



Australian Capital Territory

Executive Documents Release Act 2001

No 53 of 2001

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Definitions	2
4 Notes	3
5 Application to previous executive documents	3
6 List of released executive documents must be published	3
7 Availability of released documents	4
8 Release delayed or denied	6
9 Freedom of Information Act access not prevented	7
10 Review of release restraint determination by AAT	7
11 No liability for complying with Act	7
12 Regulation-making powers	7



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Executive Documents Release Act 2001

No 53 of 2001

An Act to require the publication of certain executive documents

[Notified in ACT Gazette No. 28: 12 July 2001]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Executive Documents Release Act 2001*.

2 Commencement

This Act commences on a day fixed by the Minister by notice in the Gazette.

Note 1 The provisions of an Act providing for its name and commencement automatically commence on the date of notification of the Act (see *Interpretation Act 1967*, s 10B).

Note 2 A single day or time may be fixed, or different days or times may be fixed for different provisions (see *Interpretation Act 1967*, s 10C (1)).

Note 3 If a provision has not commenced within 6 months beginning on the date of notification of the Act, it automatically commences on the first day after that period (see *Interpretation Act 1967*, s 10E (2)).

3 Definitions

In this Act, the following definitions apply:

accessible executive document means an executive document (or part of an executive document) on or after its earliest release day.

Assembly means the Legislative Assembly or a committee of the Legislative Assembly nominated by the Speaker for this Act.

earliest release day, for an executive document, means the later of the following days:

- (a) the next 1 July after the end of 10 years after the document's submission day;
- (b) 1 July 2001.

Example

If an executive document's submission day was 1 May 1997, its ***earliest release day*** is 1 July 2007.

Executive includes a committee of the Executive.

executive document means—

- (a) an official record of a meeting of the Executive; or
- (b) a document that was—
 - (i) formally submitted by a Minister to a meeting of the Executive for its consideration in relation to a matter on the official record; and
 - (ii) created for that purpose; or
- (c) part of a document mentioned in paragraph (a) or (b).

later release day—see section 8 (7) (Release delayed or denied).

protected private information—see section 8 (2) (b).

release restraint determination—see section 8 (2).

submission day, of an executive document, means the day of the meeting of the Executive to which the document relates.

4 Notes

A note included in this Act is explanatory, and is not part of this Act.

Note See *Interpretation Act 1967*, s 12 (1), (4)-(5) for the legal status of notes.

5 Application to previous executive documents

This Act applies to an executive document even if its submission day was before this Act commenced.

6 List of released executive documents must be published

- (1) The chief executive must arrange for a list of all accessible executive documents to be available to the public, without charge, in printed and in electronic form.

Example

To make the list available to the public in electronic form, the chief executive might make an electronic copy of the list available on a website.

Note An executive document becomes an **accessible executive document** on its **earliest release day** (see s 3, defs of **accessible executive document** and **earliest release day**).

- (2) The chief executive must also arrange for any release restraint determination to be listed in relation to the relevant executive document while the determination is in force.
- (3) The entry on the list for any release restraint determination must include a notice in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

7 Availability of released documents

- (1) On request by a person, the chief executive must, without charge, give the person a copy of an accessible executive document as soon as practicable after receiving the request, unless—
 - (a) the chief executive has decided, or decides, to make a release restraint determination about the document (see section 8 (Release delayed or denied)); and
 - (b) the release restraint determination is in force.
- (2) If a release restraint determination about the document is in force, the chief executive must, without charge—
 - (a) for any part of the document to which the determination does not apply—give the person a copy of the part as soon as practicable after receiving the request; and
 - (b) for any part of the document to which the determination applies—
 - (i) if the request is made before the later release day for the part—refuse the request; or

- (ii) if the request is made on or after the later release day for the part—give the person a copy of the part as soon as practicable after receiving the request.
- (3) However, the chief executive must refuse a request for a copy of a part of a document if—
 - (a) a release restraint determination is in force determining the part to contain protected private information; and
 - (b) the determination provides that the part is not to be released at all.
- (4) Despite subsections (2) (b) (i) and (3), the chief executive must give a person a copy of a part of the document as soon as practicable after receiving the request if—
 - (a) a release restraint determination is in force determining the part to contain protected private information; and
 - (b) either—
 - (i) the protected private information relates to that person, and that person only; or
 - (ii) if the person to which the information relates is dead—the person requesting the copy is the dead person’s legal personal representative.

Example

If the protected private information relates to a number of people, and is made jointly by all those people, or by a person with the authority of all those people, s (4) (b) would apply to allow the request to be granted.

- (5) If the chief executive has made a release restraint determination about the document that is in force, the chief executive must (whether or not the chief executive gives the person a copy of any part of the document), as soon as practicable after receiving the request, give the person—
 - (a) a copy of the determination; and

- (b) if the determination was made after the request was received—
a copy of the notice about the determination mentioned in section 6 (3).

8 Release delayed or denied

- (1) Before giving a copy of an accessible executive document to a person under section 7, the chief executive must assess whether it contains information that would, at the time of the assessment, make it an exempt document under the *Freedom of Information Act 1989*, part 4 (Exempt documents), other than section 35 (Executive documents).
- (2) The chief executive may (by a ***release restraint determination***) determine—
 - (a) that any part of the document containing such information is only to be released on or after the later release day; or
 - (b) for any information (***protected private information***) that would, at the time of the assessment, make it an exempt document under the *Freedom of Information Act 1989*, section 41 (Documents affecting personal privacy)—
 - (i) that the part containing the information is only to be released on or after the later release day; or
 - (ii) that the part containing the information is not to be released at all.
- (3) The determination must state the reasons for making the determination.
- (4) Unless the determination states that the relevant part of the document is not to be released at all (see subsection (2) (b) (ii)), it—
 - (a) may determine a day for subsection (7) (a), by stating a particular day or providing a way of working out the day; and
 - (b) must explain how the later release day for the document is worked out under subsection (7).

- (5) A copy of the determination must be kept with the document.
- (6) The determination commences on the day it is made.
- (7) The ***later release day*** for a part of the document is the earliest of the following:
 - (a) the determined day (if any) under subsection (4) (a);
 - (b) the day 5 years after the document's earliest release day;
 - (c) the next 1 July after the end of 20 years after the document's submission day;
 - (d) if the determination ceases to be in force—the day it ceases to be in force.

Note The chief executive may, by instrument, change or revoke a release restraint determination at any time after its making. The power to change or revoke the determination is exercisable in the same way, and subject to the same conditions, as the power to make the determination. (See *Interpretation Act 1967*, s 27D.)

9 Freedom of Information Act access not prevented

The Act must not be interpreted as restricting any right of access to information under the *Freedom of Information Act 1989*.

10 Review of release restraint determination by AAT

Application may be made to the administrative appeals tribunal for review of a release restraint determination.

11 No liability for complying with Act

The Territory is not liable to any person for anything done in good faith to comply with this Act.

12 Regulation-making powers

The Executive may make regulations for this Act.

[Presentation speech made in Assembly on 9 March 2000]

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