

**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**EXECUTIVE DOCUMENTS RELEASE BILL 2000**

**EXPLANATORY MEMORANDUM**

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Michael Moore MLA  
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# EXECUTIVE DOCUMENTS RELEASE BILL 2000

## OUTLINE

The objective of this Bill is require the annual release of ACT Government cabinet papers after 10 years have passed from the meeting at which they were considered. The papers would be released as an annual batch, with an entire calendar year's papers released on specific date in the 11<sup>th</sup> year. Exemptions are provided whereby documents are omitted from release if it is in the public interest, or in the interests of individual privacy, to do so.

## DETAILS OF THE BILL

### Clauses 1,

#### 2 and 4 Name of Act; Commencement; Notes

These standard clauses provide for the short title and commencement of the Bill, and the use of statutory notes.

### Clause 3 Definitions

The definitions clause in this Bill contains some important provisions for the operation of this legislation.

The *Assembly* is defined in order that an Assembly Committee may be nominated to exercise the oversight role outlined by this Bill.

A definition of *Executive* is included so that Cabinet and any subcommittees of Cabinet are covered by this legislation.

The term *executive document* has been created for this Act, as no existing term covers the scope of papers intended for release. Only the archives maintained by the Cabinet Office would be part of the release process. The papers intended for release, in current terminology, include:

- Formal *Cabinet Submissions* lodged by Ministers;
- The *Cabinet Notebook* kept by the secretarial staff attending cabinet meetings;
- The *Decisions* of Cabinet formally circulated by the Secretary to Cabinet after each meeting.

Documents which would not be released through this process include drafts of Cabinet Submissions and departmental comments on drafts; and prepared Submissions which are withdrawn prior to a Cabinet meeting. Similarly, other papers used by one or more Ministers, or circulated in an informal manner by Ministers, would not be "executive documents".

establish the timing system for the release of documents. The term *release day* is central to the operation of the legislation. Every executive document would have a default release day based upon the date of the Cabinet meeting of the relevant submission, discussion or decision (see *submission day*). This day would be the 11<sup>th</sup> May in the relevant year - the date being selected merely to commemorate the first meeting of the Assembly on 11 May 1989.

However, the delay mechanism (see clause 6) may have the effect of substituting the original release day with a new (later) release day. This result is achieved by the joint operation of paragraph (b) of the definition, and subclauses (1) and (7) of clause 6 (see below). It is possible for more than one delay to occur, according to the process set down in clause 6.

A commencement arrangement is included for any annual release day which would have occurred prior to the commencement of this scheme. The Bill allows a 'grace' period of 8 weeks after the commencement date of this Bill, at which point any documents which would have already been released had this Act been in force become due for release. The delay is intended to allow the Cabinet Office time to prepare for the implementation of this scheme.

#### **Clause 5    An executive document must be released on its release day**

This clause makes a very simple statement that the chief executive must carry out the public release of documents. The legislation does not attempt to specify how this would take place. If necessary regulations could be adopted on this matter, but the good sense of the chief executive is relied upon to achieve a sensible result.

The chief executive referred to is defined by the *Interpretation Act* to be the chief executive of the department administering the legislation under the Administrative Arrangements of the Government of the day. This is currently the chief executive of the Chief Minister's Department, and there is no reason to expect that this would change.

It would be appropriate for the chief executive to publish an index of materials released, and make arrangements on release day for media and historians to attend a presentation event. It would also be anticipated that a library of released papers was made accessible on request. Copying of papers at a cost-recovery fee should also be available.

#### **Clause 6    Release day may be delayed in the public interest**

This is the first of two clauses outlining exemptions from normal release for particular documents.

This clause provides for non-permanent delays on specified grounds. The chief executive, rather the responsible Minister, would administer this process. The decision to delay publication of a document is reviewable by the Assembly (see below).

*affect relations with other governments, or would be significantly detrimental to the public interests or the interests of the Territory. These are general grounds and leave considerable room for discretion on the part of the chief executive.*

The decision-maker must record the reasons for the decision with the archive, and determine a new release day (subclauses (3) and (4)).

The determination for a delay must be laid before the Assembly or a nominated Assembly Committee, and if the determination is not ratified within 3 months, it lapses (subclause (6)).

The new release day is controlled by subclause (7). A single delay can not be for more than 5 years, and cumulative delays may not protect the information for a total of more than 20 years from the year of the original Cabinet meeting.

The capacity for the Assembly to nominate a committee (see the definitions section – *Assembly*) allows for the Assembly to adopt a discrete process for the review of decisions to withhold material in the public interest.

#### **Clause 7 Protection of individual privacy**

This clause provides a permanent exemption from publication for any personal information which, if released, would breach the personal privacy of an individual.

This exemption can be used to apply only to *parts* of documents, so that documents can be released with any private personal material omitted.

The chief executive, in assessing the material, can choose between a delayed release, or permanent protection (which is achieved by reclassifying the material as not being an “executive document”).

It should also be noted that privacy law, currently applying to the Territory under Commonwealth legislation, would provide additional grounds to withhold information on individuals from publication.

#### **Clause 8 No liability for complying with Act**

This clause provides protection for the Territory (including persons administering this legislation) for any legal liability which may otherwise arise from the publication required by this Act.

#### **Clause 9 Regulations**

This is a standard regulation power. This power will assist in implementing any supporting arrangements for the scheme of this Act.