

Copyright is retained by the Queensland Law
Reform Commission.

**DRAFT REPORT ON STATUTORY PROVISION TO
BE RE-ENACTED BY THE QUEENSLAND
PARLIAMENT ON THE EXPIRATION OF SECTION 48
OF THE FREEDOM OF INFORMATION ACT 1992**

Miscellaneous Paper No 3

Queensland Law Reform Commission
July 1993

**QUEENSLAND LAW REFORM
COMMISSION**

DRAFT REPORT

ON

STATUTORY PROVISIONS TO BE

RE-ENACTED BY THE

QUEENSLAND PARLIAMENT

ON THE EXPIRATION OF

SECTION 48 OF THE

FREEDOM OF INFORMATION ACT

1992

How to make comments and submissions

The Commission welcomes comments and submissions on the recommendations made in this Draft Report. Written comments and submissions should be sent to

The Secretary
Queensland Law Reform Commission
PO Box 312
Roma Street Q 4003

The closing date for submissions is 30 September 1993.

If you would like your submission to be treated as confidential, please indicate this clearly. However, submissions may be subject to release under the *Freedom of Information Act 1992 (Qld)*.

Published by the Queensland Law Reform Commission,

Copyright is retained by the Queensland Law Reform Commission

Printed by

(i)

COMMISSIONERS

Chairperson:	The Hon Mr Justice G N Williams
Deputy Chairperson:	Her Hon Judge H O'Sullivan
Members:	Ms R G Atkinson Mr W G Briscoe Mr J M Herlihy Mr W A Lee Ms L Willmott

SECRETARIAT

Secretary:	Ms S P Fleming
Principal Legal Officer:	Ms P A Cooper
Project and Research Consultants:	Ms J Daley Ms M Westbrook
Administrative Officers:	Ms P McCarthy Ms J Smith

The Commission's premises are located on the 13th floor, 179 North Quay, Brisbane. Telephone (07) 227 4544. Facsimile (07) 227 9045.

CONTENTS

INTRODUCTION	1
1. THE REFERENCE	4
A. History of the reference	4
B. Methodology	4
2. THE FREEDOM OF INFORMATION ACT	6
A. The need for access to information	6
1. Accountability of government	6
2. Fairness of the decision-making process ...	7
3. Privacy rights	7
B. Countervailing factors	8
1. Government operations	8
2. Commercial activities	8
3. Personal affairs	9
C. The terms of the Act	9
3. WHAT IS A SECRECY PROVISION?	11
1. The kind of information	12
2. Prohibition against disclosure	14
4. QUEENSLAND PROVISIONS	15
A. Provisions which define matter by reference to its inherent characteristics or qualities i.e. a genus can be discerned	16
B. Provisions which define matter by reference to the capacity of the person who receives it	23
C. Provisions which define matter in general terms ..	33
D. Provisions which do not prohibit disclosure of information	40
5. RE-ENACTMENT OF QUEENSLAND PROVISIONS	46
A. Introduction	46
B. The Commonwealth position	46
C. Criteria to determine whether a provision is a "secrecy provision"	48
D. Commonwealth provisions included in Schedule 3 of the Act	49
E. Queensland provisions	50
(l) Provisions which should be re-enacted ...	51
(a) Taxation and benefit confidentiality provisions	51
(b) Tribunals, Boards, etc. provisions ..	51

(iii)

(c)	Queensland provisions which do not come within the categories identified in the schedule to the Commonwealth legislation	53
(II)	Provisions which should not be re-enacted	53
(a)	Taxation and benefit confidentiality provisions	53
(b)	Health provisions	54
(c)	Defence provisions	56
(d)	Tribunals, Boards, etc. provisions . .	56
(e)	Queensland provisions which do not come within the categories identified in the schedule to the Commonwealth legislation	60
APPENDIX A		63
APPENDIX B		66
APPENDIX C		152
APPENDIX D		155

INTRODUCTION

The Freedom of Information Bill was introduced into the Legislative Assembly on 5 December 1991.

Subsequently, the provisions of the Bill were considered by Cabinet. Cabinet, in the course of its deliberations, approved clause 48 on the basis that it should only operate for a period of two years from the Freedom of Information legislation receiving Royal Assent.

Acting on the Cabinet decision, the then Acting Attorney-General, the Honourable Mr Paul Braddy, wrote to the Chair of the Commission on 18 December 1991, referring to the Commission a consideration of all existing secrecy provisions. The letter stated:

It was also approved by Cabinet that during this period of two years, the Law Reform Commission should review all existing secrecy provisions in Queensland legislation and at the end of this period, no secrecy provisions should remain except where Parliament has re-enacted any existing secrecy provisions.

It would be appreciated if your Commission would undertake the task approved by Cabinet and report to me with a recommendation as to which secrecy provisions should be retained and which ones should be repealed.

Section 48 of the Freedom of Information Act 1992 is worded as follows:

48(1) *Matter is exempt matter if -*

- (a) there is in force an enactment applying specifically to matter of that kind, and prohibiting persons mentioned in the enactment from disclosing matter of that kind (whether the prohibition is absolute or subject to exceptions or qualifications); and*
 - (b) its disclosure would, on balance, be contrary to the public interest.*
- (2)** *Matter is not exempt under subsection (1) if it relates to information concerning the personal affairs of the person by whom, or on whose behalf, an application for access to the document containing the matter is being made.*

- (3) *This section has effect for only 2 years from the date of assent.*

This Draft Report of the Commission makes recommendations about which statutory provisions, identified to the Commission by the various Government departments, should be re-enacted on the expiration of section 48 of the *Freedom of Information Act 1992*. The methodology pursued by the Commission in compiling this Report is explained in Part B of Chapter 1. It can be seen that the Commission's function was to examine those provisions submitted by Government Departments to see whether a particular provision came within the terms of section 48 of the *Freedom of Information Act 1992* and, if the provision did come within that section's terms, to recommend whether such provision should be re-enacted so that it would override the *Freedom of Information Act 1992* on the expiration of section 48 of that Act.

The Commission has been guided by the principles underlying the *Freedom of Information Act 1992*, as set out in section 5 and as a result we have recommended that very few of the provisions, identified by the various Government departments to the Commission, should be re-enacted. The terms of section 5 are:

- (1) *Parliament recognises that, in a free and democratic society -*
- (a) *the public interest is served by promoting open discussion of public affairs and enhancing government's accountability; and*
 - (b) *the community should be kept informed of government's operations, including, in particular, the rules and practices followed by government in its dealings with members of the community; and*
 - (c) *members of the community should have access to information held by government in relation to their personal affairs and should be given the ways to ensure that information of that kind is accurate, complete, up-to-date and not misleading.*
- (2) *Parliament also recognises that there are competing interests in that the disclosure of particular information could be contrary to the public interest because its disclosure in some instances would have a prejudicial effect on -*

- (a) *essential public interests; or*
 - (b) *the private or business affairs of members of the community in respect of whom information is collected and held by government.*
- (3) *This Act is intended to strike a balance between those competing interests by giving members of the community a right of access to information held by government to the greatest extent possible with limited exceptions for the purpose of preventing a prejudicial effect to the public interest of a kind mentioned in subsection (2).*

The Commission invites submissions on the recommendations put forward in this Draft Report.



The Honourable Mr Justice G N Williams
Chairman

CHAPTER 1: THE REFERENCE

A. *History of the reference*

The Freedom of Information Bill was introduced into the Legislative Assembly on 5 December 1991.

Subsequently, the provisions of the Bill were considered by Cabinet. Cabinet, in the course of its deliberations, approved that clause 48 of the Bill should operate for a period of two years from the Freedom of Information legislation receiving Royal Assent.

Acting on the Cabinet decision, the then Acting Attorney-General, the Honourable Mr Paul Braddy, wrote to the Chairperson of the Commission on 18 December 1991, referring to the Commission a consideration of all existing secrecy provisions. The letter stated:

It was also approved by Cabinet that during this period of two years, the Law Reform Commission should review all existing secrecy provisions in Queensland legislation and at the end of this period, no secrecy provisions should remain except where Parliament has re-enacted any existing secrecy provisions.

It would be appreciated if your Commission would undertake the task approved by Cabinet and report to me with a recommendation as to which secrecy provisions should be retained and which ones should be repealed.

B. *Methodology*

The resources of the Commission do not permit an exhaustive investigation of all Queensland enactments for the purpose of identifying any secrecy provision which they may contain.

The Commission therefore determined to write to the head of each government department, requesting that each department provide relevant information about legislation which it administers.

Three specific questions were put to each department. These questions were:

1. What secrecy provisions presently exist in legislation administered by your department?

2. Is it the recommendation of your department that those provisions, if any, be retained?
3. What are the reasons for your department's recommendation that those provisions, if any, be retained or repealed?

The full text of the letter to heads of government departments is set out in Appendix A. A summary of the responses received by the Commission to the letter is provided in Appendix B.

The Commission has relied on information supplied by the various departments about the existence of secrecy provisions. However, in formulating its recommendations about the re-enactment of those provisions, the Commission has come to an independent view, taking into account the submissions of the departments concerned.

CHAPTER 2: THE FREEDOM OF INFORMATION ACT

A. *The need for access to information*

1. *Accountability of government*

One of the major tenets of democratic government is that government should be accountable to the people. However, the growth of modern government and the increasing encroachment of governmental activity into the day to day life of citizens have raised doubts about the effectiveness of traditional methods of ensuring accountability. It has become obvious that government activities cannot be adequately scrutinised without knowledge of the way in which decisions have been made.

For example, in a Westminster-style system, the convention of ministerial responsibility - that is, that ministers will answer to the parliament for the acts of their departments - has traditionally been regarded as ensuring the accountability of government administration. One way in which it is sought to make ministers answerable for administrative acts and decisions is through the use of question-time. But the effectiveness of question-time in disclosing the truth about governmental activity depends on the right questions being asked. Opposition members who have no access to government documents, and government backbenchers who may not be fully briefed, may not be in a position to know what to ask.

Similarly, for the individual citizen the traditional method of enforcing governmental accountability has been by the way of the ballot box. But if voting power is to be effective, the citizen needs information about government decisions and policies in order to exercise a meaningful vote. Without public access to information about the way government decisions are made, voters cannot evaluate the performance of government. It has been said:¹

Citizens have a right to decide by whom and by what rules they shall be governed, and are entitled to call on those who govern on their behalf to account for their conduct. But if people are to fulfil the role democracy assigns to them - if they are to cast intelligent and rational votes and exercise sound judgment on the conduct of the government and the merit of public policies - they must have the facts, the true facts.

¹ E. Campbell, *Public Access to Government Documents* (1967) 41 ALJ 73 at 74.

In other words, the extent of government control over the flow of information about government has a direct relationship to government accountability. This point was also emphasised in the Fitzgerald Report.² Freedom of information legislation therefore plays a key role in ensuring government accountability.

2. *Fairness of the decision-making process*

The growth of government, and of regulation of many ordinary activities by government agencies, means that administrative decisions impinge on almost every facet of a citizen's life. The principles of natural justice require that a person who is affected by a decision should be able to put his or her side of the case.

Citizens affected by such decisions need access to information to enable them to formulate a proper response. Citizens should therefore be entitled to know the basis on which such decisions have been made to ensure that they have been treated fairly.

Freedom of Information legislation allows citizens to be satisfied that they have not been the subject of bias, and that minimum standards of procedural fairness have been met.

3. *Privacy rights*

The extent of government regulation of activities means that an enormous volume of information about individual citizens is held by government agencies. The provision of services such as social security benefits, health care and education, for example, requires the collection of personal data. Developments in information technology allow the compilation of such data and the possibility of information held by one agency being accessed by another. This may mean that information is ultimately used for a purpose other than that for which it was collected. The citizen may be unaware of the use being made of the information and may be seriously disadvantaged if the information is inaccurate or misleading.

Freedom of Information legislation provides a method for individuals to make sure that the information, including computerised records, held about them by government agencies is relevant, up-to-date, accurate and complete.

²

Report of a Commission of Inquiry pursuant to Orders in Council, delivered 3 July 1989, 128.

B. *Countervailing factors*

Balanced against the need for access to information is the need, in certain circumstances, for information to be protected against disclosure.

Disclosure of some kinds of information collected and held by government or government agencies may have such adverse effects that the public interest in access to that information is outweighed by a countervailing public interest in confidentiality.

There are three particular categories of information the disclosure of which may be so prejudicial that the information may need to be kept confidential. The categories are information about sensitive government operations, information about commercial activities and information about the personal affairs of individual members of the community.

1. *Government operations*

When the Commonwealth Freedom of Information Bill was introduced into the House of Representatives in 1981, the Honourable Ian Viner M.P. acknowledged, in his Second Reading Speech, that it is essential that some aspects of government operation not be subject to a general right of access. He said:³

Complete openness of government is not possible. For some purposes, confidentiality is essential. It is widely recognised that governments, like individuals, families and business organisations, cannot operate effectively without a certain amount of privacy.

2. *Commercial activities*

Many government agencies hold information about the commercial activities of business enterprises. It may be necessary for the government to collect this information in connection with, for example, an application for a licence or the award of a government contract.

³

Commonwealth Parliamentary Debates 32nd Parliament, 1st Session at 39, 18 August 1981.

Unrestricted public access to information about the commercial activities of an organisation may give competitors of that organisation an unfair advantage by enabling competitors to find out about operational procedures or technological developments. It may also unfairly damage the reputation of an organisation by opening its financial affairs to public scrutiny.

3. *Personal affairs*

The information collected by government and government agencies includes a great deal of material about the personal affairs of individual members of the community. This data may touch on matters such as health, employment and personal relationships. Disclosure of information of this nature may be unfair and embarrassing, and would constitute a significant invasion of privacy.

C. *The terms of the Act*

The principles underlying the Queensland legislation are set out in section 5 of the Act. They constitute an acknowledgment by the Parliament that:

- (a) the public interest is served by promoting open discussion of public affairs and enhancing government's accountability; and
- (b) the community should be kept informed of government's operations, including, in particular, the rules and practices followed by government in its dealings with the community; and
- (c) members of the community should have access to information held by government in relation to their personal affairs and should be given the ways to ensure that information of that kind is accurate, complete, up-to-date and not misleading.

Consistently with these principles, the Act creates a legally enforceable right of access to government documents.⁴ The right is general in its application, and does not depend on the person seeking access to the information having a particular interest in that information.

However, the right of access is not absolute. The Act recognises that disclosure of some kinds of information involves competing interests, and may have a prejudicial effect which cannot be justified.⁵ It represents an attempt to provide a balance between the need for openness and accountability on the one hand and, on the

⁴ Section 21.

⁵ Section 5(2).

other, the need to protect essential public interests and the private or business affairs of individual members of the community.⁶

Consequently, the *Freedom of Information Act 1992* exempts certain information from disclosure. For example, information involving deliberations or decisions of the Cabinet or the Executive Council is exempted.⁷ So also is information which, if disclosed, would be likely to damage relations between the Queensland government and another government, to prejudice the operation of the Ombudsman or the Auditor-General, or to adversely affect law enforcement and public safety, unless there is an overriding public interest in the disclosure of such information.⁸ Other exemptions include material the disclosure of which would be likely to adversely affect commercial or business organisations by revealing trade secrets, business affairs or research results;⁹ information about the personal affairs of an individual;¹⁰ and information of a confidential nature which was communicated in confidence or disclosure of which would found an action for breach of confidence.¹¹

One should note that the exemptions are intended to demarcate areas of permitted secrecy. However, they are permissive, in that the Executive has discretion to release a document or matter that could otherwise be withheld as exempt. The exemptions therefore do not constitute a prohibition on the disclosure of documents which contain exempt matter. Finally, where a document contains exempt matter, such matter can be deleted to the extent that it is possible to do so without altering the character and sense of the relevant document.

⁶ Section 5(3).

⁷ Sections 36 and 37.

⁸ Sections 38, 39 and 42.

⁹ Section 45.

¹⁰ Section 44.

¹¹ Section 46.

CHAPTER 3: WHAT IS A SECRECY PROVISION?

One of the grounds of exemption provided by the *Freedom of Information Act 1992* is set out in section 48. That section provides:

48(1) *Matter is exempt matter if -*

- (a) *there is in force an enactment applying specifically to matter of that kind, and prohibiting persons mentioned in the enactment from disclosing matter of that kind (whether the prohibition is absolute or subject to exceptions or qualifications); and*
 - (b) *its disclosure would, on balance, be contrary to the public interest.*
- (2) *Matter is not exempt under subsection (1) if it relates to information concerning the personal affairs of the person by whom, or on whose behalf, an application for access to the document containing the matter is being made.*
- (3) *This section has effect for only 2 years from the date of assent.*

It is therefore necessary to identify the features or characteristics which must be present in a legislative provision in order for that provision to fall within the scope of section 48(1)(a).

There is as yet no Queensland case law on the interpretation of the section. However, section 48(1)(a) is substantially similar to the form in which its counterpart in the Commonwealth legislation was originally enacted.¹²

Decided cases concerning the original Commonwealth provision are therefore relevant to the interpretation of section 48(1)(a) of the Queensland legislation.

Section 38 of the Commonwealth Act defined a particular category of exempt documents with some care, although the generality of the words used left scope for argument. The documents were exempt because, stated generally, they contained information and because there was in force an enactment relating to that information which prohibited its disclosure. Thus the document was defined by reference to the information it contained and the fact that persons were prohibited from disclosing that type of information.

¹² Prior to amendment in 1991, section 38 of the *Freedom of Information Act 1982* (Cwth) provided:

A document is an exempt document if there is in force an enactment applying specifically to information of a kind contained in the document and prohibiting persons referred to in the enactment from disclosing information of that kind, whether the prohibition is absolute or is subject to exceptions or qualifications.

1. *The kind of information*

In *News Corporation Ltd and Others v National Companies and Securities Commission*¹³ the Full Court of the Federal Court considered whether section 47 of the *National Companies and Securities Commission Act* was an enactment of the kind referred to in section 38. It was common ground that section 47 prohibited the disclosure of information. What was in dispute was whether that information was of the kind referred to in section 38.¹⁴

During the course of argument three types of possible 'secrecy provisions' were described. The categories were:

- . those provisions which define the kind of information by reference to the characteristics or qualities of the information;
- . those which rely upon the status or capacity of the person in possession of the information; and
- . those which refer specifically to the capacity of the person in possession of the information and only generally to the characteristics of the information, for example by restricting the prohibition to information relating to the affairs of a person other than the person prohibited from disclosing it.¹⁵

Bowen CJ and Fisher J were of the view that provisions which came within the first category would be enactments for the purpose of section 38, but provisions which came within the second category would not.¹⁶ St John J was also of the view that provisions which prohibited disclosure of information only by reference to the capacity or position of the person in possession of the information would not be within the scope of section 38.¹⁷ The Court's conclusion on this issue has been endorsed in later cases. The Full Court of the Federal Court in *Kavvadias v Commonwealth Ombudsman* pointed to the fact that the *Freedom of Information Act 1982* was not concerned with the discipline or integrity of officers of the public service.¹⁸

¹³ (1984) 52 ALR 277.

¹⁴ Section 47 prohibited certain persons performing functions under the Act from disclosing information acquired by reason of their position.

¹⁵ (1984) 52 ALR 277 at 282 and 289-290.

¹⁶ At page 283.

¹⁷ At page 290.

¹⁸ (1984) 52 ALR 728 at 733. See also *Federal Commissioner of Taxation v Swiss Aluminium Australia Ltd* (1986) 66 ALR 159 at 167; *Harrigan v Department of Health and Others* (1986) 72 ALR 293 at 294.

Clearly, the greatest difficulty will arise in relation to provisions in the third category. Bowen CJ and Fisher J, in *News Corp*, considered that whether such provisions were protected by section 38 'may depend upon the significance it is proper to attach to the word "specifically" in that section'.¹⁹ In their view, the effect of section 38 was that it would not be enough for the enactment to have general application or merely to be formulated in such general terms that it would encompass the particular information without expressly referring to it.²⁰

Subsequent cases have accepted this principle. They have recognised that the provision must refer directly and explicitly to the information in question so that the information is capable of being identified as a genus.²¹ There must be a precise link between the provision and the kind of information.²²

But despite agreement about principle, reported decisions show varying approaches to the application of that principle.²³ The situation may be best illustrated by cases involving claims under section 38 for exemption from disclosure, based on section 16 of the *Income Tax Assessment Act 1936*.²⁴

In *Murtagh v Federal Commissioner of Taxation*²⁵ the Administrative Appeals Tribunal held that section 16(2) fell within the protection of section 38 because it specified the nature or the quality of the information not to be disclosed.²⁶ In a

¹⁹ At page 282.

²⁰ At page 281.

²¹ *Kavvadias v Commonwealth Ombudsman* (1984) 52 ALR 728 at 733.

²² *Federal Commissioner of Taxation v Swiss Aluminium Australia Ltd* (1986) 66 ALR 159 at 165.

²³ The Senate Standing Committee on Legal and Constitutional Affairs noted in 1987 that interpretation of section 38 reflected uncertainty about the meaning of the section. See *The Parliament of the Commonwealth of Australia Freedom of Information Act 1982: A Report on the Operation and Administration of the Freedom of Information Legislation*, Senate Standing Committee on Legal and Constitutional Affairs, December 1987 Australian Government Publishing Service, Canberra, at page 180.

²⁴ Section 16 provides, so far as is relevant:

(1) In this section, unless the contrary intention appears -
'officer' means a person who is or has been appointed or employed by the Commonwealth or by a State, and who by reason of that appointment or employment, or in the course of that employment, may acquire or has acquired information respecting the affairs of any other person disclosed or obtained under the provisions of this Act or of any previous law of the Commonwealth relating to income tax;

(2) Subject to this section, an officer shall not either directly or indirectly, except in the performance of any duty as an officer, and either while he is, or after he ceases to be an officer, make a record of, or divulge or communicate to any person any information respecting the affairs of another person acquired by the officer as mentioned in the definition of 'officer' in sub-section (1).

²⁵ (1984) 54 ALR 313.

²⁶ At page 333.

subsequent series of cases, however, the Tribunal came to the conclusion that, following the reasoning in *News Corp*²⁷ and *Kavvadias*,²⁸ section 16 was not a provision to which section 38 would apply, because it could not be said that there was a direct and explicit reference in section 16 to the nature or inherent characteristics of the information concerned.²⁹

The issue was then raised before the Full Court of the Federal Court. All members of the Court relied on *News Corp* and *Kavvadias*, but with differing results. The majority in *Federal Commissioner of Taxation v Swiss Aluminium Australia Ltd and Others*³⁰ (Bowen CJ and Jackson J) adopted a more expansive view of section 38, and held that although the category of information referred to by section 16 was extremely wide, nonetheless the nature of the information was defined and the section applied specifically to information of that kind.³¹ Fox J, on the other hand, considered that section 16 was of general application and that the information referred to by the section could not be identified by a sufficiently specific description.³²

2. *Prohibition against disclosure*

In order for a claim for exemption under section 38 to succeed, it had also to be shown that the provision which referred to information of the kind for which the exemption was sought prohibited a person or persons named in the provision from disclosing that kind of information. However, this issue would not arise until after the specific nature of the information referred to in the provision had been identified.³³

²⁷ Supra note 13.

²⁸ Supra note 18.

²⁹ See for example *Re Mr 'Z' and Australian Taxation Office* (1984) 2 AAR 190; *Re Mann and Australian Taxation Office* (1985) 3 AAR 261; *Re Lander and Australian Taxation Office* (1985) 17 ATR 173; *Re Swiss Aluminium Australia Ltd & Ors* (1985) 8 ALD 159; *Re Kingston Horse Stud and Australian Taxation Office* (1986) 86 ATC 2030.

³⁰ (1986) 66 ALR 159.

³¹ At pages 163 and 169.

³² At page 165.

³³ *News Corporation Ltd v National Companies and Securities Commission* (1984) 52 ALR 277 at 281.

CHAPTER 4: QUEENSLAND PROVISIONS

In response to the Commission's request for information,³⁴ government departments identified a total of approximately 150 secrecy provisions in enactments administered by them.³⁵

However, it is clear to the Commission that, for a variety of reasons, not all the provisions identified by government departments should be considered as coming within the ambit of section 48.

If section 48(1)(a) of the *Freedom of Information Act 1992 (Qld)* is construed in the same manner as was section 38 of the Commonwealth legislation,³⁶ exemption from disclosure under section 48 will depend on the existence of a statutory provision which, by specific reference to the inherent characteristics of the matter in question, expressly prohibits disclosure of matter of the kind for which the exemption is sought. Matter will not be exempt if the provision relied on does not contain a prohibition against disclosure, or prohibits disclosure of matter which is identified only by reference to the capacity of the person who obtains or possesses it.

The Commission has analysed the provisions which have been identified by government departments as 'secrecy provisions' for the purpose of determining those to which section 48 would be likely to apply. The provisions have been discussed in the following categories:

- A. Provisions which define matter by reference to its inherent characteristics or qualities i.e. a genus can be discerned;
- B. Provisions which define matter by reference to the capacity of the person who receives it;
- C. Provisions which define matter in general terms; and
- D. Provisions which do not prohibit the disclosure of information.

The result of the Commission's analysis may be summarised as follows:

³⁴ See Appendix A.

³⁵ See Appendix B.

³⁶ See Chapter 3.

A. Provisions which define matter by reference to its inherent characteristics or qualities i.e. a genus can be discerned

Provisions which define by reference to inherent characteristics or qualities the kind of matter which is prohibited from disclosure come within the first category identified in *News Corp.*³⁷ The provisions which the Commission considers would, on this basis, be likely to come within section 48(1)(a) are listed below under the department which administers the relevant legislation.

Each of the provisions refers specifically to the kind of matter, disclosure of which is prohibited. Most contain sufficient detail to allow a limited genus to be identified. Some others refer to a much broader class of matter. However, according to the majority in *Swiss Aluminium*,³⁸ the nature of the information is sufficiently defined.³⁹

EMPLOYMENT, VOCATIONAL EDUCATION, TRAINING AND INDUSTRIAL RELATIONS

Factories and Shops Act 1960

Section 10(8) (See page 73 of this Report)

An officer or Inspector is prohibited from disclosing information acquired during the course of their duties to any person. The information is identified as information acquired with respect to any factory, shop or other place, or with respect to any manufacturing or commercial secrets or working process. The information is thus identified with some particularity.

Industrial Relations Act 1990

Section 8.7 (See page 71 of this Report)

A person authorised to prepare, from returns of facts or figures required to be lodged with the Commission, schedules directed to matters on which the Commission seeks to be informed may not disclose the name of the industrial organisation that lodged the return, or any business information of a private or confidential nature.

³⁷ See page 10.

³⁸ (1986) 66 ALR 159.

³⁹ See also *Harrigan v Department of Health and Others* (1986) 72 ALR 293.

Section 8.11 (See page 71 of this Report)

Confidential material tendered in evidence relating to trade secrets of any person or the financial position of any party or witness cannot be inspected by any person other than the President, the Commission or person appointed by the Court or Commission, without prior consent of the person, party or witness. The Industrial Court, Commission or Registrar can direct that such records be withheld from release or search where disclosure of the matter would not be in the public interest or persons do not have a legitimate interest in being informed.

Section 18.8 (See page 72 of this Report)

Publication of any material in contravention of section 8.11 is prohibited. Section 8.11 concerns records relating to trade secrets of any person or to the financial position of any party or witness which are tendered in evidence.

ENVIRONMENT AND HERITAGE***Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987******Section 31(1) (See page 74 of this Report)***

A person who has been granted a permit to conduct certain explorations, in making a required progress report, may not disclose information or knowledge acquired 'concerning any anthropological or archaeological matter that is of a sacred or secret nature in the understanding of indigenous people'.

Environment Protection Bill Draft Provision (See page 74 of this Report)

This draft provision prohibits disclosure of information obtained under the proposed legislation relating to any manufacturing process or trade secret used in any particular undertaking or equipment.

Nature Conservation Act 1992***Section 124(2)(b) (See page 74 of this Report)***

A person who, while performing duties under, or in relation to the Act, gets information obtained under section 123 of the Act, must not disclose the information except to the extent necessary under the Act. Section 123 permits the chief executive to inquire into the fame, character, and suitability of an applicant for a licence or permit under the Act, or to obtain a report from the Commissioner of Police in respect of the criminal history of the applicant.

FAMILY SERVICES AND ABORIGINAL AND ISLANDER AFFAIRS***Adoption of Children Act 1964******Section 59(3) (See page 77 of this Report)***

An officer of the department shall not disclose or be required to disclose to any person, court or tribunal information that is likely to allow identification, by the natural parents of a person who has been adopted, of that person or his or her whereabouts; the identification or whereabouts of the adoptive parents, identification, by the adoptive parents of a person who has been adopted, of the natural parents or their whereabouts; or is likely to allow identification, by a person who has been adopted, of his or her natural parents or their whereabouts except where the Act otherwise permits. The genus is identification information concerning parties to an adoption.

Child Care Act 1991***Section 74 (See page 76 of this Report)***

The Chief Executive or an officer or employee of the department must not make a record of any protected information, divulge or communicate any protected information concerning another person unless it is for the purposes of the Act. Protected information is defined to mean any information of a personal, financial or business nature that concerns a person and is disclosed to the officer in the course of the officer's duties or in relation to the administration of the Act.

Domestic Violence (Family Protection) Act 1989***Section 38 (See page 76 of this Report)***

A person who publishes in a newspaper or periodical publication or who broadcasts by radio or television or otherwise to the public a notification of proceedings under the Act which identifies the parties to the proceedings, or any account of proceedings under the Act which is likely to identify the aggrieved person, the respondent or the applicant or a witness or a child concerned in the proceedings, commits an offence against the Act. The genus in this section is information relating to the identity of a person in a proceeding under the Act.

Juvenile Justice Act 1992***Section 226 (See page 77 of this Report)***

A person must not record, disclose or use confidential information gained by the person through involvement in the administration of the Act unless it is for the purposes of the Act. Confidential information is defined in subsection (5) to include the name, address, school, place of employment or any other particular or any photograph, picture, videotape or other visual representation of a person likely to

lead to the identification of a child, any report made for the purposes of a proceeding in relation to a child, a report about a child made for the Department or another Government department and a report about a child given to an agency for the purpose of carrying out the objects of the Act.

HEALTH

Health Act 1937

Section 49 (See page 83 of this Report)

This section relates to persons who act or assist in the administration of the provisions relating to controlled notifiable diseases. The person is to preserve secrecy with regard to all matters that come to his or her knowledge in his or her official capacity. This provision does enable the information to be identified with some particularity, that is, information concerning controlled notifiable diseases.

Section 100E (See page 85 of this Report)

This section relates to the preservation of secrecy by certain persons in relation to information which comes to their knowledge in their official capacity. The matters identified are all matters relevant to that Division of the Act. The Division relates to cancer patients. This would allow a genus of information to be identified.

Section 100I (See page 87 of this Report)

This section is in similar terms to section 100E. However, it relates to perinatal statistics.

Section 150(4) (See page 106 of this Report)

This subsection provides that every officer who does not maintain secrecy of all matters which come to his or her knowledge in the performance of his or her official duties or who communicates any such matter to any person is liable to a penalty and may be dismissed from office. The section relates to the power to require information to be made available in relation to drugs. Given that the section relates to information concerning drugs, the type of information protected would be able to be identified.

Health Services Act 1991

Section 2.10 (See page 104 of this Report)

A committee is to have regard to the rules of natural justice and under subsection (2) a report or information made available by a committee must not disclose the identity of an individual who is a provider or recipient of services.

HOUSING LOCAL GOVERNMENT AND PLANNING

Draft Local Government Bill

Clause 5.54 (See page 114 of this Report)

This proposed provision restricts access to information contained in a register of members' interests which is compiled under clause 5.53. This register contains information regarding a person's pecuniary interests and other interests.

Clause 6.14 (See page 114 of this Report)

This proposed provision restricts access to information contained in a register of employees' interests which is compiled under clause 6.13. This register contains information regarding a person's pecuniary interests and other interests.

JUSTICE, ATTORNEY-GENERAL AND THE ARTS

Criminal Code

Sections 84 and 85 (See page 118 of this Report)

Disclosure of information relating to defence placements in Queensland is prohibited.

Electoral Act 1992

Section 173(b)(ii) (See page 122 of this Report)

A member of the Commission's staff performing duties at a polling place in relation to an election must not disclose any information as to how an elector has voted at the election unless the person is authorised to do so under the Act or by a court.

Jury Act 1929

Section 23 (See page 122 of this Report)

A person must not disclose information concerning the day or time on or at which the sheriff will proceed to draw the names of prospective jurors, give any information concerning the names of prospective jurors, give notice of the day or time on or at which the sheriff will compile a panel of jurors intended to be summoned.

Maintenance Act 1965*Section 129 (See page 122 of this Report)*

A person is prohibited from publishing information relating to proceedings or information which will reveal the identity of the person involved in the proceedings.

Official Secrets Act 1911*Section 2 (See page 117 of this Report)*

Disclosure of any sketch, plan, model, article, note, document, or information which relates to or is used in a prohibited place as defined in the Act and which has been obtained in prescribed circumstances is prohibited. The terms 'sketch', 'model' and 'document' are further defined.

Queensland Law Society Incorporated Indemnity Rules 1987*Rule 10 (See page 118 of this Report)*

The Claims Committee is prohibited from disclosing information about any individual or firm.

Referendums Act 1989*Section 4.30(14) (See page 123 of this Report)*

A person who has obtained information concerning a voter's ballot paper is prohibited from disclosing that information unless the person is legally bound to do so.

RESOURCE INDUSTRIES**Coal Mining Act 1925***Section 31B (See page 140 of this Report)*

This provision corresponds to section 64 of the *Mines Regulation Act*.

Section 69 (See page 140 of this Report)

This provision corresponds to section 61 of the *Mines Regulation Act*.

Section 87 (See page 140 of this Report)

This provision corresponds to section 52 of the *Mines Regulation Act*.

Section 89 (See page 140 of this Report)

This provision corresponds to section 53 of the *Mines Regulation Act*.

Mines Regulation Act 1964

Section 15 (See page 139 of this Report)

A warden, government geologist or other person authorised by the Minister to enter and inspect mines and take samples and gather information required for the purposes of the inspection, shall not divulge information obtained as a result of taking such samples, except in pursuance of the purpose for which the samples were taken.

Section 52 (See page 139 of this Report)

Where plans of mines on or in a current mining tenement have been sent to an inspector, or have been made by an inspector or other officer, the plans are not to be furnished or shown to any person other than the owner, manager or authorised representative of the mine while the mining tenement remains current.

Section 53 (See page 139 of this Report)

Where a mine may affect adjacent land or an adjacent mine or road, a person with an interest in the adjacent land or mine or the local authority having control of the road may apply to the warden for authority to enter the mine or inspect the plans of the mine for certain purposes. Disclosure of information obtained as a result of such an application is prohibited.

Section 61 (See page 140 of this Report)

Disclosure of the name of a mine employee or a representative of a mine employee who makes a complaint to an inspector about an alleged breach of the provisions of the Act or about the safety of a mine is prohibited.

Section 64 (See page 140 of this Report)

Core or samples obtained by drilling for the purpose of exploration must be made available for inspection by departmental officers. Disclosure of information or knowledge acquired under the Act about the core or samples is prohibited.

Petroleum Regulations (Land) 1966***Regulation 11 (See page 141 of this Report)***

An inspector is prohibited from disclosing, other than for governmental purposes, information about operations under a petroleum title or matters related to those operations.

Regulation 69 (See page 141 of this Report)

Disclosure of information about seismic operations, or about gravimetric or aeromagnetic surveys which is submitted to the Minister in the form of maps, records or prints is prohibited for a specified period of time.

Regulation 126 (See page 141 of this Report)

Disclosure of detailed technical information required to be submitted in a well completion report is prohibited.

TREASURY***Debits Tax Act 1990 (See page 150 of this Report)***

This Act applies the *Debits Tax Administration Act 1982 (Cwth)* as the law of Queensland. Section 7(2) of the Commonwealth Act prohibits disclosure by specified persons of information obtained under the Act with respect to the affairs of any other person.

B. Provisions which define matter by reference to the capacity of the person who receives it (These provisions are listed in Appendix C)

Provisions of this kind would not, according to the decided cases,⁴⁰ be secrecy provisions within the meaning of section 48. Provisions which the Commission considers would be unlikely to come within section 48(1)(a) are listed below under the department which administers the relevant legislation.

⁴⁰ See pages 10-12.

AUDITOR-GENERAL

Financial Administration and Audit Act 1977

Section 69 (See page 66 of this Report)

Officers of the department are prohibited from disclosing information about all matters and things that come to their knowledge in the performance of their duties under the Act.

ELECTORAL AND ADMINISTRATIVE REVIEW COMMISSION

Electoral and Administrative Review Act 1989

Section 6.4(3) (See page 68 of this Report)

Commissioners and officers of the Commission are prohibited from disclosing information which comes to their knowledge in the course of discharging functions of employment or because of access to records.

EMPLOYMENT, VOCATIONAL TRAINING AND INDUSTRIAL RELATIONS

Building and Construction Industry (Portable Long Service Leave) Act 1991

Section 94 (See page 72 of this Report)

This section defines 'person to whom this section applies', 'protected information' and 'protected document'. The information is any information that concerns a person or body, and is disclosed to or obtained by a person to whom the section applies in the course of the person's duties. Protected document has a similar meaning.

Industrial Relations Act 1990

Section 14.8 (See page 72 of this Report)

An Industrial Inspector or officer is prohibited from disclosing information acquired in the exercise of powers or performance of duties under the Act.

Private Employment Agencies Act 1983

Sections 9(6) and 10 (See page 72 of this Report)

Section 9 relates to the powers and duties of inspectors. Section 9(6) provides that an inspector shall not disclose information which has been acquired in the exercise of his or her powers or the performance of his or her duties. Section 10

relates to persons who aid inspectors and provides that the person shall have all or any of the powers of an inspector.

Trading Hours Act 1990

Section 3.2 (See page 73 of this Report)

Section 3.2 prohibits an Inspector or officer from disclosing any information acquired during the course of their duties to any person.

Vocational Education, Training and Employment Act 1991

Section 4.15 (See page 70 of this Report)

A member is prohibited from disclosing any information acquired in the performance of functions under the Act.

Workplace Health and Safety Act 1989

Section 133 (See page 70 of this Report)

A person who is a member of the Council or an Industry Workplace Health and Safety Committee, an Inspector or other officer is prohibited from disclosing information acquired in the exercise of functions under the Act.

FAMILY SERVICES AND ABORIGINAL AND ISLANDER AFFAIRS

Adoption of Children Act 1964

Section 59(3) (See page 77 of this Report)

An officer of the department must not disclose to any person information that to his or her knowledge is contained in the records of the Director or the tribunal, or information that has come to his or her knowledge in connection with giving effect to the Act.

Intellectually Disabled Citizens Act 1985

Section 42 (See page 78 of this Report)

A person whilst he or she is a member, panel member or an officer and after he or she ceases to be such a member, panel member or officer shall preserve confidentiality with regard to all matters that come to his or her knowledge in his or her official capacity under the Act.

HEALTH

Food Act 1981

Section 40 (See page 105 of this Report)

This section prohibits disclosure of information obtained by a person in connection with the administration of the Act.

Health Act 1937

Section 154N(2) (See page 109 of this Report)

This section contains provisions relating to the conduct of scientific research and studies and provides that a person shall not make use of or publish to any other person any information received or report made for the purpose of research and studies authorised under the Act save in the conduct or for the purpose of such research and studies.

Health Services Act 1991

Section 2.5 (See page 107 of this Report)

This section relates to the powers of Inspectors to enter premises of any authority and any public sector health service and inspect and copy extracts from any medical, financial or other document relating to the affairs of the authority or public sector health service. Subsection (3) provides that an inspector is not to disclose any information thus gained.

Section 2.11 (See page 107 of this Report)

A person who is or was a member of a committee must not divulge any information acquired by the person in their official capacity.

Section 5.1(3) (See page 107 of this Report)

A person who has been an officer, employee or agent of an Authority or a public sector health service, must not give to any other person, directly or indirectly, any information acquired by reason of being such an officer, employee or agent which, at the time when that person ceased to be such an officer, employee or agent, it was his or her duty not to disclose.

Medical Act and Other Acts (Administration) Act 1966

Section 14B (See page 106 of this Report)

This section provides that secrecy is to be preserved in relation to the contents of any book, letter, account, record, document, card or writing which is seized by an Inspector pursuant to section 14.

Nursing Act 1992

Section 139 (See page 107 of this Report)

Persons performing functions or exercising powers under or for the purposes of the Act must not make a copy of, or take an extract from, a protected document, or make a copy of protected information, or disclose or make use of a protected document or protected information unless the person does so under or for the purposes of the Act.

JUSTICE, ATTORNEY-GENERAL AND THE ARTS

Companies Act 1961

Section 124(2) (See page 119 of this Report)

This section has been superceded by section 232(5) of the *Corporations Law (Cwlth)*. An officer of a company is prohibited from making improper use of information acquired by virtue of his or her position to gain advantage for himself or herself or to cause detriment to a corporation. It should be noted that this provision does not refer to an agency of government and for that reason also would not come within section 48 of the Act.

The Corporations Law (Commonwealth) as it applies to Queensland under the Corporations (Queensland) Act 1990

Section 320 (See page 120 of this Report)

A registered company auditor or a qualified legal practitioner is prohibited from disclosing information acquired in the course of an inspection of company books under an order of the court to any person other than a member of the company or staff member of the Commission.

Criminal Code

Section 86 (See page 118 of this Report)

This section prohibits an officer of the Public Service from disclosing information which comes to his or her knowledge by virtue of the office held and which the officer has a duty to keep secret.

Criminal Justice Act 1989

Section 6.7 (See page 121 of this Report)

A Commissioner or officer is prohibited from wilfully disclosing information obtained in the course of discharging a function under the Act. A similar prohibition applies to members of the Parliamentary Committee.

Section 3.15 (See page 121 of this Report)

A person shall not communicate or publish the text, substance or meaning of a private conversation, to which he or she was not a party, that is overheard, recorded, monitored or listened to by means of a listening device used for the purposes of the Commission, except to the Chairman or to a person nominated by the Chairman.

Dispute Resolution Centres Act 1990

Section 5.4 (See page 115 of this Report)

Disclosure by specified persons of information obtained in connection with the administration or execution of the Act is prohibited except in certain circumstances.

Police Complaints Tribunal Acts Repeal Act 1990

Section 5(1)(c) (See page 123 of this Report)

This section prohibits all members and former members assigned to the Police Complaints Tribunal from divulging information coming to their knowledge in the course of their duties unless so required under the *Police Complaints Tribunal Act 1982*, the *Police Complaints Tribunal Act Amendment Act*, or by the Commission.

Queensland Law Society Act 1952

Section 50(3) (See page 117 of this Report)

Except in certain circumstances, an official is prohibited from disclosing any confidential information or producing any confidential document relating to the affairs of another person. Information is confidential when it is acquired by reason of the office of the investigator.

Securities Industry Act 1975*Section 13(1) (See page 123 of this Report)*

A person appointed or employed under the Act is prohibited from disclosing information obtained by reason of the appointment or employment.

Special Prosecutor Act 1989*Section 20 (See page 119 of this Report)*

Persons performing functions under the Act are prohibited from disclosing information that has come to the notice or into the possession, custody or control of the chairman of the Commission of Inquiry, the deputy to the chairman or any person assisting the Commission of Inquiry.

Trust Accounts Act 1973*Section 25 (See page 116 of this Report)*

An auditor or an employee of an auditor appointed under the Act is prohibited from disclosing matter obtained in the performance of duties under the Act except in certain specified circumstances.

LANDS**Valuation of Land Act 1944***Section 8 (See page 126 of this Report)*

Persons employed under the Act are prohibited from disclosing matters which come to their knowledge in the performance of their duties. The same prohibition is imposed on the Valuer-General.

PARLIAMENTARY COMMISSIONER FOR ADMINISTRATIVE INVESTIGATIONS**Parliamentary Commissioner Act 1974***Sections 9(1), 10(4) and 22 (See page 127 of this Report)*

Disclosure of information obtained in the course of or for the purpose of an investigation is prohibited.

POLICE AND EMERGENCY SERVICES

Fire Service Act 1990

Section 142A(1) (See page 132 of this Report)

The section provides that a person who discloses information that has come to the person's knowledge because the person is concerned with the administration of the Act commits an offence unless the information is not of a confidential or privileged nature or would normally be available to any member of the public on request or the disclosure is in accordance with the administration of the Act or under a law of the State or the Commonwealth. *Section 142A(2)* defines a person who is concerned with the administration of the Act as a person who holds office, is appointed or employed, exercises a power or discharges a function under the Act.

Police Service Administration Act 1990

Section 10.1 (See page 130 of this Report)

Any officer or staff member is prohibited from disclosing information obtained through exercise of power because of employment.

PREMIER, ECONOMIC AND TRADE DEVELOPMENT

Public Works Committee Act 1989

Section 41 (See page 134 of this Report)

Matter disclosed to the Committee at a private hearing under the Act is prohibited from disclosure except in specified circumstances.

PRIMARY INDUSTRIES

Primary Producers' Organisation and Marketing Act 1926

Section 11D (See page 138 of this Report)

Members of the Board are prohibited from disclosing information which the Board has determined by formal resolution should be treated as confidential.

QUEENSLAND CORRECTIVE SERVICES COMMISSION

Corrective Services Administration Act 1988

Section 61 (See page 138 of this Report)

A Commissioner or other person is prohibited from disclosing information obtained in the discharge of functions under the Act.

RESOURCE INDUSTRIES

Explosives Act 1952

Section 46A (See page 140 of this Report)

Disclosure of information obtained in connection with the administration of the Act is prohibited, except in certain circumstances.

TOURISM, SPORT AND RACING

Racing and Betting Act 1980

Section 10 (See page 142 of this Report)

Persons appointed, employed or engaged under the Act are prohibited from disclosing matters coming to their knowledge in the capacity in which they are appointed, employed or engaged or during the course of the appointment, employment or engagement.

TREASURY

Casino Control Act 1982

Section 16 (See page 143 of this Report)

Officers are prohibited from disclosing matters which come to their knowledge in their official capacity in connection with the administration of the Act.

Financial Administration and Audit Act 1977

Section 69 (See page 151 of this Report)

The Auditor-General and every authorised auditor is prohibited from disclosing all matters and things that come to their knowledge in the exercise of their powers, authorities, functions or duties under the Act.

Gaming Machine Act 1991

Section 2.26(1) (See page 145 of this Report)

A Commissioner is prohibited from disclosing information obtained in the course of exercising powers or performing functions or duties under the Act or for the purposes of the Act.

Section 2.26(2) (See page 145 of this Report)

Disclosure of information coming to the knowledge of any person in the exercise of functions or duties under the Act is prohibited.

Land Tax Act 1915

Section 4A (See page 148 of this Report)

Persons employed under the Act are prohibited from disclosing matters coming to their knowledge in their official capacity.

Payroll Tax Act 1971

Section 5 (See page 148 of this Report)

Disclosure of information obtained in connection with the administration of the Act is prohibited except in certain specified circumstances.

Revenue Laws (Reciprocal Powers) Act 1988

Section 13 (See page 149 of this Report)

Disclosure of information obtained under the Act is prohibited except in certain specified circumstances.

Section 14 (See page 149 of this Report)

Disclosure of information obtained under a corresponding law is subject to a similar prohibition.

Stamp Act 1894

Section 10 (See pge 148 of this Report)

Disclosure of information obtained in connection with the administration of the Act is prohibited except in certain specified circumstances.

Statistical Returns Act 1896

Section 6 (See page 146 of this Report)

A person who is or has been employed in the office of the Government Statistician or engaged in collating information is prohibited from disclosing any information obtained.

Tobacco Products (Licensing) Act 1988

Section 43 (See page 149 of this Report)

Disclosure of information obtained in connection with the administration of the Act is prohibited except in certain specified circumstances.

C. Provisions which define matter in general terms (Some of these provisions are listed in Appendix C)

A third group of provisions makes reference in general terms to the kind of matter which is prohibited from disclosure. Whether or not these provisions are within the scope of section 48 depends on whether the provision in question expressly refers to a particular kind of matter, or merely encompasses that kind of matter without expressly referring to it.⁴¹

Whether or not the provisions fall within this category is discussed below under the Department which administers the relevant legislation.

ADMINISTRATIVE SERVICES

Libraries and Archives Act 1988

Section 61 (See page 66 of this Report)

This section prohibits staff of the Queensland State Archives or any other person concerned with the administration of the Act from releasing a record which is in the custody of the State Archives or being inspected by Archives staff if a secrecy provision exists in any other legislation with respect to that record. The Commission is of the view that, although the class of matter to which the prohibition in section 61 applies is very broad, it is defined with sufficient particularity to a kind of matter to allow a genus to be identified.

⁴¹ See pages 10-11.

EDUCATION

Education (General Provisions) Act 1989

Section 28 (See page 69 of this Report)

Any person, whether or not an officer of the department, is prohibited from disclosing confidential matters concerning any student "contained in school records and the records of the Department". Although the class of information defined is very broad, the Commission considers that, in line with the majority decision in *Swiss Aluminium*,⁴² a genus could be identified.

ELECTORAL AND ADMINISTRATIVE REVIEW COMMISSION

Electoral and Administrative Review Act 1989

Section 2.13(5) (See page 68 of this Report)

Publication of Commission reports is prohibited except in accordance with the provision of this section. The matter which is prohibited from disclosure is defined as Commission Reports. However the content of Commission Reports is determined by the functions of EARC as outlined in section 2.10 of the Act. The Commission is of the view that section 2.10 does not establish any genus for the purpose of section 48 of the *Freedom of Information Act 1992*.

ENVIRONMENT AND HERITAGE

Nature Conservation Act 1992

Section 124(2)(a) (See page 74 of this Report)

A person who, while performing duties under, or in relation to the Act, gets confidential information must not disclose the information except to the extent necessary under the Act. Under section 124(1), the chief executive may declare information acquired in the administration of the Act to be confidential information if the chief executive is of the opinion that disclosure of the information may result in an unreasonable level of risk to the well-being of a cultural or natural resource or critical habitat. The categories of information under section 124(2)(a) are sufficiently specific to bring the provision within section 48.

⁴² See page 12.

FAMILY SERVICES AND ABORIGINAL AND ISLANDER AFFAIRS

Child Care Act 1991

Section 58 (See page 76 of this Report)

A person must not publish any material before the Child Care Tribunal if the publication would contravene the *Criminal Law (Rehabilitation of Offenders) Act 1986*. Whilst this section only defines the information with reference to another Act, the Commission considers that there is sufficient particularity (a person's criminal history) to bring the provision within section 48.

Children's Services Act 1965

Section 144 (See page 76 of this Report)

This section relates to the investigation of child protection notifications in cases of child abuse or neglect. A person must not publish any information which is of a confidential nature and which is contained in the records of the department. Although the information is defined in general terms, the Commission considers it is defined with sufficient particularity, having regard to the subject matter of the section, that is, child abuse or neglect, to bring it within section 48.

HEALTH

Health Act 1937

Section 71B (See page 84 of this Report)

A person must not record, disclose or use confidential information gained by the person through involvement in the administration of the Division unless the person does so for the purposes of the Act or when expressly authorised under an Act. Subsection (3) defines confidential information to include the name, address, place of employment or any other particular likely to lead to the identification of a patient. The Commission is of the view that, although the category of information is very broad, it is limited to information which is likely to lead to identification of a patient. Thus, this section would be within the terms of section 48.

Health Rights Commission Act 1991

Section 138 (See page 104 of this Report)

Disclosure of confidential information gained through involvement in the administration of the Act is prohibited except in certain specified circumstances. Confidential information is defined to include information about the identity, occupation or whereabouts of certain people affected by the Act; information disclosed by a health service complaint; information of personal concern to an

individual; or information that, if disclosed, may cause detriment to a person. While this definition involves some degree of particularity, its inclusive nature indicates that the provision merely encompasses information of this kind rather than referring to it specifically. The Commission is therefore of the view that section 138 is not a provision to which section 48 applies.

Health Services Act 1991

Section 5.1(1) (See page 98 of this Report)

An officer, employee or agent of an Authority or public sector health service must not give to any other person any information acquired by reason of being such an officer, employee or agent if a person who is or has been a patient in or has received health services from a public sector health service would be identified. The Commission is of the view that, although the type of information is very broad, it is nevertheless limited to information by which a patient could be identified. Thus, the Commission believes this section to be within the terms of section 48.

HOUSING LOCAL GOVERNMENT AND PLANNING

Ordinances of the Brisbane City Council Made Pursuant to the City of Brisbane Act 1924

Chapter 2 Part 1, Ordinance 2 (See page 114 of this Report)

No officer of the Council shall show, lay open or expose any of the books, papers or records of the Council to any person, or display or communicate the contents to any person without leave of the Town Clerk. The information is defined in general terms in this Ordinance and it is the view of the Commission that no genus can be identified which would bring the provision within section 48 of the *Freedom of Information Act 1992*.

Chapter 2 Part 1, Ordinance 34 (See page 114 of this Report)

Ordinance 34(1) prohibits the disclosure of any information in relation to proceedings of committees with respect to a matter before a committee. Paragraph (2) provides that paragraph (1) shall not be taken to forbid the disclosure of information for the purpose of compliance with a requirement imposed by or under some law. The Commission considers that this information is defined in general terms and no genus can be identified to bring the provision within section 48.

JUSTICE, ATTORNEY-GENERAL AND THE ARTS

Anti-Discrimination Act 1991

Section 220 (See page 115 of this Report)

Disclosure by certain persons of information acquired by those persons in their official capacity about a person's affairs is prohibited subject to certain qualifications. Although the major emphasis is on the capacity in which the information was acquired, the provision refers with sufficient particularity to the kind of information to which it applies to allow a broad genus to be identified. The Commission is therefore of the view that section 48 would apply to section 220.

Coroners Act 1958

Section 52 (See page 121 of this Report)

This section prohibits the publication in any newspaper of a report, evidence, contents of any document or writing in relation to any inquest which has been prohibited to be published by an order under the Act or which the coroner has disallowed or has warned the witness he or she is not obliged to answer and has ordered shall not be published. The information in this section is defined in terms which are too broad to establish any genus and the Commission believes that it does not come within the terms of section 48.

The Corporations Law (Commonwealth) as it applies to Queensland under the Corporations (Queensland) Act 1990

Section 815(4) (See page 120 of this Report)

A person shall not give to another person information given by the Commission under subsection (1). Subsection (1) allows the Commission to give to a person who holds or will hold an authority from a licensee, any information that the Commission has about the person. The information is defined in general terms and there is no genus which can be established by the wording of the section. The Commission believes that the section does not come within the terms of section 48.

Criminal Justice Act 1989

Section 2.18(6) (See page 121 of this Report)

A person must not publish, furnish or deliver a report of the Commission unless the report has been printed by order of the Legislative Assembly. The Commission is of the view that this section does not establish any genus for the purpose of section 48 and does not come within its exemption.

Justices Act 1886**Section 102F(1) and (2) (See page 122 of this Report)**

Section 102F(1) prohibits the publication of a private complaint against any person or any proceeding taken in relation to such a complaint in any newspaper, magazine, book, pamphlet or paper for public distribution, report, commentary or speech broadcast by radio or television. Section 102F(2) is in similar terms and relates to the director's liability where a corporation is involved. A private complaint can be laid for any indictable offence under the *Criminal Code*.⁴³ The information is not defined with sufficient particularity for any genus to be established and the Commission is of the view that the provision does not come within the terms of section 48.

Legal Aid Act 1978**Section 81 (See page 116 of this Report)**

Certain persons having functions under the Act are prohibited, except in specified circumstances, from disclosing information about the affairs of another person which was acquired by reason of their offices or in the performance of a function under the Act. Although the major emphasis is on the capacity in which the information was acquired, the Commission is of the view that the reference in the provision to the nature of the information to which it applies is sufficiently specific to bring the provision within section 48.

POLICE AND EMERGENCY SERVICES**Ambulance Service Act 1991****Section 6.8 (See page 131 of this Report)**

Any information acquired by any officer or agent which relates to a person who could be identified from the information as a person who has received pre-hospital care or ambulance services is prohibited from disclosure. Certain exceptions to the general rule are provided in subsection (2) e.g. information given with the consent of the person or next of kin. There is a specific type of information prohibited from disclosure i.e. information which could identify a person. The Commission is therefore of the view that this provision does come within section 48.

⁴³ *Justices Act 1886* section 102A.

RESOURCE INDUSTRIES

Mineral Resources Act 1989

Sections 4.18, 7.19 (See page 139 of this Report)

Where an owner of land requests a conference in relation to an application for a mining lease, submissions made or evidence adduced by a party at the conference is confidential between the mining registrar and each of the parties, and is not to be used in any hearing or proceeding without the consent of the relevant party. Although there is a prohibition on disclosure, the kind of matter to which that prohibition refers is not defined. The Commission is therefore of the view that these provisions do not provide a ground of exemption for the purposes of section 48.

Sections 5.39, 6.33 (See page 139 of this Report)

Where a mining registrar convenes a conference between an owner of land and the holder of an exploration permit, any submission made or evidence adduced by a party at the conference is confidential between the mining warden and each of the parties and is not to be used in evidence in any hearing or proceeding without the consent of the relevant party. Although there is a prohibition on disclosure, the kind of matter to which that prohibition refers is not defined. The Commission is therefore of the view that these provisions do not provide a ground of exemption for the purposes of section 48.

Section 9.15 (See page 139 of this Report)

An officer is prohibited from disclosing information obtained in connection with the Administration of Part 9 of the Act except in certain specified circumstances. Part 9 of the Act deals with royalties. While section 9.15 taken in isolation would not seem to be sufficiently specific for the purposes of section 48, reading section 9.15 together with the other provisions in Part 9 enables it to be said that section 9.15 applies specifically to information about royalties.⁴⁴ The Commission is therefore of the view that the information is sufficiently specific to bring the provision within section 48.

⁴⁴ See *Kawadlas v Commonwealth Ombudsman* (1984) 52 ALR 728 at 732.

TREASURY

Financial Institutions Code 1992

Section 410 (See page 147 of this Report)

A person to whom the section applies is prohibited from disclosing protected information. Protected information is defined as information which is disclosed to a person in the course of or because of the person's duties under the Act and "which concerns a person". Although widely defined, the class of information to which the provision applies is similar to that in *Swiss Aluminium*,⁴⁵ and the Commission is therefore of the view that the provision would come within section 48.

D. *Provisions which do not prohibit the disclosure of information (These provisions are listed in Appendix C)*

A further group of provisions relating to confidentiality of information would be outside the protection of section 48 because they do not contain a specific prohibition on the disclosure of information.

For example, some of the provisions brought to the attention of the Commission were, on analysis, shown to be not a prohibition on disclosure, but rather either an exemption from disclosing information in a situation where disclosure would otherwise be required, or a qualification or restriction on the availability of information to which a person would otherwise be entitled.⁴⁶

Provisions which do not contain a specific prohibition are listed below under the Department which administers the relevant legislation.

EMPLOYMENT, VOCATIONAL TRAINING AND INDUSTRIAL RELATIONS

Industrial Relations Act 1990

Section 12.3 (See page 72 of this Report)

This provision confers on the Industrial Commissioner or Industrial Magistrate discretion to hold a compulsory conference in public or in private.

⁴⁵ (1986) 66 ALR 159.

⁴⁶ See for example *Re Actors' Equity and Australian Broadcasting Tribunal* (1984) 1 AAR 222 at 231.

HEALTH

Food Act 1981

Section 48 (See page 105 of this Report)

This section provides that a witness for the prosecution shall not be compelled to disclose the fact that he or she received information, the nature of the information or the name of the person who furnished the information in proceedings for an offence against the Act. This extends to an officer in relation to reports made or received by him or her in his or her official capacity or containing confidential information.

Health Act 1937

Section 48(3) (See page 109 of this Report)

This section relates to proceedings in relation to controlled notifiable diseases. The proceedings are to be held in camera. No report of the proceedings shall be published except in certain circumstances. The provision is not a prohibition section and would not come within section 48.

Health Rights Commission Act 1991

Section 89 (See page 110 of this Report)

This section relates to notices to provide information and under subsection (5) the information is not admissible in evidence against the person.

Section 98 (See page 110 of this Report)

This section relates to oral inquiry hearings and subsection (2) provides that the evidence given is not admissible in evidence against the person.

Section 108 (See page 111 of this Report)

This section relates to the powers of an authorised person in relation to the search of premises. Under subsection (3) the information taken is not admissible in evidence.

Health Services Act 1991

Section 2.6 (See page 109 of this Report)

This section provides that a person must comply with a request for information made under section 2.5 of the Act and subsection (2) then provides that protection of the confidentiality of any financial or associated record or contract does not constitute a lawful excuse for the failure to comply with a request so made.

Protection of the confidentiality of a person's medical records does constitute a lawful excuse. This is not a prohibition provision.

Section 2.12 (See page 110 of this Report)

This section provides that a person who is or has been a member of a committee under the Act is not compellable to produce documents or divulge any matter or thing which came to the person's attention as a member of the committee.

Radio-active Substances Act 1958

Section 18 (See page 111 of this Report)

This section provides that a person shall not, when required to furnish any information, or to subscribe a declaration as to the truth of any information, fail to furnish the information or declaration or furnish information or a declaration which is false or misleading. This section does not apply to an agency of government and for that reason also would not come within section 48 of the Act.

HOUSING LOCAL GOVERNMENT AND PLANNING

Local Government Superannuation Act 1985

Section 63 (See page 114 of this Report)

All communications between the Board and a Local Authority in relation to a permanent employee shall be absolutely privileged.

JUSTICE, ATTORNEY-GENERAL AND THE ARTS

Anti-Discrimination Act 1991

Section 264 (See page 15 of this Report)

Certain persons performing functions under the Act may not be required to give evidence to a court of information acquired in their capacity under the Act or to produce in court a document similarly obtained. This is not a prohibition provision.

Commercial Banking Company of Sydney Limited Merger Act 1982

Section 16(1) (See page 124 of this Report)

This section prohibits a person from enquiring into whether any property the subject of a dealing or transaction is or is not an excluded asset, or whether it is affected by any notice that the property is an excluded asset. This is a prohibition

on enquiry, not disclosure. The section does not apply to an agency of government and for that reason also would not come within section 48 of the Act.

Commercial Bank of Australia Limited Merger Act 1982

Section 16(1) (See page 124 of this Report)

This section is almost identical to the above section and differs only in the name of the Bank.

Corporations Law (Commonwealth) as it applies to Queensland under the Corporations (Queensland) Act 1990

Section 1002G (See page 124 of this Report)

This section implies a prohibition on the disclosure of inside information by way of encouraging another person to subscribe for, purchase or sell any securities. "Insider" is defined as a person who possesses information which is not generally available. This section does not apply to an agency of government and for that reason also would not come within section 48 of the Act.

Criminal Justice Act 1989

Section 3.20 (See page 121 of this Report)

The Commission may prohibit the publication of evidence taken before it, or the contents or a summary of a record produced to it if publication would be unfair to any person or contrary to the public interest.

Section 2.19 (See page 125 of this Report)

The Commission has a discretion to make certain information inaccessible. The discretion applies to reports relating to the procedures and operations of any State court, or the registry practices of any State court.

Jury Act 1929

Section 48(ii) (See page 122 of this Report)

The Supreme Court may impose a fine upon any sheriff, associate, registrar, clerk or other officer who, without lawful excuse, permits any person to have access to any list, panel, parchment or card concerning a jury.

Public Trustee Act 1978*Section 15 (See page 123 of this Report)*

Every member of staff of the Public Trust Office and of the Public Trust Office Investment Board, and every agent of the Public Trust Office is bound to secrecy by declaration.

Special Prosecutor Act 1989*Section 21 (See page 119 of this Report)*

The Special Prosecutor is required, except in certain circumstances, to disclose matter which is necessary to the conduct of a fair trial of a defendant in criminal proceedings which the Special Prosecutor is conducting.

PARLIAMENTARY COMMISSIONER FOR ADMINISTRATIVE INVESTIGATIONS

Parliamentary Commissioner Act 1974*Sections 18(2) and 29(4) (See page 127 of this Report)*

These sections relate to the conduct of investigations and the production of documents by the Commissioner in judicial proceedings. They do not impose prohibitions.

POLICE AND EMERGENCY SERVICES

Drugs Misuse Act 1989*Section 47 (See page 130 of this Report)*

Where an informer supplies information relating to an offence under Part II of the Act, the prosecutor, a witness or a police officer shall not be compelled to disclose the name of the informer and the officer shall not be compelled to produce any documents or reports containing confidential information.

TREASURY**Golden Casket Art Union Act 1978**

Rule 10 (See page 144 of this Report)

The office shall advise subscribers of the results of casket draws and may release names and addresses of registered winners unless otherwise instructed.

Lotto Act 1981

Rule 12 (See page 144 of this Report)

The office shall advise subscribers of the results of lotto games and may release the names and addresses of registered prize winners unless otherwise instructed.

Motor Vehicle Insurance Act 1936

Section 2C (See page 151 of this Report)

The Insurance Commissioner or any staff member may communicate information which has come to his or her knowledge in connection with the administration of the Act to a person to whom it is in the public interest that the information be communicated.

Queensland Industry Development Corporation Act 1985

Section 30 (See page 150 of this Report)

A director shall make a declaration of secrecy before entering into duties or exercising any power, function or authority.

Revenue Laws (Reciprocal Powers) Act 1988

Section 15 (See page 150 of this Report)

Except in the circumstances specified, a person shall not be required to communicate to a court information acquired pursuant to authority conferred by the Act or any matter coming to the notice of the person in the performance of duties under the Act.

Soccer Football Pools Act 1976

Rule 17 (See page 144 of this Report)

The office shall advise subscribers of the results of pool games and may release names and addresses of registered prize winners unless otherwise instructed.

CHAPTER 5: RE-ENACTMENT OF QUEENSLAND PROVISIONS

A. *Introduction*

In this chapter the Commission will address the question of which provisions, identified as coming within the exemption granted by section 48, should be re-enacted when section 48 is spent.⁴⁸ In making any recommendations the Commission notes that matter is exempt under the *Freedom of Information Act* 1992 if it comes within any of the provisions in Division 2 of Part 3 of the Act, so it could be that matter presently exempt from disclosure under section 48 of the Act, is also exempt under some other provision of Division 2 of Part 3 of the Act.

The Commission, in fulfilling its task of deciding which provisions should be re-enacted, has found the items listed in what is now Schedule 3 of the Commonwealth *Freedom of Information Act* 1982 very useful.

B. *The Commonwealth position*

Section 48 of the Queensland *Freedom of Information Act* 1992 is modelled on section 38 of the Commonwealth *Freedom of Information Act* 1982 as it was originally enacted. That section provided that if there was a provision in an enactment which applied to specific information or documents and which prohibited disclosure of that information or document, then the information or document was exempt from disclosure pursuant to section 38.

When the Senate Standing Committee on Constitutional and Legal Affairs first reported on the then *Freedom of Information Bill* to the Parliament in 1979⁴⁹ it recommended that a Schedule be inserted so that uncertainty would not result under the clause. This recommendation was not implemented by the Parliament when the Act was enacted in 1982.

⁴⁸ Provisions which do not come within section 48 are beyond the scope of this reference and no recommendations concerning them have been made.

⁴⁹ The Parliament of the Commonwealth of Australia *Freedom of Information: Report by the Senate Standing Committee on Constitutional and Legal Affairs on the Freedom of Information Bill 1978 and aspects of the Archives Bill 1978* Australian Government Publishing Service, Canberra 1979.

In the Committee's first report it divided secrecy provisions into three broad categories:

- "(a) Provisions that prohibit or restrict the disclosure of information ...
- (b) Provisions that restrict the publication of information ...
- (c) Provisions requiring evidence to be taken, or a meeting to be conducted in private ..."⁵⁰

It was noted by the Committee that many secrecy provisions were very broad and reservations were expressed that departments needed to be protected by provisions of such unrestricted breadth and generality. The Committee recommended that secrecy provisions should be redrafted so that in the future it would only be an offence to disclose personal or business information other than in the pursuance of the *Freedom of Information Act 1982*.⁵¹

The section was amended in 1991 and a Schedule was inserted which lists all those provisions which are to be regarded as "secrecy provisions". Section 38 of the Commonwealth *Freedom of Information Act 1982* now provides:

- (1) *Subject to subsection (1A), a document is an exempt document if:*
 - (a) *disclosure of the document, or information contained in the document is prohibited under a provision of an enactment; and*
 - (b) *either:*
 - (i) *that provision is specified in schedule 3; or*
 - (ii) *this section is expressly applied to the document, or information, by that provision, or by another provision of that or any other enactment.*
- (1A) *A person's right of access to a document under sections 11 or 22 is not effected merely because the document is an exempt document under subsection (1) of this section if disclosure of the document, or information contained in the document, to that person is not prohibited by the enactment concerned or any other enactment.*

⁵⁰ The Parliament of the Commonwealth of Australia *Freedom of Information: Report by the Senate Standing Committee on Constitutional and Legal Affairs on the Freedom of Information Bill 1978 and aspects of the Archives Bill 1978* Australian Government Publishing Service, Canberra 1979 at 233-234.

⁵¹ The Parliament of the Commonwealth of Australia *Freedom of Information: Report by the Senate Standing Committee on Constitutional and Legal Affairs on the Freedom of Information Bill 1978 and aspects of the Archives Bill 1978* Australian Government Publishing Service, Canberra 1979 at 236-237.

- (2) *Where a person requests access to a document, this section does not apply in relation to the document so far as it contains personal information about the person.*

This amendment followed a second Report by the Senate Standing Committee on Legal and Constitutional Affairs produced in 1987.⁵² The Committee noted that there was uncertainty about the meaning of section 38 of the Commonwealth legislation and stated that "the Law Institute of Victoria described the judicial interpretation of section 38 as 'confusing and contradictory'".⁵³ The Committee did state however, that the interpretation of the section had settled some uncertainty and the interpretation had "made it clear that the more general secrecy provisions [in other Acts] do not operate to provide an exemption".⁵⁴

This view was endorsed by the Senate and House of Representatives when the Bill was introduced into Parliament and it was stated by the relevant Minister in both Houses that "Federal Court interpretation has limited the exemption to specific secrecy provisions but the exemption remains uncertain in its operation".⁵⁵

C. Criteria to determine whether a provision is a "secrecy provision"

The Ministers indicated that, in inserting the Schedule in the Commonwealth *Freedom of Information Act 1982*, three criteria were used to determine whether a secrecy provision should be included:

1. "the provision must be specific in identifying a category of information which the Parliament has determined should be subject to a blanket prohibition on public disclosure...".⁵⁶

⁵² The Parliament of the Commonwealth of Australia *Freedom of Information Act 1982: A Report on the Operation and Administration of the Freedom of Information Legislation*, Senate Standing Committee on Legal and Constitutional Affairs, December 1987 Australian Government Publishing Service, Canberra.

⁵³ At page 180 referring to a submission from the Law Institute of Victoria.

⁵⁴ At page 180.

⁵⁵ Senate Hansard Second Reading Speech on the Freedom of Information Amendment Bill 1991, Wednesday 14 August 1991 at 302; House of Representatives Hansard Second Reading Speech on the Freedom of Information Amendment Bill 1991, Tuesday 3 September 1991 at 506.

⁵⁶ Senate Hansard Second Reading Speech on the Freedom of Information Amendment Bill, 1991 Wednesday 14 August 1991 at 302; House of Representatives Hansard Second Reading Speech on the Freedom of Information Amendment Bill 1991, Tuesday 3 September 1991 at 506.

2. "it will generally be inappropriate to include a secrecy provision in the Schedule if the specific exemption provisions in Part IV of the FOI Act already provide adequate protection to the information covered by the secrecy provision".⁵⁷
3. this "relates to the question of resources required by an agency to make decisions on exemptions. Some agencies that process large numbers of requests have come to rely on the blanket exemption given by secrecy provisions for categories of information in the documents they possess. These agencies would need significant resources if they had to undertake consultation and make decisions on disclosure based on the reasonableness tests in the Part IV exemptions of the FOI Act".⁵⁸

The Senate Committee had said that the list of secrecy provisions was to be exhaustive and this was endorsed in the Explanatory Memorandum to the Amendment Bill.⁵⁹ Accordingly, any secrecy provision which comes into operation after the commencement of the Amendment Act would have to amend the Schedule or the enactment itself would have to provide that section 38 applies to the secrecy provision in that enactment.⁶⁰

The section now provides a greater degree of certainty in determining whether an enactment contains a secrecy provision. The document in question will be exempt if its disclosure is prohibited under an enactment and either the enactment is set out in the Schedule or section 38 of the Commonwealth *Freedom of Information Act 1982* is stated specifically in the enactment to apply to the document or information in question.

D. Commonwealth provisions included in Schedule 3 of the Act

Schedule 3 of the Commonwealth *Freedom of Information Act 1982* contains a list of provisions which are classified as "secrecy provisions". This list follows the general criteria which have been set out above which is used by the Commonwealth to determine whether a provision should be included as a "secrecy provision".

⁵⁷ Senate Hansard Second Reading Speech on the Freedom of Information Amendment Bill 1991, Wednesday 14 August 1991 at 302; House of Representatives Hansard Second Reading Speech on the Freedom of Information Amendment Bill 1991, Tuesday 3 September 1991 at 506.

⁵⁸ Senate Hansard Second Reading Speech on the Freedom of Information Amendment Bill 1991, Wednesday 14 August 1991 at 303; House of Representatives Hansard Second Reading Speech on the Freedom of Information Amendment Bill 1991, Tuesday 3 September 1991 at 506.

⁵⁹ Explanatory Memorandum to the Freedom of Information Amendment Bill 1991 at paragraph 52.

⁶⁰ Explanatory Memorandum to the Freedom of Information Amendment Bill 1991 at paragraph 52.

The provisions can be broadly classified into four basic categories:

1. Taxation and benefit confidentiality provisions;
2. Health;
3. Defence; and
4. Tribunals, Boards, etc.

The main category is taxation and includes provisions which relate to the disclosure of information which has been acquired as a result of an officer's employment and which relates to the affairs of another person. As a generalisation, the categories indicate that business, personal, financial, trade secret and medical information are protected in relation to individuals and businesses, whilst information relating to the defence of the Commonwealth of Australia is also protected.

E. Queensland provisions

Using the general criteria developed at the Commonwealth level,⁶¹ provisions which have been notified to the Commission by the various government departments will now be examined to determine whether they should be re-enacted following the expiration of section 48 of the *Queensland Freedom of Information Act 1992*.

The Commission notes that under section 48 the fact that matter falls within subsection (1)(a) carries no presumption that its disclosure would be contrary to the public interest. This is an issue which the agency or Minister must separately address when a decision is made to claim this exemption (although an applicant would probably wish to make submissions to the agency or Minister that disclosure was in the public interest).

In relation to the other sections which incorporate a public interest test, such as sections 44, 45 and 46, the effect of their different structure and the different formulation of the public interest test is that once the agency has shown the existence of the exemption criteria, that will ordinarily be enough to justify a finding that disclosure would, on balance, not be in the public interest. Although the onus of proof in relation to the public interest test remains on the agency (see section 81), there will in such cases be a tactical onus on an applicant to raise arguments which will indicate public interests in favour of disclosure. The question will then become whether those public interests in disclosure outweigh the effects of disclosure which satisfy the first part of the exemption.

In examining the provisions, the Commission has not made any recommendations in relation to the provisions which the Commission considers do not come within the exemption provided by section 48, because if the matter is to be exempt

⁶¹ See pages 48-49.

matter, the department would have to rely on one of the other exemptions in the *Freedom of Information Act 1992*, not on section 48. It is also open to departments to utilise the regulation making procedure in section 11(1)(q) of the Act to seek total exemption from the application of the *Freedom of Information Act 1992*. The provisions which, in the view of the Commission, do not come within section 48 have been identified in Chapter 4. They are listed in Appendix C.

(I) Provisions which should be re-enacted

(a) Taxation and benefit confidentiality provisions

TREASURY

Debits Tax Act 1990 (See page 150 of this Report)

This Act applies the *Debits Tax Administration Act 1982 (Cwth)* as the law of Queensland and section 7(2) of that Act is the provision which prohibits disclosure of information. The Commonwealth Parliament has placed this provision in Schedule 3 of the Commonwealth *Freedom of Information Act 1982* and, for the purposes of consistency, the Commission recommends that the section should be re-enacted at the State level.

(b) Tribunals, Boards, etc. provisions

FAMILY SERVICES AND ABORIGINAL AND ISLANDER AFFAIRS

Children's Services Act 1965

Section 144 (See page 76 of this Report)

The Commission considers that this provision should be re-enacted because there is no other protection for the information in the *Freedom of Information Act 1992*. The recommendation of the department was to re-enact the provision because the provision "protects the rights of children and families to privacy and confidentiality and prevents the disclosure of highly sensitive information which could damage individuals." A further reason was that if the protection were removed, professionals and members of the public would be reluctant to report child abuse or neglect. The Commission agrees with this recommendation.

Domestic Violence (Family Protection) Act 1989

Section 38 (See page 76 of this Report)

The Commission considers that this provision should be re-enacted. The department recommended the re-enactment of the provision on the basis that "the matters are personal and private in nature and" victims and their children "would be reluctant to take action if they felt publicity could be given to proceedings." The Commission agrees with this recommendation. The section covers information which may lead to the identification of parties, which may not be covered by the other exemptions in the *Freedom of Information Act 1992*.

Adoption of Children Act 1964

Section 59(3) (See page 77 of this Report)

The Commission believes that this provision should be re-enacted because the information which is referred to in the section is not strictly covered by the other exemptions in the *Freedom of Information Act 1992*. The department recommended that the section should be re-enacted because "[t]he *Freedom of Information Act* is not envisaged as an alternative mechanism to gain identifying information about the parties to an adoption." The department also noted that section 22(e) of the *Freedom of Information Act 1992* specifically referred to adoption records as records to which access may be refused. The Commission agrees with the recommendations of the department.

Juvenile Justice Act 1992

Section 226 (See page 77 of this Report)

The Commission is of the view that this section should be re-enacted. The information which is referred to in the section may not strictly be covered by the other exemptions in the *Freedom of Information Act 1992*. The department recommended that the section be re-enacted on the grounds that the "provisions are focussed on preserving the rights and dignity of children who may be subject to the Act." The department also noted that "the provisions are also necessary in order to comply with article 40 of the *United Nations Conventions on the Rights of the Child*." The Commission agrees with this recommendation.

JUSTICE, ATTORNEY-GENERAL AND THE ARTS

Maintenance Act 1965

Section 129 (See page 122 of this Report)

The Commission considers that this provision should be re-enacted because there is no other exemption in the *Freedom of Information Act 1992* which adequately

protects the information (concerning a child of unmarried parents) the subject of the section. The department recommended that the provision be re-enacted because it "would be contrary to public interest" for the information to be disclosed. The Commission supports this recommendation.

- (c) **Queensland provisions which do not come within the categories identified in the schedule to the Commonwealth legislation**

ENVIRONMENT AND HERITAGE

Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987

Section 31(1) (See page 74 of Report)

The Commission considers that this provision should be re-enacted. The department did not provide any recommendation in relation to the re-enactment of the provision, but the Commission believes that the matters covered by the section would not be exempt under any other provision of the *Freedom of Information Act 1992* e.g. section 42(1)(f). It appears to the Commission that the matters covered by the section are of important significance to the indigenous people of Queensland. They are matters of a sacred or secret kind and the Commission believes that, because of the nature of the information, the section should be re-enacted.

(II) Provisions which should not be re-enacted

- (a) **Taxation and benefit confidentiality provisions**

TREASURY

Financial Institutions Code 1992

Section 410 (See page 147 of this Report)

The Commission considers that the information referred to in this provision is adequately protected by sections 45 and 46 of the *Freedom of Information Act 1992* which relate to matter concerning trade secrets, business affairs and research and matter communicated in confidence.⁶² The Commission notes the recommendations of the department and its concerns that the provision should be re-enacted to provide stability. The Commission points out that the exemption provided by section 48 is subject to the same public interest requirement as those in

⁶² See *Corrs Pavey v Collector of Customs* (1987) 14 F.C.R. 434 on the width of matter communicated in confidence.

sections 45 and 46. The Commission believes that there is adequate protection for the information under the other exemption provisions, and that this section should not be re-enacted. The Commission suggests to the Department that it should use the procedure provided in section 11(1)(q) of the Act if it wishes to exempt the Queensland Offices of Financial Supervision from the *Freedom of Information Act 1992*.⁶³

(b) Health provisions

HEALTH

Health Act 1937

Sections 49, 71B, 100E and 100I (See pages 83-85, 87)

The Commission does not believe that these provisions should be re-enacted because the information referred to in them is adequately protected by sections 44 and 46, the personal affairs and matter communicated in confidence exemptions, of the *Freedom of Information Act 1992*. The department made an extensive submission to support the retention of the provisions.⁶⁴ However, the Commission believes that, in view of the decisions of the Full Court of the Federal Court in *Department of Social Security v Dyrenfurth*⁶⁵ and *Colakovski v Australian Telecommunications Corporation*,⁶⁶ in relation to the interpretation of "personal affairs" in section 41 of the Commonwealth Act, the matters referred to in the sections are adequately protected. In *Dyrenfurth* it was held that information relating to personal affairs included information concerning a person's state of health, the nature or condition of any marital or other relationship, domestic responsibility or financial obligations. The Commission has also noted the contents of section 51 of the Act, referred to by the department.

The public interest test under sections 44 and 46 of the Queensland Act, which is also a part of the test under section 48, was of concern to the department. The Commission believes that the machinery under the *Freedom of Information Act 1992*, particularly the provisions of section 51 of the Act, are adequate to address the concerns expressed by the department in their response to the Commission. The Commission suggests to Queensland Health that if it wishes to obtain absolute

⁶³ Sections 44, 45 and 46 appear in Appendix D of this Draft Report.

⁶⁴ Refer to Appendix B

⁶⁵ (1988) 80 ALR 533.

⁶⁶ (1991) 29 FCR 429.

exemption from Freedom of Information legislation it should use the procedure provided in section 11(1)(q) of the Act.

Section 150(4) (See page 106 of this Report)

The Commission considers that the information under this provision is adequately protected under sections 44 and 45 of the *Freedom of Information Act 1992* and that therefore that it should not be re-enacted. Those sections exempt matter which relates to personal affairs and matter which relates to trade secrets, business affairs and research. The Commission refers to its comments on sections 49, 71B, 100E and 100I above.

Health Services Act 1991

Section 2.10 (See page 102 of this Report)

The Commission believes that the information under this provision is adequately protected under sections 44 and 46 of the *Freedom of Information Act 1992* which exempt matter which relates to personal affairs and information which is communicated in confidence. The Commission has considered the recommendations expressed by the department and has noted the contents of section 51 of the Act. However, the view of the Commission is that, on balance, the provision should not be re-enacted. The Commission suggests that section 11(1)(q) of the Act be utilised by the Department to protect this information if the Department so desires.

Section 5.1(1) (See page 98 of this Report)

The Commission considers that this information would be protected under sections 44 and 46 of the *Freedom of Information Act 1992* which relate to matter relating to personal affairs and matter given in confidence and therefore it should not be re-enacted. The Commission notes that this provision is to be amended and suggests that Queensland Health uses the procedure provided in section 11(1)(q) if it wishes to obtain absolute exemption from Freedom of Information legislation.

POLICE AND EMERGENCY SERVICES

Ambulance Service Act 1991

Section 6.8 (See page 131 of this Report)

The Commission considers that this information is given adequate protection under sections 44 and 46 of the *Freedom of Information Act 1992* which relate to matter concerning personal affairs and matter which is provided in confidence. Information of the type referred to in section 6.8 of the *Ambulance Service Act 1991* is afforded protection under the *Freedom of Information Act 1992* without the

section being re-enacted. The Commission draws particular attention to sections 6 and 51 of the Act in relation to the section 44 (personal affairs) exemption.

(c) Defence provisions

JUSTICE, ATTORNEY-GENERAL AND THE ARTS

Official Secrets Act 1911 (See page 117 of this Report)

The Commission recommends that this Act should not be re-enacted. The recommendation of the department that the Act should be retained because it is in the public interest to ensure that no information which could prejudice the safety or interests of the State should be passed to persons who should not have such information, is noted. However, the matter will be covered by the proposed clause 135, disclosure of official secrets, contained in the new *Criminal Code* and when this is enacted it will post-date the *Freedom of Information Act 1992*.

Criminal Code

Sections 84 and 85 (See page 118 of this Report)

The Commission considers that these provisions should not be re-enacted because the information referred to in them will be adequately protected by the proposed clause 135, disclosure of official secrets, in the new *Criminal Code*. The department has endorsed this view in its recommendation to the Commission concerning these provisions.

(d) Tribunals, Boards, etc. provisions

EMPLOYMENT, VOCATIONAL EDUCATION, TRAINING AND INDUSTRIAL RELATIONS

Industrial Relations Act 1990

Sections 8.7, 8.11 and 18.8 (See pages 71-72 of this Report)

The Commission believes that these provisions should not be re-enacted because the information falls within the exemptions provided by sections 44, 45 and 46 of the *Freedom of Information Act 1992*. These exemptions relate to matters affecting personal affairs, matters relating to trade secrets, business affairs and research, and matter communicated in confidence. The department recommended that the provisions be retained in full because information may concern personal affairs of employers and employees or trade secrets, however, these types of information are already covered by the Act. The Commission is mindful of the concerns of the department, however, the Commission believes that the information is adequately

protected from disclosure. The Commission notes that section 48 is subject to a public interest test, as are sections 44, 45 and 46.

Factories and Shops Act 1960

Section 10(8) (See page 73 of this Report)

The Commission does not believe that this provision should be re-enacted. The department recommended that the provision should be re-enacted because the purpose of the section is to protect the rights of businesses so that practices and trade secrets are not made known and also to protect the personal affairs of operators. The department was also concerned that if the provision was not re-enacted, investigations would be hampered. The Commission takes note of these recommendations, however, the Commission believes that the information would be exempt under sections 44 and 45, the personal affairs, trade secrets and business affairs exemptions, in the *Freedom of Information Act 1992*. The Commission notes that the department could avail itself of the procedure in section 11(1)(q) of the Act if it so desired.

FAMILY SERVICES AND ABORIGINAL AND ISLANDER AFFAIRS

Child Care Act 1991

Section 58 (See page 76 of this Report)

The Commission believes that the information referred to in this provision is adequately protected under section 44 of the *Freedom of Information Act 1992*, the personal affairs exemption. The section is concerned with the criminal history of a person, which is covered by the phrase "personal affairs".⁶⁷ The Commission notes the recommendations of the department. However, as adequate protection is afforded to the information, the Commission believes that the provision should not be re-enacted.

JUSTICE, ATTORNEY-GENERAL AND THE ARTS

Anti-Discrimination Act 1991

Section 220 (See page 115 of this Report)

The Commission considers that the information referred to in this provision would be protected under sections 44 and 46 of the *Freedom of Information Act 1992* which relate to information which concerns personal affairs and information given in

⁶⁷ *Department of Social Security v Dyrenfurth* (1988) 80 ALR 533; see also *Colakovski v. Australian Telecommunications Corporation* (1991) 29 FCR 429 at 436 per Lockhart J.

confidence. The Commission notes the recommendations of the department. However, as adequate protection is afforded to the information, the Commission believes that the provision should not be re-enacted.

Electoral Act 1992

Section 173(b)(ii) (See page 122 of this Report)

The Commission considers that this provision should not be re-enacted because the information is protected, in the view of the Commission, by the exemption in section 46 (the matter communicated in confidence exemption) in the *Freedom of Information Act 1992*. The Commission notes the recommendations of the department, however, the Commission believes that the information is adequately protected by the Act.

Legal Aid Act 1978

Section 81 (See page 116 of this Report)

The Commission believes that the information referred to in this provision is adequately protected under sections 44, 45 and 46 of the *Freedom of Information Act 1992* and that therefore section 81 should not be re-enacted. These sections relate to matters concerning personal affairs, matter concerning trade secrets, business affairs and research and matters given in confidence. The Commission notes the concerns of the department that the provision is to protect the privacy of individuals. However, the Commission believes that adequate protection is provided by the *Freedom of Information Act 1992* for this information. The Commission notes that the department could avail itself of the procedure provided in section 11(1)(q) if it so desired.

Queensland Law Society Incorporated Indemnity Rules 1987

Rule 10 (See page 118 of this Report)

The Commission considers that the information under this rule is adequately protected by sections 44 and 45 of the *Freedom of Information Act 1992*, the provisions which relate to personal affairs and trade secrets, business affairs and research exemptions. The concerns of the department that solicitors should be assured that disclosures will go no further than the Claims Committee are noted. However, the Commission believes that the information does receive adequate protection under the *Freedom of Information Act 1992*. The Commission draws particular attention to sections 6 and 51 of the Act relating to the section 44 (personal affairs) exemption.

Referendums Act 1989

Section 4.30(14) (See page 123 of this Report)

The Commission considers that this provision should not be re-enacted because the information is adequately protected by the exemption contained in section 46 of the *Freedom of Information Act 1992*, the matter communicated in confidence provision. The Commission notes the concerns of the department. However, it is the view of the Commission that the information is adequately protected.

RESOURCE INDUSTRIES**Mineral Resources Act 1989**

Section 9.15 (See page 139 of this Report)

The Commission considers that the information in this provision is given adequate protection under section 45 of the *Freedom of Information Act 1992* which relates to the trade secrets, business affairs and research of any person. There is no reason for this provision to be re-enacted.

Mines Regulation Act 1964

Sections 15, 52, 53 and 64 (See pages 139-140 of this Report)

The Commission believes that the information referred to in these provisions is adequately protected under section 45 of the *Freedom of Information Act 1992* which relates to matter concerning trade secrets, business affairs and research. The Commission notes the recommendation of the department. However, in the Commission's view, the matter is adequately protected by the other exemptions in the *Freedom of Information Act 1992*.

Section 61 (See page 140 of this Report)

The Commission notes the recommendation of the department. However, the Commission believes that the provision should not be re-enacted because there is adequate protection afforded the information under sections 44 and 46 of the *Freedom of Information Act 1992*.

Coal Mining Act 1925

Sections 31B, 87 and 89 (See page 140 of this Report)

The Commission believes that the information referred to in these provisions is adequately protected under section 45 of the *Freedom of Information Act 1992* which relates to matter concerning trade secrets, business affairs and research. The Commission notes the recommendation of the department. However, it is the

view of the Commission that the matter is adequately protected by the other exemptions in the *Freedom of Information Act 1992*.

Section 69 (See page 140 of this Report)

The Commission notes the recommendation of the department. However, the Commission believes that the provision should not be re-enacted because there is adequate protection afforded the information under sections 44 and 46 of the *Freedom of Information Act 1992*.

Petroleum Regulations (Land) 1966

Regulations 11, 69 and 126 (See page 141 of this Report)

The Commission believes that the information referred to in these regulations is adequately protected under section 45 of the *Freedom of Information Act 1992* which relates to matter concerning trade secrets, business affairs and research. The Commission notes the recommendation of the department. However, in the Commission's view, the matter appears to be adequately protected by the other exemptions in the *Freedom of Information Act 1992*.

- (e) **Queensland provisions which do not come within the categories identified in the schedule to the Commonwealth legislation**

ADMINISTRATIVE SERVICES

Libraries and Archives Act 1988

Section 61 (See page 66 of this Report)

The Commission considers that this provision should not be re-enacted. The department advised the Commission in its recommendation, that the Electoral and Administrative Review Commission has reviewed and reported on the Archives legislation. The proposed Bill has no secrecy provision per se. However, there is provision for a period of restricted access to records held by the Queensland State Archives. This provision has been directly linked to access to documents under the *Freedom of Information Act 1992*.

EDUCATION

Education (General Provisions) Act 1989

Section 28 (See page 69 of this Report)

The Commission considers that this provision should not be re-enacted because there is adequate protection under section 44 of the *Freedom of Information Act 1992* read together with sections 6 and 51 of the Act. The Commission notes the concerns of the department that there is considerable personal information on student files. However, the exemption in section 44 relates to personal affairs and provides adequate protection.⁶⁸ The Commission notes that the Department could utilise the procedure in section 11(1)(q) of the Act if it so desired.

ENVIRONMENT AND HERITAGE

Environment Protection Bill Draft Provision (See page 74 of this Report)

The Commission considers that the information protected by this proposed provision is adequately protected by section 45 of the *Freedom of Information Act 1992*. The department provided no recommendation in relation to this proposed provision. It appears to the Commission that it would be covered by the exemption which relates to trade secrets, business affairs and research.

Nature Conservation Act 1992

Section 124(2)(a) (See page 74 of this Report)

The Commission considers that this provision should not be re-enacted. Section 42(1)(j) of the *Freedom of Information Act 1992* specifically exempts information from disclosure if it would "prejudice the wellbeing of a cultural or natural resource or the habitat of animals or plants."

Section 124(2)(b) (See page 74 of this Report)

The Commission believes that this provision should not be re-enacted because the information is adequately protected by section 44, the personal affairs exemption, in the *Freedom of Information Act 1992*. The department made no recommendation in relation to this subsection.

⁶⁸ *Department of Social Security v Dyrenfurth* (1988) 80 ALR 533; see also *Colakovski v Australian Telecommunications Corporation* (1991) 29 FCR 429 at 436 per Lockhart J.

FAMILY SERVICES AND ABORIGINAL AND ISLANDER AFFAIRS

Child Care Act 1991

Section 74 (See page 76 of this Report)

The Commission considers that the information referred to in this provision is adequately protected by sections 44 (read together with sections 6 and 51 of the Act), 45 and 46 of the *Freedom of Information Act 1992* and should not be re-enacted. Those provisions are the personal affairs, trade secrets, business affairs and research, and matter communicated in confidence provisions. The Commission notes the concerns of the department. However, it is the view of the Commission that the information is given adequate protection by the other exemption provisions. The department could utilise section 11(1)(q) of the Act if it so desired.

HOUSING LOCAL GOVERNMENT AND PLANNING

Draft Local Government Bill

Clauses 5.54 and 6.14 (See page 114 of this Report)

The Commission considers that these proposed provisions should not be re-enacted on the expiration of section 48. The Commission believes that the information which is referred to in the clauses are covered by the exemptions contained in sections 44 and 45 of the *Freedom of Information Act 1992*, the personal affairs and the trade secrets, business and research exemptions. The Commission notes the views of the department in relation to the clauses. However, the Commission is of the view that the information is adequately protected. The Commission notes that the department could utilise the procedure in section 11(1)(q) of the Act if it so desired.

JUSTICE, ATTORNEY-GENERAL AND THE ARTS

Jury Act 1929

Section 23 (See page 122 of this Report)

The Commission considers that this section should not be re-enacted because the information is protected by the exemption contained in section 42(1)(d) of the *Freedom of Information Act 1992*. That exemption relates to matter which would prejudice a person's fair trial or impartial adjudication of a case if it were disclosed. The Commission notes the concerns of the department. However, it is the view of the Commission that the information is adequately protected by the Act.

APPENDIX A

**FULL TEXT OF COMMISSION'S LETTER
TO GOVERNMENT DEPARTMENTS
REQUESTING INFORMATION CONCERNING
SECRECY PROVISIONS**

24 June 1992

Director-General
Department of

Dear Sir/Madam

Acting at the request of the Attorney-General pursuant to a decision of the Cabinet, the Queensland Law Reform Commission is commencing a review of the operation of clause 48 of the *Freedom of Information Bill*.

Clause 48 provides that, for a period of two years following its introduction, Freedom of Information legislation will not override secrecy provisions in other legislation. In other words, in order for existing secrecy provisions to remain in operation, appropriate legislation will have to be enacted within two years of the commencement of the Freedom of Information provisions.

The Commission's reference involves:

- a. identifying all existing secrecy provisions; and
- b. recommending which should be retained and which should be repealed.

It is essential that this task be completed in time for the implementation of any necessary legislation. Accordingly, the Commission requests that your Department provides the following information:

1. What secrecy provisions presently exist in legislation administered by your Department?
2. Is it the recommendation of your Department that those provisions, if any, be retained?
3. What are the reasons for your Department's recommendation that those provisions, if any, be retained or repealed?

Your immediate co-operation in this matter would be appreciated. In view of the time constraints imposed by clause 48, the Commission asks that responses to Question 1 be received by Friday 14 August 1992, and that responses to Questions 2 and 3 be received by Friday 20 November 1992.

If these dates cannot be met, would an officer of your Department please contact me as soon as possible to discuss the matter.

Yours faithfully

Penny Cooper
Principal Legal Officer

JUSTICE, ATTORNEY-GENERAL AND THE ARTS
(continued)

Secrecy Provisions Identified	Recommendation	Reasons for Recommendation
<p>Special Prosecutor Act 1988 S.20. The Chairman of the Commission of Inquiry and the Deputy to the Commission is not required to produce in any proceedings or to any person any document, thing or information which has come into his or her possession, custody or control by reason of the exercise of his or her functions.</p> <p>S.21. Except where the production of material or evidence or the disclosure of matter will contravene a direction given under S.20(4) or would not be in the public interest, the special prosecutor shall produce material and evidence of which he or she is aware, the proof of which is necessary to a fair hearing for a defendant as soon as is reasonably possible after the commencement of the proceedings. There is provision in Ss. (2) for a defendant to apply to the special prosecutor to admit a specific fact or produce or disclose material. Ss. (7) provides that where production or disclosure will contravene any other Act the previous subsections do not apply.</p> <p>Companies Act 1961 S.124(2). An officer of a company is prohibited from making improper use of information acquired by virtue of his or her position to gain advantage for himself or herself or another person or to cause detriment to a corporation.</p>	<p>Special Prosecutor Act 1988 Ss.20 and 21. These sections should be re-enacted.</p> <p>Companies Act 1961 S.124(2). The section should be retained.</p>	<p>Special Prosecutor Act 1988 Ss.20 and 21. To enable the effective operation of the Act it is necessary that these sections be retained. There is no conflict between these sections and the object of the <i>FOI Act</i>.</p> <p>Companies Act 1961 S.124(2). The section does not conflict with the objective of the <i>FOI Act</i> which requires information concerning information held by Government and public agencies be made available to members of the public. The section also refers to detriment to a corporation as a possible result of the contravention of the section and would, therefore, fall within the exempt matters relating to trade secrets, business affairs and research under S.45 of the <i>FOI Act</i>, unless its disclosure would, on balance, be in the public interest.</p>

JUSTICE, ATTORNEY-GENERAL AND THE ARTS
(continued)

Secrecy Provisions Identified	Recommendation	Reasons for Recommendation
<p><i>The Corporations Law (Commonwealth) as it applies to Qld under the Corporations (Queensland) Act 1990.</i> S.320 prohibits a registered company auditor or a qualified legal practitioner from disclosing information acquired in the course of an inspection of company books under an order of the court under S.319 to any person other than a member of the company or a staff member, etc. of the Commission. The prohibition is subject to some exceptions.</p> <p><i>The Corporations Law (Commonwealth) as it applies to Qld under the Corporations (Queensland) Act 1990.</i> S.815(4) prohibits a person from divulging, making use of or making a record of information obtained from the Commission under subsections (1), (2) and (3). Under those subsections a person is prohibited from divulging information for any other purpose other than those mentioned in Ss. (2)(a) and (b). Subsection (1) relates to the Commission giving information to a licensee where it believes that the person holds or will hold a proper authority from a licensee. Subsection (2) relates to the Commission giving information under Ss. (1) for a purpose connected with the licensee making a decision about action to take in relation to the holder of an authority.</p>	<p><i>The Corporations Law (Commonwealth) as it applies to Qld under the Corporations (Queensland) Act 1990 S.320.</i> The provision should be retained.</p> <p><i>The Corporations Law (Commonwealth) as it applies to Qld under the Corporations (Queensland) Act 1990 S.815(4).</i> The provision should be retained.</p>	<p><i>The Corporations Law (Commonwealth) as it applies to Qld under the Corporations (Queensland) Act 1990 S.320.</i> This section does not conflict with the objective of the <i>FOI Act</i> as it does not strive to disclose information relating to business affairs unless such information would be in the public interest.</p> <p><i>The Corporations Law (Commonwealth) as it applies to Qld under the Corporations (Queensland) Act 1990 S.815(4).</i> This section does not conflict with the objective of the <i>FOI Act</i> as the matter is exempt under S.48 of that Act unless it would be in the public interest to disclose the information.</p>

JUSTICE, ATTORNEY-GENERAL AND THE ARTS
(continued)

Secrecy Provisions Identified	Recommendation	Reasons for Recommendation
<p>Coroners Act 1958. S.52 prohibits the publication in any newspaper of a report, evidence, contents of any document or writing in relation to any inquest which has been prohibited to be published by an order under the Act or which the coroner has disallowed or has warned the witness he or she is not obliged to answer and has ordered shall not be published.</p>	<p>Coroners Act 1958 S.52. The provision should be retained.</p>	<p>Coroners Act 1958 S.52. This is a clear prohibition within the meaning of S.48 of the <i>FOI Act</i> and is not in conflict with the objectives of that Act, as it exempts information relating to personal affairs.</p>
<p>Criminal Justice Act 1989. S.2.18(6) prohibits a person from publishing, furnishing or delivering a report of the Commission unless the report has been printed by order of the Legislative Assembly.</p>	<p>Criminal Justice Act 1989 S.2.18(6). The provision should be retained.</p>	<p>Criminal Justice Act 1989 S.2.18(6). This is a prohibition subject to exceptions within the meaning of S.48 of the <i>FOI Act</i> and concerns matters relating to law enforcement, specifically exempted under that Act. As a result the section does not conflict with the objectives of the <i>FOI</i> legislation.</p>
<p>S.3.15 prohibits a person from communicating or publishing information that was overheard, recorded, monitored, etc. during a conversation to which that person was not a party for the purposes of the Commission to any person other than the Chairman.</p>	<p>S.3.15. Provision should be retained.</p>	<p>S.3.15. This is a prohibition subject to an exception and ensures that information relating to law enforcement is not disclosed to the general public. It is within the objectives of the <i>FOI Act</i>.</p>
<p>S.3.20 provides for the Commission's discretion to prohibit the publication of evidence taken before it, if it considers this to be unfair to any person or contrary to the public interest.</p>	<p>S.3.20. Provision should be retained.</p>	<p>S.3.20. This is a qualified prohibition within the meaning of S.48 of the <i>FOI Act</i> and is not contrary to the principles of the <i>FOI</i> legislation.</p>
<p>S.6.7 prohibits any Commissioner, officer of the Commission and a member of the Parliamentary Committee from disclosing information which has been obtained in the course of discharging a function etc. under the Act.</p>	<p>S.6.7. Provision should be retained.</p>	<p>S.6.7. This prohibition concerns matter relating to law enforcement or public safety which is specifically exempted under the <i>FOI</i> legislation and therefore within the objects of the Act.</p>

JUSTICE, ATTORNEY-GENERAL AND THE ARTS
(continued)

Secrecy Provisions Identified	Recommendation	Reasons for Recommendation
<p>Electoral Act 1992. S.173(b)(II) prohibits a person, if he or she is a member of the Commission's staff, from disclosing any information as to how an elector has voted at the election unless so authorised under the Act or by order of the Court.</p> <p>Jury Act 1929. S.23 prohibits a person from disclosing information regarding prospective jurors. A person shall not give notice of the day or time on or at which the sheriff will proceed to draw the names of prospective jurors, give any information concerning the names of prospective jurors, give notice of the day or time on or at which the sheriff will compile a panel of jurors intended to be summoned.</p> <p>S.48(II) prohibits a sheriff, associate, registrar, clerk or other officer from permitting any person to have access to a jury list, panel, parchment or card.</p> <p>Justices Act 1886 S.102F(1) and (2). S.102F(1) prohibits the publication of a private complaint against any person or any proceeding taken in relation to such a complaint in any newspaper, magazine, book, pamphlet or paper for public distribution, report, commentary or speech broadcast by radio or television or any public speech. S.102F(2) provides for the director's liability where a corporation has contravened subsection (1).</p> <p>Maintenance Act 1965. S.129 prohibits a person from publishing or causing to be published information relating to proceedings. The section also prohibits the disclosure of the identity of any person involved in the proceedings.</p>	<p>Electoral Act 1992 S.173(b)(II). Provision should be retained.</p> <p>Jury Act 1929 S.23. Provision should be retained.</p> <p>S.48(II). Provision should be retained.</p> <p>Justices Act 1886 S.102F(1) and (2). Provision should be retained.</p> <p>Maintenance Act 1965 S.129. Provision should be retained.</p>	<p>Electoral Act 1992 S.173(b)(II). This information would be a matter communicated in confidence and is therefore exempted under the <i>FOI Act</i>. The section is consequently not in conflict with the objectives of the <i>FOI</i> legislation.</p> <p>Jury Act 1929 S.23. This section is within the objectives of the <i>FOI</i> legislation.</p> <p>S.48(II). This is to ensure public safety and is therefore not in conflict with the principles of the <i>FOI</i> legislation which exempts such matters.</p> <p>Justices Act 1886 S.102F(1) and (2). This section ensures that matters affecting legal proceedings and personal affairs are kept confidential in accordance with the <i>FOI Act</i> and is not in conflict with the legislation.</p> <p>Maintenance Act 1965 S.129. The disclosure of such information would be contrary to public interest, as it concerns matter affecting personal affairs which is specifically exempted by the <i>FOI Act</i>. As a result, the section is not in conflict with the principles of the <i>FOI</i> legislation.</p>

JUSTICE, ATTORNEY-GENERAL AND THE ARTS
(continued)

Secrecy Provisions Identified	Recommendation	Reasons for Recommendation
<p>Police Complaints Tribunal Acts Repeal Act 1990. S.5(1)(c) prohibits all members, former members, etc. assigned to the Police Complaints Tribunal from divulging any information coming to their knowledge in the course of their duties unless so required under the <i>Police Complaints Tribunal Act 1982</i>, the <i>Police Complaints Tribunal Act Amendment Act</i>, or by the Commission.</p>	<p>Police Complaints Tribunal Acts Repeal Act 1990 S.5(1)(c). Provision should be retained.</p>	<p>Police Complaints Tribunal Acts Repeal Act 1990 S.5(1)(c). This section obviously concerns matter relating to law enforcement or public safety which is specifically exempted by the <i>FOI Act</i> and is therefore not in conflict with the principles of that Act.</p>
<p>Public Trustee Act 1978. S.15 requires every member of staff of the Public Trust Office and of the Public Trust Officer Investment Board, and every agent of the Public Trustee to be bound to secrecy by declaration.</p>	<p>Public Trustee Act 1978 S.15. Provision should be retained.</p>	<p>Public Trustee Act 1978 S.15. This is a matter concerning operations of agencies as well as property interests and is specifically exempted under the <i>FOI Act</i>. The section is not in conflict with the principles of the <i>FOI</i> legislation.</p>
<p>Referendums Act 1989. S.4.30(14) prohibits a person who has obtained information concerning a voter's ballot paper from disclosing that information unless the person is legally bound to do so.</p>	<p>Referendums Act 1989 S.4.30(14). Provision should be retained.</p>	<p>Referendums Act 1989 S.4.30(14). This is information which has been communicated in confidence and is specifically exempted under the <i>FOI Act</i>. The section is therefore not in conflict with the objectives of the <i>FOI</i> legislation.</p>
<p>Securities Industry Act 1975. S.13(1) prohibits a person appointed or employed under the Act from disclosing information obtained by reason of the appointment or employment.</p>	<p>Securities Industry Act 1975 S.13(1). Provision should be retained.</p>	<p>Securities Industry Act 1975 S.13(1). This type of information is in relation to business affairs, the disclosure of which could destroy or diminish the commercial value of the information or have adverse effects on business, commercial, financial affairs of an agency or another person and is exempt under the <i>FOI Act</i>. The section is therefore, not in conflict with the objectives of the <i>FOI</i> legislation.</p>

JUSTICE, ATTORNEY-GENERAL AND THE ARTS
(continued)

Secrecy Provisions Identified	Recommendation	Reasons for Recommendation
<p>Libraries and Archives Act 1988. S.61(1) prohibits an officer of the Qld State Archives from providing access to a public record or disclosing information as a result of the confidential nature of the information contained therein where a secrecy provision under another Act makes it an offence for an officer of a public authority, other than the Qld State Archives, to disclose such information.</p> <p>The following provisions contain implied prohibitions:</p> <p>Commercial Banking Company of Sydney Limited Merger Act 1982. S.16(1) prohibits a person from enquiring into a particular matter, thereby imposing an obligation on the keepers of the information sought to reject access. The section prohibits a person from enquiring into whether any property the subject of a dealing or transaction is or is not an excluded asset, or whether it is affected by any notice that the property is an excluded asset.</p> <p>Commercial Bank of Australia Limited Merger Act 1982 S.16(1). This section is almost identical to the above section and differs only in the name of the Bank.</p> <p>The Corporations Law (Commonwealth) as it applies to Queensland under the Corporations (Queensland) Act 1990 S.1002G. This section implies a prohibition to disclose inside information by way of encouraging another person to subscribe for, purchase or sell any securities. The "insider" is defined as a person who possesses information which is not generally available.</p>	<p>Libraries and Archives Act 1988 S.61(1). Provision should be retained.</p> <p>Commercial Banking Company of Sydney Limited Merger Act 1982 S.16(1). Provision should be retained.</p> <p>Commercial Bank of Australia Limited Merger Act 1982 S.16(1). Provision should be retained.</p> <p>The Corporations Law (Commonwealth) as it applies to Queensland under the Corporations (Queensland) Act 1990 S.1002G. Provision should be retained.</p>	<p>Libraries and Archives Act 1988 S.61(1). This prohibition is in place to protect the confidential nature of information contained in public records. This situation is specifically exempted by the <i>FOI Act</i> and is, therefore, not in conflict with its objectives.</p> <p>Commercial Banking Company of Sydney Limited Merger Act 1982 S.16(1). In view of S.48 of the <i>FOI Act</i> this would be an implied prohibition from disclosing the information sought. S.16(1) would not be in conflict with the principles of the <i>FOI</i> legislation as that Act exempts matters relating to trade secrets, business affairs and research. If this section is considered to fall within the meaning of S.48 of the <i>FOI Act</i> it should be re-enacted.</p> <p>Commercial Bank of Australia Limited Merger Act 1982 S.16(1). There is also an implied prohibition imposing an obligation on the keeper of the information sought to reject access.</p> <p>The Corporations Law (Commonwealth) as it applies to Queensland under the Corporations (Queensland) Act 1990 S.1002G. This section does not conflict with the principles of the <i>FOI Act</i> as it exempts information which is a matter relating to trade secrets, business affairs and research. On the basis that the section is considered to fall within the meaning of S.48 it is recommended that the section be re-enacted.</p>

JUSTICE, ATTORNEY-GENERAL AND THE ARTS
(continued)

Secrecy Provisions Identified	Recommendation	Reasons for Recommendation
<p>Criminal Justice Act 1989. S.2.19 provides for the situation where the Commission has the discretion to make certain information inaccessible. The information is a report relating to the procedures and operations of any State court, or the registry practices of any State court.</p>	<p>Criminal Justice Act 1989 S.2.19. The provision should be retained.</p>	<p>Criminal Justice Act 1989 S.2.19. This is a qualified prohibition, although it does not strictly prohibit the disclosure of information. However, a judge may well find it, in substance, amounts to a prohibition. The section would not be contrary to the objectives of the <i>FOI Act</i>, as it concerns matters relating to law enforcement unless they are in the public interest. It would be recommended that, if the section was considered to be a secrecy provision within the meaning of S.48, that it be re-enacted.</p>

LANDS

Secrecy Provisions Identified	Recommendation	Reasons for Recommendation
<p>Valuation of Land Act 1944. S.8 imposes on every person employed under the Act, a duty to maintain secrecy about all matters coming to the person's knowledge in the course of duty, and to refrain from communicating such matters to any other person except for the purposes of the Act. The Valuer-General, or officer authorised by him or her, shall not except in the course of duties under the Act, either directly or indirectly record, divulge or communicate information obtained. No requirement to produce evidence in court unless necessary for carrying into effect the provisions of the Act. Breach - penalty range: \$10-\$100.</p>	<p>Valuation of Land Act 1944 S.8. Provision should be retained.</p>	<p>Valuation of Land Act 1944 S.8. The Department has a strong concern that possible disclosure of information provided by owners and developers to the Department for research on and calculation of valuations will lead to an unwillingness by those owners and developers to provide essential information for the calculations of such valuations. This is particularly so for information that would be of commercial value to a competitor or disclose the financial affairs of another person. Although these concerns are the subject of Ss.46(1) and 45(1) of the <i>FOI Act</i> respectively, the Department would like to see some clear definition between the levels of factual and technical information that can and should not be released. Also, where a valuation made by the Department is contested by a property owner, there is concern that the judicial process of exchanging factual information between parties in dispute may be circumvented by the disputing party through FOI. That is, there may be a one-way only flow of information to the disputing party.</p>

PARLIAMENTARY COMMISSIONER FOR ADMINISTRATIVE INVESTIGATIONS

Secrecy Provisions Identified	Recommendation	Reasons for Recommendation
<p>Parliamentary Commissioner Act 1974 S.9(1). Neither the Commissioner nor the Acting Commissioner shall divulge, other than in accordance with the Act, information obtained under the Act. S.10(4). Officers of the Commissioner shall not divulge information other than in accordance with the Act. S.18(2). Every investigation under the Act shall be conducted in private. S.22 prohibits disclosure of information obtained by a person in the course of or for the purpose of an investigation under the Act unless disclosure is for the purposes of the investigation and of any report or recommendations under the Act or for the purposes of any proceedings for perjury or any offence under the <i>Commissions of Inquiry Acts 1950-1954</i> or any offence under this Act alleged to have been committed in any proceedings upon such an investigation. A person is not to take advantage of information obtained in the course of, or for the purpose of, an investigation under the Act to benefit himself or herself or any other person. Breach of either of the above provisions constitutes an offence against the Act. S.29(4). Every person shall have the same privileges in relation to the giving of evidence and the production of documents, papers and things that he or she would have had as a witness in legal proceedings before a court.</p>	<p>Parliamentary Commissioner Act 1974 Ss.9(1), 10(4), 18(2), 22 and 29(4). Provisions should be retained.</p>	<p>Parliamentary Commissioner Act 1974 Ss.9(1), 10(4), 18(2), 22 and 29(4). The Commissioner expressed the view to EARC when the Bill was being drafted that the office should be exempt. The office depends for its success on members of the public bringing matters to its attention and assisting in investigations. The Commissioner attaches correspondence to EARC which sets out his or her views in detail, including examples. Persons or authorities under examination are not prejudiced by the confidential information because under S.24(7) any person adversely named in a report had to be given the opportunity to be heard. The Commissioner does not feel that the protection given in S.46 of the <i>FOI Act</i> would be of any assistance. The Commissioner feels that the situation now is that if any person wishes to bring a matter to his or her attention can no longer be given an assurance of confidentiality. Many complainants do not want their personal problems accessible to the media, neighbours and the world at large, regardless of what "protections" are in place. The exemption in S.39 is subject to a public interest test and a prejudice of investigation test both of which have to be met. Once an investigation is completed it will not be possible to argue that disclosure could reasonably be expected to prejudice the conduct of the investigation and protection is unavailable.</p>

PARLIAMENTARY COMMISSIONER FOR ADMINISTRATIVE INVESTIGATIONS
(continued)

Secrecy Provisions Identified	Recommendation	Reasons for Recommendation
<p>Parliamentary Commissioner Act 1974 Ss.9(1), 10(4), 18(2), 22 and 29(4).</p>	<p>Parliamentary Commissioner Act 1974 Ss.9(1), 10(4), 18(2), 22 and 29(4).</p>	<p>Parliamentary Commissioner Act 1974 Ss.9(1), 10(4), 18(2), 22 and 29(4). EARC argues that if the public interest test is removed then information which should be revealed in the public interest will not be revealed. It did not consider that if the protection of confidentiality is stripped away, then matters which in the public interest should be investigated will not be investigated, and information which is necessary to ensure administrative justice is achieved will not be forthcoming. The exemption given to the police and the CJC in relation to the disclosure of information which could reasonably be expected to enable the existence or identity of a confidential source of information in relation to the enforcement or administration of the law under S.42(1)(b) is not subject to a public interest test. This section would not cover the Commissioner as most investigations relate to the administration of public bodies and not the administration of the law. There is no reason in principle why persons who wish to provide information to ensure that public administration in the State is fair and proper should not also be protected.</p>

PARLIAMENTARY COMMISSIONER FOR ADMINISTRATIVE INVESTIGATIONS
(continued)

Secrecy Provisions Identified	Recommendation	Reasons for Recommendation
<p>Parliamentary Commissioner Act 1974 Ss.9(1), 10(4), 18(2), 22 and 29(4).</p>	<p>Parliamentary Commissioner Act 1974 Ss.9(1), 10(4), 18(2), 22 and 29(4).</p>	<p>Parliamentary Commissioner Act 1974 Ss.9(1), 10(4), 18(2), 22 and 29(4). The Commissioner's office constitutes a Royal Commission in all of its investigations and the commissioner is an officer of Parliament and not part of the executive. The Parliamentary Commission of Inquiry is exempted, as is the Parliamentary Services Commission. The reason for this is assumed to be that they are legislative bodies.</p> <p>The commissioner is also the Information Commissioner and the concept of ruling on applications for access to documents held in investigative files does not sit well with the concept of an independent arbiter. This could be resolved by exempting those investigative files. All files, apart from personnel files, relate to investigations and the potential demand for access to them is relatively high. The possible impact of freedom of information applications on the time of staff will be high.</p> <p>The office is a bona fide investigative body depending on the free flow of information which depends on confidentiality being available. If confidentiality is not available then the public and the redress of administrative error and injustice will suffer and the effectiveness of the office will diminish.</p>

POLICE AND EMERGENCY SERVICES

Secrecy Provisions Identified	Recommendation	Reasons for Recommendation
<p>Police Service Administration Act 1990 S.10.1. Information which has come to the knowledge of an officer or staff member in that capacity or because of employment in the Service is not to be disclosed unless disclosure is authorised by the Commissioner or the Commissioner's delegate; made under due process of law; not of a confidential or privileged nature; or would normally be available to any member of the public on request. It is irrelevant that the information disclosed had also come to the knowledge of the officer or staff member in any other manner. There is a penalty of 100 penalty units for breach of this provision.</p> <p>Drugs Misuse Act 1986 S.47. Source of information not to be disclosed. Where an informer supplies information to a police officer about the commission of an offence defined by Part II of the DMA, then in any proceedings whether under the DMA or otherwise, the prosecutor, prosecution witnesses and police officers appearing as a witness for the defence shall not be asked, or if asked, compelled to disclose the name of an informer or any other particular likely to lead to identification, the fact that information was received from or furnished to any informer, or the nature of the information. In proceedings arising out of a charge of an offence under Part II of the DMA, a police officer appearing as a prosecutor or witness shall not be compelled to produce any reports or documents made or received in an official capacity, or containing confidential information in relation to such offence, or to make any statement about such reports, documents or information.</p>	<p>Police Service Administration Act 1990 S.10.1 and Drugs Misuse Act 1986 S.47. Provisions should be retained.</p>	<p>Police Service Administration Act 1990 S.10.1 and Drugs Misuse Act 1986 S.47. The provisions should be retained for the reasons set out in S.42(1) of the FOI Act. Those reasons are that disclosure would:</p> <ul style="list-style-type: none"> (a) prejudice the investigation of a contravention or possible contravention of the law in a particular case; (b) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; or (c) endanger a person's life or physical safety; or (d) prejudice a person's fair trial or the impartial adjudication of a case; or (e) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law; or (f) prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety; or (g) endanger the security of a building, structure or vehicle; or (h) prejudice a system or procedure for the protection of persons, property or environment; or (i) facilitate a person's escape from lawful custody; or (j) prejudice the wellbeing of a cultural or natural resource or habitat of animals or plants.

POLICE AND EMERGENCY SERVICES
(continued)

Secrecy Provisions Identified	Recommendation	Reasons for Recommendation
<p>Legislation administered in relation to Emergency Services: <i>Fire Service Act 1990</i> <i>Ambulance Service Act 1991</i> <i>State Counter Disaster Organisation Act 1975-1978</i></p> <p>Divisions which do have secrecy provisions: Aviation Division. There are no Rules or Regulations which contain secrecy provisions.</p> <p>Queensland Ambulance Service (QAS) Ambulance Service Act 1991 S.6.8. An officer or agent of the QAS must not give directly or indirectly to any other person any information acquired as such an officer or agent in respect of a person who could be identified from the information as a person who has received pre-hospital care or ambulance services. Penalty 50 penalty units. Subsection (2) sets out exceptions to the general prohibition.</p>	<p>Queensland Ambulance Service Act 1991 S.6.8. The section should remain.</p>	<p>Aviation Division. The Division has no Regulations, Rules or other instructions that restrict disclosure of information. The Division applies confidentiality provisions in regard to release of passenger names, destinations and travel times for the Division's aircraft movements. This is important in relation to the Governor, Government Ministers and Members of Parliament, etc. This is in accord with a general convention observed by the Civil Aviation Authorities and all airlines. The information is provided as required for official purposes and may be provided after the event in accordance with FOI provisions.</p> <p>Queensland Ambulance Service Act 1991 S.6.8. The section should remain to protect the medical confidentiality ethic which needs to exist between a patient and an ambulance officer. The QAS Policy and Procedures Manual and instruction notes all carry the standard prescribed in S.6.8 of the Act.</p>

POLICE AND EMERGENCY SERVICES
(continued)

Secrecy Provisions Identified	Recommendation	Reasons for Recommendation
<p>Queensland Fire Service (QFS) Fire Service Act Amendment and Fire Safety Act Repeal Act 1991 amended the Fire Service Act 1990. S.142A provides that a person who discloses information that has come to the person's knowledge because the person is concerned with the administration of the Act commits an offence unless the information is not of a confidential or privileged nature or would normally be available to any member of the public on request, or the disclosure is in the course of the administration of the Act or the disclosure is in accordance with a requirement imposed or authorisation granted by or under a law of the State or Commonwealth. S.142A(2) defines a person who is concerned in the administration of the Act as a person who holds office, is appointed or employed, exercises a power or discharges a function under the Act. Paragraph (b) refers to the circumstances under which information is taken to come to a person's knowledge. This is because the person is concerned in the administration of the Act.</p>	<p>Queensland Fire Service Act 1990 S.142A. The provision should be retained.</p>	<p>Queensland Fire Service Act 1990 S.142A. The section is intended to protect the public from disclosure of any confidential material such as a design, invention, process or system, etc., that may come to the notice of a fire service officer during the course of duty. Confidential information could become knowledge of officers when carrying out duties such as:</p> <ul style="list-style-type: none"> * assessing plans and specifications of proposals to carry out work; * testing and commissioning fire protection systems and equipment in buildings; * surveying buildings to promote fire prevention and fire control; and * preparation of fire and evacuation plans. <p>It is considered that the section would not affect the disclosure of information relating to decisions made by fire officers in the carrying out of their duties. It is important however, that the clients' confidential information be protected.</p>

PREMIER, ECONOMIC AND TRADE DEVELOPMENT

Secrecy Provisions Identified	Recommendation	Reasons for Recommendation
<p>Criminal Justice Act 1989 S.6.7. Any Commissioner or officer who wilfully discloses, except for the purposes of the Commission or the Act, information obtained in the course of his or her duties commits an offence. Subsection (2) relates to the Parliamentary Committee. Ss.3.27 and 3.28 relate to access to material.</p>	<p>S.6.7 Criminal Justice Act 1989 should be retained.</p>	<p>S.6.7 Criminal Justice Act 1989. It is fundamental to the CJC's proper functioning that an appropriate provision be retained to ensure the confidentiality of information, so as to maintain the essential integrity of its operations and sources of information.</p>
<p>Libraries and Archives Act 1988 S.61. Relates to compliance by the Queensland State Archives staff with secrecy provisions where the information is of a confidential nature.</p>	<p>S.61 Libraries and Archives Act 1988. Under review by EARC.</p>	<p>S.61 Libraries and Archives Act 1988. As this is being reviewed by EARC it is suggested that the recommendations of EARC, its Parliamentary Committee and Cabinet would need to be considered in any deliberations regarding secrecy provisions.</p>
<p>Parliamentary Commissioner Act 1974 S.22. A person who obtains information during an investigation shall not disclose it and shall not take advantage of it for the benefit of himself or herself or any other person.</p>	<p>S.22 Parliamentary Commissioner Act 1974 and Public Sector Management and Employment Act 1988. No recommendation received.</p>	
<p>Public Sector Management and Employment Act 1988. The Public Sector Management Commission replied directly. Policies and standards under the Act relate to confidentiality or privilege provisions.</p>		

PREMIER, ECONOMIC AND TRADE DEVELOPMENT
(continued)

Secrecy Provisions Identified	Recommendation	Reasons for Recommendation
<p>Public Works Committee Act 1989. S.30 refers to the secrecy provision of the Financial Administration and Audit Act 1977 and also contains power to prohibit publication or disclosure of evidence in Ss.40 and 41.</p>	<p>Public Works Committee Act 1989 Ss.30, 40 and 41. The provisions should be retained.</p>	<p>Public Works Committee Act 1989 Ss.30, 40 and 41. These sections serve to maintain the confidentiality of any evidence given or the contents of any book, document, writing or record produced before the Committee where the Committee is of the opinion that it is desirable "in the public interest" to withhold publication for reasons connected with the subject matter of the inquiry or the nature of the evidence given. Ss.40 and 41 provide a far more comprehensive protection to persons called to give evidence before the Commission than the limited protection afforded by S.48 of the <i>FOI Act</i>. It is unlikely that S.48 provides any degree of confidentiality where the personal affairs of the applicant are concerned and the legislation clearly overrides any secrecy provisions, except where exposure is contrary to public interest, in relation to all other applications for information. If S.48 of the <i>FOI Act</i> were to supersede secrecy provisions contained in other legislation, it may do so by denying another fundamental civil right; the right to privacy which serves not so much to give rights but to protect those already in existence. S.48 grants applicants a prima facie right to evidence or documents and therefore places the onus of proof on the person wishing to maintain confidentiality to show that exposure of such matter is contrary to the public interest.</p>

PREMIER, ECONOMIC AND TRADE DEVELOPMENT
(continued)

Secrecy Provisions Identified	Recommendation	Reasons for Recommendation
<p>Public Works Committee Act 1989 Ss.30, 40 and 41.</p>	<p>Public Works Committee Act 1989 Ss.30, 40 and 41.</p>	<p>Public Works Committee Act 1989 Ss.30, 40 and 41. With regard to matters heard by the Public Works Committee, such a right may serve to deter witnesses and complainants from giving evidence before the Committee because the assurance of confidentiality cannot be given. The effective functioning of the Committee depends very much on members of the public bringing matters to its attention and assisting it in its inquiries. Confidentiality ensures a free flow of information which is necessary in order to ensure effectiveness of the Committee's inquiries. S.41 of the Act provides that where evidence is given or any book, document, writing or record is produced before the Committee at a private hearing, a person including a member shall not disclose or publish or permit or cause to be disclosed or published that matter without the prior written approval of the Committee and the person giving the evidence or producing the book, document, writing or record. Where the Public Works Committee holds a private hearing it is for the purpose of gathering confidential information which may not be otherwise available if the hearing was made public. The investigatory functions of the Committee may therefore be hampered if it cannot unequivocally assure witnesses and complainants confidentiality and protection from public scrutiny particularly while proceedings are still in progress.</p>

PREMIER, ECONOMIC AND TRADE DEVELOPMENT
(continued)

Secrecy Provisions Identified	Recommendation	Reasons for Recommendation
<p>Public Works Committee Act 1989 Ss.30, 40 and 41.</p>	<p>Public Works Committee Act 1989 Ss.30, 40 and 41.</p>	<p>Public Works Committee Act 1989 Ss.30, 40 and 41. Response by the Public Works Committee. The secrecy provisions of the <i>Public Works Committee Act</i> are designed to ensure that architects and engineers presenting work to the Committee can be confident that the original design work, concepts and ideas which are the core of the creative process of those professions, are protected. If original designs and innovative ideas are not protected before this Committee, then the professionals who come before us will be greatly discriminated against. Publicising such ideas and designs is commercially detrimental to the firm and it is important that the Parliamentary Committee is able to assure those people reliant on the sale of the quality and originality of their designs and ideas that their work will not become public property before such time as they wish it to become public property. The use of these provisions is minimal, however, it is fair to retain the secrecy provisions. The Committee does not interpret that the secrecy provisions would mean that information which it did not make public would need to remain secret for lengthy periods of time. The secrecy provisions are to protect development of projects in the early stages, however, once tenders are let, buildings are built, it would be an extremely rare event that information given to the Committee would need to be kept secret.</p>

PREMIER, ECONOMIC AND TRADE DEVELOPMENT
(continued)

Secrecy Provisions Identified	Recommendation	Reasons for Recommendation
<p><i>Public Works Committee Act 1989</i> <i>Ss.30, 40 and 41.</i></p>	<p><i>Public Works Committee Act 1989 Ss.30, 40 and 41.</i></p>	<p><i>Public Works Committee Act 1989 Ss.30, 40 and 41</i> <i>Response by the Public Works Committee.</i> If there were design matters which came before the Committee that were original and required secrecy provisions, they would be patented or some other device employed by their owners to ensure they were not copied. People designing in these areas would not be reliant on long term secrecy provisions of Parliamentary Public Works Committee legislation. If the Committee has the capacity to deal with matters of secrecy, these matters would be over and done within a shorter period of time. No longer than 12 months.</p>

PRIMARY INDUSTRIES

Secrecy Provisions Identified	Recommendation	Reasons for Recommendation
<p>Primary Producers' Organisation and Marketing Act 1926 S.11D. A person who is a member of a Board shall preserve and aid in preserving secrecy in respect of any matter that the Board has determined to be a matter which should be treated as confidential. If the Minister is satisfied following a report of the Board, that a person has contravened the section, he or she may remove that person from office as a member of the Board.</p>	<p>Primary Producers' Organisation and Marketing Act 1926 S.11D. Section should not be retained.</p>	<p>Primary Producers' Organisation and Marketing Act 1926 S.11D. The number of commodity marketing boards governed by the legislation is gradually decreasing as the commodities in question are being deregulated. It is anticipated that the Act will eventually be repealed and replaced, if necessary, by legislation governing specific commodities and producer representative bodies following completion of the review process which is presently being conducted.</p>

QUEENSLAND CORRECTIVE SERVICES COMMISSION

Secrecy Provisions Identified	Recommendation	Reasons for Recommendation
<p>Corrective Services (Administration) Act 1988. S.61 provides that a Commissioner or other person shall not, without the prior approval of the Commission, produce in any court or provide to any person any document or disclose to any court or person any information that has come into his or her possession or to his or her knowledge in the discharge of his or her functions or the exercise of his or her powers under a prescribed Act unless he or she is required to do so by order of any court or judge or otherwise by law, or he or she does so for the purposes of the <i>Corrective Services Act 1988; the Prisons Act 1958; Offenders Probation and Parole Act 1980; Prisoners (Interstate Transfer) Act 1982; Parole Orders (Transfer) Act 1984; an Act prescribed by Order in Council for the purpose of S.61.</i></p>	<p>Corrective Services (Administration) Act 1988 S.61. No recommendation.</p>	

RESOURCE INDUSTRIES

Secrecy Provisions Identified	Recommendation	Reasons for Recommendation
<p>Mineral Resources Act 1989 Ss.4.18, 7.19. These sections refer to conferences which may be requested by a landowner with the mining registrar and the applicant to discuss matters relating to the granting of mining claims or leases. Submissions made or evidence adduced are confidential between the mining registrar and each of the parties and cannot be published or admitted as evidence without the party's consent.</p> <p>Ss.5.39, 6.33. These are similar provisions in relation to conferences between a landowner and the holder of an exploration permit or mineral development licence to discuss matters relating to entry onto land.</p> <p>S.9.15. Confidentiality of information relating to the payment of royalties.</p> <p>Mines Regulation Act 1964 S.15. Information and samples obtained from an inspection of a mine shall not be divulged except in pursuance of the purpose for which the samples were taken.</p> <p>S.52. Plans are not to be shown to persons other than the owner, authorised representative or manager.</p> <p>S.53. The warden can authorise a person to enter a mine or inspect plans where the person is an adjacent mine owner or adjacent land owner which may be affected by the mine.</p> <p>Ss. (6). Any person who divulges information obtained as a result of an inspection of the mines or upon entry into a mine commits an offence.</p>	<p>Mineral Resources Act 1989 Ss.4.18, 7.19. Should be retained.</p> <p>Mines Regulation Act 1964 Ss.15, 52, 53, 61 and 64. Should be retained.</p>	<p>Mineral Resources Act 1989 Ss.4.18, 7.19. Provisions should be retained so the parties are encouraged to participate in the process for conflict resolution and in the case of royalty returns and profit information for certain mineral producers, the confidentiality should be retained to protect producers' competitiveness.</p> <p>Mines Regulation Act 1964 Ss.15, 52, 53, 61 and 64. Provisions should be retained to protect the commercial interest of the owner of the mine and to protect employees against possible punitive measures by the owner or manager.</p>

RESOURCE INDUSTRIES
(continued)

Secrecy Provisions Identified	Recommendation	Reasons for Recommendation
<p>Mines Regulation Act 1964 S.61. Where a complaint relating to safety on a mine has been made by a mine employee to an inspector, the divulging of the name of the employee or his or her representative to any person other than an officer of the Department is prohibited.</p> <p>S.64. This section relates to notification to the Chief Inspector of details of drilling for exploration and also relates to preservation, disposal and inspection of core samples. Disclosure of information is prohibited.</p> <p>Coal Mining Act 1925 S.31B. Notification before drilling. This section is similar to S.64 of the <i>Mines Regulation Act</i> above. S.69. Complaint by miner. This section is similar to S.61 of the <i>Mines Regulation Act</i> above. S.87. Copies of plans not to be furnished. This section is similar to S.52 of the <i>Mines Regulation Act</i>. S.89. Entry and inspection by any person claiming to be interested in a coal mine or land adjoining or near a coal mine may be authorised to enter the land to ascertain if there are any encroachments, any influx of water, any surface rights interfered with or any other matter and if the person divulges the information except as a witness in court he or she is liable to a penalty.</p> <p>Explosives Act 1952 S.46A. Non-disclosure of information obtained in the administration of the Act.</p>	<p>Coal Mining Act 1925 Ss.31B, 69, 87 and 89. Should be retained.</p> <p>Explosives Act 1952 S.46A. Should be retained.</p>	<p>Coal Mining Act 1925 Ss.31B, 69, 87 and 89. These provisions are parallel to the provisions in the <i>Mines Regulation Act</i> and should be retained for the same reasons.</p> <p>Explosives Act 1952 S.46A. These provisions should be retained to protect commercially confidential information and the police records of individuals. Retention of the provision will also encourage provision of information on request.</p>

RESOURCE INDUSTRIES
(continued)

Secrecy Provisions Identified	Recommendation	Reasons for Recommendation
<p>Petroleum Regulations (Land) 1966 Reg. 11. Following an Inspector's access to technical records, the information is to remain confidential and only used for Governmental purposes. Reg. 69. Submission of data in relation to seismic, gravimetric, aero-magnetic and other geophysical surveys is to be confidential for 2 years. Reg. 126. Well completion reports must remain confidential for 2 years.</p> <p>Reports on exploration permits and mineral development licences - there are no provisions in the <i>Mineral Resources Act or Regulations</i> but guidelines issued by the Department when the licences and permits are granted indicate that the Department will hold confidential such reports during the currency of the permit. An opinion from the Crown Solicitor suggests that the Department would have an obligation of confidentiality to the permit holder in relation to requests under FOI. [Reports may not come within the definition of "enactment" in the <i>FOI Act</i>].</p>	<p>Petroleum Regulations (Land) 1966 Regs. 11, 69 and 126. Should be retained.</p> <p>Reports on exploration permits and mineral development licences. Confidentiality should be maintained.</p>	<p>Petroleum Regulations (Land) 1966 Regs. 11, 69 and 126. These regulations relate to the confidentiality of information assessed by or submitted to the Department and should be retained to protect the commercial interests of the permit holders and to encourage the submission of full and accurate data.</p>

TOURISM, SPORT AND RACING

Secrecy Provisions Identified	Recommendation	Reasons for Recommendation
<p>Racing and Betting Act 1980. S.10 requires the Commissioner for Stamp Duties and every officer appointed, employed or engaged under or for the purposes of the Act to take an oath in Form 1 of the First Schedule to the Act. The person concerned swears to preserve and assist in preserving secrecy with regard to all matters coming to the person's knowledge in an official capacity or during employment or engagement while exercising the powers or performing the functions and duties conferred or imposed for the purposes of the Act. The person shall not communicate information thus obtained except in performance of duties under the Act or to the Auditor-General or an officer of his or her department or other person authorised by the Auditor-General for the purposes of audit under the laws in force relating to the audit of public accounts.</p> <p>The penalty for contravening the oath of secrecy without lawful excuse is \$2,000 or imprisonment for 12 months.</p>	<p>Racing and Betting Act 1980 S.10. Retain in relation to persons appointed, employed or engaged under or for the purposes of the Act.</p> <p>No recommendation in relation to the Commissioner for Stamp Duties.</p>	<p>Racing and Betting Act 1980 S.10. The purpose of the provision is to control the integrity and accountability of the racing industry. Secrecy is essential with respect to tests to determine whether a drug has been administered to a horse or greyhound. The integrity and accountability of the industry would be seriously undermined if anyone in the industry was to have inside knowledge of drug testing practices and procedures.</p> <p>The provision is also intended to protect the privacy of individuals (eg bookmakers) involved in the industry whose business activities are subject to scrutiny under the Act.</p>

TRANSPORT

Secrecy Provisions Identified	Recommendation	Reasons for Recommendation
None.		

TREASURY

Secrecy Provisions Identified	Recommendation	Reasons for Recommendation
<p>Casino Control Act 1982 S.16. Officers are bound to secrecy by affidavit or solemn declaration. If an officer is bound he or she shall preserve the secrecy with regard to all matters that come to his or her knowledge in his or her official capacity in connection with the administration of the Act.</p>	<p>Casino Control Act 1982 S.16. The provision should be retained and have full legislative effect after the proposed two year period.</p>	<p>Casino Control Act 1982 S.16. The Casino Control Division, as the regulatory authority for the casino industry in this State, is privy to a myriad of information in relation to both individuals and corporate entities who are involved in the casino industry. In certain circumstances persons are required to supply intimate details in relation to their families, previous employment, places of residence, their financial positions - both current and past, and other particulars as are appropriate. Similarly, corporations furnish in-depth matter regarding personnel and financial operations and their linked organisations. In receiving this information, an undertaking of confidentiality is given by the Division. Additionally, the Division is in receipt of sensitive information from police services and other law enforcement agencies relating to participants in the casino industry. This information can range from previous criminal proceedings in relation to an individual; to intelligence which must be tested by thorough investigation in relation to either individuals or corporations. Again, confidentiality is required. The main thrust of the section is of a punitive nature, aimed at personnel of the Division to ensure security of information. Only authorised officers can release such information.</p>

Secrecy Provisions Identified	Recommendation	Reasons for Recommendation
<p>Casino Control Act 1982 S.16.</p> <p>Soccer Football Pools Act 1976 - Pools (On-line) Rules Rule 17. The office shall advise subscribers of results of pools games and may release names and addresses of registered prize winners unless otherwise instructed.</p> <p>Golden Casket Act 1978 - Golden Casket (On-line) Rules Rule 10. The office shall advise subscribers of results of lottery games and may release names and addresses of registered prize winners unless otherwise instructed.</p> <p>Lotto Act 1981 - Lotto (On-line) Rules Rule 12. The office shall advise subscribers of results of lotto games and may release names and addresses of registered prize winners unless otherwise instructed.</p>	<p>Casino Control Act 1982 S.16.</p> <p>Soccer Football Pools Act 1976 - Pools (On Line) Rules - Rule 17; Golden Casket Act 1978 - Golden Casket (On Line) Rules - Rule 10; Lotto Act 1981 - Lotto (On Line) Rules - Rule 12. The provisions should be retained as they stand.</p>	<p>Casino Control Act 1982 S.16. This was specifically included by the legislators as they were fully aware that if an officer of the Division was ever tempted to disclose information to an unauthorised party it could be the source of serious repercussions. This would be particularly the case when the Government was in the process of allocating a new casino licence.</p> <p>Soccer Football Pools Act 1976 - Pools (On Line) Rules - Rule 17; Golden Casket Act 1978 - Golden Casket (On Line) Rules - Rule 10; Lotto Act 1981 - Lotto (On Line) Rules - Rule 12. The Rules relate directly to the disclosure of information on winners (specifically names and addresses) in lotteries conducted by the Golden Casket Art Union Office. The Office encourages players to "register" their name and games played using an On-Line Registered Player Card. Players may have complete anonymity when collecting a minor prize by purchasing bearer coupons which are unregistered coupons against the player's name and address. However, such a player would have to present identification to the Office for a cheque for large winnings. "Not for Publication" is an option only for registered players. However, for On-Line lottery products, the Office has made it policy that the names and addresses of winners will not be released to a third party unless that winner has first given permission. It is extremely important from the point of view of the player. When the player so desires their good fortune must remain confidential. It is recognised that the names and addresses of prize-winners would be afforded protection under S.44 FOI Act. Some of the larger first Division winners have been terrified that their</p>

TREASURY
(continued)

Secrecy Provisions Identified	Recommendation	Reasons for Recommendation
<p>Soccer Football Pools Act 1976 - Pools (On Line) Rules - Rule 17; Golden Casket Act 1978 - Golden Casket (On Line) Rules - Rule 10; Lotto Act 1981 - Lotto (On Line) Rules - Rule 12.</p> <p>Gaming Machine Act 1991 S.2.26(1). A Commissioner who wilfully discloses except for the purposes of the Commission or the Act, information that has come into his or her possession in the course of exercising powers or performing functions or duties under the Act or for the purposes of the Act commits an offence.</p> <p>Ss. (2). A person at all times after an appointment as an officer must preserve the secrecy with regard to all information that comes to his or her knowledge in the exercise of his or her functions or duties under the Act.</p>	<p>Gaming Machine Act 1991 S.2.26(1). It is imperative that S.2.26 is retained.</p>	<p>name and address may be advertised. They are fearful of many solicitations following the windfall. If the Rules were repealed it would not be possible to provide a guarantee of confidentiality which is detrimental to the revenue base of Qld.</p> <p>Gaming Machine Act 1991 S.2.26(1). It was as a consequence of the Government's commitment to a gaming machine industry free of the nefarious practices and criminal activity common in other jurisdictions that the <i>Gaming Machine Act</i> provided for persons who seek participation in the industry in this State to be thoroughly evaluated. To achieve this, the Gaming Machine Division has developed stringent and intrusive licensing procedures which involve the self declaration of sensitive information relative to the person's financial and personal affairs. (A copy of the <i>Personal History and Suitability of Person</i> document which accompanies licence applications was provided). It is felt that the secrecy provision does not detract from the thrust of Freedom of Information in respect of a person accessing information bases used to make decisions relative to that person. The purpose of the secrecy provision is to protect the confidence of any person required to make disclosures that the information remains confidential and in so doing, it compliments and enhances the protection offered by FOI. Further, it is not sufficient to only exempt documents relating to a person's personal or financial affairs by Ss.44 and 45 of the FOI Act.</p>

Secrecy Provisions Identified	Recommendation	Reasons for Recommendation
<p>Gaming Machine Act 1991 S.2.26(1).</p>	<p>Gaming Machine Act 1991 S.2.26(1).</p>	<p>Gaming Machine Act 1991 S.2.26(1). It is also necessary to provide preventative penalties for those who release information (provided in confidence) to those not entitled to it. Moreover, it is essential that an applicant for a licence can be assured that the information which they supply will be treated confidentially in all circumstances. This assurance cannot be given if the matters are subject to possible release under FOI.</p>
<p>Statistical Returns Act 1896 S.6. A person who is or has been employed in the office of Government Statistician or engaged in collating information shall not except in accordance with a direction of the Government Statistician or for the purposes of the Act divulge or communicate any information obtained.</p>	<p>Statistical Returns Act 1896 S.6. It is essential that the provision be retained.</p>	<p>Statistical Returns Act 1896 S.6. Compilation of statistical data which is used for compilation of aggregate data requires that information be obtained from or about individuals. It is vital that respondents be assured of confidentiality so that they co-operate by providing accurate information. Errors are removed by the editing process or minimised by aggregation and there is in any case no possible consequence for the individual or organisation providing the information. There is nothing to prevent an individual accessing information relating to his or her self. Maintenance of the confidentiality provisions means that the only information which is not accessible would be information relating to an identifiable individual or organisation which was obtained under the Act. Removal of the ability to guarantee confidentiality of data collected would be contrary to the public interest for three reasons; 1. it would erode public confidence in the security of the information provided; 2. there would be an inevitable deterioration in data quality as a consequence of returns completed inaccurately to avoid revealing personal or business information; 3. there would be an increase in the cost of collecting data because of initial refusals. It is simpler, cheaper, and more effective to obtain data by co-operation than</p>

Secrecy Provisions Identified	Recommendation	Reasons for Recommendation
<p>Statistical Returns Act 1896 S.6.</p> <p>Financial Institutions (Queensland) Code 1992 S.410. This section defines protected document, protected information and a person to whom this section applies. A person must not make a record of protected information or divulge protected information unless he or she is acting in accordance with the performance of his or her duties. Protected information means information that concerns a person and is disclosed to a director or member or an officer or employee in the course of or because of, the person's duties under the Act. Protected document has a similar definition.</p>	<p>Statistical Returns Act 1896 S.6.</p> <p>Financial Institutions (Queensland) Code 1992 S.410. The provision should be retained.</p>	<p>coercion and a guarantee of confidentiality is an important component of obtaining that co-operation. It is necessary to be able to provide a guarantee that information will remain confidential. If the provision is removed an assurance cannot be given.</p> <p>Financial Institutions (Queensland) Code 1992 S.410. This section is designed to preserve the authority and integrity of the Queensland Office of Financial Supervision (QOFS) in its dealings with commercially sensitive material provided by Qld non-bank financial institutions (NBFI). The NBFI industry is particularly sensitive. The Treasurer has stated that "...information regarding the registration and supervision of special service providers is commercially sensitive and its availability or non-availability for commercially sensitive reasons could affect the stability of the industry." That is, even the fact that a document exists but is exempt under either Ss.45 or 46 of the FOI Act could lead to a "run" on a particular NBFI, especially given that there is no ability to use S.35 for such information. It is for stability reasons that S.410 has been included in the Act. The drafters were aware of the ramifications if information held by QOFS was inappropriately released. The seriousness of such actions is evidenced by the imposition of a maximum penalty of \$25,000.00.</p>

TREASURY
(continued)

Secrecy Provisions Identified	Recommendation	Reasons for Recommendation
<p>Australian Financial Institutions Commission Code 1992 S.155. This section defines protected document, protected information and a person to whom this section applies. A person must not make a record of protected information or divulge protected information unless he or she is acting in accordance with the performance of his or her duties. Protected information means information that concerns a person and is disclosed to a director or member or an officer or employee in the course of or because of, the person's duties under the Act. Protected document has a similar definition.</p> <p>Land Tax Act 1915 S.4A. Every person employed under the Act is to preserve secrecy with regard to all matters that come to his or her knowledge in his or her official capacity.</p> <p>Pay-roll Tax Act 1971 S.5. A person shall not disclose any information or publish any document obtained by him or her in connection with the administration of the Act unless disclosure is made with consent of the person who provided the information, in connection with the administration of the Act or for the purpose of any legal proceedings.</p> <p>Stamp Act 1894 S.10. A person shall not disclose any information or publish any document obtained by him or her in connection with the administration of the Act unless disclosure is made with consent of the person who provided the information, in connection with the administration of the Act or for the purpose of any legal proceedings.</p>	<p>Australian Financial Institutions Commission Code 1992 S.155. The provision should be retained.</p> <p>Land Tax Act 1915; Pay-Roll Tax Act 1971; Stamp Act 1894; Tobacco Products (Licensing) Act 1988; Revenue Laws (Reciprocal Powers) Act 1988; Debit Tax Act 1990. The various provisions should be retained, especially until the new <i>Consolidated Revenue Act</i> is drafted.</p>	<p>Australian Financial Institutions Commission Code 1992 S.155. The <i>FOI Regulation</i> provided that the Australian Financial Institutions Commission is a prescribed agency for the purposes of S.11(1)(q) of the <i>FOI Act</i>. The need to examine this section in relation to S.48 of the <i>FOI Act</i> is unnecessary. In any other review of the section, Treasury would maintain that the provision should be retained for the reasons provided above in relation to S.410 of the <i>Financial Institutions (Qld) Code</i>.</p> <p>Land Tax Act 1915; Pay-Roll Tax Act 1971; Stamp Act 1894; Tobacco Products (Licensing) Act 1988; Revenue Laws (Reciprocal Powers) Act 1988; Debit Tax Act 1990. As a general rule, taxpayers expect their taxation affairs and personal and commercially sensitive information provided under revenue legislation to only be used for the purposes of the administration of the relevant revenue law and to be kept confidential from third parties. The only current legislative exceptions to this are:</p> <ol style="list-style-type: none"> 1. that relevant information can be communicated to Commonwealth and interstate taxation authorities under reciprocal arrangements; and 2. that land tax information can be communicated to any State Department - in practice this is generally restricted to liaison with the Office of the Valuer-General regarding valuations on which the tax is based.

TREASURY
(continued)

Secrecy Provisions Identified	Recommendation	Reasons for Recommendation
<p><i>Tobacco Products (Licensing) Act 1988</i> S.43. A person shall not disclose any information or publish any document obtained by him or her in connection with the administration of the Act unless disclosure is made with consent of the person who provided the information, in connection with the administration of the Act or for the purpose of any legal proceedings.</p> <p><i>Revenue Laws (Reciprocal Powers) Act 1988</i> S.13. Revenue officer may communicate information disclosed or obtained under the Act to any person with the consent of the person to whose affairs the information relates or to another Queensland Revenue Officer, a Commonwealth or State Revenue Officer, or a legal representative of the Crown in right of the State of Queensland or the Commonwealth in connection with the administration or the execution of a revenue law. Ss. (3) A person is not to disclose information unless the disclosure is made in connection with the administration of the Act or a revenue law or for legal proceedings.</p> <p>S.14. A person shall not disclose information obtained under a corresponding law unless the disclosure is made with the consent of the person to whose affairs the information relates, with the consent of the Commonwealth or State Revenue Officer from whom the information was obtained or who approved the investigation in which the information was obtained, in connection with the administration of the Queensland Revenue Law or for the purpose of legal proceedings.</p>	<p><i>Land Tax Act 1915; Pay-Roll Tax Act 1971; Stamp Act 1894; Tobacco Products (Licensing) Act 1988; Revenue Laws (Reciprocal Powers) Act 1988; Debit Tax Act 1990.</i></p>	<p><i>Land Tax Act 1915; Pay-Roll Tax Act 1971; Stamp Act 1894; Tobacco Products (Licensing) Act 1988; Revenue Laws (Reciprocal Powers) Act 1988; Debit Tax Act 1990.</i> Taxpayers and persons providing information would be reluctant to disclose relevant information if they could not be certain the information would be treated in confidence and revenue collections could suffer as a result. It is necessary to state that the various provisions will not prevent applicants from gaining access to documents relating to their personal affairs. In addition, it is not considered appropriate to examine the Queensland revenue legislation in detail as it is being redrafted into a <i>Consolidated Revenue Act</i>.</p>

TREASURY
(continued)

Secrecy Provisions Identified	Recommendation	Reasons for Recommendation
<p>Revenue Laws (Reciprocal Powers) Act 1988 S.15. A person shall not be required to communicate to a court information acquired at any time, to communicate information acquired pursuant to an authority conferred by the Act in the performance of his or her duties.</p> <p>Debit Tax Act 1990 (read in conjunction with the Commonwealth <i>Debits Tax Administration Act 1982 S.7</i>). S.3.2. The Commonwealth Act applies as law of Queensland. S.7. Debits Tax Administration Act 1982 (Cwth). Officer is defined as a person appointed or employed by the Commonwealth or who has been delegated functions by the Commissioner and who by reason of that appointment or employment or in the course of the exercise of those powers may acquire or has acquired information with respect to the affairs of any other person disclosed or obtained under this Act. If any such information is disclosed the person is guilty of an offence and can be fined.</p> <p>Queensland Industry Development Corporation Act 1985 S.30. A director shall make a declaration of secrecy before entering upon his or her duties or exercising any power, function or authority.</p>	<p>Queensland Industry Development Corporation Act 1985 S.30. This Act is currently being re-drafted and it is intended that S.30 will be repealed.</p>	

TREASURY
(continued)

Secrecy Provisions Identified	Recommendation	Reasons for Recommendation
<p>Financial Administration and Audit Act 1977. Part III is administered by the Department of the Premier, Economic and Trade Development and S.69 of that Part contains a secrecy provision.</p> <p>S.69. The Auditor-General and every authorised auditor shall preserve secrecy with respect to all matters and things that come to their knowledge in the exercise of their powers, authorities, functions or duties under the Act. Ss. (2) relates to employees.</p> <p>Racing and Betting Act 1980 (Treasury administers regulatory and tax aspects - the remainder is administered by the Department of Tourism, Sport and Racing, including the secrecy provision, S.10). S.10. Every person appointed under the Act shall preserve secrecy with regard to all matters that come to his or her knowledge in his or her official capacity while exercising powers or performing duties under the Act.</p> <p>Motor Vehicles Insurance Act 1936 S.2C. The Insurance Commissioner and any member of his or her staff may communicate information which has come to his or her knowledge in connection with the administration of the Act to a person to whom it is in the public interest that the information be communicated.</p>	<p>Financial Administration and Audit Act 1977 S.69. No recommendation.</p> <p>Racing and Betting Act 1980 S.10. No recommendation.</p> <p>Motor Vehicles Insurance Act 1936 S.2C. There is no need to retain this provision.</p>	<p>Motor Vehicles Insurance Act 1936 S.2C. There is no need to retain this provision as it is not included in the draft <i>Motor Vehicles Insurance Bill</i>. The draft clause 70(1) states, "A person engaged in work related to the administration of the statutory insurance scheme or claims made under the scheme, must not divulge information of a private or confidential nature acquired in the course of that work, except as authorised or required by the terms of the person's employment or by law."</p>

APPENDIX C

**PROVISIONS WHICH THE COMMISSION
BELIEVES DO NOT COME WITHIN
SECTION 48**

Department	Provision Identified
Auditor-General	<i>Financial Administration and Audit Act 1977 - Section 69.</i>
Electoral and Administrative Review Commission	<i>Electoral and Administrative Review Act 1989 - Sections 6.4(3) and 2.13(5).</i>
Employment, Vocational Training and Industrial Relations	<i>Building and Construction Industry (Portable Long Service Leave) Act 1991 - Section 94. Industrial Relations Act 1990 - Sections 14.8 and 12.3. Private Employment Agencies Act 1983 - Sections 9(6) and 10. Trading Hours Act 1990 Section 3.1. Vocational Education, Training and Employment Act 1991 - Section 4.15. Workplace Health and Safety Act 1989 - Section 133.</i>
Family Services and Aboriginal and Islander Affairs	<i>Adoption of Children Act 1964 - Section 59(4). Intellectually Disabled Citizens Act 1985 - Section 42.</i>
Health	<i>Food Act 1981 - Sections 40 and 48. Health Act 1937 - Sections 48(3) and 154N(2). Health Rights Commission Act 1991 - Sections 89, 98, 108 and 138. Health Services Act 1991 - Sections 2.5, 2.6, 2.11, 2.12 and 5.1(3). Medical Act and Other Acts (Administration) Act 1966 - Section 14B. Nursing Act 1992 - Section 139. Radio-active Substances Act 1958 - Section 18.</i>
Housing Local Government and Planning	<i>Local Government Superannuation Act 1985 - Section 63. Ordinances of the Brisbane City Council Made Pursuant to the City of Brisbane Act 1924 - Chapter 2 Part 1, Ordinances 2 and 34.</i>

Department	Provision Identified
Justice, Attorney-General and the Arts	<p><i>Anti-Discrimination Act 1991 - Section 264.</i> <i>Commercial Banking Company of Sydney Limited Merger Act 1982 - Section 16(1).</i> <i>Commercial Bank of Australia Limited Merger Act 1982 - Section 16(1).</i> <i>Companies Act 1961 - Section 124(2).</i> <i>The Corporations Law (Commonwealth) as it applies to Queensland under the Corporations (Queensland) Act 1990 - Sections 320, 815(4) and 1002G.</i> <i>Coroners Act 1958 - Section 52.</i> <i>Criminal Code - Section 86.</i> <i>Criminal Justice Act 1989 - Sections 2.18(6), 2.19, 6.7, 3.15 and 3.20.</i> <i>Dispute Resolution Centres Act 1990 - Section 5.4.</i> <i>Jury Act 1929 - Section 48(ii).</i> <i>Justices Act 1886 - Section 102F(1) and (2).</i> <i>Police Complaints Tribunal Acts Repeal Act 1990 - Section 5(1)(c).</i> <i>Public Trustee Act 1978 - Section 15.</i> <i>Queensland Law Society Act 1952 - Section 50(3).</i> <i>Securities Industry Act 1975 - Section 13(1).</i> <i>Special Prosecutor Act 1989 - Sections 20 and 21.</i> <i>Trust Accounts Act 1973 - Section 25.</i></p>
Lands	<i>Valuation of Land Act 1944 - Section 8.</i>
Parliamentary Commissioner for Administrative Investigations	<i>Parliamentary Commissioner Act 1974 - Sections 9(1), 10(4), 18(2), 22 and 29(4).</i>
Police and Emergency Services	<p><i>Drugs Misuse Act 1989 - Section 47.</i> <i>Fire Service Act 1990 - Section 142A.</i> <i>Police Service Administration Act 1990 - Section 10.1.</i></p>
Premier, Economic and Trade Development	<i>Public Works Committee Act 1989 - Section 41.</i>
Primary Industries	<i>Primary Producers' Organisation and Marketing Act 1926 - Section 11D.</i>
Queensland Corrective Services Commission	<i>Corrective Services Administration Act 1988 - Section 61.</i>
Resource Industries	<p><i>Explosives Act 1952 - Section 46A.</i> <i>Mineral Resources Act 1989 - Sections 4.18 and 7.19, 5.39 and 6.33.</i></p>
Tourism, Sport and Racing	<i>Racing and Betting Act 1980 - Section 10.</i>

Department	Provision Identified
Treasury	<p><i>Casino Control Act 1982 - Section 16.</i></p> <p><i>Financial Administration and Audit Act 1977 - Section 69.</i></p> <p><i>Gaming Machine Act 1991 - Section 2.26(1) and (2).</i></p> <p><i>Golden Casket Art Union Act 1978 - Rule 10.</i></p> <p><i>Land Tax Act 1915 - Section 4A.</i></p> <p><i>Lotto Act 1981 - Rule 12.</i></p> <p><i>Motor Vehicle Insurance Act 1936 - Section 2C.</i></p> <p><i>Payroll Tax Act 1971 - Section 5.</i></p> <p><i>Queensland Industry Development Corporation Act 1985 - Section 30.</i></p> <p><i>Revenue Laws (Reciprocal Powers) Act 1988 - Sections 13, 14 and 15.</i></p> <p><i>Soccer Football Pools Act 1976 - Rule 17.</i></p> <p><i>Stamp Act 1894 - Section 10.</i></p> <p><i>Statistical Returns Act 1896 - Section 6.</i></p> <p><i>Tobacco Products (Licensing) Act 1988 - Section 43.</i></p>

APPENDIX D

SECTIONS 44, 45 AND 46

OF THE

FREEDOM OF INFORMATION ACT 1992 (QLD)

Matter affecting personal affairs

44.(1) Matter is exempt matter if its disclosure would disclose information concerning the personal affairs of a person, whether living or dead, unless its disclosure would, on balance, be in the public interest.

(2) Matter is not exempt under subsection (1) merely because it relates to information concerning the personal affairs of the person by whom, or on whose behalf, an application for access to a document containing the matter is being made.

(3) If—

- (a) an application is made to an agency or Minister for access to a document of the agency or an official document of the Minister that contains information of a medical or psychiatric nature concerning the person making the application; and
- (b) it appears to the principal officer of the agency or the Minister that the disclosure of the information to the person might be prejudicial to the physical or mental health or well-being of the person;

the principal officer or Minister may direct that access to the document is not to be given to the person but is to be given instead to a qualified medical practitioner nominated by the person and approved by the principal officer or Minister.

(4) An agency or Minister may appoint a qualified medical practitioner to make a decision under subsection (3) on behalf of the agency or Minister.

Matter relating to trade secrets, business affairs and research

45.(1) Matter is exempt matter if—

- (a) its disclosure would disclose trade secrets of an agency or another person; or
- (b) its disclosure—
 - (i) would disclose information (other than trade secrets) that has a commercial value to an agency or another person; and
 - (ii) could reasonably be expected to destroy or diminish the commercial value of the information; or
- (c) its disclosure—
 - (i) would disclose information (other than trade secrets or information mentioned in paragraph (b)) concerning the business, professional, commercial or financial affairs of an agency or another person; and
 - (ii) could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of such information to government;

unless its disclosure would, on balance, be in the public interest.

(2) Matter is not exempt under subsection (1) merely because it concerns the business, professional, commercial or financial affairs of the person by, or on whose behalf, an application for access to the document containing the matter is being made.

(3) Matter is exempt matter if—

- (a) it would disclose the purpose or results of research (including research that is yet to be started or finished); and
- (b) its disclosure could reasonably be expected to have an adverse effect on the agency or other person by or on whose behalf the research is being, or is intended to be, carried out.

(4) Matter is not exempt under subsection (3) merely because it concerns research that is being, or is intended to be, carried out by the agency or other person by, or on whose behalf, an application for access to the document containing the matter is being made.

Matter communicated in confidence**46.(1) Matter is exempt if—**

- (a) its disclosure would found an action for breach of confidence; or
- (b) it consists of information of a confidential nature that was communicated in confidence, the disclosure of which could reasonably be expected to prejudice the future supply of such information, unless its disclosure would, on balance, be in the public interest.

(2) Subsection (1) does not apply to matter of a kind mentioned in section 41(1)(a) unless its disclosure would found an action for breach of confidence owed to a person or body other than—

- (a) a person in the capacity of—
 - (i) a Minister; or
 - (ii) a member of the staff of, or a consultant to, a Minister; or
 - (iii) an officer of an agency; or
- (b) the State or an agency.