

2001

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

---

(As presented)

(Minister for Urban Services)

## Territory Records Bill 2001

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2001

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FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Minister for Urban Services)

## **Territory Records Bill 2001**

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### **A Bill for**

An Act about Territory records, and for other purposes

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

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2000 019

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Territory Records Act 2001*.

### 2 Commencement

(1) Part 3 commences on 1 July 2006.

*Note* The naming and commencement provisions automatically commence on the notification day (see *Legislation Act 2001*, s 75).

(2) The remaining provisions commence on a day fixed by the Minister.

*Note* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see *Legislation Act 2001*, s 77 (1)).

(3) If the remaining provisions do not commence before 1 January 2003, they automatically commence on the first day after that day.

(4) The *Legislation Act 2001*, section 79 (Automatic commencement of postponed law) does not apply to this Act.

### 3 Main purposes of Act

The main purposes of this Act are—

- (a) to encourage open and accountable government by ensuring that Territory records are made, managed and, if appropriate, preserved in accessible form; and
- (b) to preserve Territory records for the benefit of present and future generations; and
- (c) to ensure that public access to records is consistent with the principles of the *Freedom of Information Act 1989*.

## 4 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act.

For example, the signpost definition '*agency*—see section 7 (Meaning of *agency*)' means that the expression '*agency*' is defined in that section.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Interpretation Act 1967*, s 11F and s 11G).

## 5 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) and (5) for the legal status of notes.

## 6 Application of Act

(1) This Act does not apply to records that are health records within the meaning of the *Health Records (Privacy and Access) Act 1997* (the *Health Records Act*).

(2) This Act does not apply to records of the Community and Health Services Complaints Commissioner (the *commissioner*) in relation to—

(a) a complaint made to the commissioner under the Health Records Act, section 18 (1) or (3); or

(b) a request to review made to the commissioner under the Health Records Act, section 18 (4); or

(c) the exercise of a function under the *Community and Health Services Complaints Act 1993* in relation to a complaint or request to review.

**Part 1**                      **Preliminary**

**Section 6**

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- 1        (3) This Act does not apply to records of the Legal Aid Commission  
2            (A.C.T.) (the *commission*) that relate to the exercise of a function of  
3            an officer or employee of the commission when practising as, or  
4            exercising a function of, a solicitor under the *Legal Aid Act 1977*.



1

2     **Part 2**                     **Management and care of**  
3                                     **records**

4     **Division 2.1**            **General**

5     **7**        **Meaning of *agency***

6        For this Act, an *agency* is—

- 7           (a) the Executive; or  
8           (b) the Supreme Court; or  
9           (c) the Magistrates Court or Coroners Court; or  
10          (d) the Legislative Assembly Secretariat; or  
11          (e) an administrative unit; or  
12          (f) any other prescribed authority; or  
13          (g) a board of inquiry appointed under the *Inquiries Act 1991*; or  
14          (h) a judicial commission appointed under the *Judicial*  
15             *Commissions Act 1994*; or  
16          (i) a royal commission appointed under the *Royal Commissions*  
17             *Act 1991*; or  
18          (j) an entity declared under the regulations to be an agency.

19    **8**        **Meaning of *principal officer***

20       For this Act, the *principal officer* of an agency is—

- 21           (a) for the Executive—the chief executive of the administrative  
22             unit that provides secretariat support to the Executive; or  
23           (b) for the Supreme Court—the Chief Justice; or  
24           (c) for the Magistrates Court or Coroners Court—the Chief  
25             Magistrate; or

- 1            (d) for the Legislative Assembly Secretariat—the clerk; or  
2            (e) for an administrative unit—the chief executive of the  
3               administrative unit; or  
4            (f) for a royal commission, board of inquiry or judicial  
5               commission—the chief executive of the administrative unit  
6               that provides secretariat support to the Executive; or  
7            (g) for any other prescribed authority—the principal officer of the  
8               prescribed authority under the FOI Act; or  
9            (h) for any other entity—the person declared under the regulations  
10               to be the principal officer for the entity.

11        **9        Meaning of *record* of an agency**

- 12        (1) For this Act, a *record* of the Executive is a record, in written,  
13               electronic or any other form, under the control of the Executive or  
14               which it is entitled to control, kept as a record of its activities,  
15               whether it was created or received by the Executive, and includes a  
16               record created or received by a Minister as a member of the  
17               Executive, but does not include—  
18               (a) a record related to the Minister's personal or political  
19                   activities; and  
20               (b) a record that was created or received by the Minister only in  
21                   the Minister's capacity as a member of the Legislative  
22                   Assembly.  
23        (2) For this Act, a *record* of an agency other than the Executive is a  
24               record, in written, electronic or any other form, under the control of  
25               the agency or to which it is entitled to control, kept as a record of its  
26               activities, whether it was created or received by the agency.

27        **10        Meaning of *records management***

- 28        (1) For this Act, *records management*, in relation to an agency, is the  
29               managing of records of the agency—  
30               (a) to meet its operational needs; and

- 1 (b) to ensure its records are managed and, if appropriate, preserved  
2 in accessible form—  
3 (i) to allow public access to them consistent with the  
4 principles of the FOI Act; and  
5 (ii) for the benefit of future generations.  
6 (2) *Records management* covers, but is not limited to, the creation,  
7 keeping, protection, preservation, storage and disposal of, and  
8 access to, records of the agency.

9 **11 Meaning of *control* and *entitled to control* of a record**

- 10 (1) For this Act, an agency has *control* of a record if the agency has  
11 possession of the record.  
12 (2) For this Act, an agency is *entitled to control* a record if it is entitled  
13 to possession of the record.

14 **12 Records to which Act applies**

15 This Act applies to a record of an agency whenever it was made.

16 **Division 2.2 Obligation of principal officers**

17 **13 Principal officers must ensure Act complied with**

18 The principal officer of an agency must ensure that the agency  
19 complies with this Act in relation to its records.

20 *Note* The *Legislation Act 2001*, s 104 provides that a reference to an Act  
21 includes a reference to the statutory instruments made or in force under  
22 the Act. The instruments under this Act include approved standards and  
23 codes, and declarations.

24 **Division 2.3 Records management**

25 **14 Agencies to make and keep records**

26 An agency must make and keep full and accurate records of its  
27 activities.

1    **15    Agencies to ensure accessibility of information**

2            An agency must take the steps necessary to ensure that the  
3            information in its records continues to be accessible in accordance  
4            with the FOI Act and this Act.

5    **16    Approved records management programs**

6            (1) An agency must have an approved records management program.

7            (2) The approved records management program must include  
8            arrangements—

9            (a) for ensuring that the agency complies with this Act and the  
10           records management program; and

11           *Note*     The *Legislation Act 2001*, s 104 provides that a reference to an Act  
12           includes a reference to the statutory instruments made or in force under  
13           the Act. The instruments under this Act include approved standards and  
14           codes, and declarations.

15           (b) for establishing normal practices and procedures for the  
16           exercise of functions of the agency in relation to its records  
17           (*normal administrative practices*), including the disposal of  
18           records; and

19           (c) for telling the director about any arrangements entered into  
20           with an entity that is not an agency to carry out any aspect of  
21           its records management; and

22           (d) under which the director may examine the operation of the  
23           records management program and the agency's compliance  
24           with this Act and the records management program; and

25           (e) for the resolution of disputes about whether the agency is  
26           complying with this Act or the records management program;  
27           and

28           (f) to allow the director to report on the agency's compliance with  
29           this Act and the records management program; and

30           (g) for allocating resources for the records management program;  
31           and

- 1 (h) for the proper care of records of the agency, particularly  
2 records of archival or enduring value; and
- 3 (i) for preserving records containing information that may allow  
4 people to establish links with their Aboriginal or Torres Strait  
5 Islander heritage; and
- 6 (j) for the regular review of records to which a declaration under  
7 section 27 (Declarations applying provisions of FOI Act)  
8 applies; and
- 9 (k) for the director, if asked by the agency, to provide assistance,  
10 advice and training to the agency in records management; and
- 11 (l) for review and replacement or amendment of the records  
12 management program.
- 13 (3) Subsection (2) does not limit the matters that may be included in the  
14 approved records management program.
- 15 (4) An agency may dispose of a record only in accordance with its  
16 records management program.
- 17 (5) An agency must comply with its records management program.
- 18 (6) Subsection (5) has effect despite any other Territory law, including  
19 the *Inquiries Act 1991*, *Judicial Commissions Act 1994* or *Royal*  
20 *Commissions Act 1991*.

21 **17 Criteria for approval of records management programs**

- 22 (1) The principal officer of an agency may approve a records  
23 management program for the agency if satisfied that—
- 24 (a) it complies with the approved standards and codes; and
- 25 (b) it includes the arrangements mentioned in section 16 (2)  
26 (Approved records management programs); and
- 27 (c) for records of an agency containing information that may allow  
28 people to establish links with their Aboriginal or Torres Strait  
29 Islander heritage—the agency has consulted with each entity

1 prescribed under the regulations as an entity that represents the  
2 interests of Aboriginal or Torres Strait Islanders.

3 (2) However, the principal officer of an agency may approve an  
4 agency's records management program even though the program  
5 does not comply with an approved standard or code, if the principal  
6 officer is satisfied that the noncompliance is necessary for the  
7 operational needs of the agency.

8 **18 Approved standards and codes for records management**

9 (1) The Minister may, in writing, approve standards and codes for  
10 agency records management.

11 (2) Before approving a standard or code, the Minister must give a copy  
12 to each agency and give the agency a reasonable opportunity to  
13 comment on the standard or code.

14 (3) In deciding whether to approve a standard or code, the Minister  
15 must take into account any comments made by an agency.

16 (4) An approved standard or code is a notifiable instrument.

17 *Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

18 **19 Review of approved standards and codes**

19 The Minister must keep the approved standards and codes under  
20 review.

21 **20 Inspection of records management programs**

22 (1) The principal officer of an agency must make the agency's records  
23 management program available for public inspection without charge  
24 during ordinary working hours at the office of the principal officer  
25 and any other place decided by the principal officer.

26 (2) This section does not require the principal officer of an agency to  
27 include in the agency's records management program made  
28 available for public inspection information about the existence or  
29 non-existence of a document if that information would make the

1           program an exempt document under the FOI Act, section 34 (1)  
2           or 37.

3           *Note*     The FOI Act, s 34 deals with documents affecting relations with the  
4                    Commonwealth and States and s 37 deals with documents affecting  
5                    enforcement of the law and protection of public safety.

## 6           **Division 2.4                   Protection of records**

### 7           **21     Protecting records**

8           (1) An agency must ensure the safekeeping and proper preservation of  
9           its records.

10          (2) An agency must ensure that its records that are in someone else's  
11          possession are held under arrangements that provide for the  
12          safekeeping, proper preservation and return of the records.

13          (3) If an agency does not have control of a record that it is entitled to  
14          control and the record is not held under arrangements mentioned in  
15          subsection (2), the agency must take reasonable steps to recover  
16          control of the record.

17          (4) Subsection (3) does not apply if the record is under the control of  
18          someone else who has a right to control it.

### 19          **22     Protection measures**

20          (1) An agency must not—

21               (a) abandon or dispose of a record; or

22               (b) transfer or offer to transfer, or be a party to arrangements for  
23               the transfer of, the possession or ownership of a record; or

24               (c) damage a record; or

25               (d) neglect a record in a way that causes, or is likely to cause,  
26               damage to the record.

27          (2) However, an agency does not contravene subsection (1) by doing—

28               (a) anything in accordance with the agency's normal  
29               administrative practice; or

- 1 (b) anything authorised or required to be done under this Act, or a  
2 provision of another Act or subordinate law prescribed under  
3 the regulations; or
- 4 (c) anything with the written approval of the principal officer of  
5 the agency or in accordance with a practice or procedure  
6 approved by the principal officer; or
- 7 (d) anything in accordance with a resolution of the Legislative  
8 Assembly; or
- 9 (e) anything in accordance with an order or decision of a court or  
10 tribunal.
- 11 (3) This section prevails over an Act enacted before the commencement  
12 of this section.
- 13 (4) An Act enacted after the commencement of this section is not to be  
14 interpreted as prevailing over or otherwise changing the effect of  
15 this section except so far as the Act provides expressly for it to have  
16 that effect.
- 17 **23 Normal administrative practice**
- 18 (1) Something is taken to have been done in accordance with an  
19 agency's *normal administrative practice* if—
- 20 (a) it is done in accordance with the normal practices and  
21 procedures for the exercise of functions in the agency; and
- 22 (b) those practices and procedures are consistent with the agency's  
23 approved records management program.
- 24 (2) However, something is taken not to have been done in accordance  
25 with an agency's normal administrative practice if—
- 26 (a) it is done corruptly or fraudulently, or is done for the purpose  
27 of concealing evidence of wrongdoing, or is done for any other  
28 improper purpose; or
- 29 (b) it is conduct declared under the regulations to be unacceptable  
30 conduct; or



- 1 (c) it is done in accordance with a practice or procedure declared  
2 under the regulations to be unacceptable; or  
3 (d) it is done in accordance with a practice or procedure that the  
4 Minister has told the agency in writing is unacceptable.

5 **Division 2.5 Miscellaneous**

6 **24 Records of agency that no longer exists etc**

- 7 (1) If an agency (the *original agency*) is abolished or otherwise ceases  
8 to exist, the records of the agency become the records of—  
9 (a) the agency that exercises the functions of the original agency to  
10 which the record most closely relates; or  
11 (b) if the relevant chief executive directs that the record becomes  
12 the record of an agency—that agency.  
13 (2) If a function of an agency (the *original agency*) is given or  
14 transferred to another agency, the records of the agency relating to  
15 the function become the records of—  
16 (a) the agency to which the functions of the original agency are  
17 transferred; or  
18 (b) if the relevant chief executive directs that the record becomes  
19 the record of an agency—that agency.  
20 (3) If a function of an agency (the *original agency*) is discontinued, the  
21 records of the agency become the records of—  
22 (a) the agency that exercises the functions of the original agency to  
23 which the record most closely relates; or  
24 (b) if the relevant chief executive directs that the record becomes  
25 the record of an agency—that agency.  
26 (4) In this section:  
27 *relevant chief executive* means the chief executive of the  
28 administrative unit responsible for administering the *Public Sector*  
29 *Management Act 1994*.

1

2 **Part 3** Access to records  
3

4 **25 Access to records**

5 (1) A record of an agency is open to public access under this Act if  
6 20 years has elapsed since the record, or the original of which it is a  
7 copy, came into existence.

8 (2) A person is entitled to access under this Act to a record of an agency  
9 that is open to public access.

10 **26 Requests for access**

11 (1) A person who wishes to have access to a record of an agency that is  
12 open to public access may apply to the agency.

13 (2) An agency must take reasonable steps to assist a person to make a  
14 request in accordance with this section.

15 (3) An agency to which a request is made in accordance with this  
16 section must comply with the request within a reasonable time.

17 **27 Declaration applying provisions of FOI Act**

18 (1) The principal officer of an agency may declare a record to be a  
19 record to which the disapplied provisions of the FOI Act apply.

20 (2) The principal officer of an agency may make the declaration only if  
21 satisfied that the record contains a document that is (or would be, if  
22 the disapplied provisions applied) an exempt document under 1 or  
23 more of the following provisions of the FOI Act:

24 (a) section 34 (1) (Documents affecting relations with  
25 Commonwealth and states);

26 (b) section 37 (Documents affecting enforcement of the law and  
27 protection of public safety);

28 (c) section 41 (Documents affecting personal privacy);

29 (d) section 42 (Documents subject to legal professional privilege);

- 1 (e) section 46 (Documents disclosure of which would be contempt  
2 of Legislative Assembly or a court).
- 3 (3) If the principal officer of an agency makes a declaration under  
4 subsection (1) about a record of an agency—
- 5 (a) a person is not entitled to access to the record under this Act;  
6 and
- 7 (b) for a record of a royal commission, board of inquiry or judicial  
8 commission—the FOI Act applies as if the commission or  
9 board were a prescribed authority.
- 10 *Note* A record to which a declaration applies may be accessed under the FOI  
11 Act.
- 12 (4) Despite the *Public Sector Management Act 1994*, section 36  
13 (Delegation by commissioner or chief executives) or any other  
14 Territory law, the power of the principal officer of an agency under  
15 this section cannot be delegated.
- 16 (5) In this section:
- 17 *disapplied provisions* means the FOI Act, part 3 (other than  
18 sections 24 and 26) and part 4.

19 **28 Giving access to records under this Act**

- 20 (1) If a person is entitled to access under this Act to a record of an  
21 agency, the person is entitled to be given access to the record by  
22 being given—
- 23 (a) a reasonable opportunity to inspect the record; or
- 24 (b) a copy of the record; or
- 25 (c) if the record is a record from which information may be  
26 produced or made available by electronic or other means—  
27 access to the information by use of that means; or

**Part 3**

**Access to records**

**Section 29**

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- 1           (d) if the record is a record of words in a sound recording, or in  
2           shorthand or other encoded material—a written transcript of  
3           the words.
- 4           *Note*     A fee may be determined under section 41 (Determination of fees) for  
5           this section.
- 6           (2) The person is entitled to choose how the person is to be given  
7           access, but the agency may decide to give access in another way if  
8           satisfied that access in the way chosen by the person—
- 9           (a) is not practicable because the agency does not have, and cannot  
10          readily obtain, equipment necessary to give access that way; or
- 11          (b) would be unreasonable because of the cost to the agency in  
12          giving access that way; or
- 13          (c) would interfere unreasonably with the agency's operations; or
- 14          (d) would not be appropriate having regard to the physical nature  
15          of the record; or
- 16          (e) would be detrimental to the proper preservation of the record;  
17          or
- 18          (f) would be an infringement of copyright, other than copyright  
19          owned by the Territory or an agency.
- 20          (3) The agency may give access subject to conditions to ensure the safe  
21          custody and proper preservation of the record.

22   **29     Register of records**

23           An agency must keep a register of its records in relation to which a  
24           declaration under section 27 (Declaration applying provisions of  
25           FOI Act) is in force.

26   **30     Protection from liability when access given**

27           If an agency (the *access provider*) gives access under this Act to a  
28           record of the agency—

- 29           (a) an action for defamation or breach of confidence does not lie  
30           against the Territory, an agency, a public servant, or anyone

- 1           else acting with the authority of the access provider, because of  
2           the giving of the access; and
- 3           (b) an action for defamation or breach of confidence in relation to  
4           a publication involved in, or resulting from, the giving of the  
5           access does not lie against the author of the record or anyone  
6           else because of the author or the other person having given the  
7           record to an agency; and
- 8           (c) the giving of the access is not, for a law about defamation or  
9           breach of confidence, an authorisation or approval of the  
10          publication of the record or its contents by the person to whom  
11          the access is given.

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## **Part 4                      Director of Territory Records**

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### **31      Establishment of position**

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The position of Director of Territory Records is established.

6

### **32      Functions**

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The director has the following functions:

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9

(a) to assist in the development of an agency's records management program and amendments of the program;

10

11

(b) to assist in the development of standards and codes for records management by agencies;

12

13

(c) to encourage consistency in records management programs between agencies;

14

15

(d) to give advice to agencies about the preparation of schedules of disposal of records under records management programs;

16

17

(e) to give assistance, advice and training to agencies in records management;

18

19

(f) to develop measures for the preservation of records about Aboriginal and Torres Strait Islander heritage;

20

21

22

23

(g) to examine the operation of the records management program of an agency and the agency's compliance with this Act and the program and report to the Minister on the operation and compliance;

24

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26

(h) to encourage consistency between agencies in the preparation of indexes and other guides to assist in the awareness of, and access to, records;

27

28

(i) to encourage the development of appropriate records management training for agency staff;

- 1 (j) on behalf of the Territory or an agency, to enter into and  
2 manage arrangements with the National Archives of Australia  
3 or any other entity about records management;
- 4 (k) on behalf of the Territory or an agency, to recover possession  
5 or control of records that, for whatever reason, are not under  
6 the control of an agency;
- 7 (l) to advise the Minister on any matter relevant to records  
8 management or the operation of this Act;
- 9 (m) to assist in the development of facilities for access by the  
10 public to records;
- 11 (n) to exercise any other function given to the director under this  
12 Act or any other Territory law;
- 13 (o) to do anything else—
- 14 (i) incidental, complementary or helpful to the director's  
15 other functions; or
- 16 (ii) likely to improve the effective and efficient exercise of  
17 the director's other functions.
- 18 *Note* The *Annual Reports (Government Agencies) Act 1995*, s 8 deals with  
19 the annual report to be given by a statutory officeholder who is  
20 declared, under that Act, to be a public authority.

### 21 **33 Appointment of the director**

22 The director is appointed by the Minister.

23 *Note 1* A person may be reappointed to a position if the person is eligible to be  
24 appointed to the position (see *Interpretation Act 1967*, s 28 (3) (c) and  
25 dict, def of *appoint*).

26 *Note 2* A power to appoint a person to a position includes power to appoint a  
27 person to act in the position (see *Interpretation Act 1967*, s 28 (4)-(6)).

### 28 **34 Term of appointment of director**

- 29 (1) The director is to be appointed for a term not longer than 5 years.

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- 1       (2) The instrument appointing, or evidencing the appointment of, the  
2       director must state the term for which the director is appointed.

3       **35   Ending of appointment of director**

4       The Minister may end the director's appointment—

- 5       (a) for misbehaviour or physical or mental incapacity; or  
6       (b) if the director becomes bankrupt, applies to take the benefit of  
7       any law for the relief of bankrupt or insolvent debtors,  
8       compounds with creditors or makes an assignment of  
9       remuneration for their benefit; or  
10      (c) if the director is convicted or found guilty of an indictable  
11      offence; or  
12      (d) if the director is absent from duty, except on leave given by the  
13      Minister, for 14 consecutive days or for 28 days in any  
14      12 months.

15      *Note*     The director's appointment also ends if the director resigns (see  
16      *Interpretation Act 1967*, s 28 (8) and (9)).

17      **36   Conditions of appointment generally**

18      The director holds the position on the conditions not provided by  
19      this Act or another Territory law that are decided by the Minister.

20      **37   Arrangements for staff**

- 21      (1) The director may arrange with the chief executive to use public  
22      servants in the administrative unit under the chief executive's  
23      control.  
24      (2) The *Public Sector Management Act 1994* applies to the management  
25      by the director of public servants the subject of an arrangement  
26      under subsection(1).



## Part 5 Miscellaneous

### 38 Secrecy

(1) In this section:

*court* includes any tribunal or other entity having power to require the production of documents or the answering of questions.

*person to whom this section applies* means a person who is or has been—

(a) the director; or

(b) anyone else who has exercised a function under this Act.

*produce* includes permit access to.

*protected information* means information about a person that is disclosed to, or obtained by, a person to whom this section applies because of the person's position under this Act or the exercise of a function under this Act.

(2) A person to whom this section applies must not—

(a) make a record of protected information; or

(b) directly or indirectly, divulge or communicate to a person protected information about someone else;

unless the record is made, or the information divulged or communicated, in relation to the exercise of a function, as a person to whom this section applies, under this Act or another Act.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(3) Subsection (2) does not prevent a person to whom this section applies from divulging or communicating protected information to a person about someone else with the consent of the other person.

(4) A person to whom this section applies is not required—

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- 1 (a) to divulge or communicate protected information to a court; or  
2 (b) to produce a document containing protected information to a  
3 court;  
4 unless it is necessary to do so for this Act or another Act.

**39 Secrecy about information acquired under other Acts**

- 6 (1) The provisions of another Act imposing restrictions or obligations of  
7 secrecy or nondisclosure of information acquired in the course of  
8 the administration of that Act apply to a person who, because of the  
9 person's position under this Act or in the exercise of functions under  
10 this Act, has access to the information because of the information  
11 having been acquired in the course of the administration of the other  
12 Act.
- 13 (2) For subsection (1), the person who has access to the information in  
14 the exercise of functions under this Act is taken to be a person  
15 engaged in the administration of the other Act.
- 16 (3) Subsection (1) does not prevent—  
17 (a) the giving of access to records under part 3 (Access to  
18 records); or  
19 (b) the preparation and dissemination of guides and aids to finding  
20 information contained in the records.

**40 Protection from liability**

- 22 (1) In this section:  
23 *official* means—  
24 (a) the principal officer of an agency; or  
25 (b) the director; or  
26 (c) anyone else exercising functions under this Act.
- 27 (2) An official does not incur civil or criminal liability for an act or  
28 omission done honestly and without negligence for this Act.

- 1 (3) A civil liability that would, apart from this section, attach to an  
2 official attaches instead to the Territory.

3 **41 Determination of fees**

- 4 (1) The Minister may, in writing, determine fees for this Act.

5 *Note* The *Legislation Act 2001* contains provisions about the making of  
6 determinations and regulations relating to fees (see pt 6.3).

- 7 (2) A determination is a disallowable instrument.

8 *Note* A disallowable instrument must be notified, and presented to the  
9 Legislative Assembly, under the *Legislation Act 2001*.

10 **42 Approved forms**

- 11 (1) The Minister may, in writing, approve forms for this Act.

- 12 (2) If the Minister approves a form for a particular purpose, the  
13 approved form must be used for that purpose.

- 14 (3) An approved form is a notifiable instrument.

15 *Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

16 **43 Regulation-making power**

17 The Executive may make regulations for this Act.

18 *Note* Regulations must be notified, and presented to the Legislative  
19 Assembly, under the *Legislation Act 2001*.

20 **44 Review of the Act**

- 21 (1) The Minister must review the operation of this Act as soon as  
22 practicable after 5 years after the commencement of this Act.

- 23 (2) A report on the outcome of the review must be presented by the  
24 Minister to the Legislative Assembly within 6 months after the end  
25 of the 5 years.

- 26 (3) This section expires 6 years after the day it commences.

**Part 6 Amendment of Freedom of  
Information Act 1989**

**45 Act amended in pt 6**

This Part amends the *Freedom of Information Act 1989*.

**46 New section 6A**

*insert*

**6A How Act applies to certain older records**

- (1) The disapplied provisions do not apply to a record of an agency if 20 years has elapsed since the record, or the original of which it is a copy, came into existence unless, before the end of 20 years, the principal officer of the agency makes a declaration (a **section 27 declaration**) under the *Territory Records Act 2001*, section 27 that they apply.
- (2) However, if the principal officer of the agency makes the declaration, part 4 of this Act (other than an excepted provision) ceases to apply to the record at the end of 20 years after the making of the declaration.
- (3) If—
  - (a) the disapplied provisions do not apply to a record of an agency because 20 years has elapsed since the record, or the original of which it is a copy, came into existence and the principal officer of the agency did not make a section 27 declaration before the end of that 20 years; but
  - (b) the principal officer makes a section 27 declaration in relation to the record after the end of that 20 years;the disapplied provisions again apply to the record.

- 1 (4) However, if the principal officer of the agency makes the  
2 declaration, part 4 of this Act (other than an excepted provision)  
3 does not again apply to the record.
- 4 (5) In this section:
- 5 *agency*—see the *Territory Records Act 2001*, dictionary.
- 6 *disapplied provisions* means part 3 (other than sections 24 and 26)  
7 and part 4.
- 8 *excepted provisions* means the following provisions:
- 9 (a) section 34 (1) (Documents affecting relations with  
10 Commonwealth and states);
- 11 (b) section 37 (Documents affecting enforcement of the law and  
12 protection of public safety);
- 13 (c) section 41 (Documents affecting personal privacy);
- 14 (d) section 42 (Documents subject to legal professional privilege);
- 15 (e) section 46 (Documents disclosure of which would be contempt  
16 of Legislative Assembly or a court).
- 17 *principal officer*, of an agency—see the *Territory Records Act*  
18 *2001*, section 8 (Meaning of *principal officer*)
- 19 *record*, of an agency—see the *Territory Records Act 2001*, section 9  
20 (Meaning of *record* of an agency).
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21

## Dictionary

(see s 4)

**agency**—see section 7 (Meaning of *agency*).

**approved records management program** means a records management program approved under section 16 (Approved records management programs).

**approved code** means a code approved under section 18 (Approved standards and codes for records management).

**approved standard** means a standard approved under section 18 (Approved standards and codes for records management).

**arrangement** includes a contract.

**control**, of a record—see section 11 (Meaning of *control* and *entitled to control* of a record).

**director** means the Director of Territory Records.

**disposal**, of a record, includes the deletion or destruction of the record from a record keeping system.

**FOI Act** means the *Freedom of Information Act 1989*.

**normal administrative practices**—see section 23 (Normal administrative practice).

**prescribed authority**—see the *Freedom of Information Act 1989*, section 4 (1), definition of **prescribed authority**.

**principal officer**—see section 8 (Meaning of *principal officer*).

**record**—see section 9 (Meaning of *record* of agency).

**records management**—see section 10 (Meaning of *records management*).

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## **Endnote**

### **Penalty units**

The *Interpretation Act 1967*, s 33AA deals with the meaning of offence penalties that are expressed in penalty units.

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