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**THE FREEDOM OF INFORMATION ACT 1992
REVIEW OF SECRECY PROVISION EXEMPTION**

REPORT No. 46

**Queensland Law Reform Commission
March 1994**

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Previous papers on this Reference:
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*, August 1993 (limited circulation).

(ii)

To: **The Hon Mr Dean Wells, M.L.A.**
Attorney-General of Queensland

In accordance with the provisions of section 15 of the Law Reform Commission Act 1968, I am pleased to present the Commission's Report on The Freedom of Information Act 1992 - Review of Secrecy Provision Exemption.

Yours faithfully,

The Honourable Mr Justice G N Williams (Chairman)



Her Honour Judge H O'Sullivan (Deputy Chair)



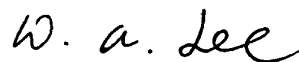
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22 March 1994

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CHAPTER 1: THE REFERENCE

A. *Terms of the reference*

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

Subsequently, the provisions of the Bill were considered by Cabinet. Cabinet approved that clause 48 of the Bill should operate only for a period of two years from the Freedom of Information legislation receiving Royal Assent. The then Acting Attorney-General, the Honourable Mr Paul Braddy, wrote to the Chairman of the Commission on 18 December 1991, referring to the Commission a consideration of all existing secrecy provisions and requesting the Commission to recommend "which secrecy provisions should be retained and which ones should be repealed." The text of the letter is set out in full in Appendix A.

The legislation was passed by Parliament on 5 August 1992 and was assented to on 19 August 1992. Section 48 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.*

Simply because legislation contains a provision prohibiting disclosure of information, does not mean that information is exempt from the operation of the *Freedom of Information Act 1992 (Qld)*. Only if the provision is a "secrecy provision" within the meaning of section 48 would the information which is the subject of the provision be exempt from disclosure under the *Freedom of Information Act 1992 (Qld)*. It should also be noted that the information may be exempt under one of the other exemption provisions contained in the *Freedom of Information Act 1992 (Qld)* as set out in Appendix I.

Section 48 of the *Freedom of Information Act 1992 (Qld)* has not been the subject of judicial consideration. However, it is similar in terms to the form in which section 38 of the Commonwealth *Freedom of Information Act* was originally enacted.¹ In consequence it will be necessary to consider the interpretation placed on section 38 in a number of Federal Court decisions.

But it must be remembered that section 48 cannot be considered in isolation. A key provision in the *Freedom of Information Act 1992 (Qld)* which should be read in conjunction with section 48 is section 16 of the Queensland Act which provides:

(1) *This Act is intended to operate to the exclusion of the provisions of other enactments relating to non-disclosure of information.*

(2) *Sub-section (1) has effect subject to section 48 (Matter to which secrecy provisions of enactments apply).*

Ultimately sections 16 and 48 must be read together. At the expiration of the two-year period referred to in section 48(3) no "secrecy provision" in another enactment will be automatically repealed. Generally all secrecy provisions will remain in force, but they will be read and applied as being subject to section 16 of the Act. In other words unless legislation to continue exemption for a "secrecy provision" is enacted that provision would not be effective after 18 August 1994 to prevent disclosure of the information pursuant to the provisions of the *Freedom of Information Act 1992 (Qld)*; that is, unless the matter was within one of the other exemption provisions it would have to be disclosed. As will be demonstrated, it becomes important to consider whether the "secrecy provision" in question prohibits access to information of a particular kind or whether it amounts to no more than a prohibition on a person disclosing information of a general kind which is within the control of that person.

B. Methodology

The resources of the Commission did 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.

¹ See page 104, footnote 147.

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 B. A summary of the responses received by the Commission to the letter is provided in Appendix C.

The Commission analysed the provisions identified to it by the various government departments to determine whether such provision was within section 48(1)(a) and then considered whether the exemption presently given by section 48 should continue.

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

In 1993, the Commission issued a Draft Report, setting out its tentative recommendations. The Commission was guided by the legislative principles underlying the *Freedom of Information Act 1992 (Qld)*. These principles are set out in section 5 of the Act. Section 5 provides:

- (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).*

In the light of these principles, the Commission recommended that the section 48 exemption should continue for very few of the provisions identified by the various departments.

The Draft Report was circulated to all government departments and comment invited. Advertisements were placed in the press, inviting public submissions. Responses to the Draft Report have been taken into account in the Commission's final recommendations.

A summary of the recommendations in the Draft Report and departmental submissions in response to those recommendations is set out in Appendix C.

C. *Format of the Report*

This Report contains the final recommendations of the Commission. The structure of the Report is substantially the same as that of the Draft Report.

Chapter 2 explains the importance for ordinary citizens of access to certain information held by government. It outlines the role of Freedom of Information legislation in balancing the competing interests of the public's right to know about government activities and administrative decisions against the potentially detrimental effects of the disclosure of some information, and identifies the principles which underlie the Queensland Act.

Chapter 3 examines section 48 of the *Freedom of Information Act 1992 (Qld)*. It analyses the relevant case law in order to determine what qualities must be present in a legislative enactment for it to fall within the terms of section 48 and for the exemption against disclosure conferred by section 48 to apply to certain kinds of information.

Chapter 4 sets out the provisions identified to the Commission by government departments in response to its request to each department for information about existing secrecy provisions in legislative enactments administered by that department. It classifies the provisions according to the criteria established by the relevant case law, and considers whether or not the provisions are within the scope of section 48. This chapter is concerned with the ambit of section 48. The Commission's recommendations in respect of the provisions which, in the view of the Commission, are within the scope of section 48 are contained in Chapter 6.

Chapter 5 sets out the provisions identified to the Commission in response to a similar request to local authorities in Queensland. The provisions are classified in the same manner as the provisions in Chapter 4 and the Commission's recommendations are set out.

Chapter 6 contains the final recommendations of the Commission with respect to the provisions which, in the view of the Commission, fall within section 48. In this chapter, consideration is given to continuation of the exemption currently provided by section 48. The Commission has made no recommendations in relation to those provisions which are not within the terms of section 48, as it considers them to be beyond the scope of this reference. The Commission's recommendations are summarised in Appendix C.

Although the Commission has made no recommendations about provisions which are not within the terms of section 48, the Commission considered that the unique role of the Auditor-General required particular mention. The Commission's comments about the Auditor-General are set out in Chapter 7.

Chapter 8 discusses the appropriate legislative framework for implementing the Commission's recommendations.

D. *Time-frame of the reference*

Section 48(3) of the *Freedom of Information Act 1992 (Qld)* provides that section 48 is to have effect for only two years from the date of assent. The Act received the Royal Assent on 19 August 1992, and section 48 therefore ceases to operate on 18 August 1994. Where the Commission has recommended continuation of the exemption presently conferred by section 48, it will be necessary, if the recommendations of the Commission are accepted, for legislation required to implement the recommendations to be enacted prior to 18 August 1994 in order for the ground of exemption provided by section 48 to continue without interruption.

The original letters from the Commission seeking the co-operation of government departments in the terms set out on pages 114-115 above were sent in July 1992. The Commission drew to the attention of the departments the two year time limit imposed by section 48 itself, and requested that departments assist the Commission by identifying relevant provisions by mid-August 1992 and by making recommendations to the Commission about those provisions by late November.

Many departments responded to the Commission's letters within this time-frame, and the Commission is grateful for their prompt assistance. However, despite the Commission's follow up to the letters, a number of responses were not received until some months after the requested date.

As a result of this delay, together with the commitment of the Commission's resources to other references, it was not possible for the Commission to release its Draft Report until early August 1993. The Commission requested that submissions to the Draft Report be received by the end of September 1993. Unfortunately, some submissions were not forwarded to the Commission until late January 1994.

The Commission has endeavoured to complete this Report at the earliest possible time in order to allow for the necessary legislation to be enacted.

CHAPTER 2: THE FREEDOM OF INFORMATION ACT

In recent years, there has been increasing recognition of the importance of public access to information held by government and government instrumentalities and agencies. In a number of jurisdictions in Australia and overseas this recognition has resulted in the enactment of legislation² designed to ensure that the public interest in knowing about government activities and about administrative decisions taken by government departments and agencies is protected.

However, the right of public access to information held by government cannot be unqualified. There are situations in which the public interest is better served if information concerning the operation and administration of government is not available to the public. Thus, tensions can arise between seemingly competing public interests. The role of Freedom of Information legislation is to balance the public interest in access to information against the need to protect certain kinds of information from disclosure.

This Chapter briefly considers the reasons why public access to government information is important and the circumstances in which such information ought not to be disclosed, and outlines the principles which underlie the *Freedom of Information Act 1992 (Qld)*.

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 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

² For example, *Freedom of Information Act 1966 (US)* (Each of the American States, as well as the District of Columbia also has Freedom of Information legislation); *Official Information Act 1982 (NZ)*; *Access to Information Act, RSC 1980-81-92, c.111 (Canada)* (Five of the Canadian Provinces also have a *Freedom of Information Act*); *Freedom of Information Act 1982 (Cth)*; *Freedom of Information Act 1982 (Vic)*; *Freedom of Information Act 1989 (NSW)*; *Freedom of Information Act 1989 (ACT)*; *Freedom of Information Act 1991 (Tas)*; *Freedom of Information Act 1991 (SA)*; *Freedom of Information Act 1992 (WA)*.

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:³

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.

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.⁴ 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 of citizens by government agencies, means that administrative decisions impinge on many aspects of a citizen's life. The principles of natural justice generally 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 social security benefits, health care and education, for example,

³ E. Campbell, *Public Access to Government Documents* (1967) 41 ALJ 73 at 74.

⁴ Report of a Commission of Inquiry pursuant to Orders in Council, delivered 3 July 1989, 126.

requires the collection of personal data. Developments in information technology have increased accessibility to personal information by agencies other than the collecting agency. 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 ensure that information, including computerised records, held about them by government agencies is relevant, up-to-date, accurate and complete.

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. *Confidential government activities*

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:⁵

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.

⁵ Commonwealth Parliamentary Debates 32nd Parliament, 1st Session at 39, 18 August 1981.

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.

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 Freedom of Information Act 1992 (Qld)*

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.⁶ 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.⁷ It represents an attempt to provide a balance between the need for openness and accountability on the one hand and, on the other, the need to protect essential public interests and the private or business affairs of individual members of the community.⁸

Consequently, the *Freedom of Information Act 1992 (Qld)* exempts certain information from disclosure. For example, information involving deliberations or decisions of the Cabinet or the Executive Council is exempted.⁹ 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.¹⁰ 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;¹¹ information about the personal affairs of an individual;¹² information of a confidential nature which was communicated in confidence or disclosure of which would found an action for breach of confidence¹³ and information which is subject to legal professional privilege.¹⁴

⁶ Section 21.

⁷ Section 5(2).

⁸ Section 5(3).

⁹ Sections 36 and 37.

¹⁰ Sections 38, 39 and 42.

¹¹ Section 45.

¹² Section 44.

¹³ Section 46.

¹⁴ Section 43.

CHAPTER 3: WHAT IS A SECRECY PROVISION?

In Chapter 2 of this Report, the need to protect certain kinds of information from disclosure was explained.¹⁵ In order to enable the disclosure of information to be prevented where appropriate, the *Freedom of Information Act 1992 (Qld)* contains a number of provisions which exempt particular kinds of information from disclosure. One of those provisions is section 48, which 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.*

To ascertain whether or not an enactment is a "secrecy provision" for the purposes of section 48, it is necessary to identify the features or characteristics which must be present in order for the enactment to fall within the scope of section 48(1)(a).

There is as yet no Queensland case law on the interpretation of section 48. However, section 48(1)(a) is substantially similar to the form in which section 38, its counterpart in the Commonwealth legislation, was originally enacted.¹⁶ Decided cases concerning the original Commonwealth provision are therefore relevant to the interpretation of section 48(1)(a) of the Queensland legislation.

¹⁵ See pages 9-10.

¹⁶ Prior to amendment in 1991, section 38 of the *Freedom of Information Act 1982 (Cth)* 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.

Although the Queensland provision refers to "matter" rather than "information", the purpose of the Queensland Act is expressed in section 4 to be "to extend as far as possible the right of the community to have access to **information** held by the Queensland government" (emphasis added). The slight variation in wording between the two provisions does not cause any significant change of meaning and is not relevant to the classification of whether or not an enactment is a "secrecy provision" for the purposes of section 48(1)(a).

Whether or not an enactment was within the terms of the Commonwealth equivalent to section 48 depended, according to the cases, on the existence of a prohibition against the disclosure of information and on the kind of information the disclosure of which was prohibited by the enactment.

1. *The kind of information*

In *News Corporation Ltd v National Companies and Securities Commission*¹⁷ the Full Court of the Federal Court considered whether section 47 of the *National Companies and Securities Commission Act 1979 (Cth)* was an enactment of the kind referred to in section 38 of the *Commonwealth Freedom of Information Act 1982*. 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 38.¹⁸

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.¹⁹

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.²⁰ 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 38.²¹ The Court's conclusion on this issue has been

¹⁷ (1984) 52 ALR 277.

¹⁸ Section 47 prohibited certain persons performing functions under the Act from disclosing information acquired by reason of their position.

¹⁹ (1984) 52 ALR 277 at 282 and 289-290.

²⁰ At page 283.

²¹ At page 290.

endorsed in later cases. The Full Court of the Federal Court in *Kawadias v Commonwealth Ombudsman* pointed to the fact that the *Freedom of Information Act 1982 (Cth)* was not concerned with the discipline or integrity of officers of the public service.²²

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'.²³ 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.²⁴

Subsequent cases have accepted this principle. They have recognised that the provision must refer directly and explicitly to the nature of the information in question so that the information is capable of being identified as a genus.²⁵ There must be a precise link between the provision and the kind of information.²⁶

But despite agreement about principle, reported decisions show varying approaches to the application of that principle.²⁷ 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 (Cth)*.²⁸

²² (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.

²³ At page 282.

²⁴ At page 281.

²⁵ *Kawadias v Commonwealth Ombudsman* (1984) 52 ALR 728 at 733.

²⁶ *Federal Commissioner of Taxation v Swiss Aluminium Australia Ltd* (1986) 66 ALR 159 at 165.

²⁷ 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.

²⁸ 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).*

In *Murtagh v Federal Commissioner of Taxation*²⁹ 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.³⁰ In a subsequent series of cases, however, the Tribunal came to the conclusion that, following the reasoning in *News Corp*³¹ and *Kavvadias*,³² 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.³³

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*³⁴ (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.³⁵ 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.³⁶

Section 38 of the Commonwealth Act was drastically altered after those decisions and now specifies the secrecy provisions in earlier statutes which now constitute a class of "exempt matter".³⁷ It is interesting to note that some provisions - for example section 16(2) of the *Income Tax Assessment Act 1936* - which the courts held were not within the old section 38 are included in the new Schedule.

²⁹ (1984) 54 ALR 313.

³⁰ At page 333.

³¹ *News Corporation Ltd v National Companies and Securities Commission* (1984) 52 ALR 277.

³² *Kavvadias v Commonwealth Ombudsman* (1984) 52 ALR 728.

³³ 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.

³⁴ (1986) 66 ALR 159.

³⁵ At pages 163 and 169.

³⁶ At page 165.

³⁷ See page 104.

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.³⁸

³⁸ *News Corporation Ltd v National Companies and Securities Commission* (1984) 52 ALR 277 at 281.

CHAPTER 4: QUEENSLAND PROVISIONS

In Chapter 3, the scope of the exemption conferred by section 48(1)(a) of the *Freedom of Information Act 1992 (Qld)* was examined in the light of judicial interpretation of its Commonwealth counterpart, section 38 of the *Freedom of Information Act 1982*. On this basis, whether matter is exempt from disclosure under section 48(1)(a) 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 under section 48 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. If a provision prohibits from disclosure matter which is identified only in general terms, whether or not the matter will be exempt from disclosure under section 48 will depend 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.

In response to the Commission's request for information,³⁹ government departments and statutory authorities identified a total of approximately 160 secrecy provisions in enactments administered by them. A summary of the provisions identified is set out in Appendix C at pages 116 to 140 of this Report.

For a variety of reasons, not all the provisions identified in fact came within the ambit of section 48. The identified provisions which the Commission considers do not come within section 48 are listed in Appendix D of this Report.⁴⁰ Some of these provisions contain a prohibition against disclosure. Others do not. Those provisions identified to the Commission which, although containing a prohibition against disclosure, do not come within section 48 are set out in Appendix E.

Provisions which are outside the scope of section 48 are also beyond the scope of this reference. Because they are outside the scope of section 48 they and the matter to which they refer are not affected by the expiration of the exemption conferred by section 48. The provisions will remain in force subject, as they are at present, to other relevant provisions of the *Freedom of Information Act 1992 (Qld)*.

This means that, in relation to the provisions in Appendix E, the prohibition is removed to the extent that the *Freedom of Information Act* provides for access to the information in question. If access were provided in accordance with the

³⁹ See Appendix B.

⁴⁰ But see Chapter 7.

Freedom of Information Act 1992 (Qld), the officer granting access would not commit an offence notwithstanding the prohibition.⁴¹

Even if a provision does not come within section 48, matter to which that provision refers may still be exempt from disclosure. The *Freedom of Information Act 1992 (Qld)* provides a number of other grounds of exemption. Access to matter may be refused if for example, it would reveal information concerning the personal affairs of a person⁴² or about trade secrets, business information or research⁴³ or information of a confidential nature.⁴⁴

No recommendations have been made in this Report about provisions which are outside the scope of section 48.

Matter referred to by a provision which is a "secrecy provision" within the meaning of section 48 may also be exempt under one or more of the other exemption provisions. Where the extent of protection given to information of a particular kind is determined by other exemption provisions, the Commission has not usually recommended continuation of the section 48 exemption in relation to the secrecy provision.⁴⁵ If a department considers the extent of the other available exemptions to be inadequate it could seek to have the relevant agency, part of an agency or function of an agency prescribed by regulation under section 11(1)(q) of the Act. The Act would not apply to an agency, part of an agency or function of an agency prescribed in this way. Alternatively, the department could seek to persuade the government that sound policy reasons exist for inclusion of the provision in the schedule recommended by the Commission in Chapter 8.⁴⁶

In the Draft Report, the Commission analysed the provisions which were identified by statutory authorities and government departments as "secrecy provisions". For the purpose of determining those provisions to which section 48 would be likely to apply the Commission divided the identified provisions into four categories. The Commission's classification of these provisions was generally accepted by the relevant department or authority. Where, after further consideration, the Commission has been persuaded to change its original classification, this is indicated in the text.

⁴¹ See section 103.

⁴² Section 44. See Appendix I.

⁴³ Section 45. See Appendix I.

⁴⁴ Section 46. See Appendix I.

⁴⁵ The recommendations of the Commission are set out in Chapter 6.

⁴⁶ See pages 104-110.

The four categories adopted by the Commission were:

- 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;
- D. Provisions which do not prohibit disclosure of information.

The provisions which, in the view of the Commission, fall into each category are listed below on pages 19 to 26 under the department which administers the relevant legislation. In each category the departments are set out in alphabetical order. The Commission's reasons for its classification of the provisions are explained on pages 26 to 69 below.

CLASSIFICATION OF PROVISIONS

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

(These provisions are within the scope of section 48.)⁴⁷

- . ***Employment, Vocational Education, Training and Industrial Relations***

Factories and Shops Act 1960 section 10(8)
Industrial Relations Act 1990 sections 73, 77, 427

- . ***Environment and Heritage***

Cultural Record (Landscapes Queensland and Queensland Estate)
Act 1987 section 31(1)
Environment Protection Bill Draft Provision
Nature Conservation Act 1992 section 124(2)(b)

⁴⁷ See page 27.

. **Family Services and Aboriginal and Islander Affairs**

Adoption of Children Act 1964 section 59(3)

Child Care Act 1991 section 74

Juvenile Justice Act 1992 section 226

. **Health**

Health Act 1937 sections 48(4), 49, 100E, 100I, 150(4)

Health Services Act 1991 section 2.10

. **Housing, Local Government and Planning**

Local Government Act 1993 sections 196 and 714⁴⁸

. **Justice, Attorney-General and the Arts**

Corporations Law (Commonwealth) as it applies to Queensland under
the *Corporations (Queensland) Act 1990* Section 1002G

Criminal Code sections 84, 85

Criminal Justice Act 1989 sections 26(6), 83

Electoral Act 1992 section 173(b)(ii)

Jury Act 1929 section 23

Maintenance Act 1965 section 129

Official Secrets Act 1911 section 2

Queensland Law Society Act 1952 section 50(3)

Queensland Law Society Incorporated Indemnity Rules 1987 rule 10

Referendums Act 1989 section 4.30(14)

. **Minerals and Energy (Formerly Resource Industries)**

Coal Mining Act 1925 sections 31B, 69, 87, 89

Mines Regulation Act 1964 sections 15, 52, 53, 61, 64

Petroleum Regulations (Land) 1966 Regulations 11, 69, 126

. **Treasury**

Debits Tax Act 1990

⁴⁸ These provisions commence operation on 26 March 1994.

B. Provisions which define matter by reference to the capacity of the person who receives it.

(These provisions are not within the scope of section 48.)⁴⁹

Auditor-General (now Queensland Audit Office)

Financial Administration and Audit Act 1977 section 92

Bureau of Emergency Services (Formerly Police and Emergency Services)

Fire Service Act 1990 section 142A(1)

Employment, Vocational Education, Training and Industrial Relations

Industrial Relations Act 1990 section 355

Private Employment Agencies Act 1983 sections 9(6), 10

Trading Hours Act 1990 section 3.2

Vocational Education, Training and Employment Act 1991 section 4.15

Workplace Health and Safety Act 1989 section 133

Family Services and Aboriginal and Islander Affairs

Adoption of Children Act 1964 section 59(4)

Intellectually Disabled Citizens Act 1985 section 42

Health

Food Act 1981 section 40

Health Act 1937 section 154N(2)

Health Services Act 1991 sections 2.11, 5.1(3)

Nursing Act 1992 section 139

⁴⁹ See page 38.

. **Justice, Attorney-General and the Arts**

Companies Act 1961 section 124(2)
The Corporations Law (Cth) as it applies to Queensland under the
Corporations (Qld) Act 1990 section 320
Criminal Code section 86
Criminal Justice Act 1989 section 132
Dispute Resolution Centres Act 1990 section 5.4
Police Complaints Tribunal Acts Repeal Act 1990 section 5(1)(c)
Securities Industry Act 1975 section 13(1)
Special Prosecutor Act 1989 section 20
Trust Accounts Act 1973 section 25

. **Lands**

Valuation of Land Act 1944 section 11

. **Minerals and Energy (Formerly Resource Industries)**

Explosives Act 1952 section 46A

. **Parliamentary Commissioner for Administrative Investigations**

Parliamentary Commissioner Act 1974 sections 9(1), 10(4) and 22

. **Premier, Economic and Trade Development**

Electoral and Administrative Review Act 1989 section 6.4(3)
Public Sector Management Commission Act 1990 section 6.4(3)
Public Works Committee Act 1989 section 41

. **Primary Industries**

Primary Producers' Organisation and Marketing Act 1926 section 11D

. **Queensland Corrective Services Commission**

Corrective Services Administration Act 1988 section 61

. **Queensland Police Service (Formerly Police and Emergency Services)**

Police Service Administration Act 1990 section 10.1

. **Tourism, Sport and Racing**

Racing and Betting Act 1980 section 10

. **Treasury**

Casino Control Act 1982 section 16

Financial Administration and Audit Act 1977 section 92

Gaming Machine Act 1991 section 35(1) and (2)

Land Tax Act 1915 section 4A

Payroll Tax Act 1971 section 5

Revenue Laws (Reciprocal Powers) Act 1988 sections 13, 14

Stamp Act 1894 section 10

Statistical Returns Act 1896 section 6

Tobacco Products (Licensing) Act 1988 section 43

C. Provisions which define matter in general terms

(Some of these provisions are within the scope of section 48. Others, because they fail to define with sufficient specificity, the matter to which they refer, are outside the scope of section 48.⁵⁰ A list of the provisions which the Commission considers to be outside the scope of section 48 is set out in Appendix D.)⁵¹

. **Administrative Services**

Libraries and Archives Act 1988 section 61

. **Bureau of Emergency Services (Formerly Police and Emergency Services)**

Ambulance Service Act 1991 section 6.8

⁵⁰ See page 51.

⁵¹ But see Chapter 7.

. **Education**

Education (General Provisions) Act 1989 section 28

. **Employment, Vocational Education, Training and Industrial Relations**

Building and Construction Industry (Portable Long Service Leave) Act 1991 section 94

. **Environment and Heritage**

Nature Conservation Act 1992 section 124(2)(a)

. **Family Services and Aboriginal and Islander Affairs**

Child Care Act 1991 section 58
Children's Services Act 1965 section 144

. **Health**

Health Act 1937 section 71B
Health Rights Commission Act 1991 section 138
Health Services Act 1991 sections 2.5(3), 5.1(1)
Medical Act and Other Acts (Administration) Act 1966 section 14B

. **Housing, Local Government and Planning**

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 Ordinance 2, Chapter 2 Part 2 Ordinance 34

* Local Authority By-laws are discussed in Chapter 5

. **Justice, Attorney-General and the Arts**

Anti-Discrimination Act 1991 section 220
Corporations Law (Commonwealth) as it applies to Queensland under the Corporations (Queensland) Act 1990 Section 815(4)
Legal Aid Act 1978 section 81

. **Minerals and Energy (Formerly Resource Industries)**

Mineral Resources Act 1989 sections 4.18, 5.39, 6.33, 7.19, 9.15

. **Premier, Economic and Trade Development**

Electoral and Administrative Review Act 1989 section 2.13(5)
Public Sector Management Commission Act 1990 section 6.4(1)

. **Treasury**

Financial Institutions Code 1992 section 410

D. Provisions which do not prohibit the disclosure of information.

(These provisions are not within the scope of section 48.)⁵²

. **Employment, Vocational Education, Training and Industrial Relations**

Industrial Relations Act 1990 section 189

. **Family Services and Aboriginal and Islander Affairs**

Domestic Violence (Family Protection) Act 1989 section 82

. **Health**

Food Act 1981 section 48
Health Act 1937 section 48(3)
Health Rights Commission Act 1991 sections 89, 98, 108
Health Services Act 1991 sections 2.6, 2.12
Radio-active Substances Act 1958 section 18

⁵² See page 59.

- . **Justice, Attorney-General and the Arts**
 - Anti-Discrimination Act 1991* section 264
 - Commercial Banking Company of Sydney Limited Merger Act 1982* section 16(1)
 - Commercial Bank of Australia Limited Merger Act 1982* section 16(1)
 - Coroners Act 1958* section 52
 - Criminal Justice Act 1989* sections 27, 58(2)(c), 88
 - Justices Act 1886* section 102F(1) and (2)
 - Jury Act 1929* section 48(ii)
 - Public Trustee Act 1978* section 15
 - Special Prosecutor Act 1989* section 21

- . **Parliamentary Commissioner for Administrative Investigations**
 - Parliamentary Commissioner Act 1974* sections 18(2), 29(4)

- . **Premier, Economic and Trade Development**
 - Public Works Committee Act 1989* section 40

- . **Queensland Police Service (Formerly Police and Emergency Services)**
 - Drugs Misuse Act 1989* section 47

- . **Treasury**
 - Golden Casket Art Union Act 1978* rule 10
 - Lotto Act 1981* rule 12
 - Motor Vehicles Insurance Act 1936* section 2C
 - Queensland Industry Development Corporation Act 1985* section 30
 - Revenue Laws (Reciprocal Powers) Act 1988* section 15
 - Soccer Football Pools Act 1976* rule 17

REASONS FOR CLASSIFICATION

Details of the provisions in each of the four categories, and the Commission's reasons for the classification of each provision, are set out below. In each category, the provisions are listed under the department which administers the relevant legislation. The departments are set out in alphabetical order.

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.*⁵³ They would therefore be within the scope of section 48.

Each of the provisions which the Commission has classified in this category 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, in the Commission's view, the nature of the information is, according to the majority in *Swiss Aluminium*,⁵⁴ sufficiently defined.⁵⁵

EMPLOYMENT, VOCATIONAL EDUCATION, TRAINING AND INDUSTRIAL RELATIONS

Factories and Shops Act 1960

Section 10(8) (See page 89 of this Report for the recommendation of the Commission)

An officer or Inspector is prohibited from disclosing to any person information acquired during the course of his or her duties. 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 sufficient particularity to establish a genus of information.

Industrial Relations Act 1990

Section 73 (See pages 89-90 of this Report for the recommendation of the Commission)

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

⁵³ *New Corporation Ltd v National Companies and Securities Commission* (1984 52 ALR 277. See also page 13.

⁵⁴ (1986) 66 ALR 159.

⁵⁵ See also *Harrigan v Department of Health and Others* (1986) 72 ALR 293.

confidential nature. The information is sufficient to establish a genus of information for the purposes of section 48 of the *Freedom of Information Act 1992 (Qld)*.

Section 77 (See page 89-90 of this Report for the recommendation of the Commission)

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. The information is identified with sufficient particularity to establish a genus of information for the purposes of section 48 of the *Freedom of Information Act 1992 (Qld)*.

Section 427 (See page 89-90 of this Report for the recommendation of the Commission)

Publication of any material in contravention of section 77 is prohibited. Section 77 concerns records relating to trade secrets of any person or to the financial position of any party or witness which are tendered in evidence. The information referred to is sufficiently particular to establish a genus of information.

ENVIRONMENT AND HERITAGE

Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987

Section 31(1) (See page 84 of this Report for the recommendation of the Commission)

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". The information referred to is sufficiently particular to establish a genus of information.

Environment Protection Bill Draft Provision (See page 90 of this Report for the recommendation of the Commission)

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. The information referred to is sufficient to establish a genus of information for the purposes of section 48 of the *Freedom of Information Act 1992 (Qld)*.

Nature Conservation Act 1992

Section 124(2)(b) (See page 91 of this Report for the recommendation of the Commission)

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. The information referred to is sufficiently particular to allow a genus of information to be identified.

FAMILY SERVICES AND ABORIGINAL AND ISLANDER AFFAIRS

Adoption of Children Act 1964

Section 59(3) (See page 85 of this Report for the recommendation of the Commission)

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 92 of this Report for the recommendation of the Commission)

The Chief Executive or an officer or employee of the Department must not make a record of any protected information, or to 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. The information referred to is sufficiently specific to establish a genus of information for the purpose of section 48 of the *Freedom of Information Act 1992 (Qld)*.

Juvenile Justice Act 1992

- . *Section 226 (See page 85 of this Report for the recommendation of the Commission)*

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. The information is identified with sufficient particularity to allow a genus of information to be established.

HEALTH

Health Act 1937

- . *Section 48(4) (See page 92 of this Report for the recommendation of the Commission)*

This section relates to proceedings in relation to controlled notifiable diseases. No report of the proceedings shall be published except in certain circumstances. The genus identified is information concerning proceedings in relation to controlled notifiable diseases.

- . *Section 49 (See page 92 of this Report for the recommendation of the Commission)*

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 92 of this Report for the recommendation of the Commission)*

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 92 of this Report for the recommendation of the Commission)*

This section is in similar terms to section 100E. However, it relates to perinatal statistics. Accordingly, the information is sufficiently specific to allow a genus of information to be established.

- . *Section 150(4) (See page 93 of this Report for the recommendation of the Commission)*

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 93 of this Report for the recommendation of the Commission)*

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. The genus of information is that which identifies an individual and is sufficiently particular for the purposes of section 48 of the *Freedom of Information Act 1992 (Qld)*.

HOUSING, LOCAL GOVERNMENT AND PLANNING

Local Government Act 1993⁵⁶

- . *Section 196 (See page 94 of this Report for the recommendation of the Commission)*

This section restricts access to information contained in a register of members' interests which is compiled under section 195. This register contains information regarding a person's pecuniary interests and other interests. The information referred to is sufficiently specific to allow a genus of information to be identified.

⁵⁶ These provisions commence operation on 26 March 1994.

Section 714 (See page 94 of this Report for the recommendation of the Commission)

This section restricts access to information contained in a register of employees' interests which is compiled under section 713. This register contains information regarding a person's pecuniary interests and other interests. The information referred to is sufficiently specific to allow a genus of information to be identified.

JUSTICE, ATTORNEY-GENERAL AND THE ARTS

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

Section 1002G (See page 95 of this Report for the recommendation of the Commission)

This section prohibits the disclosure of inside information to another person if the person communicating the information, the "insider", knows or ought reasonably know that the other person would subscribe for, purchase or sell any securities. "Insider" is defined as a person who possesses information which is not generally available. The Commission, in its Draft Report placed this provision in category "D". Upon further consideration, the Commission considers that the provision should come within category "A" as a genus of information can be identified. There is doubt, however, whether there would be any agencies of government to which the provision applies. The Commission has included the provision on the assumption that there are or may be agencies of government to which the provision applies or to which it may apply in the future.

Criminal Code

Sections 84 and 85 (See page 95 of this Report for the recommendation of the Commission)

Disclosure of information relating to defence placements in Queensland is prohibited. The genus of information identified by this section is information relating to defence placements which is sufficiently specific for the purposes of section 48 of the *Freedom of Information Act 1992 (Qld)*.

Criminal Justice Act 1989

Section 26(6) (See page 95 of this Report for the recommendation of the Commission)

This section provides that a person must not publish, furnish or deliver a report of the Criminal Justice Commission unless the report has been printed by order of the Legislative Assembly. In the Draft Report this Commission classified the section as

one which defines matter in general terms. The Commission expressed the view that the section does not establish a genus for the purpose of section 48 and therefore does not come within the exemption.⁵⁷

However, the Criminal Justice Commission, in its submission in response to the Draft Report, argued that section 26(6) should be read in conjunction with section 26(1), which refers to "a report of the Commission, signed by its Chairman". The submission pointed to the different kinds of reports which are made by the Criminal Justice Commission under, for example, sections 21 and 23 of the Act and which do not have to be signed by the Chairman. It concluded that the prohibition against disclosure contained in section 26(6) applied only to those reports under section 26(1) with the inherent characteristic or quality of being signed by the Chairman, and that a genus could therefore be identified for the purpose of section 48 of the *Freedom of Information Act 1992 (Qld)*.

After further consideration, the Commission agrees with the submission, and has revised its classification of the section accordingly.

Section 83 (See page 97 of this Report for the recommendation of the Commission)

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.

In the Draft Report, the Commission classified this section as a provision which defines matter by reference to the capacity of the person who receives it.⁵⁸ However, the Criminal Justice Commission's submission to the Draft Report expressed the view that section 83 should not be considered in isolation, but should be read in conjunction with section 82. Section 82 sets out the procedure for obtaining approval to record the information disclosure of which is prohibited by section 83. Under section 82, authority to use a listening device may be sought only in relation to information relevant to the subject-matter of an investigation by the Commission and may be given by a judge of the Supreme Court only in relation to a particular matter specified in the approval. The submission argued that section 83 establishes a genus of information disclosure of which is prohibited - namely particular information disclosed by a listening device authorised to be used in relation to a particular matter specified in a specific approval of a judge of the Supreme Court in a particular case. This argument is supported by section 123(3)(b) of the *Criminal Justice Act 1989* which requires the judge considering the

⁵⁷ Draft Report page 37.

⁵⁸ Draft Report page 28.

application for authority to use the listening device to have regard to the extent to which the privacy of any person is likely to be affected in the particular case.

After further consideration, this Commission accepts the argument put forward by the Criminal Justice Commission, and has re-classified the provision accordingly.

Electoral Act 1992

- . *Section 173(b)(ii) (See page 97 of this Report for the recommendation of the Commission)*

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. The information referred to is identified with sufficient particularity to enable a genus of information to be established.

Jury Act 1929

- . *Section 23 (See page 97 of this Report for the recommendation of the Commission)*

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; or give notice of the day or time on or at which the sheriff will compile a panel of jurors intended to be summoned. The information is identified with sufficient particularity to enable a genus of information to be identified.

Maintenance Act 1965

- . *Section 129 (See page 86 of this Report for the recommendation of the Commission)*

A person is prohibited from publishing information relating to proceedings or information which will reveal the identity of the person involved in the proceedings. The information is identified with sufficient particularity to enable a genus of information to be identified.

Official Secrets Act 1911

- . *Section 2 (See page 99 of this Report for the recommendation of the Commission)*

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. The information referred to is sufficiently specific to enable a genus of information to be identified for the purpose of section 48 of the *Freedom of Information Act 1992 (Qld)*.

Queensland Law Society Act 1952

- . *Section 50(3) (See page 99 of this Report for the recommendation of the Commission)*

An official shall not communicate to any person any information, document or matter relating to the affairs of another person acquired by him or her by reason of his or her office, appointment or employment, or by being authorised to make an examination of accounts. Nor shall the official produce any such documents to any person except in the performance of his or her functions under the Act. In the Draft Report, the Commission placed this provision in category "B". However, on further consideration, the Commission is of the view that there is a genus of information identified as relating to the affairs of another person and that accordingly the provision comes within section 48.

Queensland Law Society Incorporated Indemnity Rules 1987

- . *Rule 10 (See page 99 of this Report for the recommendation of the Commission)*

The Claims Committee is prohibited from disclosing information about any individual or firm. The genus of information referred to in this section is sufficiently specific to bring the section within section 48 of the *Freedom of Information Act 1992 (Qld)*.

Referendums Act 1989

- . *Section 4.30(14) (See page 100 of this Report for the recommendation of the Commission)*

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. The information in this section is specific enough to bring the section within the terms of section 48.

MINERALS AND ENERGY (FORMERLY RESOURCE INDUSTRIES)**Coal Mining Act 1925**

- . *Section 31B (See page 100 of this Report for the recommendation of the Commission)*

This provision corresponds to section 64 of the *Mines Regulation Act 1964*. (See below)

- . *Section 69 (See page 100 of this Report for the recommendation of the Commission)*

This provision corresponds to section 61 of the *Mines Regulation Act 1964*. (See below)

- . *Section 87 (See page 100 of this Report for the recommendation of the Commission)*

This provision corresponds to section 52 of the *Mines Regulation Act 1964*. (See below)

- . *Section 89 (See page 100 of this Report for the recommendation of the Commission)*

This provision corresponds to section 53 of the *Mines Regulation Act 1964*. (See below)

Mines Regulation Act 1964

- . *Section 15 (See page 101 of this Report for the recommendation of the Commission)*

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. The information in this section is sufficiently specific to bring it within section 48.

- . *Section 52 (See page 101 of this Report for the recommendation of the Commission)*

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. The information is sufficiently specific to enable a genus to be established for the purpose of section 48 of the *Freedom of Information Act 1992 (Qld)*.

- . *Section 53 (See page 101 of this Report for the recommendation of the Commission)*

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. The information referred to is identified with sufficient particularity to enable a genus of information to be identified.

- . *Section 61 (See page 101 of this Report for the recommendation of the Commission)*

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. The information is sufficiently specific to enable a genus of information to be identified.

- . *Section 64 (See page 101 of this Report for the recommendation of the Commission)*

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. The section is specific enough for a genus of information to be identified.

Petroleum Regulations (Land) 1966

- . *Regulation 11 (See page 101 of this Report for the recommendation of the Commission)*

An inspector is prohibited from disclosing, other than for governmental purposes, information about operations under a petroleum title or matters related to those operations. This section is sufficiently specific to enable a genus of information to be identified.

Regulation 69 (See page 101 of this Report for the recommendation of the Commission)

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. The section is sufficiently specific to enable a genus of information to be identified.

Regulation 126 (See page 101 of this Report for the recommendation of the Commission)

Disclosure of detailed technical information required to be submitted in a well completion report is prohibited. This information is identified with sufficient particularity to enable a genus of information to be identified.

TREASURY

Debits Tax Act 1990 (See page 86 of this Report for the recommendation of the Commission)

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. The section is sufficiently specific to enable a genus of information to be identified.

B. *Provisions which define matter by reference to the capacity of the person who receives it (These provisions are listed in Appendix D)*⁵⁹

The provisions which the Commission has classified in this category prohibit disclosure of information according to the capacity of the person in possession of the information, rather than by reference to the nature of the information in question. Provisions of this kind would not, according to the decided cases,⁶⁰ be secrecy provisions within the meaning of section 48.

⁵⁹ But see Chapter 7.

⁶⁰ See pages 13-16.

AUDITOR-GENERAL (Now QUEENSLAND AUDIT OFFICE)

Financial Administration and Audit Act 1977

Section 92 (See pages 102-103 of this Report)

Officers of the department are prohibited from making a record of or divulging or communicating protected information. "Protected information" is defined to mean "information that is obtained under this Act." The information is defined only by reference to the capacity of the person in possession of it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

BUREAU OF EMERGENCY SERVICES (FORMERLY POLICE AND EMERGENCY SERVICES)

Fire Service Act 1990

Section 142A(1) (No recommendation has been made in relation to this provision)

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; 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. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

EMPLOYMENT, VOCATIONAL EDUCATION, TRAINING AND INDUSTRIAL RELATIONS

Industrial Relations Act 1990

Section 355 (No recommendation has been made in relation to this provision)

An Industrial Inspector or officer is prohibited from disclosing information acquired in the exercise of powers or performance of duties under the Act. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

Private Employment Agencies Act 1983

- . *Sections 9(6) and 10 (No recommendation has been made in relation to these provisions)*

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. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

Trading Hours Act 1990

- . *Section 3.2 (No recommendation has been made in relation to this provision)*

Section 3.2 prohibits an Inspector or officer from disclosing any information acquired during the course of their duties to any person. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

Vocational Education, Training and Employment Act 1991

- . *Section 4.15 (No recommendation has been made in relation to this provision)*

A member is prohibited from disclosing any information acquired in the performance of functions under the Act. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

Workplace Health and Safety Act 1989

- . *Section 133 (No recommendation has been made in relation to this provision)*

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. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

FAMILY SERVICES AND ABORIGINAL AND ISLANDER AFFAIRS

Adoption of Children Act 1964

Section 59(4) (No recommendation has been made in relation to this provision)

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. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

Intellectually Disabled Citizens Act 1985

Section 42 (No recommendation has been made in relation to this provision)

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. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

HEALTH

Food Act 1981

Section 40 (No recommendation has been made in relation to this provision)

This section prohibits disclosure of information obtained by a person in connection with the administration of the Act. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

Health Act 1937

Section 154N(2) (No recommendation has been made in relation to this provision)

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. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

Health Services Act 1991

- . *Section 2.11 (No recommendation has been made in relation to this provision)*

A person who is or was a member of a committee must not divulge any information acquired by the person in their official capacity. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

- . *Section 5.1(3) (No recommendation has been made in relation to this provision)*

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. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

Nursing Act 1992

- . *Section 139 (No recommendation has been made in relation to this provision)*

The section applies to a member or employee of the Queensland Nursing Council, a committee of the Queensland Nursing Council, a member of the Professional Conduct Committee, or a person performing functions or exercising powers under the Act. A person to whom the section applies, must not make a copy of, or take an extract from a protected document; or must not 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. "Protected document" is defined to mean a document that was made or obtained by a person as a person to whom the section applies, and includes a document seized, a copy of a document made or an extract of a document taken under the Act. "Protected information" is defined to mean information that was disclosed to, or obtained by, a person as a person to whom the section applies. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

JUSTICE, ATTORNEY-GENERAL AND THE ARTS

Companies Act 1961

- . *Section 124(2) (No recommendation has been made in relation to this provision)*

This section has been superseded by section 232(5) of the *Corporations Law (Cth)*. 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 information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

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

- . *Section 320 (No recommendation has been made in relation to this provision)*

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 Australian Securities Commission. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

Criminal Code

- . *Section 86 (No recommendation has been made in relation to this provision)*

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. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

Criminal Justice Act 1989

- . *Section 132 (No recommendation has been made in relation to this provision)*

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 Criminal Justice Committee. The information is

identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

Dispute Resolution Centres Act 1990

. *Section 5.4 (No recommendation has been made in relation to this provision)*

Disclosure by specified persons of information obtained in connection with the administration or execution of the Act is prohibited except in certain circumstances. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

Police Complaints Tribunal Acts Repeal Act 1990

. *Section 5(1)(c) (No recommendation has been made in relation to this provision)*

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 Criminal Justice Commission. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

Securities Industry Act 1975

. *Section 13(1) (No recommendation has been made in relation to this provision)*

A person appointed or employed under the Act is prohibited from disclosing information obtained by reason of the appointment or employment. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

Special Prosecutor Act 1989

- . *Section 20 (No recommendation has been made in relation to this provision)*

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. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

Trust Accounts Act 1973

- . *Section 25 (No recommendation has been made in relation to this provision)*

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. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

LANDS**Valuation of Land Act 1944**

- . *Section 11 (No recommendation has been made in relation to this provision)*

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. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

MINERALS AND ENERGY (FORMERLY RESOURCE INDUSTRIES)

Explosives Act 1952

Section 46A (No recommendation has been made in relation to this provision)

Disclosure of information obtained in connection with the administration of the Act is prohibited, except in certain circumstances. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

PARLIAMENTARY COMMISSIONER FOR ADMINISTRATIVE INVESTIGATIONS

Parliamentary Commissioner Act 1974

Sections 9(1), 10(4) and 22 (No recommendation has been made in relation to this provision)

Disclosure of information obtained in the course of or for the purpose of an investigation is prohibited. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

PREMIER, ECONOMIC AND TRADE DEVELOPMENT

Electoral and Administrative Review Act 1989

Section 6.4(3) (No recommendation has been made in relation to this provision)

Commissioners and officers of the Electoral and Administrative Review 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. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

Public Sector Management Commission Act 1990

Section 6.4(3) (No recommendation has been made in relation to this provision)

A Commissioner or officer of the Public Sector Management Commission shall not disclose information that comes to his or her knowledge in the course of

discharging functions or exercising powers or in the course of employment or because of access to records in the course of employment. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

Public Works Committee Act 1989

Section 41 (No recommendation has been made in relation to this provision)

Matter disclosed to the Public Works Committee at a private hearing under the Act is prohibited from disclosure except in specified circumstances. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

PRIMARY INDUSTRIES

Primary Producers' Organisation and Marketing Act 1926

Section 11D (No recommendation has been made in relation to this provision)

Members of the Commodity Board are prohibited from disclosing information which the Board has determined by formal resolution should be treated as confidential. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

QUEENSLAND CORRECTIVE SERVICES COMMISSION

Corrective Services Administration Act 1988

Section 61 (No recommendation has been made in relation to this provision)

A Commissioner or other person is prohibited from disclosing information obtained in the discharge of functions under the Act. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

QUEENSLAND POLICE SERVICE (FORMERLY POLICE AND EMERGENCY SERVICES)

Police Service Administration Act 1990

- . *Section 10.1 (No recommendation has been made in relation to this provision)*

Police officers and staff members are prohibited from disclosing information obtained through exercise of power derived from their employment. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

TOURISM, SPORT AND RACING

Racing and Betting Act 1980

- . *Section 10 (No recommendation has been made in relation to this provision)*

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. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

TREASURY

Casino Control Act 1982

- . *Section 16 (No recommendation has been made in relation to this provision)*

Officers are prohibited from disclosing matters which come to their knowledge in their official capacity in connection with the administration of the Act. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

Financial Administration and Audit Act 1977

- . *Section 92 (No recommendation has been made in relation to this provision)*

Officers of the department are prohibited from making a record of or divulging or communicating protected information. "Protected information" is defined to mean "information that is obtained under this Act." The *Financial Administration and Audit Act 1977* provides for the financial administration and audit of the State's public finances and the finances of departments and statutory bodies. This is sufficient to establish a genus of information in terms of section 48 of the *Freedom of Information Act 1992 (Qld)*.

Gaming Machine Act 1991

- . *Section 35(1) (No recommendation has been made in relation to this provision)*

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. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

- . *Section 35(2) (No recommendation has been made in relation to this provision)*

Disclosure of information coming to the knowledge of any person in the exercise of functions or duties under the Act is prohibited. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

Land Tax Act 1915

- . *Section 4A (No recommendation has been made in relation to this provision)*

Persons employed under the Act are prohibited from disclosing matters coming to their knowledge in their official capacity. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

Payroll Tax Act 1971

. *Section 5 (No recommendation has been made in relation to this provision)*

Disclosure of information obtained in connection with the administration of the Act is prohibited except in certain specified circumstances. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

Revenue Laws (Reciprocal Powers) Act 1988

. *Section 13 (No recommendation has been made in relation to this provision)*

Disclosure of information obtained under the Act is prohibited except in certain specified circumstances. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

. *Section 14 (No recommendation has been made in relation to this provision)*

Disclosure of information obtained under a corresponding law is subject to a similar prohibition. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

Stamp Act 1894

. *Section 10 (No recommendation has been made in relation to this provision)*

Disclosure of information obtained in connection with the administration of the Act is prohibited except in certain specified circumstances. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

Statistical Returns Act 1896

. *Section 6 (No recommendation has been made in relation to this provision)*

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. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

Tobacco Products (Licensing) Act 1988

Section 43 (No recommendation has been made in relation to this provision)

Disclosure of information obtained in connection with the administration of the Act is prohibited except in certain specified circumstances. The information is identified only by reference to the capacity of the person who receives it and is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

C. *Provisions which define matter in general terms (Some of these provisions are listed in Appendix D)*⁶¹

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.⁶² Unless the provision refers to the protected matter with sufficient particularity, the provision will not come within section 48.

Whether or not the provisions considered by the Commission to belong in this category fall within section 48 is discussed below.⁶³

ADMINISTRATIVE SERVICES

Libraries and Archives Act 1988

Section 61 (See page 87 of this Report for the recommendation of the Commission)

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.

⁶¹ But see Chapter 7.

⁶² See pages 13-16.

⁶³ A full list of the provisions which the Commission considers to be outside the scope of section 48 is set out in Appendix D, but see also Chapter 7.

BUREAU OF EMERGENCY SERVICES (FORMERLY POLICE AND EMERGENCY SERVICES)

Ambulance Service Act 1991

- . *Section 6.8 (See page 88 of this Report for the recommendation of the Commission)*

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.

EDUCATION

Education (General Provisions) Act 1989

- . *Section 28 (See page 88 of this Report for the recommendation of the Commission)*

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 authorities discussed in Chapter 3,⁶⁴ a genus could be identified.

EMPLOYMENT, VOCATIONAL EDUCATION, TRAINING AND INDUSTRIAL RELATIONS

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

- . *Section 94 (No recommendation has been made in relation to this provision)*

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. The information is identified by reference to the capacity of the person

⁶⁴ See page 13.

who receives it and refers to the nature of the information only in broad, general terms which do not permit a genus to be identified. The section is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

ENVIRONMENT AND HERITAGE

Nature Conservation Act 1992

Section 124(2)(a) (See page 90 of this Report for the recommendation of the Commission)

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.

FAMILY SERVICES AND ABORIGINAL AND ISLANDER AFFAIRS

Child Care Act 1991

Section 58 (See page 91 of this Report for the recommendation of the Commission)

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 85 of this Report for the recommendation of the Commission)

This section relates to the investigation of child protection notifications in cases of alleged 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 92 of this Report for the recommendation of the Commission)

A person must not record, disclose or use confidential information gained by the person through involvement in the administration of the Division of the Act which contains section 71B 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 (No recommendation has been made in relation to this provision)

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 2.5(3) (No recommendation has been made in relation to this provision)

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. The provision refers specifically to the person in possession of the information and only generally to the characteristics of the information. The information is not described with sufficient particularity to allow a genus to be identified and the provision is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

Section 5.1(1) (See page 94 of this Report for the recommendation of the Commission)

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.

Medical Act and Other Acts (Administration) Act 1966

Section 14B (No recommendation has been made in relation to this provision)

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. It identifies information by reference to the capacity of the person who receives it and does not refer with sufficient particularity to the kind of information to allow a genus to be identified. The section is therefore not within section 48 of the *Freedom of Information Act 1992 (Qld)*.

HOUSING, LOCAL GOVERNMENT AND PLANNING

Local Government Superannuation Act 1985

Section 63 (See page 94 of this Report for the recommendation of the Commission)

All communications between the Local Government Superannuation Board and a Local Authority in relation to a permanent employee shall be absolutely privileged. The genus which is established is information concerning permanent employees. Accordingly, the section comes within the terms of section 48.

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

- . *Chapter 2 Part 1, Ordinance 2 (No recommendation has been made in relation to this provision)⁶⁵*

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 (Qld)*.

- . *Chapter 2 Part 2, Ordinance 34 (No recommendation has been made in relation to this provision)⁶⁶*

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 95 of this Report for the recommendation of the Commission)*

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, in line with the authorities discussed in Chapter 3,⁶⁷ section 48 would apply to section 220.

⁶⁵ This ordinance is also encompassed in the discussion in Chapter 5 of this Report concerning local authorities.

⁶⁶ This ordinance is also encompassed in the discussion in Chapter 5 of this Report concerning local authorities.

⁶⁷ See page 13.

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

- Section 815(4) (See page 95 of this Report for the recommendation of the Commission)*

A person shall not give to another person information given by the Australian Securities Commission under subsection (1). Subsection (1) allows the Australian Securities Commission to give to a person who holds or will hold an authority to act as a representative of an investment adviser from a person licensed to act as an investment adviser, any information that the Commission has about the person. The information referred to concerns the person and is defined in general terms. However, there is a genus which can be established concerning the person who is to hold the authority. The Commission believes that the section comes within the terms of section 48.

Legal Aid Act 1978

- Section 81 (See page 98 of this Report for the recommendation of the Commission)*

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.

MINERALS AND ENERGY (FORMERLY RESOURCE INDUSTRIES)

Mineral Resources Act 1989

- Sections 4.18, 7.19 (No recommendation has been made in relation to these provisions)*

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 are confidential between the mining registrar and each of the parties, and are 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 (No recommendation has been made in relation to these provisions)

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 101 of this Report for the recommendation of the Commission)

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.⁶⁸ The Commission is therefore of the view that the information is sufficiently specific to bring the provision within section 48.

PREMIER, ECONOMIC AND TRADE DEVELOPMENT

Electoral and Administrative Review Act 1989

Section 2.13(5) (No recommendation has been made in relation to this provision)

Publication of Commission reports is prohibited except in accordance with the 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 (Qld)*.

⁶⁸ See *Kavadias v Commonwealth Ombudsman* (1984) 52 ALR 728 at 732.

Public Sector Management Commission Act 1990

Section 6.4(1) (No recommendation has been made in relation to this provision)

A person shall not disclose information that the Commission has communicated to the person or to any unit of the public sector or an officer or employee in the public sector on the basis that the information is confidential. The matter which is prohibited is confidential information communicated by the Public Sector Management Commission. The Commission is of the view that this does not establish any genus of information for the purposes of section 48 of the *Freedom of Information Act 1992 (Qld)*.

TREASURY

Financial Institutions Code 1992

Section 410 (See page 86 of this Report for the recommendation of the Commission)

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*,⁶⁹ 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 D)⁷⁰

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.

⁶⁹ (1986) 66 ALR 159.

⁷⁰ But see Chapter 7.

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.⁷¹

Provisions which, in the view of the Commission, do not contain a specific prohibition are listed below.

EMPLOYMENT, VOCATIONAL EDUCATION, TRAINING AND INDUSTRIAL RELATIONS

Industrial Relations Act 1990

- . *Section 189 (No recommendation has been made in relation to this provision)*

This provision confers on the Industrial Commissioner or Industrial Magistrate discretion to hold a compulsory conference in public or in private. There is no prohibition on disclosure of information in the provision and, accordingly, the provision does not come within the terms of section 48 of the *Freedom of Information Act 1992 (Qld)*.

FAMILY SERVICES AND ABORIGINAL AND ISLANDER AFFAIRS

Domestic Violence (Family Protection) Act 1989

- . *Section 82 (No recommendation has been made in relation to this provision)*

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. Although a genus - information relating to the identity of a person in a proceeding under the Act - can be identified, in the view of the Commission the provision imposes a penalty for publication in a particular way and therefore does not fall within section 48.

⁷¹ See for example *Re Actors' Equity and Australian Broadcasting Tribunal* (1984) 1 AAR 222 at 231.

Further, it is unlikely that publication of the nature referred to in the section would be made in response to a Freedom of Information application. To be subject to an application under the *Freedom of Information Act 1992 (Qld)*, a person must be an "officer" of an "agency" as defined by the Act.⁷²

HEALTH

Food Act 1981

Section 48 (No recommendation has been made in relation to this provision)

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. There is no prohibition on disclosure of information in the provision and, accordingly, the provision does not come within the terms of section 48 of the *Freedom of Information Act 1992 (Qld)*.

Health Act 1937

Section 48(3) (No recommendation has been made in relation to this provision)

This section relates to proceedings in relation to controlled notifiable diseases. The proceedings are to be held in camera. The provision does not prohibit the disclosure of information and would not come within section 48 of the *Freedom of Information Act 1992 (Qld)*.

Health Rights Commission Act 1991

Section 89 (No recommendation has been made in relation to this provision)

This section relates to notices to provide information. Under subsection (5) the information is not admissible in evidence against the person. There is no prohibition on disclosure of information in the provision and, accordingly, the provision does not come within the terms of section 48 of the *Freedom of Information Act 1992 (Qld)*.

⁷² See sections 7 and 8.

- . *Section 98 (No recommendation has been made in relation to this provision)*

This section relates to oral inquiry hearings and subsection (2) provides that the evidence given is not admissible in evidence against the person. There is no prohibition on disclosure of information in the provision and, accordingly, the provision does not come within the terms of section 48 of the *Freedom of Information Act 1992 (Qld)*.

- . *Section 108 (No recommendation has been made in relation to this provision)*

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. There is no prohibition on disclosure of information in the provision and, accordingly, the provision does not come within the terms of section 48 of the *Freedom of Information Act 1992 (Qld)*.

Health Services Act 1991

- . *Section 2.6 (No recommendation has been made in relation to this provision)*

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. There is no prohibition on disclosure of information in the provision and, accordingly, the provision does not come within the terms of section 48 of the *Freedom of Information Act 1992 (Qld)*.

- . *Section 2.12 (No recommendation has been made in relation to this provision)*

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. There is no prohibition on disclosure of information in the provision and, accordingly, the provision does not come within the terms of section 48 of the *Freedom of Information Act 1992 (Qld)*.

Radio-active Substances Act 1958

- . *Section 18 (No recommendation has been made in relation to this provision)*

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. There is no prohibition on disclosure of information in the provision and, accordingly, the provision does not come within the terms of section 48 of the *Freedom of Information Act 1992 (Qld)*. This section does not apply to an agency of government and for that reason also would not come within section 48 of the Act.

JUSTICE, ATTORNEY-GENERAL AND THE ARTS**Anti-Discrimination Act 1991**

- . *Section 264 (No recommendation has been made in relation to this provision)*

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. There is no prohibition on disclosure of information in the provision and, accordingly, the provision does not come within the terms of section 48 of the *Freedom of Information Act 1992 (Qld)*.

Commercial Banking Company of Sydney Limited Merger Act 1982

- . *Section 16(1) (No recommendation has been made in relation to this provision)*

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) (No recommendation has been made in relation to this provision)*

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

Coroners Act 1958

Section 52 (No recommendation has been made in relation to this provision)

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 questions in relation to which the coroner has warned the witness he or she is not obliged to answer and which the coroner has ordered shall not be published. The section does not prohibit the disclosure of information, but rather imposes a restriction on permitted methods of disclosure. In any event, the information referred to in this section is defined in terms which are too broad to establish any genus. The Commission therefore believes that the section does not come within the terms of section 48.

Criminal Justice Act 1989

Section 27 (No recommendation has been made in relation to this provision)

The Criminal Justice 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. There is no prohibition on disclosure of information in the provision and, accordingly, the provision does not come within the terms of section 48 of the *Freedom of Information Act 1992 (Qld)*.

Section 58(2)(c) (No recommendation has been made in relation to this provision)

This section, identified by the Criminal Justice Commission in its response to the Draft Report, had not previously been brought to the attention of this Commission and therefore was not referred to in the Draft Report.

Section 58(1) establishes a criminal intelligence unit within the Criminal Justice Commission. One of the functions of this unit is to build up a data base of intelligence information concerning criminal activities and people involved in such activities. Section 58(2)(c) requires the criminal intelligence unit to secure the data base and records in its possession and control so that only certain people with a legitimate interest in the information they contain are able to have access to that information. The Criminal Justice Commission submission argues that section 58(2)(c) is an enactment which applies to specific information - namely, intelligence information contained in the data base and records of the unit - and prohibits the disclosure of that information subject to specific exceptions.

The Commission accepts that there is an identifiable genus of information referred to in the provision. However, the Commission is unable to agree that the provision imposes a prohibition on disclosure. Rather, it creates an obligation to ensure the security of the data base from unauthorised access.

Section 88 (No recommendation has been made in relation to this provision)

The Criminal Justice 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.

In its submission in response to the Draft Report, the Criminal Justice Commission argued that section 88, read in conjunction with section 106(i) of the Act, which makes it a contempt of the Commission to disclose information which the Commission has ordered not to be published, does in fact prohibit disclosure of information.

The Commission is unable to agree with this submission. Section 88 confers a discretion on the Criminal Justice Commission. The effect of section 106(i) is to provide for the consequences of failure to comply with an exercise of that discretion. Section 88 therefore does not, either of itself or in conjunction with section 106(i), constitute a prohibition on the disclosure of information within the meaning of section 48 of the *Freedom of Information Act 1992 (Qld)*.

Justices Act 1886

Section 102F(1) and (2) (No recommendation has been made in relation to this provision)

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*.⁷³ The Commission, in its Draft Report, considered that the information referred to did not establish a genus of information for the purpose of section 48 of the *Freedom of Information Act 1992 (Qld)*. Upon further consideration, the Commission is of the view that, although the information referred to is very broad, there is sufficient particularity for a genus to be established. The genus would be information concerning a private complaint under the *Justices Act 1886*.

⁷³ *Justices Act 1886* section 102A.

However, the Commission remains of the view that the provisions are not within the scope of section 48 as they do not prohibit the disclosure of information. The prohibition applies only to publication in the manner specified in the provisions. Disclosure in any other way is not prohibited.

Jury Act 1929

- . *Section 48(ii) (No recommendation has been made in relation to this provision)*

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. This provision does not prohibit the disclosure of information, but rather specifies the consequence of disclosure. In any event, the *Freedom of Information Act 1992 (Qld)* does not apply to the holder of an office connected with a court or the staff of an office of the court in their official capacity, so far as their functions relate to the court's judicial functions.⁷⁴ The persons referred to in the section would therefore not be subject to an application under the Act.

Public Trustee Act 1978

- . *Section 15 (No recommendation has been made in relation to this provision)*

Every member of staff of the Public Trust Office and of the Public Trust Office Investment Board, and every agent of the Public Trustee is bound to secrecy by declaration. There is no prohibition on disclosure of information in the provision. Further, the provision refers only to the capacity of persons in possession of information and does not allow a genus of information to be identified. Accordingly, the provision does not come within the terms of section 48 of the *Freedom of Information Act 1992 (Qld)*.

Special Prosecutor Act 1989

- . *Section 21 (No recommendation has been made in relation to this provision)*

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. There is no prohibition on disclosure of information in the provision and, accordingly, the provision does not come within the terms of section 48 of the *Freedom of Information Act 1992 (Qld)*.

⁷⁴ See *Freedom of Information Act 1992 (Qld)* section 11(1)(e)(ii) and 11(1)(f).

PARLIAMENTARY COMMISSIONER FOR ADMINISTRATIVE INVESTIGATIONS

Parliamentary Commissioner Act 1974

- . *Sections 18(2) and 29(4) (No recommendation has been made in relation to these provisions)*

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

PREMIER, ECONOMIC AND TRADE DEVELOPMENT

Public Works Committee Act 1989

- . *Section 40 (No recommendation has been made in relation to this provision)*

The Public Works Committee may order that evidence or the contents of a book, document or writing produced at a public hearing shall not be published where the Committee believes that it is in the public interest to so order for reasons connected with the inquiry or the nature of the evidence. The section does not prohibit the publication of information but places a discretion in the Public Works Committee. Therefore the provision does not come within the terms of section 48 of the *Freedom of Information Act 1992 (Qld)*.

QUEENSLAND POLICE SERVICE (FORMERLY POLICE AND EMERGENCY SERVICES)

Drugs Misuse Act 1989

- . *Section 47 (No recommendation has been made in relation to this provision)*

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. There is no prohibition on disclosure of information in the provision and, accordingly, the provision does not come within the terms of section 48 of the *Freedom of Information Act 1992 (Qld)*.

TREASURY

Golden Casket Art Union Act 1978

. *Rule 10 (No recommendation has been made in relation to this provision)*

The office shall advise subscribers of the results of casket draws and may release names and addresses of registered winners unless otherwise instructed. There is no prohibition on disclosure of information in the provision and, accordingly, the provision does not come within the terms of section 48 of the *Freedom of Information Act 1992 (Qld)*.

Lotto Act 1981

. *Rule 12 (No recommendation has been made in relation to this provision)*

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. There is no prohibition on disclosure of information in the provision and, accordingly, the provision does not come within the terms of section 48 of the *Freedom of Information Act 1992 (Qld)*.

Motor Vehicles Insurance Act 1936

. *Section 2C (No recommendation has been made in relation to this provision)*

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. There is no prohibition on disclosure of information in the provision and, accordingly, the provision does not come within the terms of section 48 of the *Freedom of Information Act 1992 (Qld)*.

Queensland Industry Development Corporation Act 1985

. *Section 30 (No recommendation has been made in relation to this provision)*

A director shall make a declaration of secrecy before entering into duties or exercising any power, function or authority. There is no prohibition on disclosure of information in the provision. Further, the section refers to the capacity of the person in possession of information and does not refer to the nature of the information with sufficient particularity to enable a genus to be identified. Accordingly, the provision does not come within the terms of section 48 of the *Freedom of Information Act 1992 (Qld)*.

Revenue Laws (Reciprocal Powers) Act 1988

- . *Section 15 (No recommendation has been made in relation to this provision)*

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. There is no prohibition on disclosure of information in the provision and, accordingly, the provision does not come within the terms of section 48 of the *Freedom of Information Act 1992 (Qld)*.

Soccer Football Pools Act 1976

- . *Rule 17 (No recommendation has been made in relation to this provision)*

The office shall advise subscribers of the results of pool games and may release names and addresses of registered prize winners unless otherwise instructed. There is no prohibition on disclosure of information in the provision and, accordingly, the provision does not come within the terms of section 48 of the *Freedom of Information Act 1992 (Qld)*.

CHAPTER 5: LOCAL AUTHORITY BY-LAWS

A. INTRODUCTION

Following its Draft Report, the Commission wrote to all local authorities in Queensland requesting that each local authority provide information about relevant by-laws of that local authority.⁷⁵ There are 134 local authorities in Queensland and of these, 79 responded to the Commission's request for information.⁷⁶

B. BY-LAWS NOTIFIED TO THE COMMISSION

Many local authorities advised that their relevant by-laws contained no secrecy provisions. Some local authorities notified the Commission of internal policies which were employed in the administration of the Council.⁷⁷ However, these policies were not considered by the Commission as they do not come within the definition of "enactment" in terms of section 7 of the *Freedom of Information Act 1992 (Qld)*.⁷⁸

The majority of by-laws which were notified to the Commission by the remaining local authorities were of two types⁷⁹ and there were two other by-laws which formed a third category.

⁷⁵ The letter was in similar terms to that sent to all Government Departments which appears in Appendix B to this Report.

⁷⁶ A list of the local authorities which responded to the Commission is set out in the table which is Appendix F to this Report. There is also a summary of recommendations and classification of by-laws which appears as Appendix H.

⁷⁷ A list of those local authorities and the policies is set out in Appendix H to this Report.

⁷⁸ "Enactment" means an Act or statutory instrument.

⁷⁹ Typical examples of the wording of both types of by-laws are set out in Appendix G to this Report.

1. *Records*

In general, the first type of by-law prohibits an officer of a council, without leave from the Town Clerk, showing, laying open, exposing, displaying, communicating the contents of or permitting any person to take a copy of, any books, papers or records of the council.⁸⁰

The Commission believes that this type of by-law does not come within the terms of section 48 of the *Freedom of Information Act 1992 (Qld)*.⁸¹ There is no genus which can be established from the terms of the by-law. The information which is identified is merely encompassed by the general description of "books, papers or records of the Council" and comes within the Commission's classification "C" - that is, provisions which define matter in general terms. Accordingly, by-laws of this type are outside the scope of this reference.

One of the by-laws notified to the Commission came within the Commission's classification "D" - provisions which do not prohibit the disclosure of information. This by-law⁸² provides that officers and servants of the council are to be loyal to and to conserve the interest of the council and to contribute to the smooth and efficient working of the council. Any matter or thing which the officer becomes aware of which may be prejudicial to the interests of the council must be notified to the council. As provisions which do not prohibit the disclosure of information do not come within section 48,⁸³ they are outside the scope of this reference.

2. *Committee Meetings*

The second type of by-law relates to committee meetings. In general, these by-laws provide that all discussions of a committee of the council shall be strictly confidential except when the council has expressly permitted the public to be present.⁸⁴

⁸⁰ This is a typical example and the specific provision is from Ordinance 2 of Part 1 of Chapter 2 of the *Ordinances of the City of Brisbane*.

⁸¹ See pages 13-16.

⁸² By-law 3 Part C Clause 3 of the *By-laws of the Pine Rivers Shire Council*.

⁸³ See pages 13-16 of this Report.

⁸⁴ This is a typical example and the specific provision is from Paragraph 52 of Chapter 28 of the *By-Laws of the Mareeba Shire Council*. The by-law notified to the Commission by the Ipswich City Council is in similar terms to this provision. However, because it does not prohibit the disclosure of information, it comes within the Commission's classification "D" and is therefore outside the scope of this reference.

In the view of the Commission, this type of by-law would also come within the Commission's classification "C". The information which is not to be disclosed is defined in general terms and cannot be identified from the terms of the by-law in such a way as to establish a genus of information.⁸⁵ By-laws of this type do not come within the terms of section 48 of the *Freedom of Information Act 1992 (Qld)* and are therefore outside the scope of this reference.

Some of the by-laws relating to committee meetings did not come within the Commission's classification "C" but came within the Commission's classification "D" - provisions which do not prohibit the disclosure of information.⁸⁶ This type of by-law provided that the council may resolve itself into a committee of the whole. The council could resolve itself into such a committee whenever it felt it was necessary that a matter required more full and free discussion. Ancillary by-laws to this type of by-law related to press privilege and publicity of committee meetings. Provisions of this type do not come within the terms of section 48 and are therefore outside the scope of this reference.

3. *Vandalism*

Two by-laws notified to the Commission relate to the confidentiality of the name of any informant who gives information to the Council concerning vandalism.⁸⁷ The Commission believes that the information referred to in these by-laws is sufficiently specific to enable a genus of information to be identified. Accordingly, the by-laws fall within the Commission's classification "A" - that is, provisions which define matter by reference to its inherent characteristics or qualities and come within the terms of section 48 of the *Freedom of Information Act 1992 (Qld)*.⁸⁸

The Commission believes that the information referred to in these by-laws is protected to the extent of the exemption in section 46 (matter communicated in confidence exemption) of the *Freedom of Information Act 1992 (Qld)*,⁸⁹ and it would not be necessary to continue the protection presently provided by section 48 of the *Freedom of Information Act 1992 (Qld)* after the expiration of that section.

⁸⁵ See pages 13-16.

⁸⁶ A list of these by-laws is set out in Appendix H to this Report.

⁸⁷ By-law 20(4), Chapter V "Vandalism" of the *By-laws of the Dalby Town Council*; By-law 527A(6) of the *By-laws of the Redcliffe City Council*.

⁸⁸ See pages 13-16 and page 27.

⁸⁹ Section 46 is set out in Appendix I.

C. THE LOCAL GOVERNMENT ACT 1993 (QLD) AND THE MODEL LOCAL LAWS

In addition to the by-laws notified to the Commission by local authorities, the Department of Housing, Local Government and Planning has advised the Commission of new Model Local Laws which, once gazetted, can be adopted by all local authorities in Queensland. Many of the local authorities which responded to the Commission advised that it was their intention to adopt these model laws.

The Model Local Laws do not contain any provisions which restrict access to information by members of the public. Any restriction on access to information is contained in the *Local Government Act 1993 (Qld)*.⁹⁰

1. *The Local Government Grants Commission*

Part 3 of the *Local Government Act 1993* relates to the Local Government Grants Commission. Section 155 provides that the Commission must allow members of the public to attend an inquiry of the Commission unless the Commission forms an opinion that it is in the public interest not to allow members of the public to attend. The Commission believes that the provision does not come within the terms of section 48 of the *Freedom of Information Act 1992 (Qld)* as there is no reference to a particular kind of information.⁹¹ Nor is there any prohibition on disclosure of information.⁹² The provision is therefore outside the scope of this reference.

2. *Registers of Interests*

(i) *Councillors and Related Persons*

Section 195 of the *Local Government Act 1993* sets out the requirement for local authorities to keep a register of interests of local government councillors and a register of interests of persons who are related to councillors. The register must contain the financial and non-financial particulars prescribed by regulation.⁹³ There is no restriction on access to the register of councillors' interests.

⁹⁰ Of the provisions discussed in this Chapter, sections 269 and 346 have commenced operation. The remainder commence on 26 March 1994.

⁹¹ See pages 13-16 and page 27.

⁹² See pages 13-16 and pages 59-60.

⁹³ Section 195(2) *Local Government Act 1993*.

Section 196 restricts access to the register of *other person's* interests to the councillor, and to a person permitted by law to have access to information in the register or the person's agent.⁹⁴ The provision comes within the Commission's classification "A" - provisions which define matter by reference to its inherent characteristics or qualities and is thus within the terms of section 48 of the *Freedom of Information Act 1992 (Qld)*.⁹⁵ The genus of the information is "personal information" relating to pecuniary and other interests of person's related to councillors.

The Commission, in its Draft Report, expressed the view that there was adequate protection for the information contained in the register of other persons' interests under sections 44 (the personal affairs exemption) and 45 (the trade secrets, business affairs and research exemption) of the *Freedom of Information Act 1992 (Qld)*.⁹⁶ The Commission concluded that continuation of the protection provided by section 48 was unnecessary. The Commission also noted that the Department could utilise the procedure in section 11(1)(q) of the Act if it so desired.⁹⁷

Both the Department of Housing, Local Government and Planning and the Local Government Association of Queensland Inc. submitted to the Commission that the registers of local authorities should have the same privileges as the privileges afforded the pecuniary interest registers of the Legislative Assembly. The Department advised the Commission that "[w]hen Cabinet approved the policies for the new Act and gave authority to prepare a Bill for a new Act, Cabinet decided the resolution of the Legislative Assembly regarding members of the Legislative Assembly (MLA's) to register their interests and the interests of related persons should provide the model for local government." It was the view of the Department of the Premier, Economic and Trade Development that, since section 11(1)(b) of the *Freedom of Information Act 1992 (Qld)* provides that the Act does not apply to the Legislative Assembly, it would seem that the Register of Related Persons' Interests is not subject to a request to the Legislative Assembly under the Act.

The intention of Cabinet, as disclosed by the Departmental submission, may, as a matter of policy, be to clothe the register of other persons' interests with the same exemptions as the registers of the Legislative Assembly. However, the apparent inconsistency between the registers of the Legislative Assembly and the registers of local authorities has not been addressed by the Parliament in the *Local Government Act 1993*. The Commission is of the view that the inconsistency should not be continued unless there is a sound policy reason to do so.

⁹⁴ This provision was originally clause 5.54 of the Draft *Local Government Bill 1993*.

⁹⁵ See pages 13-16 and page 27.

⁹⁶ Sections 44 and 45 are set out in Appendix I.

⁹⁷ See page 62 of the Draft Report. Section 11(1)(q) provides that the Act does not apply to an agency, part of an agency or function of an agency prescribed by regulation.

Until Parliament addresses this issue, the Commission believes that the objective of the Cabinet, as disclosed by the Departmental submission, is achieved by the grounds of exemption in sections 44 and 45 of the *Freedom of Information Act 1992 (Qld)*. The Commission also reiterates its comment concerning the procedure in section 11(1)(q) of the *Freedom of Information Act 1992 (Qld)*.⁹⁸ It should be noted that the Commission is not recommending the removal of the restriction on access imposed by section 196 of the *Local Government Act 1993*. The Commission is merely recommending that since the information contained in the register is protected to the extent of the exemptions in sections 44 and 45, it is not necessary to continue the protection presently conferred by section 48.

(ii) *Chief Executive Officer, Senior Executive Officers and Employees*

Section 713 of the *Local Government Act 1993* obliges the Mayor of a local authority to keep a register of interests of the chief executive officer and a register of interests of persons related to the chief executive officer. The chief executive officer is required to keep a register of interests of senior executive officers and employees and a register of interests of persons related to senior executive officers and employees.⁹⁹ The registers must contain the financial and non-financial particulars prescribed by regulation.¹⁰⁰ Section 714 restricts access to the registers by allowing access only to a councillor of the local government, the chief executive officer, and a person permitted by law to have access to information in the register or that person's agent.¹⁰¹ This type of provision comes within the terms of section 48 of the *Freedom of Information Act 1992 (Qld)* as it is within the Commission's classification "A" - provisions which define matter by reference to its inherent characteristics or qualities. The genus of information is "personal information" relating to pecuniary and other interests.

The Commission, in its Draft Report, recommended that the provision should not be re-enacted because there was adequate protection for the information referred to in that provision under sections 44 (the personal affairs exemption) and 45 (the trade secrets, business and research exemption) of the *Freedom of Information Act 1992 (Qld)*.¹⁰²

⁹⁸ See page 62 of the Draft Report.

⁹⁹ Section 713(2) *Local Government Act 1993*.

¹⁰⁰ Section 713(3) *Local Government Act 1993*.

¹⁰¹ This provision was originally clause 6.14 of the Draft *Local Government Bill 1993*.

¹⁰² Sections 44 and 45 are set out in Appendix I.

The Department of Housing, Local Government and Planning, in its submission to the Commission, stated that "the loss of the prohibition against disclosure of the register of interests, would subject ... local government employees to a higher level of public scrutiny than that applying to ... employees of the Parliamentary Service Commission." This argument was also supported by the Local Government Association of Queensland Inc. in its submission to the Commission.

The Commission is not recommending that the prohibition against disclosure be removed, but merely that continuation of the section 48 exemption is unnecessary.¹⁰³ After considering the concerns expressed by the Department and the Local Government Association of Queensland Inc., the Commission maintains its view that the information contained in the registers would be protected to the extent of the exemptions contained in sections 44 and 45 of the *Freedom of Information Act 1992 (Qld)*.

3. *Privacy of Voting*

Section 269 of the *Local Government Act 1993* provides that local government election returning officers must ensure that polling booths are provided with sufficient voting compartments to allow votes to be cast in private. In the view of the Commission, this provision does not prohibit disclosure of information and comes within the Commission's classification "D" - provisions which do not prohibit the disclosure of information. Therefore, the provision is not within section 48 of the *Freedom of Information Act 1992 (Qld)* and is outside the scope of this reference.

4. *Breach of Confidentiality of Vote*

Section 346 of the *Local Government Act 1993* prohibits a person from examining a ballot paper used in an election to ascertain the candidates for whom an elector has voted. If a person does ascertain the candidates for whom an elector has voted, the person must not disclose that fact unless required by law to disclose it.¹⁰⁴ This provision prohibits the disclosure of particular information which can be identified as a genus of information.¹⁰⁵ Therefore, the provision comes within the Commission's classification "A" - provisions which define matter by reference to its inherent characteristics or qualities. The genus identified is information relating

¹⁰³ See page 79.

¹⁰⁴ Section 346(3) *Local Government Act 1993*.

¹⁰⁵ See pages 13-16 and page 27.

to the candidates for whom a person has voted. Accordingly, the provision comes within the terms of section 48 of the *Freedom of Information Act 1992 (Qld)*.

However, the Commission believes that the information referred to in this provision would be protected to the extent of the exemption relating to matter communicated in confidence contained in section 46 of the *Freedom of Information Act 1992 (Qld)*.¹⁰⁶ It is therefore not necessary for the protection presently given by section 48 to be continued.

5. Meetings

Section 376 of the *Local Government Act 1993* specifies that local government meetings are to be open to the public unless the local government or committee has resolved that a meeting is to be closed under section 377.

Section 377 of the *Local Government Act 1993* provides that the local government or committee may resolve that a meeting is to be closed to the public if it is considered necessary to close the meeting to discuss certain matters such as the appointment, dismissal or discipline of employees, industrial matters affecting employees, budget matters, rating concessions, contracts to be made, legal proceedings, action to be taken under the *Local Government (Planning and Environment) Act 1990*, or other business which would be likely to prejudice the interests of the local government or someone else or enable a person to gain a financial advantage. No resolutions can be made whilst the meeting is closed.¹⁰⁷

The Commission believes that this provision comes within the Commission's classification "D" - provisions which do not prohibit the disclosure of information - and is not within the terms of section 48 of the *Freedom of Information Act 1992 (Qld)*.¹⁰⁸ Accordingly, the provision is outside the scope of this reference.

6. Improper Conduct by Local Government Employees

Section 717 of the *Local Government Act 1993* sets out conduct which an employee of a local government must not engage in.

¹⁰⁶ Section 46 is set out in Appendix I.

¹⁰⁷ Section 377(3) *Local Government Act 1993*.

¹⁰⁸ See pages 13-16 and pages 59-60.

The employee or a person who has been an employee must not make improper use of information acquired as an employee to gain an advantage or to cause harm to the local government.¹⁰⁹ There is no genus of information which can be established in this provision and the information is only identified by reference to the employee obtaining the information through the course of employment. Accordingly, the provision is outside the scope of this reference.¹¹⁰

Section 717(4) prohibits an employee or a person who has been an employee from releasing information that the person knows is confidential to the local government and which the local government wishes to keep confidential. The Commission believes that the provision comes within the Commission's classification "C" - provisions which define matter in general terms. The information referred to in this provision is "confidential" information which is not sufficiently specific to establish a genus of information as contemplated by section 48 of the *Freedom of Information Act 1992 (Qld)*.¹¹¹ The provision is therefore outside the scope of this reference.

¹⁰⁹ Section 717(2) *Local Government Act 1993*.

¹¹⁰ See pages 13-16 and page 38.

¹¹¹ See pages 13-16 and page 51.

CHAPTER 6: RECOMMENDATIONS

Section 48(3) of the *Freedom of Information Act 1992 (Qld)* provides that section 48 is to have effect for only two years from the date of assent. The Act received the Royal Assent on 19 August 1992, so that section 48 ceases to operate after 18 August 1994. Once the section expires, the exemption it contains will also expire.

This Chapter addresses the question of which of the provisions identified in Chapter 4 of this Report as coming within the terms of section 48¹¹² should be included in legislation to provide for the exemption currently contained in section 48 to continue beyond 18 August 1994.¹¹³

In the Draft Report, the Commission recommended that, for most of the provisions which were considered to be secrecy provisions, the section 48 exemption should not be continued. Most departments, in their submissions to the Commission agreed with the Commission's conclusions and recommendations, subject to the provisions remaining in the legislation. Where, as a result of submissions received by the Commission, the Commission has been persuaded to change its original recommendation, this is indicated in the text.

Three points should be noted in relation to those provisions for which the Commission has not recommended continuation of the exemption.

First, in the submissions received by the Commission there was concern that provisions would no longer exist if they were not re-enacted. There were strongly expressed views about the need for the continued existence of many provisions. However, despite the reference in the letter from the then acting Attorney-General¹¹⁴ to the repeal of existing secrecy provisions, existing provisions will not automatically be repealed. The effect of the Commission's recommendation will be that each provision classified by the Commission as coming within section 48 will continue to exist. The prohibition imposed by each of the provisions against disclosure of information will also continue to operate. However, the information to which each of the provisions refers will no longer be exempt from disclosure under the *Freedom of Information Act 1992 (Qld)* merely because of the existence of the prohibition.

¹¹² Provisions which do not come within section 48 are beyond the scope of this reference and consequently no recommendations concerning them have been made. A full list of the provisions which the Commission considers to be outside the scope of section 48 is set out in Appendix D, but see also Chapter 7.

¹¹³ The appropriate legislative mechanism will be discussed in Chapter 8.

¹¹⁴ See page 112.

Second, matter is exempt if it comes within any of the provisions in Division 2 of Part 3 of the Act. Matter presently exempt under section 48 of the Act may also be exempt on some other ground. The relevant exemption provisions are set out in sections 39 to 50 of the Act.¹¹⁵

These sections of the *Freedom of Information Act 1992 (Qld)* are concerned with exempting from the provisions of the Act specified kinds of matter. Section 39 exempts matter relating to investigations by the Parliamentary Commissioner or an audit by the Auditor-General; section 40 exempts matter concerning certain operations of agencies; section 41 exempts matter relating to deliberative processes; section 42 exempts matter relating to law enforcement or public safety; section 43 exempts matter affecting legal proceedings; section 44 exempts matter affecting personal affairs; section 45 exempts matter affecting trade secrets, business affairs and research; section 46 exempts matter communicated in confidence; section 47 exempts matter affecting the economy of the State; section 49 exempts matter affecting the financial or property interests of the State and section 50 exempts matter the disclosure of which would be in contempt of court or would infringe the privileges of Parliament.

The justification for exempting these matters from the scope of the *Freedom of Information Act 1992 (Qld)* is found in the detailed specification, in the sections themselves, of the kinds of matter which are exempt. The exemption provisions also include limitations on the extent of the exemption.

The proposition that the exemption provisions in Freedom of Information legislation should be given a restrictive interpretation has been expressly rejected.¹¹⁶ For example, information referred to in many of the provisions which come within the scope of section 48 would, in the view of the Commission, be exempt under section 44 (the personal affairs exemption) of the *Freedom of Information Act 1992 (Qld)*. The equivalent to section 44 in the *Freedom of Information Act 1982 (Cth)* has been considered on a number of occasions¹¹⁷ and courts have found it inappropriate to attempt to formulate an exhaustive definition of the phrase "personal affairs", although a distinction has been drawn between "personal" and "business" affairs. It has been recognised that "personal affairs" can include information relating to a person's state of health, the nature or condition of any marital or other relationship, and domestic responsibilities and financial obligations.¹¹⁸

¹¹⁵ See Appendix I.

¹¹⁶ See for example *News Corporation Ltd v National Companies and Securities Commission* (1984) 52 ALR 277; *Re Public Interest Advocacy Centre v Department of Community Services and Health* (1991) 14 AAR 180.

¹¹⁷ See for example *Department of Social Security v Dyrenfurth* (1988) 80 ALR 533; *Colakovski v Australian Telecommunications Corporation* (1991) 100 ALR 111.

¹¹⁸ See for example *Department of Social Security v Dyrenfurth* (1988) 80 ALR 533.

In many cases the Commission has found that the specification of prohibited matter in other enactments is similar to the specification of matter already found in one or more of the exemptive provisions of the *Freedom of Information Act 1992 (Qld)* other than section 48. The view of the Commission is that where that is the case there is no need to re-enact section 48 so as to give the matter specified in the other enactment a greater degree of exemption than that given by the *Freedom of Information Act 1992 (Qld)*, because that would have the consequence that there would be inconsistency between the considered specifications set out in the *Freedom of Information Act 1992 (Qld)* and those set out in earlier legislation; and the policy of Freedom of Information might well be compromised. In those cases, to which section 48 at present applies, the Commission takes the view that, in general, future exemption under the *Freedom of Information Act 1992 (Qld)* should be allowed only under the provisions of the Act other than section 48. In other words the appropriate extent of exemption under the *Freedom of Information Act 1992 (Qld)* should be determined by the *Freedom of Information Act 1992 (Qld)* itself.¹¹⁹

In a small number of cases however, the Commission considers that an enacted prohibition specifying matter, and coming within section 48, should continue to be exempt as indicated by the enactment prohibiting disclosure, because the matter is not sufficiently specified by exemption provisions of the *Freedom of Information Act 1992 (Qld)* other than section 48.

Third, a number of submissions expressed concern that, if the present section 48 exemption does not continue to apply to a provision which prohibits disclosure of information, departmental officers may be placed in the invidious position of being required to disclose under the *Freedom of Information Act 1992 (Qld)* information the disclosure of which is prohibited by another enactment. However, this situation is provided for by section 103 of the Act, which states that a person authorising or giving access required or permitted by the Act to be given does not commit an offence merely because of the authorising or giving of access.

The provisions for which the Commission recommends continuation of the section 48 exemption and those for which, in the view of the Commission, it is unnecessary that the exemption be continued are listed below under the department which administers the legislation. Departments are set out in alphabetical order. The reasons for the Commission's recommendations are on pages 84 to 101.

¹¹⁹ See page 105 in relation to any 'secrecy provisions' which may be enacted in the future.

A. PROVISIONS FOR WHICH SECTION 48 EXEMPTION SHOULD CONTINUE

. ***Environment and Heritage***

Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987
section 31(1)

. ***Department of Family Services and Aboriginal and Islander Affairs***

Adoption of Children Act 1964 section 59(3)
Children's Services Act 1965 section 144
Juvenile Justice Act 1992 section 226

. ***Justice, Attorney-General and the Arts***

Maintenance Act 1965 section 129

. ***Treasury***

Debits Tax Act 1990
Financial Institutions Code 1992 section 410

B. PROVISIONS FOR WHICH SECTION 48 EXEMPTION SHOULD NOT CONTINUE

. ***Administrative Services***

Libraries and Archives Act 1988 section 61

. ***Bureau of Emergency Services***

Ambulance Service Act 1991 section 6.8

. ***Education***

Education (General Provisions) Act 1989 section 28

. **Employment, Vocational Education, Training and Industrial Relations**

Factories and Shops Act 1960 section 10(8)
Industrial Relations Act 1990 sections 73, 77 and 427

. **Environment and Heritage**

Environment Protection Bill Draft Provision
Nature Conservation Act 1992 section 124(2)(a) and (b)

. **Family Services and Aboriginal and Islander Affairs**

Child Care Act 1991 sections 58 and 74

. **Health**

Health Act 1937 sections 48(4), 49, 71B, 100E, 100I and 150(4)
Health Services Act 1991 sections 2.10 and 5.1(1)

. **Housing, Local Government and Planning**

Local Government Act 1993 sections 196 and 714
Local Government Superannuation Act 1985 section 63

. **Justice, Attorney-General and the Arts**

Anti-Discrimination Act 1991 section 220
 The *Corporations Law (Commonwealth)* as it applies to Queensland under
 the *Corporations (Queensland) Act 1990* sections 815(4) and 1002G
 Criminal Code sections 84 and 85
Criminal Justice Act 1989 sections 26(6) and 83
Electoral Act 1992 section 173(b)(ii)
Jury Act 1929 section 23
Legal Aid Act 1978 section 81
Official Secrets Act 1911 section 2
Queensland Law Society Act 1952 section 50(3)
 Queensland Law Society Incorporated Indemnity Rules 1987 rule 10
Referendums Act 1989 section 4.30(14)

Minerals and Energy

Coal Mining Act 1925 sections 31B, 69, 87 and 89

Mineral Resources Act 1989 section 9.15

Mines Regulation Act 1964 sections 15, 52, 53, 61 and 64

Petroleum Regulations (Land) 1966 regulations 11, 69 and 126

REASONS FOR RECOMMENDATIONS

A. Provisions for which section 48 exemption to continue

ENVIRONMENT AND HERITAGE

Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987

Section 31(1) (See Chapter 4, page 28 and Appendix C.)

This section applies to a person who has been granted a permit to conduct certain explorations. In the view of the Commission it is unlikely that such a permit would be granted to a government department, local authority or public authority and consequently that an officer of such an agency would be affected by the prohibition. The Commission has been informed by the Department that no such permit has, in fact, ever been issued to a government agency. However, the Department also advised the Commission that it is not impossible that a permit would be issued to a government department or to a consultant acting on behalf a department. A consultant acting on behalf of a department may be an "officer" for the purposes of the *Freedom of Information Act 1992 (Qld)*.¹²⁰

Although the Department did not provide any recommendation in relation to this provision, 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 (Qld)*, although some measure of protection may be provided by section 42(1)(j). It appears to the Commission that the matters covered by the section are of 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 48 exemption should be continued.

¹²⁰ See section 7 of the *Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987*.

DEPARTMENT OF FAMILY SERVICES AND ABORIGINAL AND
ISLANDER AFFAIRS

Adoption of Children Act 1964

Section 59(3) (See Chapter 4, page 29 and Appendix C.)

The information which is referred to in the section is not strictly covered by the other exemptions in the *Freedom of Information Act 1992 (Qld)*. In its original submission to the Commission, 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 (Qld)* specifically referred to adoption records as records to which access may be refused. The Commission agrees with the Department that the protection offered by section 22(e) may be insufficient and recommends that the section 48 exemption should continue.

Children's Services Act 1965

Section 144 (See Chapter 4, page 53 and Appendix C.)

There is no protection for the information in the *Freedom of Information Act 1992 (Qld)* other than the limited protection offered by the personal affairs exemption in section 44(1). However, in certain circumstances, section 44(2) may allow the disclosure of sensitive information to a person suspected of child abuse or neglect. The initial 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 the Department's submission, and recommends that the section 48 exemption should continue.

Juvenile Justice Act 1992

Section 226 (See Chapter 4, page 30 and Appendix C.)

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 (Qld)*. The Department initially 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 the Department's submission and recommends that the section 48 exemption should continue.

JUSTICE, ATTORNEY-GENERAL AND THE ARTS

Maintenance Act 1965

Section 129 (See Chapter 4, page 34 and Appendix C.)

The Commission considers that there is no other exemption in the *Freedom of Information Act 1992 (Qld)* which adequately protects the information (concerning a child of unmarried parents) the subject of the section. The Commission is concerned that the protection offered by section 44(1) is insufficient. 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 agrees with the Department's submission and recommends that the section 48 exemption should continue.

TREASURY

Debits Tax Act 1990 (See Chapter 4, page 38 and Appendix C.)

This Act applies the *Debits Tax Administration Act 1982 (Cth)* 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 48 exemption should continue.

Financial Institutions Code 1992

Section 410 (See Chapter 4, page 59 and Appendix C.)

The Commission, in its Draft Report, recommended that this provision should not be re-enacted because the Commission considered that the information referred to was adequately protected by section 45 (matter concerning trade secrets, business affairs and research) and section 46 (matter communicated in confidence)¹²¹ of the *Freedom of Information Act 1992 (Qld)*. The Commission further suggested that the Department should use the procedure provided in section 11(1)(q) of the Act¹²² if it wished to exempt the Queensland Office of Financial Supervision from the *Freedom of Information Act 1992 (Qld)*.

¹²¹ See *Cors Pavey v Collector of Customs* (1987) 14 FCR 434 on the scope of matter communicated in confidence. Sections 44, 45 and 46 appear in Appendix I of this Report.

¹²² Section 11(1)(q) is set out in Appendix I. It provides a mechanism whereby an agency, part of an agency or function of an agency can be prescribed by regulation to be exempt as far as the operation of the *Freedom of Information Act 1992 (Qld)* is concerned.

The Department, the Queensland Office of Financial Supervision, and the Australian Financial Institutions Commission, in response to the Commission's Draft Report, submitted that there was a need to re-enact the provision to ensure that the national co-operative nature of the scheme was not compromised.

The Australian Financial Institutions Commission is specifically exempted from the operation of the *Freedom of Information Act 1992 (Qld)* by section 5(a) of the *Freedom of Information Regulation 1992 (Qld)* which was gazetted pursuant to the terms of section 11(1)(q) of the *Freedom of Information Act 1992 (Qld)*. The Queensland Office of Financial Supervision has to date been unsuccessful in obtaining the same exemption under this section.

Given that the nature of the scheme under which the Queensland Office of Financial Supervision operates is national and involves considerable co-operation between State and Federal bodies, the Commission, after further consideration, agrees with these submissions. Accordingly, the Commission recommends that the section 48 exemption be continued to ensure that there is uniformity between the agencies in question.

B. Provisions for which section 48 exemption should not continue

ADMINISTRATIVE SERVICES

Libraries and Archives Act 1988 (This Act is administered jointly with the Department of the Premier, Economic and Trade Development which agreed with the Commission's recommendation)

Section 61 (See Chapter 4, page 51 and Appendix C.)

The Commission considers that the section 48 exemption for this provision should not continue. The Department advised the Commission in its initial recommendation, which was endorsed in its submission following the Draft Report, that the Electoral and Administrative Review Commission has reviewed and reported on the Archives legislation and that the legislation proposed as a result of this review 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 (Qld)*.¹²³

¹²³ Section 17 of the *Freedom of Information Act 1992 (Qld)* specifically refers to the *Libraries and Archives Act 1988*.

BUREAU OF EMERGENCY SERVICES***Ambulance Service Act 1991***

Section 6.8 (See Chapter 4, page 52 and Appendix C.)

This information is given protection to the extent of the exemptions in sections 44 (matter concerning personal affairs) and 46 (matter which is provided in confidence) of the *Freedom of Information Act 1992 (Qld)*. The Commission also notes sections 6 and 51 of the Act in relation to the section 44 (personal affairs) exemption.¹²⁴ The Commission is therefore of the view that it is unnecessary to continue the section 48 exemption.

EDUCATION***Education (General Provisions) Act 1989***

Section 28 (See Chapter 4, page 52 and Appendix C.)

There is protection for the information referred to in this section to the extent of the exemption in section 44 (personal affairs exemption) of the *Freedom of Information Act 1992 (Qld)*, particularly when read together with sections 6 and 51 of the Act.¹²⁵

The Department in its initial recommendation and in its submission to the Commission following the Draft Report set out concerns in relation to the protection of individual student records from disclosure to third parties. The Department noted that there is considerable personal information on student files. It was concerned at the effect of removing the prohibition against disclosure. However, the Department acknowledged that section 28 "has not been relied on as a secrecy provision to found any exemptions under section 48 of the *Freedom of Information Act 1992*".

The Commission is not recommending that the provision be repealed. The effect of the Commission's recommendation will be that the provision will remain in the legislation to provide a prohibition against disclosure.

¹²⁴ See Appendix I.

¹²⁵ See Appendix I.

The Commission also noted in the Draft Report that the Department could utilise the procedure in section 11(1)(q) of the Act¹²⁶ if it so desired. This procedure does not entail the enactment of regulations in similar terms to the legislation being considered, such as regulations in terms of the *Education (General Provisions) Act 1989*. The procedure involves the agency concerned applying for the agency itself or for a function of the agency to be an exempt agency or function of the agency for the purposes of the Freedom of Information legislation. The agency or function is then prescribed by regulation under the *Freedom of Information Act 1992 (Qld)* to be an agency or function to which the Act does not apply. It does not involve enactment of further regulations under the *Education (General Provisions) Act 1989*.

The Commission remains of the view that continuation of the section 48 exemption is unnecessary.

EMPLOYMENT, VOCATIONAL EDUCATION, TRAINING AND INDUSTRIAL RELATIONS

Factories and Shops Act 1960

Section 10(8) (See Chapter 4, page 27 and Appendix C.)

The Department initially recommended that the section 48 exemption should be continued 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 noted these recommendations in its Draft Report. However, the Commission also noted that the information would be exempt under sections 44 (personal affairs exemption) and 45 (trade secrets and business affairs exemption) in the *Freedom of Information Act 1992 (Qld)*. The Department has now accepted the analysis of the Commission. The Commission therefore recommends that the section 48 exemption should not be continued.

Industrial Relations Act 1990

Sections 73, 77 and 427 (See Chapter 4, pages 27, 28 and 29 and Appendix C.)

The Department recommended in its initial response to the Commission 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 protected to the extent of the exemptions provided by sections 44

¹²⁶ See page 18, and Appendix I.

(personal affairs exemption), 45 (matter relating to trade secrets, business affairs and research) and 46 (matters communicated in confidence) of the Act. The Commission noted the concerns of the Department in its Draft Report. The Department subsequently agreed that the information is adequately protected from disclosure under sections 44, 45 and 46 of the *Freedom of Information Act 1992 (Qld)* provided the provisions are retained within the Department's legislation. The Commission therefore remains of the view that it is unnecessary for the section 48 exemption to be continued.

ENVIRONMENT AND HERITAGE

Environment Protection Bill Draft Provision (See Chapter 4, page 28 and Appendix C.)

The Department initially provided no recommendation in relation to this proposed provision and the Commission considered that it would be covered by the exemption in section 45 (trade secrets, business affairs and research exemption) of the *Freedom of Information Act 1992 (Qld)*.

Following the Draft Report, the Department recommended that the provision should be re-enacted because it is arguable that the *Freedom of Information Act 1992 (Qld)* is not specific enough to address environmental management issues and specific tests would be required to substantiate a trade secrecy claim. The Department also noted that the provision is designed to protect the interests of industry without compromising the purpose of the Act and that industry may need reassurance to encourage compliance in supplying required information.

The Commission notes the concerns of the Department in relation to this provision. However, the Commission is not convinced that continuation of the section 48 exemption is necessary. If the Department believes greater protection to be necessary it could utilise the procedure in section 11(1)(q).

Nature Conservation Act 1992

Section 124(2)(a) (See Chapter 4, page 53 and Appendix C.)

The information referred to in this provision is protected to the extent of the exemption in section 42(1)(j) of the *Freedom of Information Act 1992 (Qld)* which specifically exempts information from disclosure if it would "prejudice the well-being of a cultural or natural resource or the habitat of animals or plants." The Department noted that there should be a specific penalty provision remaining in the legislation as a specific deterrent to unlawful use of confidential information. The Commission is aware of this concern. However, the Commission is not recommending that the provision be repealed. The provision will remain in the legislation to provide a prohibition against disclosure. However, in view of the exemption provided by section 42(1)(j), the Commission does not believe that

continuation of the section 48 exemption is necessary.

Section 124(2)(b) (See Chapter 4, page 29 and Appendix C.)

The information described in this section is protected to the extent of the exemption provided by section 44 (personal affairs exemption) in the *Freedom of Information Act 1992 (Qld)*. The Department noted that the provision should remain as a penalty provision to deter the unlawful use of confidential information. As explained above in relation to section 124(2)(a), the Commission is not recommending that the provision be repealed. However, the Commission recommends that the section 48 exemption should not continue.

FAMILY SERVICES AND ABORIGINAL AND ISLANDER AFFAIRS

Child Care Act 1991

Section 58 (See Chapter 4, page 53 and Appendix C.)

The information referred to in this provision is protected to the extent of the exemption under section 44 (personal affairs exemption) of the *Freedom of Information Act 1992 (Qld)*. The Commission notes that the Department, in its submission, is concerned that section 44 is subject to a "public interest" test. The Department argued that the interpretation of "public interest" necessarily relies upon the knowledge and values of the decision-maker and that the use of section 44 would introduce an element of uncertainty as to whether information would be released. However, section 48 is also subject to a "public interest" test and any uncertainty arising under section 44 would also arise under section 48. The Commission is not convinced that there is not adequate protection for the information in section 44 of the *Freedom of Information Act 1992 (Qld)*, and therefore considers continuation of the section 48 exemption unnecessary.

Section 74 (See Chapter 4, page 29 and Appendix C.)

The information referred to in this provision is protected to the extent of the exemptions provided by sections 44 (personal affairs exemption) read together with sections 6 and 51 of the Act,¹²⁷ 45 (trade secrets, business affairs and research) and 46 (matter communicated in confidence) of the *Freedom of Information Act 1992 (Qld)*. The Department is concerned that sections 44, 45 and 46 contain a "public interest" test. However, as explained above, section 48 is also subject to a "public interest" test. The Commission notes the Department's concerns. However, the Commission remains of the view that continuation of the section 48 exemption is unnecessary. The Department could also utilise section 11(1)(q) of the Act¹²⁸ if it so desired.

HEALTH

Health Act 1937

Sections 48(4), 49, 71B, 100E and 100I (See Chapter 4, pages 30-31 and page 54 and Appendix C.)

The information referred to in these provisions is protected to the extent of the exemptions in sections 44 (personal affairs exemption) and 46 (matter communicated in confidence) of the *Freedom of Information Act 1992 (Qld)*. The Department originally made an extensive submission to support the retention of the provisions. However, the Commission is not recommending that the provisions be repealed. The Commission believes that, in view of the decisions of the Full Court of the Federal Court in *Department of Social Security v Dyrenfurth*¹²⁹ where it was held that information relating to personal affairs included information concerning a person's state of health, continuation of the section 48 exemption is unnecessary.

¹²⁷ See Appendix I.

¹²⁸ See page 18 and Appendix I.

¹²⁹ (1988) 80 ALR 533.

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 originally of concern to the Department. The Commission believes that the machinery under the *Freedom of Information Act 1992 (Qld)*, particularly the provisions of section 51 of the Act,¹³⁰ address the concerns expressed by the Department in their response to the Commission. The Commission suggested to Queensland Health that if it wished to obtain absolute exemption from Freedom of Information legislation it should use the procedure provided in section 11(1)(q) of the Act.¹³¹

The Department, in its submission to the Draft Report, concurred with this reasoning and does not now require the section 48 exemption to be continued.

Section 150(4) (See Chapter 4, page 31 and Appendix C.)

The information under this provision is protected to the extent of the exemptions in sections 44 (personal affairs exemption) and 45 (trade secrets, business affairs and research) of the *Freedom of Information Act 1992 (Qld)*. The Department concurred with this reasoning in its submission to the Draft Report. The Commission refers to its comments on sections 48(4), 49, 71B, 100E and 100I above and recommends that the section 48 exemption not be continued.

Health Services Act 1991

Section 2.10 (See Chapter 4, page 31 and Appendix C.)

The information under this provision is protected to the extent of the exemptions provided by sections 44 (personal affairs exemption) and 46 (information which is communicated in confidence) of the *Freedom of Information Act 1992 (Qld)*. The Department concurred with this conclusion in its submission to the Draft Report. The Commission therefore recommends that the section 48 exemption not be continued.

¹³⁰ Section 51 is set out in Appendix I.

¹³¹ See page 18 and Appendix I.

Section 5.1(1) (See Chapter 4, page 94 and Appendix C.)

This information would be protected to the extent of the exemptions under sections 44 (personal affairs exemption) and 46 (matter communicated in confidence) of the *Freedom of Information Act 1992 (Qld)*. The Commission notes that this provision is to be amended and suggests that Queensland Health use the procedure provided in section 11(1)(q)¹³² if it wishes to obtain absolute exemption from Freedom of Information legislation. The Department concurred with this conclusion in its submission to the Draft Report. The Commission therefore recommends that the section 48 exemption should not be continued.

HOUSING, LOCAL GOVERNMENT AND PLANNING

Local Government Act 1993

*Sections 196 and 714*¹³³ (See Chapter 4, pages 31-32 and Appendix C.)

The information which is referred to in the sections is covered to the extent of the exemptions contained in sections 44 (personal affairs exemption) and 45 (trade secrets, business affairs and research) of the *Freedom of Information Act 1992 (Qld)*. The Commission notes the views of the Department in relation to the sections as discussed in Chapter 5 of this Report.¹³⁴ However, the Commission is of the view that the section 48 exemption should not be continued. The Department could utilise the procedure in section 11(1)(q) of the Act¹³⁵ if it so desired.

Local Government Superannuation Act 1985

Section 63 (See Chapter 4, page 55 and Appendix C.)

The information concerned would be protected to the extent of the exemptions contained in sections 44 (personal affairs), 45 (trade secrets, business affairs and research), and 46 (matter communicated in confidence) of the *Freedom of Information Act 1992 (Qld)*. The Commission therefore recommends that the section 48 exemption should not be continued.

¹³² See page 18 and Appendix I.

¹³³ These provisions commence operation on 26 March 1994.

¹³⁴ See pages 73-76.

¹³⁵ See page 18 and Appendix I.

JUSTICE, ATTORNEY-GENERAL AND THE ARTS***Anti-Discrimination Act 1991***

- . *Section 220* (See Chapter 4, page 56 and Appendix C.)

The information referred to in this provision would be protected to the extent of the exemptions under sections 44 (personal affairs) and 46 (matter communicated in confidence) of the *Freedom of Information Act 1992 (Qld)*. The Department initially recommended that the provision be retained. However, in response to the Draft Report, the Department agreed that adequate protection is afforded to the information. The Commission therefore recommends that the section 48 exemption should not be continued.

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

- . *Section 815(4)* (See Chapter 4, page 57 and Appendix C.)

The information referred to in this provision will be protected to the extent of the exemptions under sections 44 (personal affairs exemption), 45 (matter relating to trade secrets, business affairs and research), 46 (matter communicated in confidence) and 49 (matter affecting financial or property interests) of the *Freedom of Information Act 1992 (Qld)*. It is not specifically exempted under Commonwealth legislation. The Commission therefore recommends that the section 48 exemption should not be continued.

- . *Section 1002G* (See Chapter 4, page 32 and Appendix C.)

The information referred to in this provision would be protected to the extent of the exemptions under sections 45 (matter relating to trade secrets, business affairs and research), 46 (matter communicated in confidence), 47 (matter affecting the economy of State) and 49 (matter affecting financial or property interests) of the *Freedom of Information Act 1992 (Qld)*. The Commission therefore recommends that the section 48 exemption should not be continued.

Criminal Code

- . *Sections 84 and 85* (See Chapter 4, page 32 and Appendix C.)

The Commission considers that it is unnecessary for the section 48 exemption for these provisions to be continued because the information referred to in them will be protected by the proposed clause 135, disclosure of official secrets, when the new *Criminal Code* is enacted. The Department adopted this view in its initial recommendation to the Commission concerning these provisions. Whether or not the proposed clause 135 is enacted, the information would be protected to the extent of the exemptions under section 38 (matter affecting relations with other

governments), section 42 (matter relating to law enforcement or public safety) and section 46 (matter communicated in confidence), and continuation of the section 48 exemption would be unnecessary.

The Commission therefore recommends that the section 48 exemption should not be continued.

Criminal Justice Act 1989

Section 26(6) (See Chapter 4, pages 32-33 and Appendix C.)

The Criminal Justice Commission has urged that, if this Commission accepts the Criminal Justice Commission's argument that this provision comes within section 48, the present exemption under section 48 should continue. The Criminal Justice Commission is concerned about the risk of premature disclosure of material involved in the preparation of a report prior to its completion.

The Commission recognises the validity of this concern. However, in the view of the Commission, continuation of the section 48 exemption is unnecessary.

Material relating to reports of investigations conducted through the Official Misconduct Division of the Criminal Justice Commission will be protected to the extent of the exemption under section 42 (matter relating to law enforcement or public safety). Section 42(1) exempts matter if its disclosure could reasonably be expected to prejudice the investigation of a contravention or possible contravention of the law in a particular case. Section 42(4) provides that reference to "a contravention or possible contravention of the law" includes a reference to "misconduct or official misconduct, or possible misconduct or official misconduct, within the meaning of the *Criminal Justice Act 1989*". The Criminal Justice Commission accepts this view.

The concern of the Criminal Justice Commission relates to reports prepared in the discharge of the responsibilities of its Research and Co-ordination Division. In the view of this Commission, however, such material is also protected under the exemption provisions of the *Freedom of Information Act 1992 (Qld)*. In addition to section 42, section 41 (matter relating to the deliberative process) may also be relevant.

Section 41 exempts matter if its disclosure would disclose an opinion, advice or recommendation that has been obtained, prepared or recorded or if it would disclose a consultation or deliberation that has taken place in the course of or for the purposes of the deliberative processes involved in the functions of government and would be contrary to the public interest.

In any event, the exemption presently conferred by section 48 would not assist the Criminal Justice Commission in relation to reports which are in the course of preparation. In order to come within the protection of section 48, an enactment must refer to a particular kind of matter with sufficient particularity to enable a

genus to be identified.¹³⁶ The genus identified by the Criminal Justice Commission in order to bring material referred to by section 26(6) within the protection of section 48 was "reports with the inherent characteristic or quality of being signed by the Chairman." It is therefore only reports which are completed and signed to which section 26(6) refers and which are currently protected by section 48.

In its submission, the Criminal Justice Commission argued that Parliament clearly intended to establish a regime for the publication of reports "signed by the Chairman", by which such reports are not to be made public until the events specified in section 26 have occurred. It advocated that this "blanket prohibition" should be accompanied by continued exemption under section 48.

However, as previously explained, the section 48 exemption does not meet the Criminal Justice Commission's concern in relation to material involved in the preparation of the report. If the Criminal Justice Commission wishes to extend the basis for exemption of such material from disclosure it could utilise the procedure in section 11(1)(q) of the *Freedom of Information Act 1992 (Qld)*.¹³⁷

The Commission recommends that the section 48 exemption should not be continued.

Section 83 (See Chapter 4, pages 33-34 and Appendix C.)

The information referred to in the provision is protected to the extent of the exemption provided by section 42 (matter relating to law enforcement or public safety).

Under section 82, the chairperson of the Criminal Justice Commission may apply to a Judge of the Supreme Court for approval to use a listening device if the chairperson is satisfied that there are reasonable grounds for suspecting that the use of a listening device may disclose information relevant to the subject matter of an investigation by the Criminal Justice Commission. The Chairperson may then give authorisation in writing to a person to use a listening device in accordance with that approval. By the Criminal Justice Commission's own submission, "the application will always relate to a particular investigation". If the information relates to an investigation of the Criminal Justice Commission, there will be adequate protection for the information under section 42 of the *Freedom of Information Act 1992 (Qld)*. The Commission therefore recommends that the section 48 exemption should not continue.

¹³⁶ See pages 13-16 and page 27.

¹³⁷ See page 18 and Appendix I.

Electoral Act 1992

Section 173(b)(ii) (See Chapter 4, page 34 and Appendix C.)

The information described in this provision is protected to the extent of the exemption in section 46 (the matter communicated in confidence exemption) in the *Freedom of Information Act 1992 (Qld)*. The Department, in its response to the Draft Report, agreed with the Commission that the information is adequately protected by the Act. The Commission therefore recommends that the section 48 exemption should not be continued.

Jury Act 1929

Section 23 (See Chapter 4, page 34 and Appendix C.)

The information referred to in this section is protected to the extent of the exemption contained in section 42(1)(d) (matter which would prejudice a person's fair trial or impartial adjudication of a case if it were disclosed) of the *Freedom of Information Act 1992 (Qld)*. The Department, in its response to the Draft Report, agreed with the Commission that the information is adequately protected by the Act. The Commission therefore recommends that the section 48 exemption should not be continued.

Legal Aid Act 1978

Section 81 (See Chapter 4, page 57 and Appendix C.)

The information referred to in this provision is protected to the extent of the exemptions under sections 44 (personal affairs), 45 (matter concerning trade secrets, business affairs and research) and 46 (matter communicated in confidence) of the *Freedom of Information Act 1992 (Qld)*. The Department, in its response to the Draft Report, agreed with the Commission that adequate protection is provided by the *Freedom of Information Act 1992 (Qld)* for this information. The Commission notes that the Department could avail itself of the procedure provided in section 11(1)(q)¹³⁸ if it so desired. The Commission therefore recommends that the section 48 exemption should not be continued.

¹³⁸ See page 18 and Appendix I.

Official Secrets Act 1911

Section 2 (See Chapter 4, page 35 and Appendix C.)

In the Draft Report, the Commission noted the initial 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. However, the Commission expressed the view that the matter will be covered by the proposed clause 135, disclosure of official secrets, contained in the new *Criminal Code*. The Department agreed with this conclusion in its submission to the Draft Report. Whether or not the proposed clause 135 is enacted, the information would be protected to the extent of the exemption under section 42 (matter relating to law enforcement and public safety), and continuation of the section 48 exemption would be unnecessary. The Commission therefore recommends that the section 48 exemption should not be continued.

Queensland Law Society Act 1952

Section 50(3) (See Chapter 4, page 35 and Appendix C.)

The Department initially recommended that this provision be retained because members of the legal profession would be concerned that information obtained by accountants appointed by the Queensland Law Society would be disclosed. In the Draft Report, the Commission classified the provision as one which defines matter by reference to the person in possession of it, and therefore not within the scope of section 48. However, after further consideration, the Commission has formed the view that there is a genus of information identified and that, accordingly, the section does fall within section 48. The Commission notes the concerns of the Department but believes that the information referred to in the section would be protected to the extent of the exemptions contained in section 44 (personal affairs), 45 (trade secrets, business affairs and research) and section 46 (matter communicated in confidence) of the *Freedom of Information Act 1992 (Qld)*. The Commission therefore recommends that the section 48 exemption should not be continued.

Queensland Law Society Incorporated Indemnity Rules 1987

Rule 10 (See Chapter 4, page 35 and Appendix C.)

In the Draft Report, the Commission expressed the view that the information under this rule is adequately protected by sections 44 (personal affairs exemption) and 45 (trade secrets, business affairs and research) of the *Freedom of Information Act 1992 (Qld)*. The Department was initially concerned that solicitors should be assured that disclosures would go no further than the Claims Committee. However, the Department subsequently agreed with the Commission's analysis in the Draft Report. The Queensland Law Society Inc. submitted that the rule placed an obligation on the Claims Committee not to reveal matters relating to assured

practitioners without the consent of the practitioner. However, the submission was based on the misapprehension that the Commission was recommending that the rule be repealed. The Commission is not recommending that the rule be repealed but is merely recommending that the section 48 exemption should not continue. The rule will remain in the Law Society Rules but will not have the status of a secrecy provision under the *Freedom of Information Act 1992 (Qld)*. The Commission remains of the view that continuation of the section 48 exemption is unnecessary. The Commission draws particular attention to sections 6 and 51 of the Act in relation to the section 44 (personal affairs) exemption.

Referendums Act 1989

Section 4.30(14) (See Chapter 4, page 35 and Appendix C.)

The information referred to in this provision is protected to the extent of the exemption contained in section 46 (matter communicated in confidence) of the *Freedom of Information Act 1992 (Qld)*. In its submission to the Draft Report, the Department agreed with the view of the Commission that the information is adequately protected. The Commission therefore recommends that the section 48 exemption should not be continued.

MINERALS AND ENERGY

Coal Mining Act 1925

Sections 31B, 87 and 89 (See Chapter 4, page 36 and Appendix C.)

The information referred to in these provisions is protected to the extent of the exemptions under section 45 (trade secrets, business affairs and research) of the *Freedom of Information Act 1992 (Qld)*. In its response to the Draft Report the Department supported this view. The Commission therefore recommends that the section 48 exemption should not be continued.

Section 69 (See Chapter 4, page 36 and Appendix C.)

There is protection afforded the information to the extent of the exemptions under sections 44 (personal affairs exemption) and 46 (matter communicated in confidence) of the *Freedom of Information Act 1992 (Qld)*. This view was supported by the Department in its submission to the Commission. The Commission therefore recommends that the section 48 exemption should not be continued.

Mineral Resources Act 1989

. *Section 9.15* (See Chapter 4, page 58 and Appendix C.)

The information in this provision is given protection to the extent of the exemptions under section 45 (trade secrets, business affairs and research) of the *Freedom of Information Act 1992 (Qld)*. In its submission to the Draft Report the Department agreed with the Commission. The Commission therefore recommends that the section 48 exemption should not be continued.

Mines Regulation Act 1964

. *Sections 15, 52, 53 and 64* (See Chapter 4, pages 36-37 and Appendix C.)

The information referred to in these provisions is protected to the extent of the exemptions under section 45 (trade secrets, business affairs and research) of the *Freedom of Information Act 1992 (Qld)*. The Department agreed with this recommendation. The Commission therefore recommends that the section 48 exemption should not be continued.

. *Section 61* (See Chapter 4, page 37 and Appendix C.)

There is protection afforded the information to the extent of the exemptions under sections 44 (personal affairs exemption) and 46 (matter communicated in confidence) of the *Freedom of Information Act 1992 (Qld)*. This analysis was supported by the Department in its submission to the Commission in response to the Draft Report. The Commission therefore recommends that the section 48 exemption should not be continued.

Petroleum Regulations (Land) 1966

. *Regulations 11, 69 and 126* (See Chapter 4, pages 37-38 and Appendix C.)

The information referred to in these regulations is protected to the extent of the exemptions under section 45 (trade secrets, business affairs and research) of the *Freedom of Information Act 1992 (Qld)*. The Department agreed with this analysis and, in the Commission's view, the section 48 exemption should not be continued.

CHAPTER 7: THE QUEENSLAND AUDIT OFFICE

Section 92 of the *Financial Administration and Audit Act 1977* prohibits officers of the Queensland Audit Office (formerly the Department of the Auditor-General) from making a record of or divulging or communicating information obtained under the Act. In Chapter 4 of this Report the Commission classified section 92 as outside the scope of the protection of section 48 of the *Freedom of Information Act 1992 (Qld)* because section 92 prohibits disclosure of information which is identified by reference to the person who obtains it rather than by reference to the inherent characteristics of the information.¹³⁹

The general approach adopted by the Commission in this Report has been to make no recommendation in relation to provisions which are outside the scope of section 48. However, in the view of the Commission, the unique role of the Auditor-General deserves special consideration.

The Auditor-General has three mandatory responsibilities under the *Financial Administration and Audit Act 1977*:

- . to audit the public accounts, the departmental accounts and the accounts of every statutory body and to submit to the administrative and executive arms of Government any significant matters arising from such audits;¹⁴⁰
- . to audit and certify the Treasurer's Annual Statement, the departmental statements of the accounts subsidiary to the public accounts and the financial accounts of statutory bodies;¹⁴¹
- . to report annually to the Legislative Assembly whether such audits have been completed and to inform the Legislative Assembly of any matters arising from the audits that are of such significance as to warrant this action.¹⁴²

The results of audits of public accounts are available to the public. Reports on the above matters must be given to the Speaker, who must table a report in the Legislative Assembly on the next sitting day after it is presented.¹⁴³ Disclosure may also be made to the Parliamentary Committee of Public Accounts, the

¹³⁹ See page 39.

¹⁴⁰ Sections 73, 76, 81, 93, 103 of the *Financial Administration and Audit Act 1977*.

¹⁴¹ Section 81 of the *Financial Administration and Audit Act 1977*.

¹⁴² Sections 97, 98, 99, 100, 101, 104, 105 of the *Financial Administration and Audit Act 1977*.

¹⁴³ Section 105 of the *Financial Administration and Audit Act 1977*.

Parliamentary Committee of Public Works, the Criminal Justice Commission, a police officer if the information relates to the investigation or prosecution of an offence or a court for the purposes of the prosecution of a person for an offence.¹⁴⁴

The Queensland Audit Office performs a vital and independent watchdog role. It is essential that confidentiality be maintained in relation to audit documentation, so that the audit process is not prejudiced by either premature disclosure of the audit process to auditees or the inhibiting of those who are sources of important information to the successful fulfilment of the overall auditing function.

At present section 39 of the *Freedom of Information Act 1992 (Qld)* exempts matter from disclosure if its disclosure could reasonably be expected to prejudice the conduct of an audit by the Auditor-General unless such disclosure would, on balance, be in the public interest.

However, it would seem that section 92 of the *Financial Administration and Audit Act 1977* encompasses a wider class of information than that exempted by section 39 of the *Freedom of Information Act 1992 (Qld)*. Although a number of other grounds of exemption may apply - for example section 40 (matter concerning the operations of agencies), section 45 (matter relating to trade secrets, business affairs and research), section 47 (matter affecting the economy of the State), and section 49 (matter affecting financial or property interests) - the Auditor-General is concerned that some information which requires protection against disclosure may not necessarily be exempt. In consequence, information may become available which would prejudice future action where information gathered did not produce a result in a particular audit period and which would provide a person suspected of improper conduct in relation to the management of public funds with the means to defeat the audit process and defraud public funds. The Commission acknowledges the concerns of the Auditor-General.

It is the view of the Commission that, since section 39 of the *Freedom of Information Act 1992 (Qld)* contains a specific exemption in relation to the Auditor-General, if information obtained and held by the Queensland Audit Office is to be granted the extent of protection sought by the Auditor-General, it should be achieved through amendment of the specific provision. A draft provision for implementing an amendment to section 39 is included in the Draft Bill in Chapter 8 of this Report.¹⁴⁵

It should be noted that in other Australian jurisdictions, the office of the Auditor-General is exempted from the application of Freedom of Information legislation.¹⁴⁶

¹⁴⁴ Section 92(3) of the *Financial Administration and Audit Act 1977*.

¹⁴⁵ See page 109.

¹⁴⁶ See *Freedom of Information Act 1982 (Cth)* Schedule 2 Part 1; *Freedom of Information (Exempt Offices) Regulations 1987 (Vic)*; *Freedom of Information Act 1989 (NSW)* Schedule 2.

CHAPTER 8: LEGISLATIVE FRAMEWORK

Following its Draft Report, the Commission consulted with the Office of Parliamentary Counsel to determine the best method by which the recommendations of the Commission could be implemented. Three alternative methods were available:

1. amendment of the *Freedom of Information Act 1992 (Qld)* to continue the section 48 exemption for the provisions (those recommended for continued exemption) specified in a new schedule to the Act; or
2. amendment, by a Miscellaneous Provisions Act, of each Act containing a provision recommended for continued exemption to state that section 48 of the *Freedom of Information Act 1992 (Qld)* applies to the provision.

The first method of implementation was chosen as the simplest and most effective legislative framework for the Commission's recommendations and it has the added advantage that all provisions relating to Freedom of Information are contained in the one Act. This is also the method adopted by the Commonwealth when it amended the Commonwealth equivalent to section 48.¹⁴⁷ The Commission is unaware of any significant problems encountered by the Commonwealth after adopting this method.

¹⁴⁷ Section 38 of the *Freedom of Information Act 1982 (Cth)* was amended in 1991 and now reads:

- (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.
- (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.

Of course, this procedure will only apply to existing secrecy provisions. If, in the future, the government wishes to enact legislation including a prohibition against the disclosure of information, and that prohibition is intended to override the provisions of the *Freedom of Information Act 1992 (Qld)*, it will be necessary, at the time the legislation is enacted, to also amend the schedule to the *Freedom of Information Act* to include the name of the legislation.

Under section 48 as it is currently drafted, a secrecy provision is only exempt if "its disclosure would, on balance, be contrary to the public interest."¹⁴⁸

In most of the other provisions of the *Freedom of Information Act 1992 (Qld)* which provide an exemption, the relevant information is exempt "unless its disclosure would, on balance, be in the public interest."¹⁴⁹

The Commission is unaware of any reason why an amended section 48 should not be drafted in a style consistent with other exempting provisions, and the Draft Bill has been drafted accordingly.¹⁵⁰

The Commission would like to thank the Office of Parliamentary Counsel for its assistance in preparing the Draft Bill contained in this Chapter.

¹⁴⁸ Section 48(1)(b) *Freedom of Information Act 1992*. See Appendix I.

¹⁴⁹ See Appendix I. The exemptions under section 39, 40, 41, 42, 44, 45, 46, 47, 48 and 49 of the *Freedom of Information Act 1992 (Qld)* include the public interest test in this form. The exemptions under section 43 (legal professional privilege) and section 50 (contempt of Parliament and Contempt of Court) are not subject to a public interest test.

¹⁵⁰ Section 38 of the *Freedom of Information Act 1982 (Cth)* has never had a public interest test.

1994

A BILL

FOR

An Act to amend the *Freedom of Information Act 1992* about the exemption for matter to which a statutory secrecy provision applies, and for other purposes

Queensland



FREEDOM OF INFORMATION (REVIEW OF SECRECY PROVISION EXEMPTION) BILL 1994

TABLE OF PROVISIONS

Section	Page
1 Short title	5
2 Act amended	5
3 Amendment of s 39 (Matter relating to investigations by Parliamentary Commissioner or audits by Auditor-General)	5
4 Amendment of s 48 (Matter to which secrecy provisions of enactments apply)	5
5 Insertion of Schedule	6

SCHEDULE

SECRECY PROVISIONS GIVING EXEMPTION

*Freedom of Information (Review of Secrecy
Provision Exemption)*

The Parliament's reasons for enacting this Act are—

- | | |
|--|----------------------|
| 1. In order to balance openness against legitimate claims for secrecy in the interest of people about whom the Government holds information and in the public interest, the <i>Freedom of Information Act 1992</i> (the “FOI Act”) allows exemptions from access to certain matters. | 2
3
4
5 |
| 2. Section 48 of the FOI Act makes matter exempt if it falls within the terms of a specified type of secrecy provision (a “section 48 secrecy provision”) and its disclosure would, on balance, be contrary to public interest. | 6
7
8
9 |
| 3. The exemption in section 48 operates only for 2 years from the FOI Act's date of assent on 19 August 1992. | 10
11 |
| 4. On a reference from the Government, the Queensland Law Reform Commission has reviewed existing secrecy provisions in Queensland legislation identified by Government departments. | 12
13
14 |
| 5. The purpose of the review was to— | 15 |
| (a) identify section 48 secrecy provisions; and | 16 |
| (b) recommend whether the exemption from access given by each section 48 secrecy provision should continue. | 17
18 |
| 6. As a result of its review, the Commission recommended that the exemption from access given by the section 48 secrecy provision in certain Acts should continue. | 19
20
21
22 |

*Freedom of Information (Review of Secrecy
Provision Exemption)*

The Parliament of Queensland enacts—	1
Short title	2
<i>Clause</i> 1. This Act may be cited as the <i>Freedom of Information (Secrecy Provision Review) Amendment Act 1994</i> .	3 4
Act amended	5
<i>Clause</i> 2. This Act amends the <i>Freedom of Information Act 1992</i> .	6
Amendment of s 39 (Matter relating to investigations by Parliamentary Commissioner or audits by Auditor-General)	7 8
<i>Clause</i> 3.(1) Section 39, heading, after 'Auditor-General'—	9
<i>insert</i> 'etc.'	10
(2) Section 39—	11
<i>insert</i> —	12
'(2) Matter is also exempt matter if its disclosure is prohibited by section 92 of the <i>Financial Administration and Audit Act 1977</i> unless its disclosure would, on balance, be in the public interest.'	13 14 15
Amendment of s 48 (Matter to which secrecy provisions of enactments apply)	16 17
<i>Clause</i> 4.(1) Section 48(1)—	18
<i>omit, insert</i> —	19
'(1) Matter is exempt matter if its disclosure is prohibited by an enactment mentioned in the Schedule unless its disclosure would, on balance, be in the public interest.'	20 21 22
(2) Section 48(3)—	23
<i>omit</i> .	24

*Freedom of Information (Review of Secrecy
Provision Exemption)*

	Insertion of Schedule	1
<i>Clause</i>	5. After section 109—	2
	<i>insert—</i>	3
	‘SCHEDULE	4
	‘SECURITY PROVISIONS GIVING EXEMPTION	5
	section 48	6
	<i>Adoption of Children Act 1964, section 59(3)</i>	7
	<i>Children’s Services Act 1965, section 144</i>	8
	<i>Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987, section 31(1)</i>	9 10
	<i>Debits Tax Act 1990, section 3.2 (to the extent it applies section 7(2) of the Debits Tax Administration Act 1982 (Cwlth))</i>	11 12
	Financial Institutions Code, section 410	13
	<i>Juvenile Justice Act 1992, section 226</i>	14
	<i>Maintenance Act 1965, section 129.’.</i>	15
		16
		17

APPENDIX A

FULL TEXT OF COMMISSION'S REFERENCE FROM

THE ACTING ATTORNEY-GENERAL

REQUESTING A REVIEW OF EXISTING

SECRECY PROVISIONS



112

In reply 00794
Please Quote LEGAL
Ref:

18 DEC 1991

The Honourable Mr Justice McPherson, CBE, SPJ
Chairman
Law Reform Commission
PO Box 312
NORTH QUAY QLD 4002

My dear Judge

Cabinet, in its recent consideration of Freedom of Information (FOI) legislation, approved that such legislation should not override secrecy provisions in other Queensland legislation except in certain circumstances for a period of two years.

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.

For your assistance, I have enclosed a copy of the FOI Bill introduced into Parliament on 5 December together with a copy of the explanatory notes on such Bill. The relevant clause in the FOI Bill on secrecy provisions is clause 48.

I also point out that the FOI Bill will lie on the table of Parliament over the December-January period and will be debated when Parliament resumes next year.

Yours sincerely

PAUL BRADDY
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APPENDIX B

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

APPENDIX C

**SUMMARY OF PROVISIONS, DEPARTMENTAL RESPONSES AND
RECOMMENDATIONS OF THE COMMISSION****

****** Reference in this Appendix to "Should not be re-enacted" does not mean repeal. The Commission is not recommending the repeal of any provisions, only re-enactment of some provisions which the Commission considers require to be re-enacted as specific secrecy provisions.

Secrecy Provision Identified	Departments' Initial Recommendation	Recommendation of the Commission in the Draft Report	Departments' Response to the Draft Report	Final Recommendation of the Commission
<p>Administrative Services Department - Libraries and Archives Act 1988 section 61</p>	<p>Administrative Services Department - Libraries and Archives Act 1988 section 61 - QLRC liaise with EARC</p>	<p>Administrative Services Department - Libraries and Archives Act 1988 section 61 - Should not be re-enacted</p>	<p>Administrative Services Department - Libraries and Archives Act 1988 section 61 - Agrees with recommendation Proposed new legislation contains no secrecy provision and access linked to FOI</p>	<p>Administrative Services Department - Libraries and Archives Act 1988 section 61 - s.48 exemption should not continue</p>
<p>Auditor-General (Now Queensland Audit Office) - Financial Administration and Audit Act 1977 section 69</p>	<p>Auditor-General (Now Queensland Audit Office) - Financial Administration and Audit Act 1977 section 69 - Retain with proposed amendment</p>	<p>Auditor-General (Now Queensland Audit Office) - Financial Administration and Audit Act 1977 section 69 - Not within section 48</p>	<p>Auditor-General (Now Queensland Audit Office) - Financial Administration and Audit Act 1977 section 69 - Section omitted when Act amended by <i>Audit Legislation Amendment Act 1993</i>. New Section 92 inserted. Department recommends its retention</p>	<p>Auditor-General (Now Queensland Audit Office) - Financial Administration and Audit Act 1977 section 92 - Not within section 48. Section 39 of the <i>Freedom of Information Act 1992</i> should be amended to exempt information contained in section 92 from the operation of the <i>Freedom of Information Act 1992</i>.</p>

Secrecy Provision Identified	Departments' Initial Recommendation	Recommendation of the Commission in the Draft Report	Departments' Response to the Draft Report	Final Recommendation of the Commission
<p><i>Bureau of Emergency Services (Formerly Police and Emergency Services) - Ambulance Service Act 1991 section 6.8</i></p> <p><i>Fire Service Act 1990 section 142A(1)</i></p>	<p><i>Bureau of Emergency Services (Formerly Police and Emergency Services) - Ambulance Service Act 1991 section 6.8 - The section should remain</i></p> <p><i>Fire Service Act 1990 section 142A(1) - The provision should be retained</i></p>	<p><i>Bureau of Emergency Services (Formerly Police and Emergency Services) - Ambulance Service Act 1991 section 6.8 - Should not be re-enacted</i></p> <p><i>Fire Service Act 1990 section 142A(1) - Not within section 48</i></p>	<p><i>Bureau of Emergency Services (Formerly Police and Emergency Services) - Ambulance Service Act 1991 section 6.8 - Commission's comments noted</i></p> <p><i>Fire Service Act 1990 section 142A(1) - Section should be re-enacted</i></p>	<p><i>Bureau of Emergency Services (Formerly Police and Emergency Services) - Ambulance Service Act 1991 section 6.8 - s.48 exemption should not continue</i></p> <p><i>Fire Service Act 1990 section 142A(1) - Not within section 48</i></p>
<p><i>Education - Education (General Provisions) Act 1989 section 28</i></p>	<p><i>Education - Education (General Provisions) Act 1989 section 28 - Provision should be retained</i></p>	<p><i>Education - Education (General Provisions) Act 1989 section 28 - Should not be re-enacted</i></p>	<p><i>Education - Education (General Provisions) Act 1989 section 28 - The provision should be retained</i></p>	<p><i>Education - Education (General Provisions) Act 1989 section 28 - s.48 exemption should not continue</i></p>

Secrecy Provision Identified	Departments' Initial Recommendation	Recommendation of the Commission in the Draft Report	Departments' Response to the Draft Report	Final Recommendation of the Commission
<p>Employment, Vocational Education, Training and Industrial Relations - Building and Construction Industry (Portable Long Service Leave) Act 1991 section 94</p>	<p>Employment, Vocational Education, Training and Industrial Relations - Building and Construction Industry (Portable Long Service Leave) Act 1991 section 94 - Provision should be retained</p>	<p>Employment, Vocational Education, Training and Industrial Relations - Building and Construction Industry (Portable Long Service Leave) Act 1991 section 94 - Not within section 48</p>	<p>Employment, Vocational Education, Training and Industrial Relations - Building and Construction Industry (Portable Long Service Leave) Act 1991 section 94 - Assumed that provision retained in current form</p>	<p>Employment, Vocational Education, Training and Industrial Relations - Building and Construction Industry (Portable Long Service Leave) Act 1991 section 94 - Not within section 48</p>
<p>Factories and Shops Act 1960 section 10(8)</p>	<p>Factories and Shops Act 1960 section 10(8) - Provision should be retained</p>	<p>Factories and Shops Act 1960 section 10(8) - Should not be re-enacted</p>	<p>Factories and Shops Act 1960 section 10(8) - Sufficient protection in other exemptions but provision should be retained in Act</p>	<p>Factories and Shops Act 1960 section 10(8) - s.48 exemption should not continue</p>
<p>Industrial Relations Act 1990 sections 73, 77, 189, 355 and 427 (formerly sections 8.7, 8.11, 12.3, 14.8 and 18.8)</p>	<p>Industrial Relations Act 1990 sections 73, 77, 189, 355 and 427 (formerly sections 8.7, 8.11, 12.3, 14.8 and 18.8) - Provisions should be retained in full</p>	<p>Industrial Relations Act 1990 sections 73, 77, 189, 355 and 427 (formerly sections 8.7, 8.11 and 18.8) - Should not be re-enacted Sections 12.3 and 14.8 - Not within section 48</p>	<p>Industrial Relations Act 1990 sections 73, 77 and 427 (formerly sections 8.7, 8.11 and 18.8) - Sufficient protection in other exemptions but provisions should remain in Act. Sections 189 and 355 - Assumed that provisions retained in current form</p>	<p>Industrial Relations Act 1990 sections 73, 77 and 427 (formerly sections 8.7, 8.11 and 18.8) - s.48 exemption should not continue Sections 189 and 355 not within section 48</p>

Secrecy Provision Identified	Departments' Initial Recommendation	Recommendation of the Commission in the Draft Report	Departments' Response to the Draft Report	Final Recommendation of the Commission
<i>Employment, Vocational Education, Training and Industrial Relations - Private Employment Agencies Act 1983 sections 9(6) and 10</i>	<i>Employment, Vocational Education, Training and Industrial Relations - Private Employment Agencies Act 1983 sections 9(6) and 10 - Provisions should be retained</i>	<i>Employment, Vocational Education, Training and Industrial Relations - Private Employment Agencies Act 1983 sections 9(6) and 10 - Not within section 48</i>	<i>Employment, Vocational Education, Training and Industrial Relations - Private Employment Agencies Act 1983 sections 9(6) and 10 - Assumed that provisions retained in current form</i>	<i>Employment, Vocational Education, Training and Industrial Relations - Private Employment Agencies Act 1983 sections 9(6) and 10 - Not within section 48</i>
<i>Trading Hours Act 1990 section 3.2</i>	<i>Trading Hours Act 1990 section 3.2 - Provision should be retained</i>	<i>Trading Hours Act 1990 section 3.2 - Not within section 48</i>	<i>Trading Hours Act 1990 section 3.2 - Assumed that provision retained in current form</i>	<i>Trading Hours Act 1990 section 3.2 - Not within section 48</i>
<i>Vocational Education, Training and Employment Act 1991 section 4.15</i>	<i>Vocational Education, Training and Employment Act 1991 section 4.15 - Provision should be retained</i>	<i>Vocational Education, Training and Employment Act 1991 section 4.15 - Not within section 48</i>	<i>Vocational Education, Training and Employment Act 1991 section 4.15 - Assumed that provision retained in current form</i>	<i>Vocational Education, Training and Employment Act 1991 section 4.15 - Not within section 48</i>
<i>Workplace Health and Safety Act 1989 section 133</i>	<i>Workplace Health and Safety Act 1989 section 133 - Provision retained in part</i>	<i>Workplace Health and Safety Act 1989 section 133 - Not within section 48</i>	<i>Workplace Health and Safety Act 1989 section 133 - Assumed that provision retained in current form</i>	<i>Workplace Health and Safety Act 1989 section 133 - Not within section 48</i>

Secrecy Provision Identified	Departments' Initial Recommendation	Recommendation of the Commission in the Draft Report	Departments' Response to the Draft Report	Final Recommendation of the Commission
<p><i>Environment and Heritage - Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987 section 31(1)</i></p> <p><i>Environment Protection Bill</i></p> <p><i>Nature Conservation Act 1992 section 124(2)(a) and (b)</i></p>	<p><i>Environment and Heritage - Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987 section 31(1) - No recommendation</i></p> <p><i>Nature Conservation Act 1992 section 124(2)(a) and (b) - To be retained</i></p>	<p><i>Environment and Heritage - Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987 section 31(1) - Should be re-enacted</i></p> <p><i>Environment Protection Bill - Should not be re-enacted</i></p> <p><i>Nature Conservation Act 1992 section 124(2)(a) and (b) - Should not be re-enacted</i></p>	<p><i>Environment and Heritage - Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987 section 31(1) - No recommendation</i></p> <p><i>Environment Protection Bill - Draft section 153 - The section should be re-enacted</i></p> <p><i>Nature Conservation Act 1992 section 124(2)(a) and (b) - There is no objection to the sections not being re-enacted in principle as the provisions in the Act and the FOI Act would be sufficient</i></p>	<p><i>Environment and Heritage - Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987 section 31(1) - s.48 exemption should continue</i></p> <p><i>Environment Protection Bill - Draft section 153 - s.48 exemption should not continue</i></p> <p><i>Nature Conservation Act 1992 section 124(2)(a) and (b) - s.48 exemption should not continue</i></p>

Secrecy Provision Identified	Departments' Initial Recommendation	Recommendation of the Commission in the Draft Report	Departments' Response to the Draft Report	Final Recommendation of the Commission
Family Services and Aboriginal and Islander Affairs - Adoption of Children Act 1964 section 59(3)	Family Services and Aboriginal and Islander Affairs - Adoption of Children Act 1964 section 59(3) - Section should be retained	Family Services and Aboriginal and Islander Affairs - Adoption of Children Act 1964 section 59(3) - Should be re-enacted	Family Services and Aboriginal and Islander Affairs - Adoption of Children Act 1964 section 59(3) - Agrees with recommendation	Family Services and Aboriginal and Islander Affairs - Adoption of Children Act 1964 section 59(3) - s.48 exemption should continue Section 59(4) - Now within section 48
Child Care Act 1991 sections 58 and 74	Child Care Act 1991 sections 58 and 74 - Sections should be retained	Child Care Act 1991 sections 58 and 74 - Should not be re-enacted	Child Care Act 1991 sections 58 and 74 - Provisions should be retained	Child Care Act 1991 sections 58 and 74 - s.48 exemption should not continue
Children's Services Act 1965 section 144	Children's Services Act 1965 section 144 - Provision should be retained	Children's Services Act 1965 section 144 - Should be re-enacted	Children's Services Act 1965 section 144 - Agrees with recommendation	Children's Services Act 1965 section 144 - s.48 exemption should continue
Domestic Violence (Family Protection) Act 1989 section 82	Domestic Violence (Family Protection) Act 1989 section 82 - Section should be retained	Domestic Violence (Family Protection) Act 1989 section 82 - Should be re-enacted	Domestic Violence (Family Protection) Act 1989 section 82 - Agrees with recommendation	Domestic Violence (Family Protection) Act 1989 section 82 - Not within section 48
Intellectually Disabled Citizens Act 1985 section 42	Intellectually Disabled Citizens Act 1985 section 42 - Section should be retained	Intellectually Disabled Citizens Act 1985 section 42 - Not within section 48	Intellectually Disabled Citizens Act 1985 section 42 - Agrees with recommendation	Intellectually Disabled Citizens Act 1985 section 42 - Not within section 48
Juvenile Justice Act 1992 section 226	Juvenile Justice Act 1992 section 226 - Section should be retained	Juvenile Justice Act 1992 section 226 - Should be re-enacted	Juvenile Justice Act 1992 section 226 - Agrees with recommendation	Juvenile Justice Act 1992 section 226 - s.48 exemption should continue

Secrecy Provision Identified	Departments' Initial Recommendation	Recommendation of the Commission in the Draft Report	Departments' Response to the Draft Report	Final Recommendation of the Commission
Health - Food Act 1981 sections 40 and 48	Health - Food Act 1981 sections 40 and 48 - Provisions should be retained	Health - Food Act 1981 sections 40 and 48 - Not within section 48	Health - Food Act 1981 sections 40 and 48 - Concur with assessment of its secrecy provisions	Health - Food Act 1981 sections 40 and 48 - Not within section 48
Health Act 1937 sections 48(4), 49, 71B, 100E, 100I, 150(4) and 154N(2)	Health Act 1937 sections 48(4), 49, 71B, 100E, 100I, 150(4) and 154N(2) - Sections should be retained	Health Act 1937 sections 48(4), 49, 71B, 100E, 100I and 150(4) - Should not be re-enacted Section 154N(2) - Not within section 48	Health Act 1937 sections 48(4), 49, 71B, 100E, 100I, 150(4), 154N(2) - Concur with the Commission's assessment of its secrecy provisions	Health Act 1937 sections 48(4), 49, 71B, 100E, 100I and 150(4) - s.48 exemption should not continue Section 154N(2) - Not within section 48
Health Act 1937 section 48(3)	Health Act 1937 section 48(3) - No recommendation	Health Act 1937 section 48(3) - Not within section 48	Health Act 1937 section 48(3) - Concur with the Commission's assessment of its secrecy provisions	Health Act 1937 section 48(3) - Not within section 48
Health Rights Commission Act 1991 section 138	Health Rights Commission Act 1991 section 138 - Provision should be retained	Health Rights Commission Act 1991 section 138 - Not within section 48	Health Rights Commission Act 1991 section 138 - Concur with the assessment of its secrecy provisions	Health Rights Commission Act 1991 section 138 - Not within section 48
Health Rights Commission Act 1991 sections 85, 86, 87, 89, 98 and 108	Health Rights Commission Act 1991 sections 85, 86, 87, 89, 98 and 108 - No recommendation	Health Rights Commission Act 1991 sections 89, 98 and 108 - Not within section 48 Sections 85, 86 and 87 - Not necessary to consider	Health Rights Commission Act 1991 sections 89, 98 and 108 - Concur with the assessment of its secrecy provisions	Health Rights Commission Act 1991 sections 89, 98 and 108 - Not within section 48. Sections 85, 86, 87 - No need to consider
Health Services Act 1991 sections 5.1 and 2.10	Health Services Act 1991 sections 5.1, 2.10, 2.5(3) and 2.11 - Sections should be retained	Health Services Act 1991 sections 5.1(1) and 2.10 - Should not be re-enacted	Health Services Act 1991 sections 5.1(1) and 2.10 - Concur with the assessment of its secrecy provisions	Health Services Act 1991 sections 5.1(1), 2.10 - s.48 exemption should not continue

Secrecy Provision Identified	Departments' Initial Recommendation	Recommendation of the Commission in the Draft Report	Departments' Response to the Draft Report	Final Recommendation of the Commission
Health - Health Services Act 1991 sections 2.5(3), 2.11 and 5.1(3)	Health - Health Services Act 1991 sections 2.5(3), 2.11 and 5.1(3) - Sections should be retained	Health - Health Services Act 1991 sections 2.5(3), 2.11 and 5.1(3) - Not within section 48	Health - Health Services Act 1991 sections 2.5(3), 2.11 and 5.1(3) - Concurs with the Commission's assessment of its secrecy provisions	Health - Health Services Act 1991 sections 2.5(3), 2.11 and 5.1(3) - Not within section 48
Health Services Act 1991 sections 2.6 and 2.12	Health Services Act 1991 sections 2.6 and 2.12 - No recommendation	Health Services Act 1991 sections 2.6 and 2.12 - Not within section 48	Health Services Act 1991 sections 2.6 and 2.12 - Concurs with the Commission's assessment of its secrecy provisions	Health Services Act 1991 sections 2.6 and 2.12 - Not within section 48
Medical Act and Other Acts (Administration) Act 1966 section 14B	Medical Act and Other Acts (Administration) Act 1966 section 14B - Provision should be retained	Medical Act and Other Acts (Administration) Act 1966 section 14B - Not within section 48	Medical Act and Other Acts (Administration) Act 1966 section 14B - Concurs with the Commission's assessment of its secrecy provisions	Medical Act and Other Acts Administration Act 1966 section 14B - Not within section 48
Medical and Paramedical (Amendment of Inspectorial and Audit Provisions) Act 1987 section 14B	Medical and Paramedical (Amendment of Inspectorial and Audit Provisions) Act 1987 section 14B - Provision should be retained	Medical and Paramedical (Amendment of Inspectorial and Audit Provisions) Act 1987 section 14B - Not within section 48	Medical and Paramedical (Amendment of Inspectorial and Audit Provisions) Act 1987 section 14B - Concurs with the Commission's assessment of its secrecy provisions	Medical and Paramedical (Amendment of Inspectorial and Audit Provisions) Act 1987 section 14B - Not within section 48
Nursing Act 1992 section 139	Nursing Act 1992 section 139 - Provision should be retained	Nursing Act 1992 section 139 - Not within section 48	Nursing Act 1992 section 139 - Concurs with the Commission's assessment of its secrecy provisions	Nursing Act 1992 section 139 - Not within section 48

Secrecy Provision Identified	Departments' Initial Recommendation	Recommendation of the Commission in the Draft Report	Departments' Response to the Draft Report	Final Recommendation of the Commission
Health - Radioactive Substances Act 1958 section 18	Health - Radioactive Substances Act 1958 section 18 - No recommendation	Health - Radioactive Substances Act 1958 section 18 - Not within section 48	Health - Radioactive Substances Act 1958 section 18 - Concur with the Commission's assessment of its secrecy provisions	Health - Radioactive Substances Act 1958 section 18 - Not within section 48
Health Rights Commission - Health Rights Commission Act 1991 sections 138, 85, 86 and 87	Health Rights Commission - Health Rights Commission Act 1991 sections 138, 85, 86 and 87 - Retain all secrecy provisions in their entirety	Health Rights Commission - Health Rights Commission Act 1991 section 138 - Not within section 48 Sections 85, 86 and 87 - Not necessary to consider	Health Rights Commission - Health Rights Commission Act 1991 section 138 - No recommendation	Health Rights Commission - Health Rights Commission Act 1991 section 138 - Not within section 48

Secrecy Provision Identified	Departments' Initial Recommendation	Recommendation of the Commission in the Draft Report	Departments' Response to the Draft Report	Final Recommendation of the Commission
<p>Housing, Local Government and Planning - Local Authority By-Laws - The Ordinances of the Brisbane City Council made Pursuant to the City of Brisbane Act 1924 - Chapter 2 Part 1, Ordinance 2, Chapter 2 Part 2, Ordinance 34</p>	<p>Housing, Local Government and Planning - Local Authority By-Laws - The Ordinances of the Brisbane City Council made Pursuant to the City of Brisbane Act 1924 - Chapter 2 Part 1, Ordinance 2, Chapter 2 Part 2, Ordinance 34 - No recommendation</p>	<p>Housing, Local Government and Planning - Local Authority By-Laws - The Ordinances of the Brisbane City Council made Pursuant to the City of Brisbane Act 1924 - Chapter 2 Part 1, Ordinance 2, Chapter 2 Part 2, Ordinance 34 - Not within section 48</p>	<p>Housing, Local Government and Planning - Local Authority By-Laws - The Ordinances of the Brisbane City Council made Pursuant to the City of Brisbane Act 1924 - Chapter 2 Part 1, Ordinance 2, Chapter 2 Part 2, Ordinance 34 - Need not be retained (Submission by Brisbane City Council)</p>	<p>Housing, Local Government and Planning - Local Authority By-Laws - The Ordinances of the Brisbane City Council made Pursuant to the City of Brisbane Act 1924 - Chapter 2 Part 1, Ordinance 2, Chapter 2 Part 2, Ordinance 34 - Not within section 48</p>
<p>Local Government Act 1993 sections 196 and 714 (Formerly clauses 5.4 and 6.14)</p>	<p>Local Government Act 1993 - sections 196 and 714 (Formerly clauses 5.4 and 6.14) - Provisions should be retained</p>	<p>Local Government Act 1993 - sections 196 and 714 (Formerly clauses 5.4 and 6.14) - Should not be re-enacted</p>	<p>Local Government Act 1993 - sections 196 and 714 (Formerly clauses 5.4 and 6.14) - Provisions should be maintained</p>	<p>Local Government Act 1993 - sections 196 and 714 (Formerly clauses 5.4 and 6.14) - s.48 exemption should not continue</p>
<p>Local Government Superannuation Act 1985 section 63</p>	<p>Local Government Superannuation Act 1985 section 63 - Provision not to remain in operation beyond November 1994</p>	<p>Local Government Superannuation Act 1985 section 63 - Not within section 48</p>	<p>Local Government Superannuation Act 1985 section 63 - No recommendation See more detailed analysis in Chapter 5 and Appendices there referred to</p>	<p>Local Government Superannuation Act 1985 section 63 - s.48 exemption should not continue</p>

Secrecy Provision Identified	Departments' Initial Recommendation	Recommendation of the Commission in the Draft Report	Departments' Response to the Draft Report	Final Recommendation of the Commission
Justice, Attorney-General and the Arts - Anti-Discrimination Act 1991 sections 220 and 264	Justice, Attorney-General and the Arts - Anti-Discrimination Act 1991 sections 220 and 264 - Should be re-enacted	Justice, Attorney-General and the Arts - Anti-Discrimination Act 1991 section 220 - Should not be re-enacted Section 264 - Not within section 48	Justice, Attorney-General and the Arts - Anti-Discrimination Act 1991 sections 220 and 264 - Agrees with recommendation	Justice, Attorney-General and the Arts - Anti-Discrimination Act 1991 section 220 - s.48 exemption should not continue Section 264 - Not within section 48
Commercial Banking Company of Sydney Limited Merger Act 1982 section 16(1)	Commercial Banking Company of Sydney Limited Merger Act 1982 section 16(1) - Provision should be retained	Commercial Banking Company of Sydney Limited Merger Act 1982 section 16(1) - Not within section 48	Commercial Banking Company of Sydney Limited Merger Act 1982 section 16(1) - Agrees with recommendation	Commercial Banking Company of Sydney Limited Merger Act 1982 section 16(1) - Not within section 48
Commercial Bank of Australia Limited Merger Act 1982 section 16(1)	Commercial Bank of Australia Limited Merger Act 1982 section 16(1) - should be retained	Commercial Bank of Australia Limited Merger Act 1982 section 16(1) - Not within section 48	Commercial Bank of Australia Limited Merger Act 1982 section 16(1) - Agrees with recommendation	Commercial Bank of Australia Limited Merger Act 1982 section 16(1) - Not within section 48
Companies Act 1961 section 124(2)	Companies Act 1961 section 124(2) - Should be retained	Companies Act 1961 section 124(2) - Not within section 48	Companies Act 1961 section 124(2) - Agrees with recommendation	Companies Act 1961 section 124(2) - Not within section 48
Coroners Act 1958 section 52	Coroners Act 1958 section 52 - Provision should be retained	Coroners Act 1958 section 52 - Not within section 48	Coroners Act 1958 section 52 - Agrees with recommendation	Coroners Act 1958 section 52 - Not within section 48
The Corporations Law (Cth) as it applies to Queensland under the Corporations (Queensland) Act 1990 section 320	The Corporations Law (Cth) as it applies to Queensland under the Corporations (Queensland) Act 1990 section 320 - Provisions should be retained	The Corporations Law (Cth) as it applies to Queensland under the Corporations (Queensland) Act 1990 section 320 - Not within section 48	The Corporations Law (Cth) as it applies to Queensland under the Corporations (Queensland) Act 1990 section 320 - Agrees with recommendation	The Corporations Law (Cth) as it applies to Queensland under the Corporations (Queensland) Act 1990 section 320 - Not within section 48

Secrecy Provision Identified	Departments' Initial Recommendation	Recommendation of the Commission in the Draft Report	Departments' Response to the Draft Report	Final Recommendation of the Commission
<p>Justice, Attorney-General and the Arts - The Corporations Law (Cth) as it applies to Queensland under the Corporations (Queensland) Act 1990 sections 815(4) and 1002G</p>	<p>Justice, Attorney-General and the Arts - The Corporations Law (Cth) as it applies to Queensland under the Corporations (Queensland) Act 1990 sections 815(4) and 1002G - should be retained</p>	<p>Justice, Attorney-General and the Arts - The Corporations Law (Cth) as it applies to Queensland under the Corporations (Queensland) Act 1990 sections 815(4) and 1002G - Not within section 48</p>	<p>Justice, Attorney-General and the Arts - The Corporations Law (Cth) as it applies to Queensland under the Corporations (Queensland) Act 1990 sections 815(4) and 1002G - Agrees with recommendation</p>	<p>Justice, Attorney-General and the Arts - The Corporations Law (Cth) as it applies to Queensland under the Corporations (Queensland) Act 1990 sections 815(4) and 1002G - s.48 exemption should not continue</p>
<p>Criminal Justice Act 1989 sections 26(6), 83, 88 and 132 (Formerly sections 2.18(6), 3.15, 3.20, and 6.7)</p>	<p>Criminal Justice Act 1989 sections 26(6), 83, 88 and 132 - Provisions should be retained</p>	<p>Criminal Justice Act 1989 sections 26(6), 83, 88 and 132 - Not within section 48</p>	<p>Criminal Justice Act 1989 sections 26(6), 83, 88 and 132 - Department agrees with recommendation but Criminal Justice Commission considers the provisions should be re-enacted</p>	<p>Criminal Justice Act 1989 sections 26(6), 83 - s.48 exemption should not continue</p>
<p>Criminal Justice Act 1989 section 27 (Formerly section 2.19)</p>	<p>Criminal Justice Act 1989 section 27 - Provision should be retained</p>	<p>Criminal Justice Act 1989 section 27 - Not within section 48</p>	<p>Criminal Justice Act 1989 section 27 - Agrees with recommendation</p>	<p>Criminal Justice Act 1989 section 27 - Not within section 48</p>
			<p>Criminal Justice Act 1989 section 27 - Commission responded directly and also agreed. CJC identified section 58(2)(c) of the <i>Criminal Justice Act 1989</i> as a secrecy provision which should be re-enacted</p>	<p>Criminal Justice Act 1989 section 27 - Not within section 48</p>

Secrecy Provision Identified	Departments' Initial Recommendation	Recommendation of the Commission in the Draft Report	Departments' Response to the Draft Report	Final Recommendation of the Commission
<i>Justice, Attorney-General and the Arts - Dispute Resolution Centres Act 1990</i> section 5.4	<i>Justice, Attorney-General and the Arts - Dispute Resolution Centres Act 1990</i> section 5.4 - Should be re-enacted	<i>Justice, Attorney-General and the Arts - Dispute Resolution Centres Act 1990</i> section 5.4 - Not within section 48	<i>Justice, Attorney-General and the Arts - Dispute Resolution Centres Act 1990</i> section 5.4 - Agrees with recommendation	<i>Justice, Attorney-General and the Arts - Dispute Resolution Centres Act 1990</i> section 5.4 - Not within section 48
<i>Electoral Act 1992</i> section 173(b)(ii)	<i>Electoral Act 1992</i> section 173(b)(ii) - Provision should be retained	<i>Electoral Act 1992</i> section 173(b)(ii) - Should not be re-enacted	<i>Electoral Act 1992</i> section 173(b)(ii) - Agrees with recommendation	<i>Electoral Act 1992</i> section 173(b)(ii) - s.48 exemption should not continue
<i>Jury Act 1929</i> sections 23 and 48(ii)	<i>Jury Act 1929</i> sections 23 and 48(ii) - Provisions should be retained	<i>Jury Act 1929</i> section 23 - Should not be re-enacted. Section 48(ii) - Not within section 48	<i>Jury Act 1929</i> sections 23 and 48(ii) - Agrees with recommendation	<i>Jury Act 1929</i> section 23 - s.48 exemption should not continue Section 48(ii) - Not within section 48
<i>Justices Act 1886</i> section 102F(1) and (2)	<i>Justices Act 1886</i> section 102F(1) and (2) - Provision should be retained	<i>Justices Act 1886</i> section 102F(1) and (2) - Not within section 48	<i>Justices Act 1886</i> section 102F(1) and (2) - Agrees with recommendation	<i>Justices Act 1886</i> section 102F(1) and (2) - not within section 48
<i>Legal Aid Act 1978</i> section 81	<i>Legal Aid Act 1978</i> section 81 - Should be re-enacted	<i>Legal Aid Act 1978</i> section 81 - Should not be re-enacted	<i>Legal Aid Act 1978</i> section 81 - Agrees with recommendation	<i>Legal Aid Act 1978</i> section 81 - s.48 exemption should not continue
<i>Libraries and Archives Act 1988</i> section 61(1)	<i>Libraries and Archives Act 1988</i> section 61(1) - Provision should be retained	<i>Libraries and Archives Act 1988</i> section 61(1) - Should not be re-enacted	<i>Libraries and Archives Act 1988</i> section 61(1) - Agrees with recommendation	<i>Libraries and Archives Act 1988</i> section 61(1) - s.48 exemption should not continue
<i>Maintenance Act 1965</i> section 129	<i>Maintenance Act 1965</i> section 129 - Provision should be retained	<i>Maintenance Act 1965</i> section 129 - Should be re-enacted	<i>Maintenance Act 1965</i> section 129 - Agrees with recommendation	<i>Maintenance Act 1965</i> section 129 - s.48 exemption should continue

Secrecy Provision Identified	Departments' Initial Recommendation	Recommendation of the Commission in the Draft Report	Departments' Response to the Draft Report	Final Recommendation of the Commission
Justice, Attorney-General and the Arts - Official Secrets Act 1911	Justice, Attorney-General and the Arts - Official Secrets Act 1911 - The Act should be re-enacted	Justice, Attorney-General and the Arts - Official Secrets Act 1911 - Should not be re-enacted	Justice, Attorney-General and the Arts - Official Secrets Act 1911 - Agrees with recommendation	Justice, Attorney-General and the Arts - Official Secrets Act 1911 - s.48 exemption should not continue
Police Complaints Tribunal Acts Repeal Act 1990 section 5(1)(c)	Police Complaints Tribunal Acts Repeal Act 1990 section 5(1)(c) - Provision should be retained	Police Complaints Tribunal Acts Repeal Act 1990 section 5(1)(c) - Not within section 48	Police Complaints Tribunal Acts Repeal Act 1990 section 5(1)(c) - Agrees with recommendation	Police Complaints Tribunal Acts Repeal Act 1990 section 5(1)(c) - Not within section 48
Public Trustee Act 1978 section 15	Public Trustee Act 1978 section 15 - Provision should be retained	Public Trustee Act 1978 section 15 - Not within section 48	Public Trustee Act 1978 section 15 - Agrees with recommendation	Public Trustee Act 1978 section 15 - Not within section 48
Queensland Criminal Code sections 84, 85 and 86	Queensland Criminal Code sections 84, 85 and 86 - New legislation is to be passed	Queensland Criminal Code sections 84 and 85 - Should not be re-enacted Section 86 - Not within section 48	Queensland Criminal Code sections 84, 85 and 86 - Agrees with recommendation	Queensland Criminal Code sections 84, 85 - s.48 exemption should not continue Section 86 - Not within section 48
Queensland Law Society Act 1952 section 50(3)	Queensland Law Society Act 1952 section 50(3) - Section should be re-enacted	Queensland Law Society Act 1952 section 50(3) - Not within section 48	Queensland Law Society Act 1952 section 50(3) - Agrees with recommendation	Queensland Law Society Act 1952 section 50(3) - s.48 exemption should not continue
Queensland Law Society Incorporated Indemnity Rules 1987 Rule 10	Queensland Law Society Incorporated Indemnity Rules 1987 Rule 10 - The Rule should be re-enacted	Queensland Law Society Incorporated Indemnity Rules 1987 Rule 10 - Should not be re-enacted	Queensland Law Society Incorporated Indemnity Rules 1987 Rule 10 - Agrees with recommendation Qld Law Society submitted the rule should remain	Queensland Law Society Incorporated Indemnity Rules 1987 Rule 10 - s.48 exemption should not continue

Secrecy Provision Identified	Departments' Initial Recommendation	Recommendation of the Commission In the Draft Report	Departments' Response to the Draft Report	Final Recommendation of the Commission
<p>Justice, Attorney-General and the Arts - Referendums Act 1989 section 4.30(14)</p> <p>Securities Industry Act 1975 section 13(1)</p> <p>Special Prosecutor Act 1988 sections 20 and 21</p> <p>Trust Accounts Act 1973 section 25</p>	<p>Justice, Attorney-General and the Arts - Referendums Act 1989 section 4.30(14) - Provision should be retained</p> <p>Securities Industry Act 1975 section 13(1) - Provision should be retained</p> <p>Special Prosecutor Act 1988 sections 20 and 21 - Sections should be re-enacted</p> <p>Trust Accounts Act 1973 section 25 - Should be re-enacted</p>	<p>Justice, Attorney-General and the Arts - Referendums Act 1989 section 4.30(14) - Should not be re-enacted</p> <p>Securities Industry Act 1975 section 13(1) - Not within section 48</p> <p>Special Prosecutor Act 1988 sections 20 and 21 - Not within section 48</p> <p>Trust Accounts Act 1973 section 25 - Not within section 48</p>	<p>Justice, Attorney-General and the Arts - Referendums Act 1989 section 4.30(14) - Agrees with recommendation</p> <p>Securities Industry Act 1975 section 13(1) - Agrees with recommendation</p> <p>Special Prosecutor Act 1988 sections 20 and 21 - Agrees with recommendation</p> <p>Trust Accounts Act 1973 section 25 - Agrees with recommendation</p>	<p>Justice, Attorney-General and the Arts - Referendums Act 1989 section 4.30(14) - s.48 exemption should not continue</p> <p>Securities Industry Act 1975 section 13(1) - Not within section 48</p> <p>Special Prosecutor Act 1988 sections 20 and 21 - Not within section 48</p> <p>Trust Accounts Act 1973 section 25 - Not within section 48</p>
<p>Lands - Valuation of Land Act 1944 section 11 (Formerly section 8)</p>	<p>Lands - Valuation of Land Act 1944 section 11 (Formerly section 8) - Provision should be retained</p>	<p>Lands - Valuation of Land Act 1944 section 11 (Formerly section 8) - Not within section 48</p>	<p>Lands - Valuation of Land Act 1944 section 11 (Formerly section 8) - Agrees with the recommendation</p>	<p>Lands - Valuation of Land Act 1944 section 11 (Formerly section 8) - Not within section 48</p>

Secrecy Provision Identified	Departments' Initial Recommendation	Recommendation of the Commission in the Draft Report	Departments' Response to the Draft Report	Final Recommendation of the Commission
Minerals and Energy (Formerly Resource Industries) - Coal Mining Act 1925 sections 31B, 69, 87 and 89	Minerals and Energy (Formerly Resource Industries) - Coal Mining Act 1925 sections 31B, 69, 87 and 89 - Should be retained	Minerals and Energy (Formerly Resource Industries) - Coal Mining Act 1925 sections 31B, 69, 87 and 89 - Should not be re-enacted	Minerals and Energy (Formerly Resource Industries) - Coal Mining Act 1925 sections 31B, 69, 87 and 89 - Agrees with recommendation	Minerals and Energy (Formerly Resource Industries) - Coal Mining Act 1925 sections 31B, 69, 87 and 89 - s.48 exemption should not continue
Explosives Act 1952 section 46A	Explosives Act 1952 section 46A - Should be retained	Explosives Act 1952 section 46A - Not within section 48	Explosives Act 1952 section 46A - Agrees with recommendation	Explosives Act 1952 section 46A - Not within section 48
Mineral Resources Act 1989 sections 4.18, 7.19, 5.39, 6.33 and 9.15	Mineral Resources Act 1989 sections 4.18, 7.19, 5.39, 6.33 and 9.15 - Should be retained	Mineral Resources Act 1989 sections 4.18, 7.19, 5.39 and 6.33 - Not within section 48 Section 9.15 - Should not be re-enacted	Mineral Resources Act 1989 sections 4.18, 7.19, 5.39, 6.33 and 9.15 - Agrees with recommendation	Mineral Resources Act 1989 sections 4.18, 7.19, 5.39 and 6.33 - Not within section 48 Section 9.15 - s.48 exemption should not continue
Mines Regulation Act 1964 sections 15, 52, 53, 61 and 64	Mines Regulation Act 1964 sections 15, 52, 53, 61 and 64 - Should be retained	Mines Regulation Act 1964 sections 15, 52, 53, 61 and 64 - Should not be re-enacted	Mines Regulation Act 1964 sections 15, 52, 53, 61 and 64 - Agrees with recommendation	Mines Regulation Act 1964 sections 15, 52, 53, 61 and 64 - s.48 exemption should not continue
Petroleum Regulations (Land) 1966 regulations 11, 69 and 126	Petroleum Regulations (Land) 1966 regulations 11, 69 and 126 - Should be retained	Petroleum Regulations (Land) 1966 regulations 11, 69 and 126 - Should not be re-enacted	Petroleum Regulations (Land) 1966 regulations 11, 69 and 126 - Agrees with recommendation	Petroleum Regulations (Land) 1966 regulations 11, 69 and 126 - s.48 exemption should not continue

Secrecy Provision Identified	Departments' Initial Recommendation	Recommendation of the Commission in the Draft Report	Departments' Response to the Draft Report	Final Recommendation of the Commission
Minerals and Energy (Formerly Resource Industries) - Reports on Exploration Permits and Mineral Development Licences	Minerals and Energy (Formerly Resource Industries) - Reports on Exploration Permits and Mineral Development Licences - Confidentiality should be maintained	Minerals and Energy (Formerly Resource Industries) - Reports on Exploration Permits and Mineral Development Licences - Not within the definition of "enactment"	Minerals and Energy (Formerly Resource Industries) - Reports on Exploration Permits and Mineral Development Licences - Agrees with recommendation	Minerals and Energy (Formerly Resource Industries) - Reports on Exploration Permits and Mineral Development Licences - Not within the definition of "enactment"
Parliamentary Commissioner for Administrative Investigations - Parliamentary Commission Act 1974 sections 9(1), 10(4), 18(2), 22 and 29(4)	Parliamentary Commissioner for Administrative Investigations - Parliamentary Commission Act 1974 sections 9(1), 10(4), 18(2), 22 and 29(4) - Provisions should be retained	Parliamentary Commissioner for Administrative Investigations - Parliamentary Commission Act 1974 sections 9(1), 10(4), 18(2), 22 and 29(4) - Not within section 48	Parliamentary Commissioner for Administrative Investigations - Parliamentary Commission Act 1974 sections 9(1), 10(4), 18(2), 22 and 29(4) - Agrees with the conclusions of the Commission	Parliamentary Commissioner for Administrative Investigations - Parliamentary Commission Act 1974 sections 9(1), 10(4), 18(2), 22 and 29(4) - Not within section 48

Secrecy Provision Identified	Departments' Initial Recommendation	Recommendation of the Commission in the Draft Report	Departments' Response to the Draft Report	Final Recommendation of the Commission
<p>Premier, Economic and Trade Development - Criminal Justice Act 1989 section 132 (Formerly section 6.7)</p>	<p>Premier, Economic and Trade Development - Criminal Justice Act 1989 section 132 - Should be retained</p>	<p>Premier, Economic and Trade Development - Criminal Justice Act 1989 section 132 - Not within section 48</p>	<p>Premier, Economic and Trade Development - Criminal Justice Act 1989 section 132 - Criminal Justice Commission responded directly and agrees with recommendation</p>	<p>Premier, Economic and Trade Development - Criminal Justice Act 1989 section 132 - Not within section 48</p>
<p>Electoral and Administrative Review Act 1989 sections 2.13(5) and 6.4</p>	<p>Electoral and Administrative Review Act 1989 sections 2.13(5) and 6.4 - Repeal</p>	<p>Electoral and Administrative Review Act 1989 sections 2.13(5) and 6.4 - Not within section 48</p>	<p>Electoral and Administrative Review Act 1989 sections 2.13(5) and 6.4 - EARC has now been wound up</p>	<p>Electoral and Administrative Review Act 1989 sections 2.13(5) and 6.4 - Not within section 48</p>
<p>Libraries and Archives Act 1988 section 61</p>	<p>Libraries and Archives Act 1988 section 61 - Under review by EARC</p>	<p>Libraries and Archives Act 1988 section 61 - Should not be re-enacted</p>	<p>Libraries and Archives Act 1988 section 61 - Administrative Services Department advised that new legislation to be enacted and agrees with recommendation</p>	<p>Libraries and Archives Act 1988 section 61 - s.48 exemption should not continue</p>
<p>Parliamentary Commissioner Act 1974 section 22</p>	<p>Parliamentary Commissioner Act 1974 section 22 - No recommendation</p>	<p>Parliamentary Commissioner Act 1974 section 22 - Not within section 48</p>	<p>Parliamentary Commissioner Act 1974 section 22 - Parliamentary Commissioner for Administrative Investigations responded directly and agrees with the conclusions of the Commission</p>	<p>Parliamentary Commissioner Act 1974 section 22 - Not within section 48</p>

Secrecy Provision Identified	Departments' Initial Recommendation	Recommendation of the Commission in the Draft Report	Departments' Response to the Draft Report	Final Recommendation of the Commission
<p>Premier, Economic and Trade Development - Public Sector Management Commission Act 1990</p> <p>Public Works Committee Act 1989 sections 40 and 41</p>	<p>Premier, Economic and Trade Development - Public Sector Management Commission Act 1990 - No recommendation</p> <p>Public Works Committee Act 1989 sections 40 and 41 - The provisions should be retained</p>	<p>Premier, Economic and Trade Development - Public Sector Management Commission Act 1990 - No recommendation - submission not received in time</p> <p>Public Works Committee Act 1989 sections 40 and 41 - Not within section 48</p>	<p>Premier, Economic and Trade Development - Public Sector Management Commission Act 1990 - Submission notified section 6.4 which should be retained and regulations prescribed under section 4.13 which were not considered to be secrecy provisions by the Public Sector Management Commission</p> <p>Public Works Committee Act 1989 sections 40 and 41 - Parliamentary Committee of Public Works agrees with recommendation but if new legislation is enacted then the new legislation may cover the needs of the Committee</p>	<p>Premier, Economic and Trade Development - Public Sector Management Commission Act 1990 - Sections 6.4(1) and 6.4(3) - Not within section 48</p> <p>Public Works Committee Act 1989 sections 40 and 41 - Not within section 48</p>
<p>Primary Industries - Primary Producers' Organisation and Marketing Act 1926 section 11D</p>	<p>Primary Industries - Primary Producers' Organisation and Marketing Act 1926 section 11D - Section should not be retained</p>	<p>Primary Industries - Primary Producers' Organisation and Marketing Act 1926 section 11D - Not within section 48</p>	<p>Primary Industries - Primary Producers' Organisation and Marketing Act 1926 section 11D - No recommendation</p>	<p>Primary Industries - Primary Producers' Organisation and Marketing Act 1926 section 11D - Not within section 48</p>

Secrecy Provision Identified	Departments' Initial Recommendation	Recommendation of the Commission in the Draft Report	Departments' Response to the Draft Report	Final Recommendation of the Commission
<p>Queensland Corrective Services Commission - Corrective Services (Administration) Act 1988 section 61</p>	<p>Queensland Corrective Services Commission - Corrective Services (Administration) Act 1988 section 61 - No recommendation</p>	<p>Queensland Corrective Services Commission - Corrective Services (Administration) Act 1988 section 61 - Not within section 48</p>	<p>Queensland Corrective Services Commission - Corrective Services (Administration) Act 1988 section 61 - Provision should be retained</p>	<p>Queensland Corrective Services Commission - Corrective Services (Administration) Act 1988 section 61 - Not within section 48</p>
<p>Queensland Police Service (Formerly Police and Emergency Services) - Drugs Misuse Act 1986 section 47</p> <p>Police Service Administration Act 1990 section 10.1</p>	<p>Queensland Police Service (Formerly Police and Emergency Services) - Drugs Misuse Act 1986 section 47 - Provision should be retained</p> <p>Police Service Administration Act 1990 section 10.1 - Provision should be retained</p>	<p>Queensland Police Service (Formerly Police and Emergency Services) - Drugs Misuse Act 1986 section 47 - Not within section 48</p> <p>Police Service Administration Act 1990 section 10.1 - Not within section 48</p>	<p>Queensland Police Service (Formerly Police and Emergency Services) - Drugs Misuse Act 1986 section 47 - Section should remain but other exemptions in the FOI Act adequate</p> <p>Police Service Administration Act 1990 section 10.1 - Section should remain but other exemptions in the FOI Act adequate</p>	<p>Queensland Police Service (Formerly Police and Emergency Services) - Drugs Misuse Act 1986 section 47 - Not within section 48</p> <p>Police Service Administration Act 1990 section 10.1 - Not within section 48</p>
<p>Tourism, Sport and Racing - Racing and Betting Act 1980 section 10</p>	<p>Tourism, Sport and Racing - Racing and Betting Act 1980 section 10 - Retain in relation to persons appointed, employed or engaged under or for the purposes of the Act. No recommendation in relation to the Commissioner for Stamp Duties</p>	<p>Tourism, Sport and Racing - Racing and Betting Act 1980 section 10 - Not within section 48</p>	<p>Tourism, Sport and Racing - Racing and Betting Act 1980 section 10 - Agrees with the Commission's conclusions</p>	<p>Tourism, Sport and Racing - Racing and Betting Act 1980 section 10 - Not within section 48</p>

Secrecy Provision Identified	Departments' Initial Recommendation	Recommendation of the Commission in the Draft Report	Departments' Response to the Draft Report	Final Recommendation of the Commission
<p>Treasury - Australian Financial Institutions Commissions Code 1992 section 155</p> <p>Casino Control Act 1982 section 16</p> <p>Debits Tax Act 1990 section 3.2 - read in conjunction with the Commonwealth Debits Tax Administration Act 1982 section 7</p> <p>Financial Administration and Audit Act 1977 section 92</p>	<p>Treasury - Australian Financial Institutions Commissions Code 1992 section 155 - Provision should be retained</p> <p>Casino Control Act 1982 section 16 - Should be retained in full</p> <p>Debits Tax Act 1990 section 3.2 - read in conjunction with the Commonwealth Debits Tax Administration Act 1982 section 7 - Should be retained until the new Consolidated Revenue Act is drafted</p> <p>Financial Administration and Audit Act 1977 section 92 - No recommendation</p>	<p>Treasury - Australian Financial Institutions Commissions Code 1992 section 155 - No recommendation</p> <p>Casino Control Act 1982 section 16 - Not within section 48</p> <p>Debits Tax Act 1990 section 3.2 - read in conjunction with the Commonwealth Debits Tax Administration Act 1982 section 7 - Should be re-enacted</p> <p>Financial Administration and Audit Act 1977 section 92 - Not within section 48</p>	<p>Treasury - Australian Financial Institutions Commissions Code 1992 section 155 - No recommendation</p> <p>Casino Control Act 1982 section 16 - No recommendation</p> <p>Debits Tax Act 1990 section 3.2 - read in conjunction with the Commonwealth Debits Tax Administration Act 1982 section 7 - No recommendation</p> <p>Financial Administration and Audit Act 1977 section 92 - No recommendation</p>	<p>Treasury - Australian Financial Institutions Commissions Code 1992 section 155 - No need to consider</p> <p>Casino Control Act 1982 section 16 - Not within section 48</p> <p>Debits Tax Act 1990 section 3.2 - read in conjunction with the Commonwealth Debits Tax Administration Act 1982 section 7 - s.48 exemption should continue</p> <p>Financial Administration and Audit Act 1977 section 92 - Not within section 48. Section 39 of the <i>Freedom of Information Act 1992</i> should be amended to exempt information contained in section 92 from the operation of the <i>Freedom of Information Act 1992</i>.</p>

Secrecy Provision Identified	Departments' Initial Recommendation	Recommendation of the Commission In the Draft Report	Departments' Response to the Draft Report	Final Recommendation of the Commission
Treasury - Financial Institutions (Queensland) Code 1992 section 410	Treasury - Financial Institutions (Queensland) Code 1992 section 410 - Provision should be retained	Treasury - Financial Institutions (Queensland) Code 1992 section 410 - Should not be re-enacted	Treasury - Financial Institutions (Queensland) Code 1992 section 410 - The section should remain. Supported by the Queensland Office of Financial Supervision and the Australian Financial Institutions Commission	Treasury - Financial Institutions (Queensland) Code 1992 section 410 - s.48 exemption should continue
Gaming Machine Act 1991 section 35	Gaming Machine Act 1991 section 35 - Imperative that the section be retained	Gaming Machine Act 1991 section 35 - Not within section 48	Gaming Machine Act 1991 section 35 - No recommendation	Gaming Machine Act 1991 section 35 - Not within section 48
Golden Casket Act 1978 - Golden Casket (On-Line) Rules rule 10	Golden Casket Act 1978 - Golden Casket (On-Line) Rules rule 10 - Should be retained	Golden Casket Act 1978 - Golden Casket (On-Line) Rules rule 10 - Not within section 48	Golden Casket Act 1978 - Golden Casket (On-Line) Rules rule 10 - No recommendation	Golden Casket Act 1978 - Golden Casket (On-Line) Rules rule 10 - Not within section 48
Land Tax Act 1915 section 4A	Land Tax Act 1915 section 4A - Should be retained until the new Consolidated Revenue Act is drafted	Land Tax Act 1915 section 4A - Not within section 48	Land Tax Act 1915 section 4A - Needs to be considered with new Consolidated Revenue Act	Land Tax Act 1915 section 4A - Not within section 48
Lotto Act 1981 - Lotto (On-Line) Rules rule 12	Lotto Act 1981 - Lotto (On-Line) Rules rule 12 - Should be retained	Lotto Act 1981 - Lotto (On-Line) Rules rule 12 - Not within section 48	Lotto Act 1981 - Lotto (On-Line) Rules rule 12 - No recommendation	Lotto Act 1981 - Lotto (On-Line) Rules rule 12 - Not within section 48
Motor Vehicles Insurance Act 1936 section 2C	Motor Vehicles Insurance Act 1936 section 2C - There is no need to retain this provision	Motor Vehicles Insurance Act 1936 section 2C - Not within section 48	Motor Vehicles Insurance Act 1936 section 2C - No recommendation	Motor Vehicles Insurance Act 1936 section 2C - Not within section 48

Secrecy Provision Identified	Departments' Initial Recommendation	Recommendation of the Commission in the Draft Report	Departments' Response to the Draft Report	Final Recommendation of the Commission
<p>Treasury - Payroll Tax Act 1971 section 5</p> <p>Queensland Industry Development Corporation Act 1985 section 30</p>	<p>Treasury - Payroll Tax Act 1971 section 5 - Should be retained until the new Consolidated Revenue Act is drafted</p> <p>Queensland Industry Development Corporation Act 1985 section 30 - The Act is currently being re-drafted and it is intended that section 30 will be repealed</p>	<p>Treasury - Payroll Tax Act 1971 section 5 - Not within section 48</p> <p>Queensland Industry Development Corporation Act 1985 section 30 - Not within section 48</p>	<p>Treasury - Payroll Tax Act 1971 section 5 - Needs to be considered with new Consolidated Revenue Act</p> <p>Queensland Industry Development Corporation Act 1985 section 30 - No recommendation</p>	<p>Treasury - Payroll Tax Act 1971 section 5 - Not within section 48</p> <p>Queensland Industry Development Corporation Act 1985 section 30 - Not within section 48</p>
<p>Racing and Betting Act 1980 section 10</p>	<p>Racing and Betting Act 1980 section 10 - No recommendation</p>	<p>Racing and Betting Act 1980 section 10 - Not within section 48</p>	<p>Racing and Betting Act 1980 section 10 - No recommendation</p>	<p>Racing and Betting Act 1980 section 10 - Not within section 48</p>
<p>Revenue Laws (Reciprocal Powers) Act 1988 sections 13, 14 and 15</p>	<p>Revenue Laws (Reciprocal Powers) Act 1988 sections 13, 14 and 15 - Should be retained until the new Consolidated Revenue Act is drafted</p>	<p>Revenue Laws (Reciprocal Powers) Act 1988 sections 13, 14 and 15 - Not within section 48</p>	<p>Revenue Laws (Reciprocal Powers) Act 1988 sections 13, 14 and 15 - Needs to be considered with new Consolidated Revenue Act</p>	<p>Revenue Laws (Reciprocal Powers) Act 1988 sections 13, 14 and 15 - Not within section 48</p>
<p>Soccer Football Pools Act 1976 - Pools (On-Line) Rules rule 17</p>	<p>Soccer Football Pools Act 1976 - Pools (On-Line) Rules rule 17 - Should be retained</p>	<p>Soccer Football Pools Act 1976 - Pools (On-Line) Rules rule 17 - Not within section 48</p>	<p>Soccer Football Pools Act 1976 - Pools (On-Line) Rules rule 17 - No recommendation</p>	<p>Soccer Football Pools Act 1976 - Pools (On-Line) Rules rule 17 - Not within section 48</p>
<p>Stamp Act 1894 section 10</p>	<p>Stamp Act 1894 section 10 - Should be retained until the new Consolidated Revenue Act is drafted</p>	<p>Stamp Act 1894 section 10 - Not within section 48</p>	<p>Stamp Act 1894 section 10 - Needs to be considered with new Consolidated Revenue Act</p>	<p>Stamp Act 1894 section 10 - Not within section 48</p>

Secrecy Provision Identified	Departments' Initial Recommendation	Recommendation of the Commission In the Draft Report	Departments' Response to the Draft Report	Final Recommendation of the Commission
<p><i>Treasury - Statistical Returns Act 1896 section 6</i></p> <p><i>Tobacco Products (Licensing) Act 1988 section 43</i></p>	<p><i>Treasury - Statistical Returns Act 1896 section 6 - Essential that the provision be retained</i></p> <p><i>Tobacco Products (Licensing) Act 1988 section 43 - Should be retained until the new Consolidated Revenue Act is drafted</i></p>	<p><i>Treasury - Statistical Returns Act 1896 section 6 - Not within section 48</i></p> <p><i>Tobacco Products (Licensing) Act 1988 section 43 - Not within section 48</i></p>	<p><i>Treasury - Statistical Returns Act 1896 section 6 - No recommendation</i></p> <p><i>Tobacco Products (Licensing) Act 1988 section 43 - Needs to be considered with new Consolidated Revenue Act</i></p>	<p><i>Treasury - Statistical Returns Act 1896 section 6 - Not within section 48</i></p> <p><i>Tobacco Products (Licensing) Act 1988 section 43 - Not within section 48</i></p>

APPENDIX D

PROVISIONS WHICH DO NOT COME WITHIN
SECTION 48

Department	Provision Identified
Auditor-General (Now Queensland Audit Office)	<i>Financial Administration and Audit Act 1977</i> section 92
Bureau of Emergency Services (Formerly Police and Emergency Services)	<i>Fire Service Act 1990</i> section 142A(1)
Employment, Vocational Training and Industrial Relations	<i>Building and Construction Industry (Portable Long Service Leave) Act 1991</i> - Section 94. <i>Industrial Relations Act 1990</i> - Sections 189 and 355. <i>Private Employment Agencies Act 1983</i> - Sections 9(6) and 10. <i>Trading Hours Act 1990</i> Section 3.2. <i>Vocational Education, Training and Employment Act 1991</i> - Section 4.15. <i>Workplace Health and Safety Act 1989</i> - Section 133.
Family Services and Aboriginal and Islander Affairs	<i>Adoption of Children Act 1964</i> - Section 59(4). <i>Domestic Violence (Family Protection) Act 1989</i> section 82. <i>Intellectually Disabled Citizens Act 1985</i> - Section 42.
Health	<i>Food Act 1981</i> - Sections 40 and 48. <i>Health Act 1937</i> - Sections 48(3) and 154N(2). <i>Health Rights Commission Act 1991</i> - Sections 89, 98, 108 and 138. <i>Health Services Act 1991</i> - Sections 2.5(3), 2.6, 2.11, 2.12 and 5.1(3). <i>Medical Act and Other Acts (Administration) Act 1966</i> - Section 14B. <i>Nursing Act 1992</i> - Section 139. <i>Radio-active Substances Act 1958</i> - Section 18.
Housing Local Government and Planning	<i>Ordinances of the Brisbane City Council Made Pursuant to the City of Brisbane Act 1924</i> - Chapter 2 Part 1, Ordinance 2 and Chapter 2 Part 2, Ordinance 34.

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 - Section 320.</i> <i>Coroners Act 1958 - Section 52.</i> <i>Criminal Code - Section 86.</i> <i>Criminal Justice Act 1989 - Sections 27, 58(2)(c), 88, and 132.</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>Securities Industry Act 1975 - Section 13(1).</i> <i>Special Prosecutor Act 1988 - Sections 20 and 21.</i> <i>Trust Accounts Act 1973 - Section 25.</i></p>
Lands	<i>Valuation of Land Act 1944 - Section 11.</i>
Minerals and Energy (Formerly 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>
Parliamentary Commissioner for Administrative Investigations	<i>Parliamentary Commissioner Act 1974 - Sections 9(1), 10(4), 18(2), 22 and 29(4).</i>
Premier, Economic and Trade Development	<p><i>Electoral and Administrative Review Act 1989 - Sections 2.13(5) and 6.4(3).</i> <i>Public Sector Management Commission Act 1990 - Sections 6.4(1) and 6.4(3).</i> <i>Public Works Committee Act 1989 - Sections 40 and 41.</i></p>
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>
Queensland Police Service (Formerly Police and Emergency Services)	<p><i>Drugs Misuse Act 1986 - Section 47.</i> <i>Police Service Administration Act 1990 - Section 10.1.</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> <i>Financial Administration and Audit Act 1977 section 92</i> <i>Gaming Machine Act 1991 - Section 35(1) and (2).</i> <i>Golden Casket Art Union Act 1978 - Rule 10.</i> <i>Land Tax Act 1915 - Section 4A.</i> <i>Lotto Act 1981 - Rule 12.</i> <i>Motor Vehicles Insurance Act 1936 - Section 2C.</i> <i>Payroll Tax Act 1971 - Section 5.</i> <i>Queensland Industry Development Corporation Act 1985 - Section 30.</i> <i>Revenue Laws (Reciprocal Powers) Act 1988 - Sections 13, 14 and 15.</i> <i>Soccer Football Pools Act 1976 - Rule 17.</i> <i>Stamp Act 1894 - Section 10.</i> <i>Statistical Returns Act 1896 - Section 6.</i> <i>Tobacco Products (Licensing) Act 1988 - Section 43.</i> </p>

APPENDIX E

LIST OF PROVISIONS WHICH PROHIBIT THE DISCLOSURE OF INFORMATION BUT WHICH DO NOT COME WITHIN SECTION 48

DEPARTMENT	PROVISION
Auditor-General (Now Queensland Audit Office)	<i>Financial Administration and Audit Act 1977</i> section 92
Bureau of Emergency Services (Formerly Police and Emergency Services)	<i>Fire Service Act 1990</i> section 142A(1)
Employment, Vocational Education, Training and Industrial Relations	<i>Building and Construction Industry (Portable Long Service Leave) Act 1991</i> section 94 <i>Industrial Relations Act 1990</i> section 355 <i>Private Employment Agencies Act 1983</i> sections 9(6) and 10 <i>Trading Hours Act 1990</i> section 3.2 <i>Vocational Education, Training and Employment Act 1991</i> section 4.15 <i>Workplace Health and Safety Act 1989</i> section 133
Family Services and Aboriginal and Islander Affairs	<i>Adoption of Children Act 1964</i> section 59(4) <i>Intellectually Disabled Citizens Act 1985</i> section 42
Health	<i>Food Act 1981</i> section 40 <i>Health Act 1937</i> section 154N(2) <i>Health Rights Commission Act 1991</i> section 138 <i>Health Services Act 1991</i> sections 2.5(3), 2.11, 5.1(3) <i>Medical Act and Other Acts (Administration) Act 1966</i> section 14B <i>Nursing Act 1992</i> section 139
Housing, Local Government and Planning	By-laws of Local Authorities concerning records and committee meetings <i>Local Government Act 1993</i> sections 155, 269, 377 and 717 <i>Ordinances of the Brisbane City of Council</i> made pursuant to the <i>City of Brisbane Act 1924</i> Chapter 2 Part 1, Ordinance 2 and Chapter 2 Part 2, Ordinance 34

DEPARTMENT	PROVISION
Justice, Attorney-General and the Arts	<i>Companies Act 1961 section 124(2)</i> <i>The Corporations Law (Cth) as it applies to Queensland under the Corporations (Qld) Act 1990 section 320</i> <i>Criminal Code section 86</i> <i>Criminal Justice Act 1989 section 132</i> <i>Dispute Resolution Centres Act 1990 section 5.4</i> <i>Police Complaints Tribunal Acts Repeal Act 1990 section 5(1)(c)</i> <i>Securities Industry Act 1975 section 13(1)</i> <i>Special Prosecutor Act 1989 section 20</i> <i>Trust Accounts Act 1973 section 25</i>
Lands	<i>Valuation of Land Act 1944 section 11</i>
Minerals and Energy (Formerly Resource Industries)	<i>Explosives Act 1952 section 46A</i> <i>Mineral Resources Act 1989 sections 4.18, 5.39, 6.33 and 7.19</i>
Parliamentary Commissioner for Administrative Investigations	<i>Parliamentary Commissioner Act 1974 sections 9(1), 10(4) and 22</i>
Premier, Economic and Trade Development	<i>Electoral and Administrative Review Act 1989 sections 2.13(5) and 6.4(3)</i> <i>Public Sector Management Commission Act 1990 section 6.4(1) and 6.4(3)</i> <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>
Queensland Police Service (Formerly Police and Emergency Services)	<i>Police Service Administration Act 1990 section 10.1</i>
Tourism, Sport and Racing	<i>Racing and Betting Act 1980 section 10</i>
Treasury	<i>Casino Control Act 1982 section 16</i> <i>Financial Administration and Audit Act 1977 section 92</i> <i>Gaming Machine Act 1991 sections 35(1) and (2)</i> <i>Land Tax Act 1915 section 4A</i> <i>Payroll Tax Act 1971 section 5</i> <i>Revenue Laws (Reciprocal Powers) Act 1988 sections 13 and 14</i> <i>Stamp Act 1894 section 10</i> <i>Statistical Returns Act 1896 section 6</i> <i>Tobacco Products (Licensing) Act 1988 section 43</i>

APPENDIX F

LIST OF LOCAL AUTHORITIES WHICH RESPONDED TO THE COMMISSION
Albert Shire Council
Atherton Shire Council
Aurukun Shire Council
Balonne Shire Council
Barcoo Shire Council
Bauhinia Shire Council
Belyando Shire Council
Beaudesert Shire Council
Biggenden Shire Council
Blackall Shire Council
Boonah Shire Council
Booringa Shire Council
Brisbane City Council
Broadsound Shire Council
Bundaberg City Council
Bungil Shire Council
Burdekin Shire Council
Burke Shire Council
Caboolture Shire Council
Cairns City Council
Calliope Shire Council
Caloundra City Council
Clifton Shire Council
Cook Shire Council
Croydon Shire Council
Dalby Town Council
Dalrymple Shire Council
Duaringa Shire Council
Eacham Shire Council

LIST OF LOCAL AUTHORITIES WHICH RESPONDED TO THE COMMISSION
Gladstone City Council
Gooburrum Shire Council
Goondiwindi Town Council
Gympie City Council
Herberton Shire Council
Hervey Bay City Council
Hinchinbrook Shire Council
Ipswich City Council
Isis Shire Council
Isisford Shire Council
Johnstone Shire Council
Kilcoy Shire Council
Kilkivan Shire Council
Kingaroy Shire Council
Livingstone Shire Council
Mackay City Council
Mareeba Shire Council
Maroochy Shire Council
Maryborough City Council
Millmerran Shire Council
Mirani Shire Council
Monto Shire Council
Moreton Shire Council
Mornington Shire Council
Mount Isa City Council
Mount Morgan Shire Council
Mulgrave Shire Council
Mundubbera Shire Council
Murweh Shire Council
Noosa Shire Council
Peak Downs Shire Council

**LIST OF LOCAL AUTHORITIES
WHICH RESPONDED TO THE
COMMISSION**

Pine Rivers Shire Council

Pioneer Shire Council

Pittsworth Shire Council

Quilpie Shire Council

Redcliffe City Council

Rosalie Shire Council

Sarina Shire Council

Stanthorpe Shire Council

Tara Shire Council

Taroom Shire Council

Thuringowa City Council

Tiaro Shire Council

Toowoomba City Council

Waroo Shire Council

Widgee Shire Council

Winton Shire Council

Wondai Shire Council

Woocoo Shire Council

Woongarra Shire Council

APPENDIX G
EXTRACTS FROM TYPICAL BY-LAWS NOTIFIED TO THE COMMISSION
BY LOCAL AUTHORITIES

Committee Business Confidential

All discussions of a committee of the Council, shall, save as regards between members of the Council, be strictly confidential, except in cases where the public have been present by permission of the committee and a person shall not, unless the committee transacting the business or the Council on a reference by such committee otherwise determines, disclose information with regard to such business otherwise than to the Council.

Records

Except as otherwise provided by law, a Councillor or officer of the Council shall not be at liberty to show, lay open, or expose a record of the Council to a person other than a councillor without leave of the Council.

Vandalism

The name of the informant who supplies the Council with information pursuant to this by-law shall be kept confidential as between the Council and the informant. Any member or employee of the Council who wilfully discloses the name of an informant save in the bona fide discharge of his duty shall be guilty of an offence.

APPENDIX H - SUMMARY OF ALL BY-LAWS NOTIFIED TO THE COMMISSION**LOCAL AUTHORITIES WHOSE BY-LAWS CONTAIN NO SECRECY PROVISIONS**

Local Authority
Atherton Shire Council
Aurukun Shire Council
Balonne Shire Council
Barcoo Shire Council
Belyando Shire Council
Biggenden Shire Council
Booringa Shire Council
Bungil Shire Council
Burdekin Shire Council
Caboolture Shire Council
Calliope Shire Council
Clifton Shire Council
Cook Shire Council
Croydon Shire Council
Eacham Shire Council
Gladstone City Council
Gympie City Council
Herberton Shire Council
Hervey Bay City Council
Hinchinbrook Shire Council
Isis Shire Council
Isisford Shire Council
Johnstone Shire Council
Kilkivan Shire Council
Maroochy Shire Council
Millmerran Shire Council
Mirani Shire Council
Mornington Shire Council
Mulgrave Shire Council

Local Authority
Murweh Shire Council
Noosa Shire Council
Peak Downs Shire Council
Pittsworth Shire Council
Quilpie Shire Council
Rosalie Shire Council
Sarina Shire Council
Stanthorpe Shire Council
Tara Shire Council
Thuringowa City Council
Widgee Shire Council
Wondai Shire Council
Wocoo Shire Council

**BY-LAWS WHICH COME WITHIN CATEGORY 'C' - PROVISIONS WHICH DEFINE
MATTER IN GENERAL TERMS¹**

PROHIBITIONS AGAINST SHOWING RECORDS

LOCAL AUTHORITY	BY-LAW NOTIFIED
Albert Shire Council	Chapter 3 Section 92
Blackall Shire Council	Chapter 3 Clause 67
Brisbane City Council	Ordinance 2 of Part 1 of Chapter 2
Duaringa Shire Council	By-law 72
Kilcoy Shire Council	By-law 96
Monto Shire Council	By-law 51
Mount Isa City Council	By-law 38
Pine Rivers Shire Council	By-law 3, Part C Clause 6
Winton Shire Council	Chapter 3 Clause 68
Department of Housing, Local Government and Planning	Section 717 <i>Local Government Act 1993</i>

PROHIBITION AGAINST DISCLOSURE OF COMMITTEE DISCUSSIONS

LOCAL AUTHORITY	BY-LAW NOTIFIED
Albert Shire Council	Chapter 3 Section 76
Bauhinia Shire Council	By-law No. 2 Clause 103
Beaudesert Shire Council	Section 48(ii) of Part II of Chapter III
Boonah Shire Council	Clause 52
Brisbane City Council	Ordinance 34 of Part 2 of Chapter 2
Broadsound Shire Council	Clause 53
Caloundra City Council	Chapter 3 Clauses 47 and 64
Gooburrum Shire Council	Chapter 2 Clause 52
Goondiwindi Town Council	By-law No. 3 Clause 109

¹ For the reasons explained in Chapter 5, these provisions are outside the scope of this reference and therefore no recommendation has been made about their re-enactment.

LOCAL AUTHORITY	BY-LAW NOTIFIED
Albert Shire Council	Chapter 3 Section 76
Livingstone Shire Council	By-law 33 Clause 48
Mareeba Shire Council	Paragraph 52, Chapter 28
Maryborough City Council	Chapter 3 By-law 39
Moreton Shire Council	Chapter 3 By-laws 87 and 110
Mount Isa City Council	By-law 37
Pioneer Shire Council	By-law 67
Redcliffe City Council	By-law 111 of Chapter 41
Taroom Shire Council	Chapter 80 Part 2 Section 38(ii)
Toowoomba City Council	By-law 36 of Chapter 3
Warroo Shire Council	Sections 21(vi) and 53

BY-LAWS WHICH COME WITHIN CATEGORY 'D' - PROVISIONS WHICH DO NOT PROHIBIT THE DISCLOSURE OF INFORMATION²

PROHIBITION AGAINST SHOWING RECORDS

LOCAL AUTHORITY	BY-LAW NOTIFIED
Pine Rivers Shire Council	By-law 3 Part C Clause 3

PROHIBITION AGAINST DISCLOSURE OF COMMITTEE DISCUSSIONS

LOCAL AUTHORITY	BY-LAW NOTIFIED
Blackall Shire Council	Chapter 3 Clause 54
Bundaberg City Council	Chapter 4 By-laws 101(d), 106, 107 and 108 Chapter 5 By-law 126
Dalby Town Council	Chapter III By-law 20
Dalrymple Shire Council	By-law 22 Chapter 9
Goondiwindi Town Council	By-law No. 3 Clause 92
Ipswich City Council	Clause 7 of By-law 4
Kilcoy Shire Council	By-law No. 75
Kingaroy Shire Council	By-law 2A Clause 71
Monto Shire Council	By-law 69 Chapter 2 By-law 31
Mundubbera Shire Council	Clauses 70 and 71
Pine Rivers Shire Council	By-law 3 Part A Clause 94
Winton Shire Council	Chapter 3 Clauses 37, 38 and 60
Department of Housing, Local Government and Planning	Section 377

² For the reasons explained in Chapter 5, these provisions are outside the scope of this reference and therefore no recommendation has been made about their re-enactment.

BY-LAWS WHICH COME WITHIN SECTION 48

VANDALISM, REGISTERS, VOTING	
LOCAL AUTHORITY	BY-LAW NOTIFIED
Dalby Town Council	Chapter V, By-law 4 - Vandalism
Redcliffe City Council	By-law 527A(6) - Vandalism
Department of Housing, Local Government and Planning	Sections 196 and 714 <i>Local Government Act</i> 1993 - Registers Section 346 <i>Local</i> <i>Government Act 1993</i> - Voting

LOCAL AUTHORITIES WHICH NOTIFIED THE COMMISSION OF POLICIES³

POLICIES OF LOCAL AUTHORITIES	
LOCAL AUTHORITY	POLICY NOTIFIED
Cairns City Council	Internal policies and practices regarding dissemination of information obtained in the course of the Council's functions.
Dalby Town Council	Policy of protecting identity of complainants who make a written complaint over any matter.
Mackay City Council	Policy in relation to release of information received by way of complaint.
Mount Morgan Shire Council	Council considering adherence to a Building Note outlined by the Department of Housing, Local Government and Planning concerning access to information on building activities.
Tiaro Shire Council	Staff Duty Statement concerning the release of information by staff.

³ For the reasons explained in Chapter 5, these policies are outside the scope of this reference and therefore no recommendation has been made about them.

APPENDIX I

SECTIONS 6 - 9, 11 AND 39 -51

OF THE

FREEDOM OF INFORMATION ACT 1992 (QLD)

Matter relating to personal affairs of applicant

6. If an application for access to a document is made under this Act, the fact that the document contains matter relating to the personal affairs of the applicant is an element to be taken into account in deciding—

- (a) whether it is in the public interest to grant access to the applicant; and
- (b) the effect that the disclosure of the matter might have.

Definitions

7. In this Act—

“agency” has the meaning given by section 8;

“Commissioner” means the Information Commissioner;

“competitive commercial activity” means an activity carried on, on a commercial basis, in competition with a person, other than—

- (a) the Commonwealth or a State or Territory; or
- (b) a State authority; or
- (c) a local government authority;

“court” includes a justice and a coroner;

“document” includes—

- (a) a copy of a document; and
- (b) a part of a document or a copy of a part of a document;

“document of an agency” or **“document of the agency”** means a document in the possession or under the control of an agency, or the agency concerned, whether created or received in the agency, and includes—

- (a) a document to which the agency is entitled to access; and
- (b) a document in the possession or under the control of an officer of the agency in the officer's official capacity;

“enactment” means an Act or a statutory instrument;

“exempt document” means a document that contains exempt matter, but to which access cannot be given under section 32;

“exempt matter” means matter that is exempt under Division 2 of Part 3;

“function” includes a power;

“government” includes an agency and a Minister;

“holds”, in relation to an office, includes performs the duties of the office;

“officer”, in relation to an agency, includes—

- (a) the agency's principal officer; and
- (b) a member of the agency; and
- (c) a member of the agency's staff; and
- (d) a person employed by or for the agency;

“official document of a Minister” or **“official document of the Minister”** means a document in the possession or under the control of a Minister, or the Minister concerned, that relates to the affairs of an agency, and includes—

- (a) a document to which the Minister is entitled to access; and
- (b) a document in the possession or under the control of a member of the staff of, or a consultant to, the Minister in the person's capacity as such a member or consultant;

“Parliamentary Commissioner” means the Parliamentary Commissioner for Administrative Investigations appointed under the *Parliamentary Commissioner Act 1974*;

“policy document”, in relation to an agency, means—

- (a) a document containing interpretations, rules, guidelines, statements of policy, practices or precedents; or
- (b) a document containing particulars of an administrative scheme; or
- (c) a document containing a statement of the way, or intended way, of administration of an enactment or administrative scheme; or
- (d) a document describing the procedures to be followed in investigating a contravention or possible contravention of an

enactment or administrative scheme; or

- (e) another document of a similar kind;

that is used by the agency in connection with the performance of such of its functions as affect or are likely to affect rights, privileges or other benefits, or obligations, penalties or other detriments, to which members of the community are or may become entitled, eligible, liable or subject, but does not include an enactment that has already been published;

“principal officer” means—

- (a) in relation to a department—the chief executive of the department; or
- (b) in relation to a local authority—the clerk (however described) of the authority; or
- (c) in relation to a public authority for which a regulation declares an office to be the principal office—the holder of the office; or
- (d) in relation to another public authority—
- (i) if it is an incorporated body that has no members—the person who manages the body’s affairs; or
- (ii) if it is a body (whether or not incorporated) that is constituted by 1 person—the person; or
- (iii) if it is a body (whether or not incorporated) that is constituted by 2 or more persons—the person who is entitled to preside at a meeting of the body at which the person is present;

“public authority” has the meaning given by section 9;

“public library” includes—

- (a) the State library; and
- (b) a local authority library; and
- (c) a library in the State that forms part of a public tertiary educational institution;

“responsible Minister” means—

- (a) in relation to a department—the Minister administering the

- department; or
- (b) in relation to the Town Commission constituted under the *Alcan Queensland Pty. Limited Agreement Act 1965*—the Minister administering that Act; or
 - (c) in relation to a council constituted under the *Local Government (Aboriginal Lands) Act 1978*, the *Community Services (Aborigines) Act 1984* or the *Community Services (Torres Strait) Act 1984*—the Minister administering those Acts; or
 - (d) in relation to another local authority—the Minister administering the *Local Government Act 1936*; or
 - (e) in relation to a public authority mentioned in paragraph (a) of the definition of “public authority”—the Minister administering the Act by or under which the public authority is established; or
 - (f) in relation to a public authority mentioned in paragraph (d) of that definition—the Minister administering the Act by which the office is established; or
 - (g) in relation to any other public authority—the Minister declared by regulation to be the responsible Minister in relation to the public authority.

Meaning of “agency”

8.(1) In this Act—

“agency” means a department, local authority or public authority.

(2) In this Act, a reference to an agency includes a reference to a body that—

- (a) forms part of the agency; or
- (b) exists mainly for the purpose of enabling the agency to perform its functions.

Meaning of “public authority”

9.(1) In this Act—

“public authority” means—

- (a) a body (whether or not incorporated) that—
 - (i) is established for a public purpose by an enactment; or
 - (ii) is established by government for a public purpose under an enactment; or
- (b) a body (whether or not incorporated) that is created by the Governor in Council or a Minister; or
- (c) another body (whether or not incorporated)—
 - (i) that is—
 - (A) supported directly or indirectly by government funds or other assistance or over which government is in a position to exercise control; or
 - (B) a body established by or under an enactment; and
 - (ii) that is declared by regulation to be a public authority for the purposes of this Act; or
- (d) subject to subsection (3), a person holding an office established by or under an enactment; or
- (e) a person holding an appointment—
 - (i) made by the Governor in Council or Minister otherwise than by or under an enactment; and
 - (ii) that is declared by regulation to be an appointment the holder of which is a public authority for the purposes of this Act;

but does not include a body that, under subsection (2), is not a public authority for the purposes of this Act.

(2) For the purposes of this Act, an unincorporated body that is a board, council, committee, sub-committee or other body established by or under an enactment for the purpose of assisting, or performing functions connected with, a public authority is not a separate public authority, but is taken to be comprised within the public authority.

- (3) A person is not a public authority merely because the person holds—
- (a) an office the duties of which are performed as duties of employment as an agency's officer; or
 - (b) an office of member of a body; or
 - (c) an office established by or under an enactment for the purposes of an agency.

Act not to apply to certain bodies etc.**11.(1) This Act does not apply to—**

- (a) the Governor; or
- (b) the Legislative Assembly, a member of the Legislative Assembly, a committee of the Legislative Assembly, a member of a committee of the Legislative Assembly, a parliamentary commission of inquiry or a member of a parliamentary commission of inquiry; or
- (c) the Parliamentary Judges Commission of Inquiry appointed under the *Parliamentary (Judges) Commission of Inquiry Act 1988*; or
- (d) the Parliamentary Service Commission established by the *Parliamentary Service Act 1988*; or
- (e) the judicial functions of—
 - (i) a court; or
 - (ii) the holder of a judicial office or other office connected with a court; or
- (f) a registry or other office of a court, or the staff of a registry or other office of a court in their official capacity, so far as its or their functions relate to the court's judicial functions; or
- (g) the Litigation Reform Commission established by the *Supreme Court of Queensland Act 1991*; or
- (h) the Fitzgerald commission of inquiry, that is, the commission of inquiry that is "the Commission" within the meaning of the *Commission of Inquiry Continuation Act 1989*; or

- (i) another commission of inquiry issued by the Governor in Council; or
 - (j) an agency in relation to a document that has originated with, or has been received from, the Australian Secret Intelligence Service, the Australian Security Intelligence Organisation, the Inspector-General of Intelligence and Security or the Office of National Assessments, or the Defence Signals Directorate or the Defence Intelligence Organisation of the Commonwealth Department of Defence; or
 - (k) Queensland Industry Development Corporation in relation to its investment functions; or
 - (l) Queensland Investment Corporation; or
 - (m) Queensland Treasury Corporation in relation to its borrowing, liability and asset management related functions; or
 - (n) Queensland Treasury Holdings Pty Ltd, its wholly owned subsidiaries (within the meaning of the Corporations Law), and the entities in which the subsidiaries have a controlling interest (within the meaning of the Corporations Law), in relation to their commercially competitive activities; or
 - (o) Suncorp Insurance and Finance; or
 - (p) the Health Rights Commissioner, or a person appointed as a conciliator under section 75 of *Health Rights Commission Act 1991*, in relation to the conciliation of health service complaints under Part 6 of that Act; or
 - (q) an agency, part of an agency or function of an agency prescribed by regulation for the purposes of this paragraph.
- (2) In subsection (1), a reference to documents in relation to a particular function or activity is a reference to documents received or brought into existence in performing the function or carrying on the activity.

Matter relating to investigations by Parliamentary Commissioner or audits by Auditor-General

39. Matter is exempt matter if its disclosure could reasonably be expected to prejudice the conduct of—

- (a) an investigation by the Parliamentary Commissioner; or
- (b) an audit by the Auditor-General;

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

Matter concerning certain operations of agencies

40. Matter is exempt matter if its disclosure could reasonably be expected to—

- (a) prejudice the effectiveness of a method or procedure for the conduct of tests, examinations or audits by an agency; or
- (b) prejudice the attainment of the objects of a test, examination or audit conducted by an agency; or
- (c) have a substantial adverse effect on the management or assessment by an agency of the agency's personnel; or
- (d) have a substantial adverse effect on the conduct of industrial relations by an agency;

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

Matter relating to deliberative processes

41.(1) Matter is exempt matter if its disclosure—

- (a) would disclose—
 - (i) an opinion, advice or recommendation that has been obtained, prepared or recorded; or
 - (ii) a consultation or deliberation that has taken place;

in the course of, or for the purposes of, the deliberative processes involved in the functions of government; and
- (b) would, on balance, be contrary to the public interest.

(2) Matter is not exempt under subsection (1) if it merely consists of—

- (a) matter that appears in an agency's policy document; or
- (b) factual or statistical matter; or
- (c) expert opinion or analysis by a person recognised as an expert in the field of knowledge to which the opinion or analysis relates.

(3) Matter is not exempt under subsection (1) if it consists of—

- (a) a report of a prescribed body or organisation established within an agency; or
- (b) the record of, as a formal statement of the reasons for, a final decision, order or ruling given in the exercise of—
 - (i) a power; or
 - (ii) an adjudicative function; or
 - (iii) a statutory function; or
 - (iv) the administration of a publicly funded scheme.

Matter relating to law enforcement or public safety

42.(1) Matter is exempt matter if its disclosure could reasonably be expected to—

- (a) prejudice the investigation of a contravention or possible contravention of the law (including revenue law) in a particular case; or
- (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 (including revenue 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 the habitat of animals or plants.

(2) Matter is not exempt under subsection (1) if—

(a) it consists of—

- (i) matter revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law; or
- (ii) matter containing a general outline of the structure of a program adopted by an agency for dealing with a contravention or possible contravention of the law; or
- (iii) a report on the degree of success achieved in a program adopted by an agency for dealing with a contravention or possible contravention of the law; or
- (iv) a report prepared in the course of a routine law enforcement inspection or investigation by an agency whose functions include that of enforcing the law (other than the criminal law or the law relating to misconduct or official misconduct within the meaning of the *Criminal Justice Act 1989*); or
- (v) a report on a law enforcement investigation that has already been disclosed to the person or body the subject of the investigation; and

(b) its disclosure would, on balance, be in the public interest.

(3) For the purposes of this Act, a certificate signed by the Minister certifying that matter is of a kind mentioned in subsection (1), but not of a kind mentioned in subsection (2), establishes, subject to Part 5, that it is exempt matter.

(4) A reference in this section to a contravention or possible contravention of the law includes a reference to misconduct or official misconduct, or possible misconduct or official misconduct, within the meaning of the *Criminal Justice Act 1989*.

(5) In this section—

“law” includes law of the Commonwealth, another State, a Territory or a foreign country.

Matter affecting legal proceedings

43.(1) Matter is exempt matter if it would be privileged from production in a legal proceeding on the ground of legal professional privilege.

(2) Matter is not exempt under subsection (1) merely because it appears in an agency's policy document.

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 wellbeing 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.

Matter affecting the economy of State

47.(1) Matter is exempt matter if its disclosure could reasonably be expected—

- (a) to have a substantial adverse effect on the ability of government to manage the economy of the State; or
- (b) to expose any person or class of persons to an unfair advantage or disadvantage because of the premature disclosure of information concerning proposed action or inaction of the Legislative Assembly or government in the course of, or for the purpose of, managing the economy of the State;

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

(2) Without limiting subsection (1)(a), that paragraph applies to matter the disclosure of which would reveal—

- (a) the consideration of a contemplated movement in government taxes, fees or charges; or
- (b) the imposition of credit controls.

Matter to which secrecy provisions of enactments apply

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.

Matter affecting financial or property interests

49. Matter is exempt matter if its disclosure could reasonably be expected to have a substantial adverse effect on the financial or property interests of the State or an agency unless its disclosure would, on balance, be in the public interest.

Matter disclosure of which would be contempt of Parliament or contempt of court

50. Matter is exempt matter if its public disclosure would, apart from this Act and any immunity of the Crown—

- (a) be in contempt of court; or
- (b) be contrary to an order made or direction given by—
 - (i) a royal commission or commission of inquiry; or
 - (ii) a person or body having power to take evidence on oath; or
- (c) infringe the privileges of—
 - (i) Parliament; or
 - (ii) the Parliament of the Commonwealth or a State or a House of such a Parliament; or
 - (iii) the Legislative Assembly of the Australian Capital Territory, the Northern Territory or Norfolk Island.

Disclosure that may reasonably be expected to be of substantial concern

51.(1) An agency or Minister may give access to a document that contains matter the disclosure of which may reasonably be expected to be of substantial concern to a government, agency or person only if the agency or Minister has taken such steps as are reasonably practicable to obtain the views of the government, agency or person concerned about whether or not the matter is exempt matter.

(2) If—

- (a) the agency or Minister decides, after having sought the views of the government, agency or person concerned, that the matter is not exempt matter; and
- (b) that government, agency or person believes that the matter is exempt matter;

the agency or Minister must—

- (c) give written notice to the government, agency or person concerned of—
 - (i) the decision of the agency or Minister; and
 - (ii) the reasons for the decision; and
 - (iii) the rights of review conferred by this Act in relation to the decision; and
 - (iv) the procedures to be followed in exercising those rights; and
- (d) give written notice to the applicant of the decision; and
- (e) defer giving access to the document until after the end of the period within which any application for review under this Act may be made or, if such an application is made, until after the application is finally disposed of.

(3) In this section—

“person concerned”, in relation to a person who has died, means the person's closest relative.