Commissioner thinks necessary to avoid the disclosure of protected matter.

              (2) The Commissioner must not include protected matter in a conciliation proceedings record.

**84. Production of certain health records for inspection**

25            (1) In dealing with a complaint about an access decision the Commissioner may require an organisation to produce a health record for inspection so that the Commissioner can consider whether it contains protected matter.

30            (2) The Commissioner must do such things as the Commissioner thinks necessary to ensure that any health record produced to the Commissioner under subsection (1) is not disclosed to a person other than a member of the staff of the Commissioner in the course of the performance of his or her duties as a member



of that staff, and to ensure the return of the health record to the organisation when the complaint has been dealt with.

- (3) If the complaint is referred to the Tribunal, subsection (2) has effect subject to section 86.

5 **85. Referral of unresolved complaint to Tribunal**

- (1) If the Commissioner has given a complainant a copy of a conciliation proceedings record prepared under section 80(3), the complainant may require the Commissioner to refer the complaint to the Tribunal.

- 10 (2) A requirement under subsection (1) is to be made by notice in writing served on the Commissioner within the period of 21 days after the complainant receives the copy of the conciliation proceedings record.

- 15 (3) On receipt of a notice under subsection (2), the Commissioner must refer the complaint to the Tribunal.

**86. Provision of information to Tribunal**

- (1) If a complaint is referred to the Tribunal under section 75 or 85, the Commissioner must provide the following to the Tribunal —

- 20 (a) a statement of the reasons for referring the complaint to the Tribunal;
- (b) other documents and other material in the Commissioner's possession or under the Commissioner's control and relevant to the Tribunal's consideration of the complaint.

- 25 (2) In the case of a referral under section 85, subsection (1)(b) extends to a copy of the conciliation proceedings record but does not extend to a document that records anything said or done in the conciliation proceedings.

- 30 (3) Subsection (1) does not affect the organisation's obligation to provide a statement, documents and material to the Tribunal under the *State Administrative Tribunal Act 2004* section 24.

**Division 3 — Tribunal's jurisdiction as to complaints**

**87.        Meaning of “complaint jurisdiction”**

In this Division —

“**complaint jurisdiction**” means —

- 5                      (a) the Tribunal's original jurisdiction, as defined in the  
*State Administrative Tribunal Act 2004* section 3(1),  
in relation to an alleged interference with privacy or  
alleged contravention of a conciliation requirement  
that is the subject of a complaint referred to the  
10                      Tribunal under section 75 or 85; or
- (b) the Tribunal's review jurisdiction, as defined in the  
*State Administrative Tribunal Act 2004* section 3(1),  
in relation to an access decision or amendment  
decision that is the subject of a complaint referred to  
15                      the Tribunal under section 75 or 85.

**88.        Presiding member of Tribunal**

- (1) When the Tribunal is exercising its complaint jurisdiction its  
presiding member must be a legally qualified member.
- (2) Terms used in subsection (1) relating to members of the  
20                      Tribunal have the meanings given in the *State Administrative  
Tribunal Act 2004* section 3(1).

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

- (1) In conducting a proceeding in its complaint jurisdiction the  
Tribunal must avoid the disclosure of protected matter.
- 25                      (2) If it is necessary to do so in the interests of justice, the Tribunal  
may by order permit a solicitor or counsel representing a party  
to a proceeding in its complaint jurisdiction to examine the  
health record to which the proceeding relates.
- (3) Permission may be given under subsection (2) on such terms  
30                      and conditions as the Tribunal thinks fit.

- (4) Without limiting subsection (3), permission may be given under subsection (2) on the condition that the solicitor or counsel does not disclose, to a party to the proceeding or to another person, protected matter.
- 5 (5) If in the opinion of the Tribunal it is necessary to do so in order to prevent disclosure of protected matter the Tribunal may receive evidence and hear argument in the absence of the public and any party or person representing a party.
- 10 (6) The Tribunal must not include protected matter in its decision or in reasons given for the decision.

**90. Decisions of the Tribunal**

- (1) At the conclusion of a proceeding in its complaint jurisdiction relating to an alleged interference with privacy the Tribunal may —
- 15 (a) dismiss the complaint; or
- (b) find the complaint or any part of it substantiated and make any one or more of the following orders —
- 20 (i) an order restraining the respondent from repeating or continuing the interference with privacy;
- (ii) an order that the respondent perform any reasonable act or course of conduct to redress any loss or damage suffered by the complainant as a result of the interference with privacy;
- 25 (iii) an order that the respondent pay to the complainant a specified amount, not exceeding \$40 000, by way of compensation for any loss or damage suffered by the complainant as a result of the interference with privacy;
- 30 or
- (c) find the complaint or any part of it substantiated but decline to take any further action in relation to the matter.

- (2) At the conclusion of a proceeding in its complaint jurisdiction relating to an alleged contravention of a conciliation requirement the Tribunal may —
- (a) dismiss the complaint; or
  - 5 (b) find the complaint or any part of it substantiated and make an order that the respondent comply with the conciliation requirement within the period (if any) specified in the order; or
  - 10 (c) find the complaint or any part of it substantiated but decline to take any further action in relation to the matter.
- (3) In a proceeding in its complaint jurisdiction relating to an access decision or amendment decision, the Tribunal has, in addition to any other power it has under the *State Administrative Tribunal Act 2004*, power to —
- 15 (a) review any decision of the organisation in respect of the relevant access application or amendment application; and
  - 20 (b) decide any matter in relation to the relevant access application or amendment application that could, under Part 3, have been decided by the organisation.
- (4) At the conclusion of a proceeding referred to in subsection (3), the Tribunal may —
- 25 (a) affirm the decision to which the complaint relates; or
  - (b) vary the decision to which the complaint relates; or
  - (c) set aside the decision to which the complaint relates and substitute its own decision.
- (5) If it is established that a health record contains protected matter, the Tribunal does not have power to make a decision to the effect that access is to be given to the health record.
- 30 (6) Unless the Tribunal otherwise orders, a decision of the Tribunal under subsection (4) has effect from when it is made.

**91. Restrictions under other laws not applicable**

- 5 (1) No obligation to maintain secrecy or other restriction on the disclosure of information obtained by or given to organisations, whether imposed under an enactment or other law, applies to the disclosure of information to the Tribunal when it is exercising its complaint jurisdiction.
- 10 (2) Legal professional privilege does not apply to the production of documents or the giving of evidence by an organisation, or an officer of an organisation, to the Tribunal when it is exercising its complaint jurisdiction.

**Division 4 — Appeals**

**92. Terms used in this Division**

In this Division —

15 “**appeal**” means an appeal on any question of law arising out of any decision of the Tribunal on a complaint referred to it under section 75 or 85;

“**Supreme Court**” means the General Division of that court or the Court of Appeal, whichever is appropriate under the *State Administrative Tribunal Act 2004* section 105.

20 **93. Appeal from Tribunal’s decision**

- (1) An appeal may be brought under the *State Administrative Tribunal Act 2004* section 105.
- (2) However there is no appeal in relation to a decision of the Tribunal as to —
- 25 (a) the charges to be imposed for dealing with an access application; or
- (b) the payment of a deposit under section 31.
- (3) The *State Administrative Tribunal Act 2004* section 106 applies in respect of an appeal.

**94.        No access to health record containing exempt matter**

If it is established that a health record contains protected matter the Supreme Court does not have power to make a decision to the effect that access is to be given to the health record.

5    **95.        Power to impose terms on orders**

(1)    Subject to subsection (2), an order or decision made by the Supreme Court on an appeal may be made on such terms and conditions (including terms and conditions as to costs) as the Supreme Court thinks fit.

10    (2)    If the appellant is an organisation it bears its own costs.

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

(1)    In hearing and determining an appeal the Supreme Court must avoid the disclosure of protected matter.

15    (2)    If it is necessary to do so in the interests of justice, the Supreme Court may by order permit a solicitor or counsel representing a party to an appeal to examine a health record to which the appeal relates.

(3)    Permission may be given under subsection (2) on such terms and conditions as the Supreme Court thinks fit.

20    (4)    Without limiting subsection (3), permission may be given under subsection (2) on the condition that the solicitor or counsel does not disclose, to a party to the appeal or to another person, protected matter.

25    (5)    If in the opinion of the Supreme Court it is necessary to do so in order to prevent disclosure of protected matter the Supreme Court may receive evidence and hear argument in the absence of the public and any party or person representing a party.

(6)    The Supreme Court must not include protected matter in its decision on an appeal or in reasons given for the decision.

**97. Production of documents**

- (1) For the purpose of hearing and determining an appeal the Supreme Court may require an organisation to produce a document in evidence before it.
- 5 (2) The Supreme Court must ensure that the confidentiality of a document produced under this section is maintained and arrange for its return to the organisation when the appeal has been determined.

**98. Restrictions under other laws not applicable**

- 10 (1) No obligation to maintain secrecy or other restriction on the disclosure of information obtained by or given to organisations, whether imposed under an enactment or other law, applies to the disclosure of information to the Supreme Court on an appeal.
- 15 (2) Legal professional privilege does not apply to the production of documents or the giving of evidence by an organisation, or an officer of an organisation, to the Supreme Court on an appeal.

**99. Other procedure**

20 To the extent that it is not prescribed by this Act or rules of court the procedure on an appeal may be determined by the Supreme Court.

## Part 6 — Exchange of information

### 100. Terms used in this Part

In this Part —

“agency” means —

- 5           (a) a person, body or office referred to in Schedule 1; or  
          (b) an exempt organisation;

“disclosing agency” means the agency disclosing or intending to disclose information;

10           “information” means health information or personal information;

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

15           “principal officer” of an agency or a disclosing agency means —

- (a) in relation to a department or organisation (as defined in the *Public Sector Management Act 1994* section 3(1)) — the chief executive officer or chief employee of the department or organisation; or  
20           (b) in relation to the Police Force of Western Australia — the Commissioner of Police; or  
          (c) in relation to a local government — the chief executive officer of the local government; or  
          (d) in relation to a regional local government — the chief executive officer of the regional local government; or  
25           (e) in relation to a court — an officer of the court declared by rules of court or the regulations to be the principal officer of the court (not being a person holding judicial office or an office the functions of  
30           which include judicial functions); or



- 5 (f) in relation to an agency that consists of one person (not being a court or an incorporated body) — that person; or
- (g) in relation to an agency for which the regulations declare an officer to be the principal officer of the agency — that officer; or
- (h) in relation to any other agency —
- 10 (i) if it is an incorporated body that has no members, the person who manages the affairs of the body; or
- (ii) if it is a body (whether incorporated or not) that is constituted by 2 or more persons, the person who is entitled to preside at any meeting of the body at which he or she is present.
- 15

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

- (1) In this section —
- “**relevant provision**” means any of the following —
- 20 (a) IPP 2(1)(e), (f), (g), (h) or (i);
- (b) IPP 2(3);
- (c) IPP 8;
- (d) HPP 2(1)(f), (g), (h), (i), (l), (m) or (n);
- (e) HPP 2(5);
- 25 (f) HPP 8.
- (2) For the purposes of this Part a reference in a relevant provision to an organisation or a public organisation is to be regarded as including a reference to an exempt organisation.
- (3) If the application or operation of a relevant provision is modified by an approved code of practice by which the disclosing agency is bound, a reference in this Part to the
- 30

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relevant provision is to be regarded as including a reference to each provision of the approved code of practice that modifies its application or operation.

**102. Exchange of information between agencies**

- 5 (1) An agency may disclose personal information held by the agency to another agency if —
- (a) the disclosure is for the purpose for which the information was collected by the disclosing agency; or
  - 10 (b) an exception set out in IPP 2(1)(e), (f), (g), (h), (i) or (j)(iii) or (iv) applies to the disclosure; or
  - (c) the disclosure is permitted under IPP 2(3).
- (2) An agency may disclose health information held by the agency to another agency if —
- 15 (a) the disclosure is for the purpose for which the information was collected by the disclosing agency; or
  - (b) an exception set out in HPP 2(1)(f), (g), (h), (i), (l), (m), (n) or (q)(iii) or (iv) applies to the disclosure; or
  - (c) the disclosure is permitted under HPP 2(5).
- 20 (3) A decision to disclose information under this section may be made by —
- (a) the principal officer of the disclosing agency; or
  - (b) an officer of the disclosing agency authorised by the principal officer for that purpose, either generally or in a particular case.

25 **103. Exchange of information between agencies and other persons**

- (1) An agency may, with the approval of the Commissioner, disclose information held by the agency to a person or body other than an agency.

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- (2) An application for approval may be made by —
- (a) the principal officer of the disclosing agency; or
  - (b) an officer of the disclosing agency authorised by the principal officer for that purpose, either generally or in a particular case.
- (3) Approval may be given for the purposes of subsection (1) either generally or in respect of a particular disclosure or class of disclosure.
- (4) The Commissioner must not give approval for the purposes of subsection (1) in relation to the disclosure of personal information unless the Commissioner is satisfied that —
- (a) the disclosure is for the purpose for which the information was collected by the disclosing agency and, if the disclosure is to a person or body outside Western Australia, the requirements of IPP 8 are met; or
  - (b) an exception set out in IPP 2(1)(e), (f), (g), (h) or (i) applies to the disclosure; or
  - (c) the disclosure is permitted under IPP 2(3).
- (5) The Commissioner must not give approval for the purposes of subsection (1) in relation to the disclosure of health information unless the Commissioner is satisfied that —
- (a) the disclosure is for the purpose for which the information was collected by the disclosing agency and, if the disclosure is to a person or body outside Western Australia, the requirements of HPP 8 are met; or
  - (b) an exception set out in HPP 2(1)(f), (g), (h), (i), (l), (m) or (n) applies to the disclosure; or
  - (c) the disclosure is permitted under HPP 2(5).
- (6) The Commissioner must not give approval for the purposes of subsection (1) if disclosure of the information by the agency or an officer of the agency contravenes a prescribed enactment or is required or authorised under a prescribed enactment.

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**104. Scope of disclosure powers**

- 5
- (1) Sections 102 and 103 do not authorise an agency to disclose information if disclosure of the information by the agency or an officer of the agency contravenes a prescribed enactment or is required or authorised under a prescribed enactment.
- (2) The powers conferred on an agency by sections 102 and 103 —
- 10
- (a) may be exercised despite any enactment relating to confidentiality or secrecy; and
  - (b) are in addition to any other powers the agency may have to disclose information.

**105. Protection from liability for disclosure**

- If information is disclosed, in good faith, under section 102 or 103 —
- 15
- (a) no civil or criminal liability is incurred in respect of the disclosure; and
  - (b) the disclosure is not to be regarded as a breach of any duty of confidentiality or secrecy imposed by law; and
  - (c) the disclosure is not to be regarded as a breach of professional ethics or standards or as unprofessional conduct.
- 20

## **Part 7 — Privacy and Information Commissioner**

### **Division 1 — Office of Privacy and Information Commissioner**

#### **106. Privacy and Information Commissioner**

- 5 (1) An office of Privacy and Information Commissioner is established.
- (2) The office of Privacy and Information Commissioner is not an office in the Public Service.

#### **107. Appointment of Commissioner**

- 10 (1) The Governor is to appoint a person to the office of Privacy and Information Commissioner.
- (2) Subject to this Act, the Commissioner holds office for a period, not exceeding 7 years, fixed by the instrument of appointment.
- (3) A person who has been appointed to the office of Privacy and Information Commissioner is eligible for reappointment.

#### **108. Remuneration**

- 15 (1) The remuneration of the Commissioner is to be determined by the Salaries and Allowances Tribunal under the *Salaries and Allowances Act 1975*.
- 20 (2) The rate of remuneration of the Commissioner must not be reduced during a term of office of the Commissioner without the Commissioner's consent.

#### **109. Leave and other conditions of service**

- 25 (1) The Governor may determine —
- (a) the leave of absence to which the Commissioner is entitled; and
- (b) other terms and conditions of service that apply to the Commissioner.

- (2) Subject to any determination under subsection (1), the Commissioner is entitled to leave of absence and other conditions of service as applicable to public service officers.

**110. Resignation of Commissioner**

5 The Commissioner may resign from office by giving the Governor a signed letter of resignation.

**111. Removal and suspension from office**

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

(2) If the Commissioner has been suspended from office under subsection (1), the suspension has effect until the Commissioner is restored to or removed from office by the Governor on addresses from both Houses of Parliament.

15 (3) Despite subsection (1), the Governor may suspend the Commissioner from office if the Governor is satisfied that the Commissioner —

(a) is incapable of performing the functions of the Commissioner properly; or

20 (b) has performed the functions of the Commissioner incompetently or has neglected to perform those functions; or

(c) has been guilty of misconduct.

25 (4) If the Commissioner has been suspended from office under subsection (3), the Commissioner is restored to office by operation of this subsection if —

(a) by the end of the 7<sup>th</sup> sitting day of a House of Parliament following the day of suspension, a full statement of the grounds of the suspension has not been laid before that House; or

30

(b) by the end of the relevant day for a House of Parliament, that House has not passed an address requesting the removal of the Commissioner from office.

(5) In subsection (4)(b) —

5 “**relevant day**” for a House of Parliament means —

(a) the 30<sup>th</sup> sitting day of that House following the day on which the statement referred to in subsection (4)(a) is laid before it; or

10 (b) the last day of the session during which the statement referred to in subsection (4)(a) is laid before that House, if that session ends before the sitting day referred to in paragraph (a).

(6) The *Interpretation Act 1984* section 52 does not apply to the office of Commissioner.

15 **112. Deputy Privacy and Information Commissioner**

(1) An office of Deputy Privacy and Information Commissioner is established.

(2) The office of Deputy Privacy and Information Commissioner is not an office in the Public Service.

20 (3) The Governor may, if satisfied that it is necessary or expedient to do so, appoint a person to the office of Deputy Privacy and Information Commissioner.

(4) A Deputy Commissioner is to perform such functions as the Commissioner directs.

25 (5) Sections 107(2) and (3), 108, 109, 110 and 111 apply to a Deputy Commissioner as if references in those provisions to the Commissioner were references to a Deputy Commissioner.

**113. Deputy Commissioner may act as Commissioner**

- (1) Subject to subsection (4), if there is a Deputy Commissioner the Deputy Commissioner is to act in the office of Commissioner during a period when —
- 5 (a) the Commissioner is absent from duty or is unable to perform the functions of that office for any other reason; or
- (b) the Commissioner is suspended from that office; or
- (c) that office is vacant.
- 10 (2) Without limiting subsection (1)(a), an inability to perform the functions of the Commissioner arises if the Commissioner has an actual or potential conflict of interest in relation to a matter to be dealt with by the Commissioner under this Act or the FOI Act.
- 15 (3) While a Deputy Commissioner is acting in the office of Commissioner —
- (a) the Deputy Commissioner may perform the functions of the Commissioner and any act or thing done by the Deputy Commissioner in performing those functions has the like effect as if it were done by the Commissioner; and
- 20 (b) any act or thing that is required under a written law to be done to, by reference to or in relation to the Commissioner is taken to be effectually done if done to, by reference to or in relation to the Deputy Commissioner; and
- 25 (c) the Deputy Commissioner has the same immunities as the Commissioner.
- 30 (4) If an Acting Commissioner has been appointed under section 114 for a period mentioned in subsection (1), a Deputy Commissioner is not to act in the office of Commissioner during that period unless the Acting Commissioner is absent from duty



or unable to perform the functions of the Commissioner for any other reason.

**114. Acting Commissioner**

- 5 (1) The Governor may appoint a person to act in the office of Commissioner during a period mentioned in section 113(1) but a person is not to be appointed to act in that office for a period exceeding 12 months.
- (2) While an Acting Commissioner is acting in the office of Commissioner —
- 10 (a) the Acting Commissioner may perform the functions of the Commissioner and any act or thing done by the Acting Commissioner in performing those functions has the like effect as if it were done by the Commissioner; and
- 15 (b) any act or thing that is required under a written law to be done to, by reference to or in relation to the Commissioner is taken to be effectually done if done to, by reference to or in relation to the Acting Commissioner; and
- 20 (c) the Acting Commissioner has the same immunities as the Commissioner.
- (3) An Acting Commissioner is entitled to such remuneration, leave of absence and other terms and conditions of service as the Governor may determine.
- 25 (4) An appointment under this section —
- (a) may be made at any time and may be terminated at any time by the Governor; and
- 30 (b) may be expressed to have effect only in the circumstances specified in the instrument of appointment.

**115. Oath or affirmation of office — Commissioner, Deputy Commissioner and Acting Commissioner**

- 5 (1) Before performing the functions of Commissioner for the first time, the Commissioner, a Deputy Commissioner or an Acting Commissioner must take an oath or make an affirmation that he or she will faithfully and impartially perform those functions, and that he or she will not, except in accordance with this Act or the FOI Act, divulge any information received in the performance of those functions.
- 10 (2) The oath or affirmation is to be administered by the Speaker of the Legislative Assembly.
- 15 (3) If the office of Speaker is vacant or the Speaker is absent or otherwise unable to administer the oath or affirmation, the President of the Legislative Council is to administer the oath or affirmation.
- (4) If subsections (2) and (3) do not enable the oath or affirmation to be administered, it is to be administered by a person appointed by the Governor for the purpose.

**116. Staff of Commissioner**

- 20 (1) The Commissioner may appoint such officers as are necessary for the performance of the Commissioner's functions.
- (2) Subject to this Act the remuneration, leave of absence and other terms and conditions of service of a person appointed under subsection (1) are as determined by the Commissioner.
- 25 (3) The *Public Sector Management Act 1994* Part 3 does not apply to a person appointed under subsection (1).
- 30 (4) The Commissioner may by arrangement with the employing authority, within the meaning given in the *Public Sector Management Act 1994* section 5, of the officer or employee, make use, either full-time or part-time, of the services of any officer or employee employed in the Public Service or in a State

instrumentality or otherwise in the service of the Crown in right of the State.

**117. Oath or affirmation of office — members of staff**

- 5 (1) Before performing functions under this Act or the FOI Act for the first time, a member of staff must take an oath or make an affirmation that he or she will faithfully and impartially perform those functions, and that he or she will not, except in accordance with this Act or the FOI Act, divulge any information received in the performance of those functions.
- 10 (2) The oath or affirmation is to be administered by the Commissioner.

**118. Rights of officers preserved**

- 15 (1) In this section —  
“**officer of the Commissioner**” means a person appointed under section 116(1).
- 20 (2) If a person who is a public service officer is appointed as Commissioner, Deputy Commissioner or an officer of the Commissioner, the person is entitled to retain any accruing and existing rights, including any rights under the *Superannuation and Family Benefits Act 1938*, as if service as Commissioner, Deputy Commissioner or an officer of the Commissioner were a continuation of service as a public service officer.
- 25 (3) If a person ceases to be Commissioner, Deputy Commissioner or an officer of the Commissioner and becomes a public service officer, the service as Commissioner, Deputy Commissioner or an officer of the Commissioner is to be regarded as service in the Public Service for the purpose of determining that person’s rights as a public service officer and, if applicable, for the purposes of the *Superannuation and Family Benefits Act 1938*.
- 30 (4) If —  
(a) a person immediately before appointment as Commissioner, Deputy Commissioner or an officer of

the Commissioner occupied an office under the *Public Sector Management Act 1994* Part 3; and

- (b) the person's term of office expires by effluxion of time and he or she is not reappointed,

5 the person is entitled to be appointed to an office under the *Public Sector Management Act 1994* Part 3 of at least the equivalent level of classification as the office that the person occupied immediately before appointment as Commissioner, Deputy Commissioner or an officer of the Commissioner.

10 **119. Offices of Commissioner and Parliamentary Commissioner can be held concurrently**

- (1) The Commissioner may also hold the office of Parliamentary Commissioner.

15 (2) Schedule 5 sets out provisions as to the term of office of a person appointed to the offices of Commissioner and Parliamentary Commissioner, his or her conditions of service, his or her staff and other matters relevant to the operation of subsection (1).

**Division 2 — Functions and powers of Commissioner**

20 **120. Functions of Commissioner**

The Commissioner has the following functions —

- (a) to promote understanding of and compliance with the information privacy principles and the health privacy principles;
- 25 (b) to conduct or commission audits of records of personal information and health information maintained by an organisation for the purpose of ascertaining whether the records are maintained in accordance with the information privacy principles, the health privacy principles or any applicable code of practice;
- 30

- 
- 5 (c) to review an organisation's procedures for the handling of personal information or health information to determine whether or not the information is being handled in accordance with this Act;
- 5 (d) to review an organisation's procedures —
- (i) for giving access to health records under Part 3 Division 2; and
  - (ii) for amending health records under Part 3 Division 3;
- 10 (e) to review the operation of approved codes of practice;
- (f) to examine, assess and report to the Minister on any proposed legislation that is likely to have an impact on the privacy of personal information or health information;
- 15 (g) to research, monitor developments in, and report to the Minister on, data processing and computer technology (including data matching and data linkage) to ensure that any adverse effects of such developments on the privacy of personal information and health information are
- 20 minimised;
- (h) to make reports and recommendations to the Minister, or the Minister responsible for the administration of a particular public organisation, on the need for, or desirability of, legislative or administrative action in the
- 25 interests of the privacy of personal information and health information;
- (i) to provide assistance to members of the public and organisations on matters relevant to this Act;
- 30 (j) other functions given to the Commissioner under this Act and the FOI Act.

**121. General powers of Commissioner**

The Commissioner has all the powers that are needed for the performance of the Commissioner's functions.

**122. Powers relating to audit or review**

- 5 (1) If the Commissioner has reason to believe that a person has information or a document relevant to an audit under section 120(b) or a review under section 120(c), (d) or (e), the Commissioner may give to the person a written notice requiring the person —
- 10 (a) to give the information to the Commissioner in writing signed by the person or, in the case of a body corporate, by an officer of the body corporate; or
- (b) to produce the document to the Commissioner.
- (2) A notice given by the Commissioner under subsection (1) must state —
- 15 (a) the place at which the information or document is to be given or produced to the Commissioner; and
- (b) the time at which, or the period within which, the information or document is to be given or produced.
- (3) If the Commissioner has reason to believe that a person has information relevant to an audit under section 120(b) or a review under section 120(c), (d) or (e), the Commissioner may give to the person a written notice requiring the person to appear before the Commissioner at a time and place specified in the notice to answer questions relevant to the audit or review.
- 20 (4) The Commissioner may administer an oath or affirmation to a person required under subsection (3) to appear before the Commissioner and may examine such a person on oath or affirmation.
- 25 (5) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the answers the person will give will be true.

**123. Commissioner to report on audit or review**

- (1) As soon as practicable after the completion of an audit under section 120(b) or a review under section 120(c), (d) or (e) the Commissioner must —
- 5           (a) prepare a report on the audit or review; and
- (b) give a copy of the report to each organisation affected by the audit or review.
- (2) The Commissioner may include in the report any
- 10           recommendations that the Commissioner considers appropriate as a result of the audit or review.
- (3) If a report includes recommendations that particular action be taken by an organisation, the Commissioner may, by written notice, request the organisation to inform the Commissioner of —
- 15           (a) the steps it has taken, or proposes to take, to give effect to the recommendations; or
- (b) its reasons for not taking, or proposing to take, such steps.

**124. Delegation**

- 20           (1) The Commissioner may delegate to a Deputy Commissioner or a member of staff any power or duty of the Commissioner under —
- (a) another provision of this Act other than section 61(1), 73(1), 75(3), 84, 85(3) or 103(1); or
- 25           (b) the FOI Act other than section 67(1), 67B(3), 75 or 76(3) of that Act.
- (2) The delegation must be in writing signed by the Commissioner.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- 30           (4) A person exercising or performing a power or duty that has been delegated to the person under this section, is to be taken to do so

in accordance with the terms of the delegation unless the contrary is shown.

- (5) Nothing in this section limits the ability of the Commissioner to perform a function through an officer or agent.

5

### **Division 3 — Reports to Parliament**

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

- (1) In this section —

10           “**annual report**” means the annual report for a financial year required under the *Financial Management Act 2006* Part 5 in respect of the department taken to be constituted under section 5(1) of that Act by the administration of the Commissioner.

- 15           (2) Without limiting the *Financial Management Act 2006* section 61(1), the annual report must contain the following information for the financial year —

- (a) the number of complaints received by the Commissioner;
- 20                   (b) the number of complaints which the Commissioner decided under section 73 not to deal with, or to stop dealing with;
- (c) the number of complaints resolved by conciliation;
- (d) the number of complaints referred to the State Administrative Tribunal;
- 25                   (e) details of any audit under section 120(b) or review under section 120(c), (d) or (e) including the following —
- (i) the outcome of the audit or review;
- (ii) any recommendations made as a result of the audit or review;
- 30                           (iii) any response to those recommendations;
- (f) details of any report made under section 120(g);



- (g) details of any report or recommendations made under section 120(h);
- (h) the information required under the FOI Act section 111(2);
- 5 (i) any other information that is prescribed.

**126. Special reports**

- 10 (1) The Commissioner may, at any time, prepare a report on any matter arising in connection with the performance of the Commissioner's functions and may submit the report to both Houses of Parliament.
- (2) If the Commissioner wants to submit a report to a House of Parliament and the House is not sitting, the Commissioner may transmit a copy of the report to the Clerk of the House.
- 15 (3) A copy of a report transmitted to the Clerk of a House under subsection (2) is taken to have been laid before the House.
- (4) The laying of a copy of a report before a House that is taken to have occurred under subsection (3) is to be reported to the House by the Clerk, and recorded in the Votes and Proceedings or Minutes of Proceedings, on the first sitting day of the House  
20 after the Clerk received the copy.

## Part 8 — Miscellaneous

### 127. Deceased individuals

(1) In this section —

5 “**representative**” means an authorised representative or a legal representative.

(2) If an individual has died, a right or power conferred on an individual by Part 3 or 5, an IPP or an HPP is exercisable in relation to the deceased individual, so far as the circumstances reasonably permit, by a representative of the deceased individual.

10

### 128. Capacity of authorised representative to give consent

(1) If an IPP or an HPP requires the consent of an individual to the doing of any thing and the individual is incapable of giving consent, consent may be given on behalf of the individual by an authorised representative of the individual.

15

(2) For the purposes of subsection (1), an individual is incapable of giving consent if he or she is incapable by reason of age, illness, physical impairment or mental disability of —

(a) understanding the general nature and effect of giving the consent; or

20

(b) communicating the consent or refusal of consent,

despite the provision of reasonable assistance by another person.

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

(1) If access to a health record is given under a decision under this Act, and the person who makes the decision believes, in good faith, when making the decision, that this Act permits or requires the decision to be made —

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(a) an action for defamation or breach of confidence does not lie against the State, an organisation or an officer or

- employee of an organisation merely because of the making of the decision or the giving of access; and
- 5 (b) an action for defamation or breach of confidence in respect of any publication involved in, or resulting from, the giving of access does not lie against the author of the health record or any other person by reason of the author or other person having supplied the health record to an organisation.
- 10 (2) Neither the giving of access to a health record under a decision under this Act nor the making of such a decision is to be regarded as constituting, for the purpose of the law relating to defamation or breach of confidence, an authorisation or approval of the publication of the health record, or any matter it contains, by the person to whom access is given.
- 15 (3) If access to a health record is given under a decision under this Act, and the person who makes the decision believes, in good faith, when making the decision, that this Act permits or requires the decision to be made, neither the person who makes the decision nor any other person concerned in giving access to
- 20 the health record is guilty of an offence merely because of the making of the decision or the giving of access.

**130. Restrictions under other laws not applicable**

- 25 (1) No obligation to maintain secrecy or other restriction on the disclosure of information obtained by or given to organisations, whether imposed under an enactment or other law, applies to the disclosure of information to the Commissioner for the purposes of Part 5 Division 2 or Part 7 Division 2.
- 30 (2) Legal professional privilege does not apply to the production of documents or the giving of evidence by an organisation, or an officer of an organisation, to the Commissioner for the purposes of Part 5 Division 2 or Part 7 Division 2.
- (3) Subject to subsections (1) and (2), every party to conciliation proceedings or person who complies with a requirement under

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section 122 has the same privileges in relation to the giving of evidence and the production of documents and things that he or she would have as a witness in proceedings before a court.

**131. Confidentiality of information**

- 5            (1) In this section —
- “confidential information”** means information obtained in the course of the performance of functions under this Act or the FOI Act;
- “relevant person”** means a person who is or has been the  
10                      Commissioner, a Deputy Commissioner or a member of staff.
- (2) Except as required for the purposes of proceedings arising under or in relation to this Act or the FOI Act, a relevant person cannot be required to disclose confidential information in court  
15                      or in any judicial proceedings.
- (3) The Commissioner, a Deputy Commissioner or a member of the Commissioner’s staff authorised for the purposes of this subsection by the Commissioner may disclose confidential information to —
- 20                      (a) the Parliamentary Commissioner; or
- (b) the Deputy Parliamentary Commissioner; or
- (c) a member of the Parliamentary Commissioner’s staff authorised for the purposes of this paragraph by the Parliamentary Commissioner,
- 25                      if the information concerns a matter that is relevant to the functions of the Parliamentary Commissioner.
- (4) Subsection (3) does not authorise the disclosure of confidential information that is exempt matter for the purposes of the FOI Act.

- (5) A relevant person must not disclose confidential information except —
- (a) for the purposes of this Act or the FOI Act or proceedings arising under or in relation to this Act or the FOI Act; or
  - (b) as authorised by subsection (3).
- Penalty: a fine of \$6 000.

- (6) A relevant person must not take advantage of confidential information to benefit that person or another person.
- Penalty: a fine of \$6 000.

**132. Protection from liability for wrongdoing**

- (1) An action in tort does not lie against the Commissioner, a Deputy Commissioner or a member of staff for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act or the FOI Act.
- (2) The State is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (1).
- (3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act or the FOI Act had been enacted.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

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

If a person who has been required under Part 5 Division 2 or Part 7 Division 2 —

- (a) to give information to the Commissioner; or
- (b) to produce a document to the Commissioner; or

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(c) to appear before the Commissioner or a conciliator,  
refuses or fails, without reasonable excuse, to comply with the  
requirement, the person commits an offence.

Penalty:

- 5                      (a) for an individual — a fine of \$6 000;  
                         (b) for a body corporate — a fine of \$10 000.

**134. Regulations**

10                      (1) The Governor may make regulations prescribing all matters that  
by this Act are required or permitted to be prescribed or that are  
necessary or convenient to be prescribed for giving effect to  
this Act.

                         (2) Without limiting subsection (1) and subject to section 29, the  
regulations may prescribe or provide for —  
15                      (a) fees for lodging access applications; and  
                         (b) charges for dealing with access applications or rates to  
be used in calculating such charges; and  
                         (c) the extent to which —  
                                 (i) a fee paid for lodging an access application; or  
                                 (ii) an advance deposit paid under section 31 in  
20                      relation to an access application,  
is to or may be refunded to the access applicant in the  
event of the access applicant withdrawing the access  
application or being regarded as having withdrawn the  
access application.

25                      (3) In the making of regulations under subsection (2) (as read with  
the *Interpretation Act 1984* section 45) regard is to be had to the  
need to ensure that fees and charges are reasonable and as low  
as is practicable, and special regard is to be had to —  
30                      (a) the need to ensure that financially disadvantaged  
persons are not precluded from exercising their rights  
under this Act merely because of financial hardship; and

- (b) the particular relationship between an individual and health records relating to that individual.

**135. Review of Act**

- (1) In this section —
  - 5 **“review day”** means the expiry day of a period of 5 years after —
    - (a) the commencement of this section; or
    - (b) the day on which a report is tabled in the Legislative Assembly under subsection (3).
- 10 (2) The Minister must carry out a review of the operation and effectiveness of this Act as soon as is practicable after each review day.
- (3) The Minister must prepare a report based on each review and  
15 must cause the report to be tabled before each House of Parliament as soon as is practicable after it is prepared.

## **Part 9 — Amendment of other written laws**

### **Division 1 — *Freedom of Information Act 1992***

**136. The Act amended**

5 The amendments in this Division are to the *Freedom of Information Act 1992*\*.

[\* *Reprint 4 as at 10 September 2004.*

*For subsequent amendments see Western Australian  
Legislation Information Tables for 2005, Table 1 and Acts  
Nos. 41 and 43 of 2006.]*

10 **137. Part 4 Division 1 repealed**

Part 4 Division 1 is repealed.

**138. Heading to Part 4 Division 2 amended**

The heading to Part 4 Division 2 is amended by deleting  
“Information”.

15 **139. Section 63 amended**

Section 63(1) is amended by deleting “The main function of the  
Commissioner is” and inserting instead —

“ It is a function of the Commissioner ”.

**140. Section 64 repealed**

20 Section 64 is repealed.

**141. Heading to Part 4 Division 4 amended**

The heading to Part 4 Division 4 is amended by deleting  
“Information”.

**142. Section 79 repealed**

25 Section 79 is repealed.



**143. Section 80 repealed**

Section 80 is repealed.

**144. Section 82 repealed**

Section 82 is repealed.

5 **145. Section 111 amended**

- (1) Section 111(1) is repealed and the following subsection is inserted instead —

“

- (1) In this section —

10

“**report**” means the annual report referred to in the  
*Information Privacy Act 2007* section 125.

”.

- (2) Section 111(2) is amended as follows:

15

- (a) after paragraph (k) by deleting “; and” and inserting a full stop instead;  
(b) by deleting paragraph (l).

- (3) Section 111(3)(a) is amended by deleting “preparation of a report under this section” and inserting instead —

“ ensuring that the report complies with subsection (2) ”.

20

- (4) Section 111(5) is repealed.

**146. Schedule 2 amended**

Schedule 2 is amended as follows:

25

- (a) after the item relating to the Auditor General by inserting —  
“ The Commissioner. ”;  
(b) by deleting the item relating to the Information Commissioner.

**147. Glossary amended**

The Glossary clause 1 is amended by inserting in the appropriate alphabetical position —

“

5 “**Commissioner**” has the meaning given in the *Information Privacy Act 2007* section 4(1);

”.

**Division 2 — Parliamentary Commissioner Act 1971**

**148. The Act amended**

10 The amendments in this Division are to the *Parliamentary Commissioner Act 1971*\*.

[\* *Reprint 7 as at 1 October 2004.*

*For subsequent amendments see Western Australian Legislation Information Tables for 2005, Table 1 and Act*  
15 *No. 77 of 2006.*]

**149. Section 4 amended**

Section 4 is amended by inserting in the appropriate alphabetical position —

“

20 “**remuneration**” has the meaning given in the *Salaries and Allowances Act 1975* section 4(1);

”.

**150. Section 5 amended**

25 (1) Section 5(5) and (6) are repealed and the following subsections are inserted instead —

“

(5) The remuneration of the Commissioner and Deputy Commissioner is to be determined by the Salaries and

*Allowances Tribunal under the Salaries and Allowances Act 1975.*

- 5 (6) The rate of remuneration of the Commissioner or Deputy Commissioner must not be reduced during the term of office of the Commissioner or Deputy Commissioner without the consent of the Commissioner or Deputy Commissioner, as the case requires. ”.
- 10 (2) Section 5(7) is amended by deleting “such travelling and other allowances” and inserting instead —  
“ other terms and conditions of service ”.
- (3) After section 5(9) the following subsection is inserted —  
“
- 15 (9a) Subsection (9), to the extent that it applies to the Commissioner, is subject to section 12A. ”.

**151. Section 7 amended**

20 Section 7(3) is amended by deleting “such travelling and other allowances” and inserting instead —  
“ other terms and conditions of service ”.

**152. Section 12A inserted**

After section 12 the following section is inserted in Part II —  
“

25 **12A. Offices of Commissioner and Privacy and Information Commissioner can be held concurrently**

30 (1) The Commissioner may also hold the office of Privacy and Information Commissioner under the *Information Privacy Act 2007*.

**Information Privacy Bill 2007**

**Part 9** Amendment of other written laws

**Division 2** Parliamentary Commissioner Act 1971

**s. 153**

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- (2) The *Information Privacy Act 2007* Schedule 5 applies for the purposes of subsection (1).

”.

**153. Section 22B amended**

5 Section 22B is amended as follows:

- (a) after paragraph (d) by deleting the full stop and inserting —

“

; or

- 10 (e) is disclosed to a person who is —
- (i) the Privacy and Information Commissioner under the *Information Privacy Act 2007*; or
  - 15 (ii) a Deputy Privacy and Information Commissioner under that Act; or
  - (iii) a member of the staff of the Privacy and Information Commissioner authorised by the Privacy and Information Commissioner for the purposes of this subparagraph,
- 20 and concerns a matter that is relevant to the functions of the Privacy and Information Commissioner.

”;

- 25 (b) after each of paragraphs (aa) and (b) and paragraph (b)(i) by inserting —

“ or ”.

**154. Section 31 amended**

30 Section 31 is amended by deleting “\$1 000.” and inserting instead —

“ \$6 000. ”.

**155. Schedule 1 amended**

Schedule 1 is amended by deleting the item relating to the Information Commissioner and inserting instead —

“

5

The Privacy and Information Commissioner under the *Information Privacy Act 2007*.

”.

**Division 3 — Other Acts amended**

**156. Constitution Acts Amendment Act 1899**

10

- (1) The amendments in this section are to the *Constitution Acts Amendment Act 1899*\*.

[\* *Reprint 14 as at 21 April 2006.*

*For subsequent amendments see Western Australian*

*Legislation Information Tables for 2005, Table 1 and Acts*

15

*Nos. 34 of 2004, 18, 32 and 38 of 2005, 5, 28, 41, 43, 56, 60, 64 and 77 of 2006.]*

- (2) Schedule V Part 1 Division 2 is amended as follows:

(a) by deleting the item relating to the Information Commissioner;

20

(b) by inserting in the appropriate alphabetical position —

“

Privacy and Information Commissioner appointed under the *Information Privacy Act 2007*.

”.

25

**157. Financial Management Act 2006**

- (1) The amendments in this section are to the *Financial Management Act 2006*\*.

[\* *Act No. 76 of 2006.*

*For subsequent amendments see Act No. 77 of 2006.]*

**Information Privacy Bill 2007**

**Part 9** Amendment of other written laws

**Division 3** Other Acts amended

**s. 158**

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- (2) Section 5(1)(e) is deleted and the following paragraph is inserted instead —

“

(e) the Privacy and Information Commissioner,

5

”.

- (3) Schedule 2 is amended in column 2 in the item relating to section 54 as follows:

(a) by inserting before “Information Commissioner” —

“ Privacy and ”;

10

(b) by deleting “*Freedom of Information Act 1992*,” and inserting instead —

“ *Information Privacy Act 2007*, ”.

**158. State Records Act 2000**

- (1) The amendments in this section are to the *State Records Act 2000*\*.

15

[\* *Act No. 52 of 2000*.

*For subsequent amendments see Acts Nos. 18 of 2005 and 77 of 2006.]*

- (2) Section 58 is amended as follows:

20

(a) after paragraph (a) by inserting —

“ and ”;

(b) by deleting paragraph (b) and inserting instead —

“

25

(b) the person who is the Privacy and Information Commissioner, or who is acting in that office, under the *Information Privacy Act 2007*; and

”.

**Division 4 — Amendment of subsidiary legislation**

**159. Power to amend subsidiary legislation**

- 5
- (1) The Governor, on the recommendation of the Minister, may make regulations amending subsidiary legislation made under any Act.
- (2) The Minister may make a recommendation under subsection (1) only if the Minister considers that each amendment proposed to be made by the regulations is necessary or desirable as a consequence of the enactment of this Act.
- 10 (3) Nothing in this section prevents subsidiary legislation from being amended in accordance with the Act under which it is made.

## Part 10 — Transitional provisions

### 160. Terms used in this Part

In this Part —

5 “**commencement day**” means the day on which this Part comes into operation;

“**former Commissioner**” means the Information Commissioner under the FOI Act;

“**new Commissioner**” means the Commissioner.

### 161. Continuation of office

10 The office of Privacy and Information Commissioner established under this Act is to be taken to be a continuation of the office of Information Commissioner established under the FOI Act.

### 162. Staff of former Commissioner

15 (1) On the commencement day a person who, immediately before that day, was a member of the former Commissioner’s staff appointed under the FOI Act section 61(1) becomes a member of the new Commissioner’s staff as if appointed under section 116(1).

20 (2) The operation of subsection (1) in relation to a person does not —

- (a) unless the person agrees otherwise, affect the person’s remuneration or terms and conditions of appointment; or
- (b) prejudice the person’s existing or accruing rights; or
- 25 (c) affect any rights under a superannuation scheme; or
- (d) interrupt continuity of service.



**163. References to former Commissioner**

If in a written law or other document or instrument there is a reference to the former Commissioner, the reference may, where the context so requires, be read as if it had been amended to be a reference to the new Commissioner.

5

## **Schedule 1 — Public organisations**

[s. 4(1)]

1. A court.
2. A department of the Public Service.
- 5 3. An organisation specified in the *Public Sector Management Act 1994* Schedule 2 column 2.
4. The Police Force of Western Australia.
5. A local government or a regional local government.
- 10 6. A body or office that is established for a public purpose under a written law.
7. A body or office that is established by the Governor or a Minister.
8. Any other body or office that is declared by the regulations to be a public organisation being —
  - 15 (a) a body or office established under a written law; or
  - (b) a corporation or association over which control can be exercised by the State, a Minister, a body referred to in item 3, 6 or 7 or paragraph (a), or the holder of an office referred to in item 7 or paragraph (a).

## **Schedule 2 — Exempt organisations**

[s. 4(1)]

1. The Governor and the Governor's establishment.
- 5 2. The Legislative Council or a member or committee of the Legislative Council.
3. The Legislative Assembly or a member or committee of the Legislative Assembly.
4. A joint committee or standing committee of the Legislative Council and the Legislative Assembly.
- 10 5. A department of the staff of Parliament.
6. A Minister in his or her official capacity.
7. A parliamentary secretary in his or her official capacity.
8. The Auditor General and the Office of the Auditor General.
9. The Commissioner.
- 15 10. The Corruption and Crime Commission.
11. The Inspector of Custodial Services appointed under the *Inspector of Custodial Services Act 2003*.
12. The Parliamentary Commissioner.
13. The Parliamentary Inspector of the Corruption and Crime Commission appointed under the *Corruption and Crime Commission Act 2003*.
- 20 14. A Royal Commission or member of a Royal Commission.
15. The State Administrative Tribunal.
- 25 16. A person who holds an office established under a written law for the purposes of a body referred to in this Schedule.

**Schedule 3 — Information privacy principles**

[s. 4(1), 15(1)]

**1. Collection**

- 5 (1) A public organisation must not collect personal information unless the information is necessary for one or more of its functions or activities.
- (2) A public organisation must collect personal information only by lawful and fair means and not in an unreasonably intrusive way.
- 10 (3) If it is reasonable and practicable to do so, a public organisation must collect personal information about an individual only from that individual.
- (4) At or before the time (or, if that is not practicable, as soon as practicable after) a public organisation collects personal information about an individual from the individual, it must take reasonable steps to ensure that the individual is aware of —
- 15 (a) the identity of the organisation and how to contact it; and
- (b) the fact that he or she is able to gain access to the information; and
- (c) the purposes for which the information is collected; and
- 20 (d) to whom (or the types of individuals or organisations to which) the organisation usually discloses information of that kind; and
- (e) any law that requires the particular information to be collected; and
- 25 (f) the main consequences (if any) for the individual if all or part of the information is not provided,
- except to the extent that making the individual aware of the matters would pose a serious threat to the life, health, safety or welfare of any individual.
- 30 (5) If a public organisation collects personal information about an individual from someone else (other than an authorised representative of the individual), it must take reasonable steps to ensure that the

individual is or has been made aware of the matters listed in subclause (4) except —

(a) to the extent that making the individual aware of the matters would —

- 5 (i) pose a serious threat to the life, health, safety or welfare of any individual; or
- (ii) enable the existence, or non-existence, or identity of any confidential source of information, in relation to the enforcement or administration of the law, to be
- 10 discovered;

or

(b) in prescribed circumstances (if any).

## 2. Use and disclosure

15 (1) A public organisation that holds personal information about an individual must not use or disclose the information for a purpose other than the purpose for which it was collected unless —

- (a) the other purpose is related to the purpose for which it was collected and the individual would reasonably expect the organisation to use or disclose the information for that other
- 20 purpose; or
- (b) the individual consents to the use or disclosure; or
- (c) the use or disclosure is required or authorised by or under law; or
- (d) the use or disclosure is necessary for the purpose of —
- 25 (i) research; or
- (ii) the compilation or analysis of statistics, relevant to the development or evaluation of government funded policies or programmes and it is impracticable for the organisation to seek the individual's consent to the use or
- 30 disclosure; or
- (e) the organisation reasonably believes that the use or disclosure is necessary to lessen or prevent —
- (i) a serious threat to an individual's life, health, safety or welfare; or

**cl. 2**

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- (ii) a serious threat to public health, public safety or public welfare;
- or
- 5 (f) the organisation reasonably believes that the use or disclosure is necessary to safeguard or promote the wellbeing of a child or a class or group of children; or
- 10 (g) the organisation has reason to suspect that unlawful activity has been, is being, or may be, engaged in and uses or discloses the information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities; or
- (h) the organisation reasonably believes that the use or disclosure is necessary for one or more of the law enforcement functions of a law enforcement agency; or
- 15 (i) the organisation reasonably believes that the use or disclosure is necessary for one or more of the licensing functions of a licensing agency; or
- (j) in the case of a disclosure, any of the following applies —

  - 20 (i) the disclosure is to a person for the purpose of research in relation to the person's Aboriginal family history;
  - 25 (ii) the disclosure is to a representative Aboriginal/Torres Strait Islander body, as defined in the *Native Title Act 1993* (Commonwealth) section 253, or a public organisation for the purpose of preparation for, or use in relation to, an application that has been made under Part 3 of that Act;
  - (iii) the disclosure is to the Parliamentary Commissioner;
  - 30 (iv) the disclosure is to a coroner or the Coroner's Court of Western Australia;
  - (v) the organisation is a public health agency and the disclosure is to another public health agency.
- 35 (2) If a public organisation uses or discloses personal information for a purpose other than the purpose for which it was collected, it must make a record of the use or disclosure.

- 
- (3) Despite subclause (1), a public organisation may use or disclose personal information about an individual where —
- (a) it is known or suspected that the individual is dead; or
  - (b) it is known or suspected that the individual is missing; or
  - 5 (c) the individual has been involved in an accident or other misadventure and is incapable of consenting to the use or disclosure,
- and the use or disclosure is to the extent reasonably necessary —
- (d) to identify the individual or ascertain his or her location; or
  - 10 (e) to ascertain the identity and location of a relative of the individual for the purpose of —
- (i) enabling a member of the Police Force, a coroner or other prescribed organisation to contact the relative for compassionate reasons; or
  - 15 (ii) assisting in the identification of the individual.
- (4) If a disclosure to which subclause (1) or (3) applies involves the disclosure of personal information to a person (other than the individual) who is outside Western Australia, the requirements of IPP 8 must also be met.
- 20 (5) Nothing in this principle is to be taken to prevent the disclosure of personal information by a public organisation to the Minister responsible for the administration of that organisation.

### 3. Data quality

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

### 4. Data security

- 30 (1) A public organisation must take reasonable steps to protect the personal information it holds from misuse and loss and from unauthorised access, modification or disclosure.
- (2) A public organisation must take reasonable steps to destroy or permanently de-identify personal information if it is no longer needed for any purpose.

**cl. 5**

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- (3) The operation of subclause (2) is subject to the *State Records Act 2000*.

**5. Openness**

- 5 (1) A public organisation must set out in a document clearly expressed policies on its management of personal information and must make the document available to anyone who asks for it.
- (2) On request by a person, a public organisation must take reasonable steps to let the person know, generally, what sort of personal information it holds, for what purposes, and how it handles that information.
- 10

**6. Identifiers**

- (1) A public organisation must not assign identifiers to individuals unless the assignment of identifiers is necessary to enable the organisation to carry out any of its functions efficiently.
- 15 (2) A public organisation must not adopt as its own identifier of an individual an identifier of the individual that has been assigned by another public organisation unless —
- (a) it is necessary to enable the public organisation to carry out any of its functions efficiently; or
- 20 (b) the individual consents to the adoption of the same identifier.
- (3) A public organisation must not use or disclose an identifier assigned to an individual by another public organisation unless —
- (a) the use or disclosure is necessary to enable the public organisation to carry out any of its functions efficiently; or
- 25 (b) the use or disclosure is necessary for the public organisation to fulfil its obligations to the other organisation; or
- (c) one or more of IPP 2(1)(c) or (e) to (h) applies to the use or disclosure; or
- (d) the individual consents to the use or disclosure.
- 30 (4) A public organisation must not require an individual to provide an identifier in order to obtain a service unless the provision of the identifier is required or authorised by law or the provision is in





**cl. 8**

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(iii) if it were practicable to obtain that consent, the individual would be likely to give it;

or

(g) the organisation —

5

(i) reasonably believes that the information is relevant to the functions or activities of the person receiving the information; and

10

(ii) has taken reasonable steps to ensure that the information will not be held, used or disclosed by the person receiving the information in a manner that is inconsistent with the information privacy principles.

## **Schedule 4 — Health privacy principles**

[s. 4(1), 18(1)]

### **1. Collection**

- 5            (1) An organisation must not collect health information about an individual unless the information is necessary for one or more of its functions or activities and at least one of the following applies —
- (a) the individual consents to the collection;
  - (b) the collection is required or authorised by or under law;
  - 10            (c) the information is necessary to provide a health service to the individual and the individual is incapable of giving consent and —
    - (i) it is not reasonably practicable to obtain the consent of an authorised representative of the individual; or
    - (ii) the individual does not have an authorised
    - 15                    representative;
  - (d) the collection is the result of a disclosure made in accordance with HPP 2(1)(a), (f), (j), (k), (l) or (p), (4) or (5);
  - (e) the collection is necessary for the purpose of research, or the compilation or analysis of statistics, in the public interest and
  - 20                    all of the following apply —
    - (i) that purpose cannot be served by the collection of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained;
    - 25                    (ii) it is impracticable for the organisation to seek the individual's consent to the collection;
    - (iii) if there is no applicable code of practice relating to the collection of information under this paragraph, the information is collected in accordance with
    - 30                    guidelines approved under the *Privacy Act 1988* (Commonwealth) section 95A(4);
  - (f) the collection is necessary to lessen or prevent —
    - (i) a serious threat to an individual's life, health, safety or welfare; or

**cl. 1**

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- (ii) a serious threat to public health, public safety or public welfare and the collection is by or on behalf of a public organisation;
- 5 (g) the collection is necessary for the establishment, exercise or defence of a legal or equitable claim;
- (h) the information is a family or social medical history, or other relevant information about an individual, that is collected for the purpose of providing a person (including the individual) with a health service, and is collected by a health service
- 10 provider —
- (i) from the person who is to receive that service; or
- (ii) from a relative, carer, or authorised representative, of the individual in circumstances where —
- 15 (I) the health service provider believes that the collection of the information would reasonably be expected by the individual; and
- (II) the collection of the information is not contrary to any wish previously expressed by the individual of which the health service provider is aware or of which the health service provider could reasonably be expected to be aware.
- 20
- (2) An organisation must collect health information only by lawful and fair means and not in an unreasonably intrusive way.
- 25
- (3) If it is reasonable and practicable to do so, an organisation must collect health information about an individual only from that individual.
- (4) At or before the time (or, if that is not practicable, as soon as practicable after) an organisation collects health information about an individual from the individual, it must take reasonable steps to ensure that the individual is aware of —
- 30
- (a) the identity of the organisation and how to contact it; and
- (b) the fact that he or she is able to gain access to the
- 35 information; and
- (c) the purposes for which the information is collected; and

- 5
- (d) to whom (or the types of individuals or organisations to which) the organisation usually discloses information of that kind; and
  - (e) any law that requires the particular information to be collected; and
  - (f) the main consequences (if any) for the individual if all or part of the information is not provided.
- 10
- (5) If an organisation collects health information about an individual from someone else (other than an authorised representative of the individual), it must take reasonable steps to ensure that the individual is or has been made aware of the matters listed in subclause (4) except —
- (a) to the extent that subclause (1)(b) or (h) applies to the information or its collection; or
  - 15 (b) to the extent that making the individual aware of the matters would —
    - (i) pose a serious threat to the life, health, safety or welfare of any individual; or
    - 20 (ii) enable the existence, or non-existence, or identity of any confidential source of information, in relation to the enforcement or administration of the law, to be discovered;
- or
- (c) in prescribed circumstances (if any).

25    **2. Use and disclosure**

- (1) An organisation must not use or disclose health information about an individual for a purpose other than the purpose for which it was collected unless —
- 30 (a) the other purpose is related to the purpose for which it was collected and the individual would reasonably expect the organisation to use or disclose the information for that other purpose; or
  - (b) the individual consents to the use or disclosure; or
  - 35 (c) the use or disclosure is required or authorised by or under law; or

**cl. 2**

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- (d) all of the following apply —
- (i) the organisation is a health service provider providing a health service to the individual;
  - 5 (ii) the use or disclosure for the other purpose is reasonably necessary for the provision of the health service;
  - (iii) the individual is incapable of giving consent and —
    - 10 (I) it is not reasonably practicable to obtain the consent of an authorised representative of the individual; or
    - (II) the individual does not have an authorised representative;
- or
- (e) all of the following apply —
- 15 (i) the organisation is a health service provider providing a health service to the individual;
  - (ii) the use or disclosure is for the purpose of the provision of a further health service to the individual by the organisation;
  - 20 (iii) the use or disclosure is reasonably necessary for the provision of the further health service;
- or
- (f) the use or disclosure is for the purpose of the funding, management, planning, monitoring, improvement or
- 25 evaluation of health services or for the purpose of training provided by a health service provider to employees or persons working with or being trained by the organisation and —
  - (i) it is impracticable for the organisation to seek the individual's consent to the use or disclosure; and
  - 30 (ii) either —
    - (I) in circumstances where that purpose cannot be served by the use or disclosure of information that does not identify the individual or from which the individual's

identity cannot reasonably be ascertained,  
the information is not published in a  
generally available publication; or

(II) reasonable steps are taken to de-identify the  
information;

5

or

(g) the use or disclosure is necessary for the purpose of research,  
or the compilation or analysis of statistics, in the public  
interest and all of the following apply —

10

(i) that purpose cannot be served by the use or disclosure  
of information that does not identify the individual or  
from which the individual's identity cannot  
reasonably be ascertained;

15

(ii) it is impracticable for the organisation to seek the  
individual's consent to the use or disclosure;

20

(iii) if there is no applicable code of practice relating to  
the use or disclosure of information under this  
paragraph, the information is used or disclosed in  
accordance with guidelines approved under the  
*Privacy Act 1988* (Commonwealth) section 95A(2),

and, in addition, in the case of disclosure —

25

(iv) the organisation reasonably believes that the recipient  
of the information will not disclose the information;  
and

(v) the information will not be published in a form that  
identifies particular individuals or from which an  
individual's identity can reasonably be ascertained;

or

30

(h) the organisation reasonably believes that the use or disclosure  
is necessary to lessen or prevent —

(i) a serious threat to an individual's life, health, safety  
or welfare; or

(ii) a serious threat to public health, public safety or  
public welfare;

35

or

**cl. 2**

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- (i) the organisation reasonably believes that the use or disclosure is necessary to safeguard or promote the wellbeing of a child or a class or group of children; or
- 5 (j) in the case of the use of genetic information about an individual in a form which is, or could be, predictive of the health of another individual, the organisation reasonably believes that the use is necessary to lessen or prevent a serious threat to that other individual's life, health, safety or welfare and any of the following apply —
- 10 (i) reasonable steps have been taken to obtain the consent of the first-mentioned individual;
- (ii) it is not reasonably practicable to obtain the consent of that individual;
- (iii) that individual is incapable of giving consent;
- 15 or
- (k) in the case of the disclosure of genetic information about an individual in a form which is, or could be, predictive of the health of another individual —
- 20 (i) the organisation reasonably believes that the disclosure is necessary to lessen or prevent a serious threat to that other individual's life, health, safety or welfare and any of the following apply —
- 25 (I) reasonable steps have been taken to obtain the consent of the first-mentioned individual;
- (II) it is not reasonably practicable to obtain the consent of that individual;
- (III) that individual is incapable of giving consent;
- 30 and
- (ii) subject to subclause (2), at or before the time of disclosure (or, if that is not practicable, as soon as practicable after disclosure) the organisation takes



reasonable steps to inform the first-mentioned individual —

- 5
- (I) that the organisation has disclosed, or is about to disclose, genetic information about that individual that is necessary to lessen or prevent a serious threat to another individual's life, health, safety or welfare; and
  - 10 (II) of the name of that other individual; and
  - (III) of the name of the person or body to whom the information has been or will be disclosed; and
  - (IV) in general terms, of the nature of the information disclosed or to be disclosed;

15 or

- (l) the organisation has reason to suspect that unlawful activity has been, is being, or may be, engaged in and uses or discloses the information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities; or
  - 20 (m) the organisation reasonably believes that the use or disclosure is necessary for one or more of the law enforcement functions of a law enforcement agency; or
  - 25 (n) the organisation reasonably believes that the use or disclosure is necessary for one or more of the licensing functions of a licensing agency; or
  - (o) the use or disclosure is necessary for the establishment, exercise or defence of a legal or equitable claim; or
  - 30 (p) in the case of a disclosure, the information is about a deceased individual and is disclosed to —
    - (i) a legal representative of the deceased individual; or
    - (ii) an authorised representative of the deceased individual, and the disclosure is for a purpose related to the former powers, functions or duties of that person; or
- 35

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- 5
- (iii) a person nominated in writing by the deceased individual as eligible to receive the information; or
  - (iv) a relative of the deceased individual in circumstances where the organisation has no reasonable grounds to believe that the deceased individual would have objected to the disclosure to that person;
- or
- (q) in the case of a disclosure, any of the following applies —
- 10
- (i) the disclosure is to a person for the purpose of research in relation to the person's Aboriginal family history;
  - (ii) the disclosure is to a representative Aboriginal/Torres Strait Islander body, as defined in the *Native Title Act 1993* (Commonwealth) section 253, or a public organisation for the purpose of preparation for, or use in relation to, an application that has been made under Part 3 of that Act;
  - (iii) the disclosure is to the Parliamentary Commissioner;
  - (iv) the disclosure is to a coroner or the Coroner's Court of Western Australia;
  - (v) the organisation is a public health agency and the disclosure is to another public health agency.
- 15
- 20
- (2) An organisation —
- 25
- (a) is not required to take steps to inform an individual of a matter referred to in subclause (1)(k)(ii) if the individual is already aware of that matter; and
  - (b) must not take such steps if to do so could result in a serious threat to the life, health, safety or welfare of any individual.
- (3) If an organisation discloses health information under subclause (1)(l), (m) or (n), it must make a record of the disclosure.
- 30
- (4) Despite subclause (1), where an individual is incapable of giving consent, an organisation providing a health service to the individual

may disclose health information about the individual to another person if —

- 5            (a) the disclosure is made to a relative, carer or authorised representative of the individual and, in the opinion of the organisation, is necessary for the continued provision of appropriate health services to, or care of, the individual; or
- 10           (b) the disclosure is made for compassionate reasons and —
- (i) the organisation believes that the disclosure would reasonably be expected by the individual; and
- (ii) the disclosure is not contrary to any wish previously expressed by the individual of which the organisation is aware or of which the organisation could reasonably be expected to be aware;

or

- 15           (c) the disclosure is made to the individual's authorised representative in order for the representative to make decisions about the individual's care and treatment or to perform functions or duties related to the individual.

20        (5) Despite subclause (1), an organisation may use or disclose health information about an individual where —

- (a) it is known or suspected that the individual is dead; or
- (b) it is known or suspected that the individual is missing; or
- (c) the individual has been involved in an accident or other misadventure and is incapable of consenting to the use or disclosure,
- 25

and the use or disclosure is to the extent reasonably necessary —

- (d) to identify the individual or ascertain his or her location; or
- (e) to ascertain the identity and location of a relative of the individual for the purpose of —
- 30            (i) enabling a member of the Police Force, a coroner or other prescribed organisation to contact the relative for compassionate reasons; or
- (ii) assisting in the identification of the individual.

35        (6) If a disclosure to which subclause (1), (4) or (5) applies involves the disclosure of health information to a person (other than the individual)

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who is outside Western Australia, the requirements of HPP 8 must also be met.

- 5 (7) Nothing in this principle is to be taken to prevent the disclosure of health information by a public organisation to the Minister responsible for the administration of that organisation.

**3. Data quality**

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

10 **4. Data security and data retention**

- (1) An organisation must take reasonable steps to protect the health information it holds from misuse and loss and from unauthorised access, modification or disclosure.
- 15 (2) A health service provider must retain, and must not delete or destroy, health information relating to an individual, even if it is later found or claimed to be inaccurate, unless —
- (a) the deletion or destruction is required or authorised by or under law; or
- 20 (b) the deletion or destruction is not prohibited by any other law and occurs —
- (i) in the case of health information collected while the individual was a child, after the individual reaches 25 years of age; or
- 25 (ii) in any case, more than 7 years after the last occasion on which a health service was provided to the individual by the provider,
- whichever is the later.
- (3) A health service provider must create and maintain a register of health information that has been deleted or destroyed or transferred to another individual or organisation as follows —
- 30 (a) in the case of health information that has been deleted or destroyed, the provider must adequately identify the individual to whom the information related, the period of

time that the information covered and the date on which it was deleted or destroyed;

- 5                    (b) in the case of health information that has been transferred, the provider must record the name of the individual to whom the information relates and the name and address of the individual or organisation to whom it was transferred.
- 10                (4) An organisation other than a health service provider must take reasonable steps to destroy or permanently de-identify health information if it is no longer needed for the purpose for which it was collected or any other purpose authorised by this Act or any other law.
- (5) In the case of a public organisation, the operation of subclauses (2), (3) and (4) is subject to the *State Records Act 2000*.

**5. Openness**

- 15                (1) An organisation must set out in a document —
- (a) clearly expressed policies on its management of health information; and
- (b) the steps that an individual must take if the individual wishes to obtain access to his or her health records or to have his or her health records corrected, whether under Part 3 or otherwise,
- 20
- and the organisation must make the document available to anyone who asks for it.
- (2) On request by an individual or an authorised representative of an individual, an organisation must take reasonable steps —
- 25                    (a) to let the individual or authorised representative know —
- (i) whether the organisation holds health information relating to the individual; and
- (ii) the steps that the individual or authorised representative must take if he or she wishes to obtain access to the individual's health records or to have his or her health records corrected, whether under Part 3 or otherwise;
- 30
- and

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- (b) if the organisation holds health information relating to the individual, to let the individual or authorised representative know in general terms —
- (i) the nature of the information; and
  - 5 (ii) the purposes for which the information is used; and
  - (iii) how the organisation handles the information.

**6. Identifiers**

- (1) An organisation must not assign identifiers to individuals unless the assignment of identifiers is necessary to enable the organisation to carry out any of its functions efficiently.
- 10
- (2) A private organisation must not adopt as its own identifier of an individual an identifier of the individual that has been assigned by another organisation unless —
- 15 (a) the individual consents to the adoption of the same identifier; or
  - (b) the use or disclosure of the identifier is required or authorised by or under law.
- (3) A private organisation must not use or disclose an identifier assigned to an individual by another organisation unless —
- 20
- (a) the use or disclosure is required for the purpose for which it was assigned or for a purpose referred to in one or more of HPP 2(1)(c) to (o); or
  - (b) the individual consents to the use or disclosure; or
  - 25 (c) the disclosure is to the public organisation which assigned the identifier to enable the public organisation to identify the individual for its own purposes.
- (4) A public organisation must not adopt as its own identifier of an individual an identifier of the individual that has been assigned by another public organisation unless —
- 30
- (a) it is necessary to enable the public organisation to carry out any of its functions efficiently; or
  - (b) the individual consents to the adoption of the same identifier.

- (5) A public organisation must not use or disclose an identifier assigned to an individual by another public organisation unless —
- (a) the use or disclosure is necessary to enable the public organisation to carry out any of its functions efficiently; or
  - 5        (b) the use or disclosure is necessary for the public organisation to fulfil its obligations to the other organisation; or
  - (c) one or more of HPP 2(1)(c) to (o) applies to the use or disclosure; or
  - (d) the individual consents to the use or disclosure.

10    **7. Anonymity**

Wherever it is lawful and practicable, individuals must have the option of not identifying themselves when dealing with an organisation.

**8. Transborder data flows**

15        An organisation must not disclose health information about an individual to a person (other than the individual) outside Western Australia unless —

- (a) the disclosure is required or authorised by or under law; or
- (b) the organisation reasonably believes that —
  - 20            (i) the information is relevant to the functions or activities of the person receiving the information; and
  - (ii) the person receiving the information is subject to a law, administrative scheme by which the person is bound, or contract, that requires the person to comply
  - 25            with principles for handling the information that are substantially similar to the health privacy principles;
- or
- (c) the individual consents to the disclosure; or
- (d) the disclosure is necessary for the performance of a contract
- 30            between the individual and the organisation or for the implementation of pre-contractual measures taken in response to the individual's request; or
- (e) the disclosure is necessary for the performance or completion of a contract between the organisation and a third party, the

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performance or completion of which benefits the individual;  
or

(f) all of the following apply —

- 5 (i) the disclosure is for the benefit of the individual;
- (ii) it is impracticable to obtain the consent of the individual to the disclosure;
- (iii) if it were practicable to obtain that consent, the individual would be likely to give it;

or

10 (g) the organisation —

- (i) reasonably believes that the information is relevant to the functions or activities of the person receiving the information; and
- 15 (ii) has taken reasonable steps to ensure that the information will not be held, used or disclosed by the person receiving the information in a manner that is inconsistent with the health privacy principles.

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

20 (1) In the interests of facilitating safe and effective treatment through the timely provision of access to health information, where the practice or business of a health service provider (the “**provider**”) is, or is proposed to be —

- 25 (a) sold, amalgamated or otherwise transferred and the provider will not be providing health services in the new practice or business; or
- (b) closed down,

the provider or, if the provider is deceased, the legal representative of the provider, as soon as practicable, must take reasonable steps to —

- 30 (c) make individuals who have received health services from the provider aware of the sale, amalgamation, transfer or closure of the practice or business; and
- (d) inform those individuals about the proposed arrangements for the transfer or storage of health information held by the practice or business; and



- 
- (e) make appropriate entries in the register required under HPP 4(3) about any transfer, storage or destruction of health information held by the practice or business.
- 5 (2) If an individual requests a health service provider whose practice or business is being sold, amalgamated, transferred or closed down to transfer health information held by the health service provider about the individual to another health service provider, the request is to be treated as a request to which HPP 10(1)(a) applies.
- 10 (3) For the purposes of subclause (2), references in that subclause and HPP 10 to a health service provider are to be taken to include references to the legal representative of a health service provider if the health service provider is deceased.
- 10. Making health information available to other health service providers**
- 15 (1) If an individual —
- (a) requests a health service provider to make health information held by the health service provider about the individual available to another health service provider (the “**other provider**”); or
- 20 (b) authorises a health service provider (the “**requesting provider**”) to request another health service provider to make available health information held by that other health service provider about the individual to the requesting provider,
- 25 the health service provider to whom the request is made, if it holds health information about the individual, must, on payment of the fee (if any) charged by the health service provider, give to the other provider or the requesting provider, as the case requires —
- (c) the health information; or
- (d) a copy of the health information; or
- 30 (e) a summary of the health information.
- (2) A fee charged by a health service provider for the purposes of subclause (1) must not exceed the prescribed amount (if any).
- (3) This principle does not limit or otherwise affect the operation of Part 3 Division 2.

**Schedule 5 — Concurrent appointment as Commissioner and Parliamentary Commissioner**

[s. 119]

**1. Term of office**

- 5 (1) If a person is appointed at the same time to the offices of Commissioner and Parliamentary Commissioner, the period for which the person is appointed to the office of Commissioner must be 5 years.
- 10 (2) If the Commissioner is appointed to the office of Parliamentary Commissioner, then, despite the *Parliamentary Commissioner Act 1971* section 5(3), the period for which he or she is appointed to that office must not exceed the period remaining before his or her term of office as Commissioner expires.
- 15 (3) If the Parliamentary Commissioner is appointed to the office of Commissioner, the period for which he or she is appointed to that office must not exceed the period remaining before his or her term of office as Parliamentary Commissioner expires.

**2. Remuneration and other conditions of service**

- 20 (1) If a person is appointed at the same time to the offices of Commissioner and Parliamentary Commissioner, the *Parliamentary Commissioner Act 1971* section 5(5) and (7) do not apply in relation to the office of Parliamentary Commissioner and the person's remuneration and other conditions of service are to be determined under sections 108 and 109.
- 25 (2) If the Commissioner is appointed to the office of Parliamentary Commissioner, the *Parliamentary Commissioner Act 1971* section 5(5) and (7) do not apply in relation to that appointment.
- 30 (3) If the Parliamentary Commissioner is appointed to the office of Commissioner, sections 108 and 109 do not apply in relation to that appointment.

**3. Rights preserved**

(1) If a person is appointed at the same time to the offices of Commissioner and Parliamentary Commissioner —

- 5 (a) section 118 applies; and  
(b) the *Parliamentary Commissioner Act 1971* section 10(3), (4) and (5) do not apply,

to the person.

(2) If —

- 10 (a) the Commissioner is appointed to the office of Parliamentary Commissioner; or  
(b) the Parliamentary Commissioner is appointed to the office of Commissioner,

the appointment does not affect his or her existing or accruing rights, including superannuation rights, unless he or she otherwise agrees.

15 **4. Resignation from office**

If a person who holds the offices of Commissioner and Parliamentary Commissioner resigns from one of those offices, the person is to be taken to have resigned from the other office.

**5. Removal or suspension from office**

20 (1) If a person who holds the offices of Commissioner and Parliamentary Commissioner is removed or suspended from one of those offices, the person is to be taken to have been removed or suspended from the other office.

25 (2) If a person who holds the offices of Commissioner and Parliamentary Commissioner is restored to one of those offices after having been suspended from office, the person is to be taken to have been restored to the other office.

**6. Application of clauses 7 to 10**

30 Clauses 7, 8, 9 and 10 apply during, and in relation to, any period when a person holds the offices of Commissioner and Parliamentary Commissioner.

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**7. Deputy Commissioners and Acting Commissioners**

- (1) A direction given to a Deputy Commissioner under section 112(4) may include a direction as to functions under the *Parliamentary Commissioner Act 1971*.
- 5 (2) A Deputy Commissioner has, in relation to the performance of functions referred to in subclause (1), the powers, obligations, responsibilities and protections that are conferred or imposed on the Deputy Parliamentary Commissioner by the *Parliamentary Commissioner Act 1971*.
- 10 (3) Without limiting subclause (2), before carrying out duties referred to in subclause (1) for the first time a Deputy Commissioner must take an oath or make an affirmation as described in the *Parliamentary Commissioner Act 1971* section 8(1).
- (4) Section 113(1) does not apply.
- 15 (5) A direction given to the Deputy Parliamentary Commissioner under the *Parliamentary Commissioner Act 1971* section 6A(1) may include a direction as to functions under this Act and the FOI Act.
- (6) The Deputy Parliamentary Commissioner has, in relation to the performance of functions referred to in subclause (5), the powers, obligations, responsibilities and protections that are conferred or imposed on a Deputy Commissioner by this Act or the FOI Act.
- 20 (7) Without limiting subclause (6), before carrying out duties referred to in subclause (5) for the first time the Deputy Parliamentary Commissioner must take an oath or make an affirmation as described in section 115.
- 25 (8) The *Parliamentary Commissioner Act 1971* section 6A(2) applies, with necessary modifications, as if references in it to —
- (a) the Commissioner were references to the person who holds the offices of Commissioner and Parliamentary Commissioner; and
- 30 (b) the office of Commissioner were references to the offices of Commissioner and Parliamentary Commissioner.
- (9) A person may be appointed at the same time —
- (a) under section 114 to act in the office of Commissioner; and

- (b) under the *Parliamentary Commissioner Act 1971* section 7 to act in the office of Parliamentary Commissioner.

**8. Functions of staff**

- (1) In this clause —  
5       **“office holder”** means the person who holds the offices of  
          Commissioner and Parliamentary Commissioner.
- (2) A member of the Commissioner’s staff may, if authorised to do so by  
the office holder, perform the functions of a member of the  
10       Parliamentary Commissioner’s staff under the *Parliamentary  
Commissioner Act 1971*.
- (3) A member of the Commissioner’s staff has, in relation to the  
performance of functions referred to in subclause (2), the powers,  
obligations, responsibilities and protections that are given to or  
15       imposed on a member of the Parliamentary Commissioner’s staff by  
the *Parliamentary Commissioner Act 1971*.
- (4) Without limiting subclause (3), before performing functions referred  
to in subclause (2) for the first time, a member of the Commissioner’s  
staff must take an oath or make an affirmation as described in the  
*Parliamentary Commissioner Act 1971* section 9(4).
- 20       (5) A member of the Parliamentary Commissioner’s staff may, if  
authorised to do so by the office holder, perform functions of a  
member of the Commissioner’s staff under this Act or the FOI Act.
- 25       (6) A member of the Parliamentary Commissioner’s staff has, in relation  
to the performance of functions referred to in subclause (5), the  
powers, obligations, responsibilities and protections that are given to  
or imposed on a member of the Commissioner’s staff by this Act or  
the FOI Act.
- 30       (7) Without limiting subclause (6), before performing functions referred  
to in subclause (5) for the first time, a member of the Parliamentary  
Commissioner’s staff must take an oath or make an affirmation as  
described in section 117.
- (8) An authorisation given for the purposes of subclause (2) or (5) may —  
      (a) be expressed to apply generally or in relation to particular  
          functions; and

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- (b) specify the circumstances in which functions are to be performed.

**9. Delegation**

- 5 (1) A delegation may be made under the *Parliamentary Commissioner Act 1971* section 11 to —
  - (a) a Deputy Commissioner as if he or she were the Deputy Parliamentary Commissioner; or
  - (b) a member of the Commissioner’s staff as if he or she were a member of the Parliamentary Commissioner’s staff.
- 10 (2) A delegation may be made under section 124(1) to —
  - (a) the Deputy Parliamentary Commissioner as if he or she were a Deputy Commissioner; or
  - (b) a member of the Parliamentary Commissioner’s staff as if he or she were a member of the Commissioner’s staff.

15 **10. Confidentiality provisions**

- 20 (1) Without limiting clause 7(2) or 8(3), the *Parliamentary Commissioner Act 1971* section 23 applies to information obtained by a Deputy Commissioner or a member of the Commissioner’s staff in the course of, or for the purposes of, an investigation under that Act in the same way that it applies to such information obtained by the Deputy Parliamentary Commissioner or a member of the Parliamentary Commissioner’s staff.
- 25 (2) Nothing in the *Parliamentary Commissioner Act 1971* section 23 is to be taken to prevent the disclosure of information by —
  - (a) the Parliamentary Commissioner; or
  - (b) the Deputy Parliamentary Commissioner; or
  - (c) a member of the Parliamentary Commissioner’s staff,to a Deputy Commissioner or a member of the Commissioner’s staff.
- 30 (3) Without limiting clause 7(6) or 8(6), section 131 applies to a person who is or has been the Deputy Parliamentary Commissioner or a member of the Parliamentary Commissioner’s staff in the same way that it applies to a person who is or has been a Deputy Commissioner or a member of the Commissioner’s staff.

(4) Nothing in section 131 is to be taken to prevent the disclosure of information by —

(a) the Commissioner; or

(b) a Deputy Commissioner; or

5 (c) a member of the Commissioner's staff,

to the Deputy Parliamentary Commissioner or a member of the Parliamentary Commissioner's staff.

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Defined Terms

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**Defined Terms**

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

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