Australian Capital Territory

Territory Records Act 2002

A2002-18

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Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Territory Records Act 2002* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 29 June 2016. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 29 June 2016.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register (www.legislation.act.gov.au). For more information, see the home page for this law on the register.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is $150 for an individual and $750 for a corporation (see *Legislation Act 2001*, s 133).

Australian Capital Territory

Territory Records Act 2002

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Australian Capital Territory

Territory Records Act 2002

An Act about Territory records, and for other purposes

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Part 1 Preliminary

1 Name of Act

This Act is the *Territory Records Act 2002*.

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 support the management and operation of Territory agencies; and

(c) to preserve Territory records for the benefit of present and future generations; and

(d) 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 terms used in this Act, and includes references (***signpost definitions***) to other terms defined elsewhere.

For example, the signpost definition '***prescribed authority***—see the *Freedom of Information Act 1989*, dictionary.' means that the term 'prescribed authority' is defined in that dictionary and the definition applies to this Act.

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 Legislation Act, s 155 and s 156 (1)).

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5 Notes

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

Note See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

5A Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The Criminal Code, ch 2 applies to the offences against this Act.

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg ***conduct***, ***intention***, ***recklessness*** and ***strict liability***).

Note 2 *Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

6 Application of Act

(1) This Act, except for the following provisions, does not apply to records that are health records:

(a) section 16;

(b) section 17;

(c) section 19;

(d) section 21.

(2) This Act does not apply to records of the human rights commission in relation to—

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

(b) the exercise of a function under the *Human Rights Commission Act 2005* in relation to a complaint mentioned in paragraph (a).

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(3) This Act does not apply to records of the legal aid commission that relate to—

(a) the provision of legal assistance to a person under the *Legal Aid Act 1977*, part 5 (Provision of legal assistance by commission); or

(b) a negotiation process conducted under the *Legal Aid Act 1977*, part 5A (Dispute resolution).

Note Under the *Legal Aid Act 1977*, s 69B, the legal aid commission must have a records management program for records mentioned in s (3). The program is to be approved by the chief executive officer and a copy of the program given to the director (see *Legal Aid Act 1977*, s 69C).

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Part 2 Management and care of records

Division 2.1 General

7 Meaning of *agency*

For this Act, an ***agency*** is—

(a) the Executive; or

(b) the Supreme Court; or

(c) the Magistrates Court or Coroner's Court; or

(d) the ACAT; or

(e) the Office of the Legislative Assembly; or

(f) an officer of the Assembly; or

(g) an administrative unit; or

(h) any other prescribed authority; or

(i) a board of inquiry under the *Inquiries Act 1991*; or

(j) a judicial commission under the *Judicial Commissions Act 1994*; or

(k) a royal commission under the *Royal Commissions Act 1991*; or

(l) an entity declared under the regulations to be an agency.

8 Meaning of *principal officer*

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

(a) for the Executive—the director-general of the administrative unit that provides secretariat support to the Executive; or

(b) for the Supreme Court, the Magistrates Court or Coroner's Court, or the ACAT—the principal registrar appointed under the *Court Procedures Act 2004*, section 11A; or

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(c) for the Office of the Legislative Assembly—the clerk of the Legislative Assembly; or

(d) for the office of an officer of the Assembly—the officer; or

(e) for an administrative unit—the director-general of the administrative unit; or

(f) for a royal commission, board of inquiry or judicial commission—the director-general of the administrative unit that provides secretariat support to the Executive; or

(g) for a territory-owned corporation, or a subsidiary, under the *Territory-owned Corporations Act 1990*—the chief executive officer of the corporation or subsidiary; or

(h) for any other entity—the person declared under the regulations to be the principal officer for the entity.

9 Meaning of *record* of an agency etc

(1) For this Act, a record of the Executive—

(a) is a record under the Executive's control or that it is entitled to control, kept as a record of its activities; and

(b) includes a record created or received by a Minister as a member of the Executive; but

(c) does not include a record—

(i) relating to the Minister's personal or political activities; or

(ii) created or received by the Minister only in the Minister's capacity as a member of the Legislative Assembly.

(2) For this Act, a record of an agency other than the Executive is a territory record under the agency's control or to which it is entitled to control.

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(3) For this Act, a ***territory record*** is a record made and kept, or received and kept, by a person in the course of exercising a function under a territory law.

10 Meaning of *records management*

(1) For this Act, ***records management***, in relation to an agency, is the managing of records of the agency—

(a) to meet its operational needs; and

(b) to ensure its records are managed and, if appropriate, preserved in accessible form—

(i) to allow public access to them consistent with the principles of the FOI Act; and

(ii) for the benefit of future generations.

(2) ***Records management*** covers, but is not limited to, the creation, keeping, protection, preservation, storage and disposal of, and access to, records of the agency.

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

(1) For this Act, an agency has ***control*** of a record if the agency has possession of the record.

(2) For this Act, an agency is ***entitled to control*** a record if it is entitled to possession of the record.

12 Records to which Act applies

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

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Division 2.2 Obligation of principal officers

13 Principal officers must ensure Act complied with

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

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

Division 2.3 Records management

14 Agencies to make and keep records

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

15 Agencies to ensure accessibility of information

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

16 Approved records management programs

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

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

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

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

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

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

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

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

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

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

(h) for the proper care of records of the agency, particularly records of archival or enduring value; and

(i) for preserving records containing information that may allow people to establish links with their Aboriginal or Torres Strait Islander heritage; and

(j) for the regular review of records to which a declaration under section 28 (Declarations applying provisions of FOI Act) applies; and

(k) for the director, if asked by the agency, to provide assistance, advice and training to the agency in records management; and

(l) for review and replacement or amendment of the records management program.

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(3) Subsection (2) does not limit the matters that may be included in the approved records management program.

(4) An agency may dispose of a record only in accordance with its records management program.

(5) An agency may dispose of a record mentioned in subsection (2) (i) only after consulting the council.

(6) An agency must comply with its records management program.

(7) Subsection (6) has effect despite any other Territory law, including the *Inquiries Act 1991*, *Judicial Commissions Act 1994* or *Royal Commissions Act 1991*.

(8) Despite anything else in this section—

(a) an approved records management program for health records is in addition to, and must not be inconsistent with, the requirements of the Health Records Act; and

(b) the Health Records Act prevails to the extent of any inconsistency between the program and the Health Records Act.

17 Procedure for approving records management programs

(1) The principal officer of an agency may, in writing, approve a records management program for the agency if satisfied that—

(a) it complies with the approved standards and codes; and

(b) the director has approved a schedule for the disposal of records of the agency; and

(c) it includes the arrangements mentioned in section 16 (2) (Approved records management programs); and

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(d) for records of an agency containing information that may allow people to establish links with their Aboriginal or Torres Strait Islander heritage—the agency has consulted with the council; and

(e) for records of the agency that are health records—it is not inconsistent with the Health Records Act.

(2) However, the principal officer of an agency may approve an agency's records management program even though the program does not comply with an approved standard or code, only if the director has certified in writing that the noncompliance is necessary for the agency's operational needs.

(3) If the principal officer of an agency approves an agency's records management program, the principal officer must give a copy of the program to the director.

18 Approved standards and codes for records management

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

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

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

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

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

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19 Approval of schedules for the disposal of records

(1) The director may, in writing, approve schedules for the disposal of an agency's records.

(2) An approved schedule is a notifiable instrument.

Note 1 A notifiable instrument must be notified under the Legislation Act.

Note 2 The director may amend or repeal an approved schedule at any time after its making. The power to amend or repeal the approved schedule is exercisable in the same way, and subject to the same conditions, as the power to make the approved schedule (see Legislation Act, s 46).

19A Records disposal schedules—suspension

(1) The director may suspend a schedule approved under section 19 in relation to a record or a class of records mentioned in the schedule.

(2) A suspension is a notifiable instrument.

Note 1 A notifiable instrument must be notified under the Legislation Act.

Note 2 The director may amend or repeal a suspension at any time after its making. The power to amend or repeal the suspension is exercisable in the same way, and subject to the same conditions, as the power to make the suspension (see Legislation Act, s 46).

20 Review of approved standards and codes

The director must keep the approved standards and codes under review.

21 Inspection of records management programs

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

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(2) This section does not require the principal officer of an agency to include in the agency's records management program made available for public inspection information about the existence or non-existence of a document if that information would make the program an exempt document under the FOI Act, section 34 (1) or 37.

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

Division 2.4 Protection of records

22 Protecting records

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

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

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

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

23 Protection measures

(1) An agency must not—

(a) abandon or dispose of a record; or

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

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(c) damage a record; or

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

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

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

(b) anything authorised or required to be done under this Act, or a provision of another Act, or a subordinate law, prescribed under the regulations; or

(c) anything with the written approval of the director or in accordance with a practice or procedure approved by the director; or

(d) anything in accordance with a resolution of the Legislative Assembly; or

(e) anything in accordance with an order or decision of a court or tribunal.

(3) Despite section 23 (1) (b), the director may approve, in writing, the transfer of the possession or ownership of a record of an agency to a public body of the Commonwealth or a State if the director is satisfied on reasonable grounds—

(a) that the record is not a record the agency should retain control over; and

(b) in relation to any other matter prescribed by regulation for this subsection.

Note ***State*** includes the Northern Territory (see Legislation Act, dict, pt 1).

(4) This section prevails over an Act enacted before the commencement of this section.

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(5) An Act enacted after the commencement of this section is not to be interpreted as prevailing over or otherwise changing the effect of this section except so far as the Act provides expressly for it to have that effect.

23A Agencies with inter-government functions

(1) This section applies to an agency that exercises functions (***inter-government functions***) under a law, or under an agreement or other arrangement between governments, that provides for the exercise of functions by the agency jointly or in cooperation with a public body of the Commonwealth or a State.

Note ***State*** includes the Northern Territory (see Legislation Act, dict, pt 1).

(2) The director may enter into an agreement (an ***inter-government records agreement***) with the agency about the agency's rights and obligations in relation to the making, keeping, protection and control of and access to the agency's inter-government records.

(3) An inter-government records agreement may exclude or modify the operation of a provision of this Act in its application to inter-government records.

(4) This Act has effect in relation to an inter-government record mentioned in subsection (3) in accordance with the inter-government records agreement.

(5) In this section:

inter-government record, of an agency, means a record of the agency that relates to its inter-government functions.

public body means a body established for a public purpose.

23B Report about inter-government records agreements

(1) This section applies if the director enters into an inter-government records agreement with an agency under section 23A (2).

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(2) The director must give a report about the agreement to the Minister.

(3) The report must include the following information:

(a) the name of the agency;

(b) the date the agreement was entered into;

(c) a brief description of the agreement, including whether the agreement excludes or modifies the operation of a provision of this Act in its application to inter-government records.

(4) If the Minister is given a report under subsection (2), the Minister must present the report to the Legislative Assembly within 6 sitting days after the day the Minister receives the report.

24 Normal administrative practice

(1) Something is taken to have been done in accordance with an agency's ***normal administrative practice*** if—

(a) it is done in accordance with the normal practices and procedures for the exercise of functions in the agency; and

(b) the practices and procedures are consistent with the agency's approved records management program.

(2) However, something is taken not to have been done in accordance with an agency's normal administrative practice if—

(a) it is done corruptly or fraudulently, for the purpose of concealing evidence of wrongdoing, or for any other improper purpose; or

(b) it is conduct declared under the regulations to be unacceptable conduct; or

(c) it is done in accordance with a practice or procedure declared under the regulations to be unacceptable; or

(d) it is done in accordance with a practice or procedure that the Minister has told the agency in writing is unacceptable.

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Division 2.5 Miscellaneous

25 Records of agency that no longer exists etc

(1) If an agency (the ***original agency***) is abolished or otherwise ceases to exist, the records of the agency become the records of—

(a) the agency that exercises the functions of the original agency to which the record most closely relates; or

(b) if the relevant director-general directs that the record becomes the record of an agency—that agency.

(2) If a function of an agency (the ***original agency***) is given or transferred to another agency, the records of the agency relating to the function become the records of—

(a) the agency to which the functions of the original agency are transferred; or

(b) if the relevant director-general directs that the record becomes the record of an agency—that agency.

(3) If a function of an agency (the ***original agency***) is discontinued, the records of the agency become the records of—

(a) the agency that exercises the functions of the original agency to which the record most closely relates; or

(b) if the relevant director-general directs that the record becomes the record of an agency—that agency.

(4) In this section:

relevant director-general means the director-general of the administrative unit responsible for administering the *Public Sector Management Act 1994*.

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Part 3 Agency records—access

26 Access to records

(1) A record of an agency is open to public access under this Act on the next Canberra Day after the end of 20 years after the record, or the original of which it is a copy, came into existence.

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

27 Requests for access

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

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

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

28 Declaration applying provisions of FOI Act

(1) The director may, on application by an agency, declare a record, or a class of records, to be a record, or a class of records, to which the disapplied provisions of the FOI Act apply.

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

(a) section 34 (1) (Documents affecting relations with Commonwealth and States);

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

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

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

(e) section 46 (Documents disclosure of which would be contempt of Legislative Assembly or a court).

(3) If the director makes a declaration under subsection (1) about a record of an agency—

(a) a person is not entitled to access to the record under this Act; and

(b) for a record of a royal commission, board of inquiry or judicial commission—the FOI Act applies as if the commission or board were a prescribed authority.

Note A record to which a declaration applies may be accessed under the FOI Act.

(4) In this section:

disapplied provisions means the FOI Act, part 3 (Access to documents) (other than sections 24 (Information as to existence of certain documents) and 26 (Procedure on request in respect of documents likely to affect relations between the Territory and the Commonwealth or a State)) and part 4 (Exempt documents).

29 Giving access to records under this Act

(1) If a person is entitled to access under this Act to a record of an agency, the person is entitled to be given access to the record by being given—

(a) a reasonable opportunity to inspect the record; or

(b) a copy of the record; or

(c) if the record is a record from which information may be produced or made available by electronic or other means—access to the information by use of that means; or

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(d) if the record is a record of words in a sound recording, or in shorthand or other encoded material—a written transcript of the words.

Note A fee may be determined under s 55 for this provision.

(2) The person is entitled to choose how the person is to be given access, but the agency may decide to give access in another way if satisfied that access in the way chosen by the person—

(a) is not practicable because the agency does not have, and cannot readily obtain, equipment necessary to give access that way; or

(b) would be unreasonable because of the cost to the agency in giving access that way; or

(c) would interfere unreasonably with the agency's operations; or

(d) would not be appropriate having regard to the physical nature of the record; or

(e) would be detrimental to the proper preservation of the record; or

(f) would be an infringement of copyright, other than copyright owned by the Territory or an agency.

(3) The agency may give access subject to conditions to ensure the safe custody and proper preservation of the record.

30 Register of records

An agency must keep a register of its records in relation to which a declaration under section 28 (Declaration applying provisions of FOI Act) is in force.

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31 Protection from liability when access given

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

(a) an action for defamation or breach of confidence does not lie against the Territory, an agency, a public servant, or anyone else acting with the authority of the access provider, because of the giving of the access; and

(b) an action for defamation or breach of confidence in relation to a publication involved in, or resulting from, the giving of the access does not lie against the author of the record or anyone else because of the author or the other person having given the record to an agency; and

(c) the giving of the access is not, for a law about defamation or breach of confidence, an authorisation or approval of the publication of the record or its contents by the person to whom the access is given.

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Part 3A Executive records—access and release

31A Application—pt 3A

This part applies to an executive record whenever the submission day for the record happened.

31B Definitions—pt 3A

In this part:

accessible executive record means an executive record (or part of a record) 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 part.

earliest release day, for an executive record, means the next Canberra Day after the end of 10 years after the record's submission day.

Example

If the submission day for an executive record was 1 February 2002, its earliest release day is Canberra Day 2012.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Executive includes a committee of the Executive.

executive record means—

(a) a record (or part of a record) that—

(i) has been, or is proposed by a Minister to be, submitted to the Executive for consideration; and

(ii) was brought into existence for the purpose of submission for consideration by the Executive; or

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(b) an official record (or part of an official record) of the Executive; or

(c) a copy of a record (or part of a record) mentioned in paragraph (a) or (b); or

(d) a record (or part of a record) the disclosure of which would involve the disclosure of any deliberation or decision of the Executive, other than a record (or part of a record) by which a decision of the Executive was officially published.

internally reviewable determination—see section 31J (1).

internal reviewer—see section 31J (2).

later release day—see section 31G (7).

principal officer means principal officer of the Executive.

protected private information—see section 31G (2) (b).

release restraint determination—see section 31G (2).

reviewable decision notice—see section 31I (1).

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

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31C List of released executive records—publication

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

Example—electronic form

making an electronic copy of the list available on a website

Note 1 An executive record becomes an ***accessible executive document*** on its ***earliest release day*** (see s 31B, defs of ***accessible executive record*** and ***earliest release day***).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) If a release restraint determination is in force in relation to an executive record, the principal officer must—

(a) arrange for the determination to be listed in relation to the entry for the executive record; and

(b) include a reviewable decision notice in the entry.

31D Requests for access

A person who wishes to have access to an accessible executive record may apply to the principal officer.

31E Giving access to accessible executive records—no release restraint determination

(1) This section applies if—

(a) the principal officer receives a request from a person under section 31D for access to an accessible executive record; and

(b) no release restraint determination is in force in relation to the record.

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(2) The principal officer must, without charge, give the person a copy of the accessible executive record as soon as practicable after receiving the request.

31F Giving access to accessible executive records—release restraint determination

(1) This section applies if—

(a) the principal officer receives a request from a person under section 31D for access to an accessible executive record; and

(b) either—

(i) the principal officer has decided, or decides, to make a release restraint determination about the record (see section 31G (Release delayed or denied)); or

(ii) a release restraint determination about the record is in force.

(2) If a release restraint determination about the record is in force, the principal officer must, without charge—

(a) for any part of the record 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 record 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.

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(3) However, the principal officer must refuse a request for a copy of a part of a record 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 principal officer must give a person a copy of a part of the record 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 only to that person; or

(ii) if the person to whom 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.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(5) If the principal officer has made a release restraint determination about the record that is in force, the principal officer must (whether the principal officer gives the person a copy of any part of the record), as soon as practicable after receiving the request, give the person—

(a) a copy of the determination; and

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(b) if the determination was made after the request was received—a reviewable decision notice.

31G Release delayed or denied

(1) Before giving a copy of an accessible executive record to a person under section 31E or section 31F, the principal officer 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 principal officer may determine (by a ***release restraint determination***)—

(a) that any part of the record containing the 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).

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(5) A copy of the determination must be kept with the record.

(6) The determination commences on the day it is made.

(7) The ***later release day*** for a part of the record is the earliest of the following:

(a) the determined day (if any) under subsection (4) (a);

(b) the day 5 years after the record's earliest release day;

(c) the next Canberra Day after the end of 20 years after the record's submission day;

(d) if the determination ceases to be in force—the day it ceases to be in force.

Note The principal officer 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 Legislation Act, *s 46*).

31H Freedom of Information Act access not prevented

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

31I Internal review notice—release restraint determination

(1) The principal officer must give written notice (a ***reviewable decision notice***) of a release restraint determination to each person whose interests are affected by the determination.

Note The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

(2) In particular, the reviewable decision notice must tell the person—

(a) whether the person has the right to apply for internal review of the determination or the right to apply to the ACAT for review of the determination, and how the application must be made; and

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(b) if the person has the right to apply for internal review of the determination—that the person has the right to apply to the ACAT for the review of the decision on the internal review if the person is dissatisfied with that decision.

31J Internal review of certain determinations

(1) A person whose interests are affected by a release restraint determination (an ***internally reviewable determination***) may apply in writing to the principal officer for internal review of the determination.

(2) The principal officer must arrange for someone else (the ***internal reviewer***) to review the determination.

(3) However, this section does not apply to a release restraint determination made personally by the principal officer.

Note Section 31M provides for review, by ACAT, of release restraint determinations exempt from internal review.

31K Internal review—application

(1) An application for internal review of an internally reviewable determination must be made within—

(a) 28 days after the day when the applicant is told about the determination by the principal officer; or

(b) any longer period allowed by the internal reviewer, whether before or after the end of the 28-day period.

(2) The application must set out the grounds on which internal review of the determination is sought.

(3) The making of the application for internal review does not affect the operation of the determination.

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31L Internal review

(1) The internal reviewer must review the internally reviewable determination, and confirm, vary or revoke the determination, within 5 business days after the principal officer receives the application for internal review of the determination.

Note For the meaning of ***business day***, see the Legislation Act, dictionary, pt 1.

(2) If the determination is not varied or revoked within the 5-day period, the determination is taken to have been confirmed by the internal reviewer.

(3) As soon as practicable after reviewing the determination, the internal reviewer must give written notice of the decision on the internal review to the applicant.

31M Review of determinations by ACAT

A person whose interest are affected by a release restraint determination may apply to the ACAT for review of—

(a) a decision made by an internal reviewer; or

(b) a release restraint determination, other than an internally reviewable determination.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

31N Protection from liability—executive records

The Territory is not liable to any person for anything done honestly and without recklessness to comply with this part.

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Part 4 Director of Territory Records

32 Establishment of position

The position of Director of Territory Records is established.

33 Functions

(1) The director has the following functions:

(a) to develop and approve standards and codes for records management by agencies;

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

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

(d) on behalf of the Territory or an agency, to recover possession or control of records that, for whatever reason, are not under the control of an agency;

(e) to give advice to agencies about the preparation of, and to approve or suspend, schedules for the disposal of records under records management programs;

(f) to monitor the disposal of records by agencies;

(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 on the operation and compliance;

(h) to advise the Minister on any matter relevant to records management or the operation of this Act;

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

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

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

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

(m) on behalf of the Territory or an agency, to enter into and manage arrangements with the National Archives of Australia or any other entity about records management;

(n) to assist in the development of facilities for access by the public to records;

(o) to exercise any other function given to the director under this Act or any other Territory law;

(p) to do anything else—

(i) incidental, complementary or helpful to the director's other functions; or

(ii) likely to improve the effective and efficient exercise of the director's other functions.

Note 1 A provision of a law that gives an entity (including a person) a function also gives the entity the powers necessary and convenient to exercise the function (see Legislation Act, s 196 (1) and dict, pt 1, defs ***entity*** and ***function***).

Note 2 The *Annual Reports (Government Agencies) Act 2004*, s 6 (Annual report of public authority) deals with the annual report to be given by a statutory office-holder who is declared to be a public authority under that Act.

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(2) In subsection (1) (g):

report means—

(a) for an agency mentioned in section 7 (Meaning of ***agency***) other than a board of inquiry or royal commission—report to the Minister; and

(b) for a board of inquiry or royal commission—report to the Legislative Assembly.

34 Appointment of the director

The director is appointed by the Minister.

Note 1 For the making of appointments generally, see Legislation Act, pt 19.3.

Note 2 Certain statutory appointments made by a Minister require consultation with a Legislative Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

Note 3 A power to appoint a person to a position includes power to appoint a person to act in the position (see Legislation Act, s 209).

35 Term of appointment of director

The director is to be appointed for a term not longer than 5 years.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def ***appoint***).

36 Ending of appointment of director

The Minister may end the director's appointment—

(a) for misbehaviour or physical or mental incapacity; or

(b) if the director becomes bankrupt or personally insolvent; or

(c) if the director is convicted or found guilty of an indictable offence; or

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(d) if the member fails to comply with section 51 (Disclosure of interests by members of council) without reasonable excuse; or

(e) if the director is absent from duty for 14 consecutive days, or for 28 days in any 12 months, except on leave given by the Minister.

Note The director's appointment also ends if the director resigns (see Legislation Act, s 210).

37 Conditions of appointment generally

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

38 Delegation

The director may delegate the director's powers under this Act (other than section 28 (Declaration applying provisions of FOI Act) to a public servant.

Note For the making of delegations and the exercise of delegated functions, see Legislation Act, pt 19.4.

39 Ministerial directions to the director

(1) The Minister may give written directions to the director about the exercise of the director's functions.

(2) Before giving a direction, the Minister must—

(a) tell the director of the intent of the proposed direction; and

(b) give the director a reasonable opportunity to comment on the proposed direction; and

(c) consider any comments made by the director.

(3) The Minister must present a copy of a direction given under this section to the Legislative Assembly within 6 sitting days after the day it is given.

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(4) The director must comply with a direction given to the director under this section.

(5) For the *Competition and Consumer Act 2010* (Cwlth), this Act authorises—

(a) the giving of a direction under this section; and

(b) the doing of, or the failure to do, anything by the director to comply with a direction under this section.

40 Arrangements for staff

(1) The director may arrange with the director-general to use public servants in the administrative unit under the director-general's control.

(2) The *Public Sector Management Act 1994* applies to the management by the director of public servants the subject of an arrangement under subsection (1).

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Part 5 Territory Records Advisory Council

Division 5.1 Establishment, functions and members of council

41 Territory Records Advisory Council

There is a Territory Records Advisory Council.

42 Functions of council

The functions of the council are to advise the director about—

(a) the development and review of standards and codes for agency records management; and

(b) the disposal of agency records; and

(c) the preservation of agency records about Aboriginal and Torres Strait Islander heritage; and

(d) issues relating to the access to records that are open to public access under section 26 (Access to records).

Note A provision of a law that gives an entity (including a person) a function also gives the entity the powers necessary and convenient to exercise the function (see Legislation Act, s 196 (1) and dict, pt 1, defs of ***entity*** and ***function***).

43 Membership of council

The council consists of—

(a) the director; and

(b) not less than 5, and not more than 8, members (the ***appointed members***) appointed by the Minister under section 44.

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44 Appointed members of council

(1) The Minister must appoint as a member at least 1 person to represent each of the following:

(a) agencies;

(b) professional organisations interested in records management and archives;

(c) community associations interested in historical or heritage issues;

(d) entities interested in Aboriginal and Torres Strait Islander heritage;

(e) organisations interested in public administration, governance or public accountability.

Note 1 For the making of appointments generally, see Legislation Act, pt 19.3.

Note 2 Certain statutory appointments made by a Minister require consultation with a Legislative Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

Note 3 A power to appoint a person to a position includes power to appoint a person to act in the position (see Legislation Act, s 209).

(2) The person appointed to represent entities mentioned in subsection (1) (d) must be an Aboriginal or Torres Strait Islander.

45 Chairperson and deputy chairperson

(1) The Minister must appoint—

(a) an appointed member to be chairperson; and

(b) another appointed member to be deputy chairperson

(2) A person appointed to be chairperson or deputy chairperson ceases to hold office if the person ceases to be an appointed member.

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46 Term of appointment of appointed members

An appointed member is to be appointed for a term of not longer than 3 years.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def ***appoint***).

47 Ending of appointment of appointed members

(1) The Minister must end the appointment of an appointed member if satisfied that the member is no longer an appropriate person to represent the relevant group of entities mentioned in section 44 (1) (a), (b), (c) and (d) (Appointed members of council).

(2) The Minister may end the appointment of an appointed member—

(a) for misbehaviour or physical or mental incapacity; or

(b) if the member is absent for 3 consecutive meetings of the council without reasonable excuse; or

(c) if the member is convicted or found guilty of an indictable offence; or

(d) if the member fails to comply with section 51 (Disclosure of interests by members of council) without reasonable excuse.

Note A member's appointment also ends if the member resigns (see Legislation Act, s 210).

48 Conditions of appointment generally

An appointed member holds the position on the conditions not provided by this Act or another Territory law that are decided by the Minister.

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Division 5.2 Proceedings of council

49 Time and place of meetings of council

(1) The council is to meet at the times and places it decides.

(2) However, the council must meet at least 4 times a year.

(3) The chairperson—

(a) may at any time call a meeting of the council; and

(b) must call a meeting if asked by the Minister, the director or at least 3 appointed members.

(4) If the chairperson is not available for any reason to call a meeting of the council, the deputy chairperson may call the meeting.

50 Procedures governing proceedings of council

(1) The chairperson of the council presides at all meetings of the council at which the chairperson is present.

(2) If the chairperson is absent, the deputy chairperson presides.

(3) If the chairperson and deputy chairperson are both absent, the member chosen by the members present presides.

(4) Business may be carried out at a meeting of the council only if 3 appointed members are present.

(5) At a meeting of the council each appointed member has a vote on each question to be decided.

(6) A question is to be decided by a majority of the votes of the appointed members present and voting but, if the votes are equal, the member presiding has a casting vote.

(7) The council may hold meetings, or allow members to take part in meetings, by telephone, closed-circuit television or another form of communication.

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(8) A member who takes part in a meeting conducted under subsection (7) is taken to be present at the meeting.

(9) A resolution of the council is a valid resolution, even though it was not passed at a meeting of the council, if—

(a) all appointed members agree, in writing, to the proposed resolution; and

(b) notice of the resolution is given under procedures decided by the council.

(10) The council must keep minutes of its meetings.

(11) The council may conduct its proceedings (including its meetings) as it otherwise considers appropriate.

51 Disclosure of interests by members of council

(1) This section applies to a member of the council if—

(a) the member has a direct or indirect financial interest in an issue being considered, or about to be considered, by the council; and

(b) the interest could conflict with the proper exercise of the member's functions in relation to the council's consideration of the issue.

(2) As soon as practicable after the relevant facts come to the member's knowledge, the member must disclose the nature of the interest to a meeting of the council.

(3) The disclosure must be recorded in the council's minutes and, unless the council otherwise decides, the member must not—

(a) be present when the council considers the issue; or

(b) take part in a decision of the council on the issue.

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(4) Any other member who also has a direct or indirect financial interest in the issue must not—

(a) be present when the council is considering its decision under subsection (3); or

(b) take part in making the decision.

(5) Within 14 days after the end of each financial year, the chairperson of the council must give the Minister a statement of any disclosure of interest made under this section during the financial year.

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Part 6 Miscellaneous

52 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) an appointed member of the council; or

(c) 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 commits an offence if the person—

(a) makes a record of protected information; or

(b) directly or indirectly, discloses or communicates to a person protected information about someone else.

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

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(3) Subsection (2) does not apply if the record is made, or the information is disclosed or communicated—

(a) under this or any other Act; or

(b) in relation to the exercise of a function, as a person to whom this section applies, under this or any other Act.

(4) 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.

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

(a) to divulge or communicate protected information to a court; or

(b) to produce a document containing protected information to a court;

unless it is necessary to do so for this Act or another Act.

53 Secrecy about information acquired under other Acts

(1) The provisions of another Act imposing restrictions or obligations of secrecy or nondisclosure of information acquired in the course of the administration of that Act apply to a person who, because of the person's position under this Act or in the exercise of functions under this Act, has access to the information because of the information having been acquired in the course of the administration of the other Act.

(2) For subsection (1), the person who has access to the information in the exercise of functions under this Act is taken to be a person engaged in the administration of the other Act.

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(3) Subsection (1) does not prevent—

(a) the giving of access to records under part 3 (Access to records); or

(b) the preparation and dissemination of guides and aids to finding information contained in the records.

54 Protection from liability

(1) In this section:

official means—

(a) the principal officer of an agency; or

(b) the director; or

(c) an appointed member of the council; or

(d) anyone else exercising a function under this Act.

(2) An official does not incur civil or criminal liability for an act or omission done honestly and without negligence for this Act.

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

55 Determination of fees

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

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

(2) A determination is a disallowable instrument.

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

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56 Approved forms

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

Note For other provisions about forms, see Legislation Act, s 255.

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

(3) An approved form is a notifiable instrument.

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

57 Regulation-making power

The Executive may make regulations for this Act.

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

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Dictionary

(see s 4)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACAT
- bankrupt or personally insolvent
- director-general (see s 163)
- document
- entity
- Minister (see s 162)
- Office of the Legislative Assembly
- officer of the Assembly
- person (see s 160).

accessible executive record, for part 3A (Executive records—access and release)—see section 31B.

agency—see section 7.

appointed member—see section 43 (b) (Membership of council).

approved records management program means a records management program approved under section 17 (Procedure for approving 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.

Assembly, for part 3A (Executive records—access and release)—see section 31B.

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Canberra Day, in any year, means the day that is Canberra Day under the *Holidays Act 1958*.

control, of a record—see section 11.

council means the Territory Records Advisory Council.

director means the Director of Territory Records.

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

earliest release day, for part 3A (Executive records—access and release)—see section 31B.

entitled to control, of a record—see section 11.

Executive, for part 3A (Executive records—access and release)—see section 31B.

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

health record—see the *Health Records (Privacy and Access) Act 1997*, dictionary.

Health Records Act means the *Health Records (Privacy and Access) Act 1997*.

later release day, for part 3A (Executive records—access and release)—see section 31B.

member means a member of the council.

normal administrative practices—see section 24 (Normal administrative practice).

prescribed authority—see the *Freedom of Information Act 1989*, dictionary.

principal officer—see section 8.

protected private information, for part 3A (Executive records—access and release)—see section 31B.

public body means a body established for a public purpose.

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record—

(a) means information created and kept, or received and kept, as evidence and information by a person in accordance with a legal obligation or in the course of conducting business; and

(b) includes information in written, electronic or any other form.

records management—see section 10.

release restraint determination, for part 3A (Executive records—access and release)—see section 31B.

reviewable decision notice, for part 3A (Executive records—access and release)—see section 31B.

submission day, for part 3A (Executive records—access and release)—see section 31B.

territory record—see section 9 (3).

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Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

A = Act
AF = Approved form
am = amended
amdt = amendment
AR = Assembly resolution
ch = chapter
CN = Commencement notice
def = definition
DI = Disallowable instrument
dict = dictionary
disallowed = disallowed by the Legislative Assembly
div = division
exp = expires/expired
Gaz = gazette
hdg = heading
IA = Interpretation Act 1967
ins = inserted/added
LA = Legislation Act 2001
LR = legislation register
LRA = Legislation (Republication) Act 1996
mod = modified/modification
NI = Notifiable instrument
o = order
om = omitted/repealed
ord = ordinance
orig = original
par = paragraph/subparagraph
pres = present
prev = previous
(prev...) = previously
pt = part
r = rule/subrule
reloc = relocated
renum = renumbered
R[X] = Republication No
RI = reissue
s = section/subsection
sch = schedule
sdiv = subdivision
SL = Subordinate law
sub = substituted
<u>underlining</u> = whole or part not commenced or to be expired

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3 Legislation history

Territory Records Act 2002 A2002-18

notified LR 13 June 2002
s 1, s 2 commenced 13 June 2002 (LA s 75 (1))
pt 3 commenced 1 July 2008 (s 2 (1) as am by A2007-9 s 4)
remainder commenced 2 July 2003 (s 2 (3))

as amended by

Criminal Code 2002 A2002-51 sch 1 pt 1.23

notified LR 20 December 2002
s 1, s 2 commenced 20 December 2002 (LA s 75 (1))
sch 1 pt 1.23 commenced 2 July 2003 (s 2 (2) and see A2002-18, s 2 (3))

Annual Reports Legislation Amendment Act 2004 A2004-9 sch 1 pt 1.33

notified LR 19 March 2004
s 1, s 2 commenced 19 March 2004 (LA s 75 (1))
sch 1 pt 1.33 commenced 13 April 2004 (s 2 and see Annual Reports (Government Agencies) Act 2004 A2004-8, s 2 and CN2004-5)

Human Rights Commission Legislation Amendment Act 2005 A2005-41 sch 1 pt 1.13 (as am by A2006-3 amdt 1.3)

notified LR 1 September 2005
s 1, s 2 commenced 1 September 2005 (LA s 75 (1))
sch 1 pt 1.13 commenced 1 November 2006 (s 2 (3) (as am by A2006-3 amdt 1.3) and see Human Rights Commission Act 2005 A2005-40, s 2 (as am by A2006-3 s 4) and CN2006-21)

Human Rights Commission Legislation Amendment Act 2006 A2006-3 amdt 1.3

notified LR 22 February 2006
s 1, s 2 commenced 22 February 2006 (LA s 75 (1))
amdt 1.3 commenced 23 February 2006 (s 2)

Note This Act only amends the Human Rights Commission Legislation Amendment Act 2005 A2005-41

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Statute Law Amendment Act 2007 A2007-3 sch 3 pt 3.96
notified LR 22 March 2007
s 1, s 2 taken to have commenced 1 July 2006 (LA s 75 (2))
sch 3 pt 3.96 commenced 12 April 2007 (s 2 (1))

Territory Records Amendment Act 2007 A2007-9
notified LR 10 May 2007
s 1, s 2 commenced 10 May 2007 (LA s 75 (1))
remainder commenced 11 May 2007 (s 2)

Statute Law Amendment Act 2008 A2008-28 sch 3 pt 3.56
notified LR 12 August 2008
s 1, s 2 commenced 12 August 2008 (LA s 75 (1))
sch 3 pt 3.56 commenced 26 August 2008 (s 2)

ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 A2008-36 sch 1 pt 1.49
notified LR 4 September 2008
s 1, s 2 commenced 4 September 2008 (LA s 75 (1))
sch 1 pt 1.49 commenced 2 February 2009 (s 2 (1) and see ACT Civil and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)

Statute Law Amendment Act 2009 (No 2) A2009-49 sch 3 pt 3.73
notified LR 26 November 2009
s 1, s 2 commenced 26 November 2009 (LA s 75 (1))
sch 3 pt 3.73 commenced 17 December 2009 (s 2)

Territory Records Amendment Act 2010 A2010-48
notified LR 25 November 2010
s 1, s 2 commenced 25 November 2010 (LA s 75 (1))
remainder commenced 26 November 2010 (s 2)

Fair Trading (Australian Consumer Law) Amendment Act 2010 A2010-54 sch 3 pt 3.26
notified LR 16 December 2010
s 1, s 2 commenced 16 December 2010 (LA s 75 (1))
sch 3 pt 3.26 commenced 1 January 2011 (s 2 (1))

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Administrative (One ACT Public Service Miscellaneous Amendments) Act 2011 A2011-22 sch 1 pt 1.149

notified LR 30 June 2011
s 1, s 2 commenced 30 June 2011 (LA s 75 (1))
sch 1 pt 1.149 commenced 1 July 2011 (s 2 (1))

Legislative Assembly (Office of the Legislative Assembly) Act 2012 A2012-26 sch 1 pt 1.9

notified LR 24 May 2012
s 1, s 2 commenced 24 May 2012 (LA s 75 (1))
sch 1 pt 1.9 commenced 1 July 2012 (s 2)

Officers of the Assembly Legislation Amendment Act 2013 A2013-41 sch 1 pt 1.9

notified LR 7 November 2013
s 1, s 2 commenced 7 November 2013 (LA s 75 (1))
sch 1 pt 1.9 commenced 1 July 2014 (s 2)

Judicial Commissions Amendment Act 2015 A2015-1 sch 1 pt 1.7

notified LR 25 February 2015
s 1, s 2 commenced 25 February 2015 (LA s 75 (1))
sch 1 pt 1.7 awaiting commencement (s 2 (as am by A2015-52 s 28))

Note default commencement under s 2 (2): 1 February 2017 (LA s 79 does not apply to this Act)

Courts Legislation Amendment Act 2015 (No 2) A2015-52 pt 10

notified LR 26 November 2015
s 1, s 2 commenced 26 November 2015 (LA s 75 (1))
pt 10 commenced 10 December 2015 (s 2 (2))

Note This Act only amends the Judicial Commissions Amendment Act 2015 A2015-1

Justice and Community Safety Legislation Amendment Act 2016 A2016-37 sch 1 pt 1.20

notified LR 22 June 2016
s 1, s 2 commenced 22 June 2016 (LA s 75 (1))
sch 1 pt 1.20 commenced 29 June 2016 (s 2)

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4 Amendment history

Commencement—pt 3
s 2 sub A2007-9 s 4
om LA s 89 (4)

Main purposes of Act
s 3 am A2010-48 s 4; pars renum R10 LA

Dictionary
s 4 am A2007-3 amdt 3.483

Offences against Act—application of Criminal Code etc
s 5A ins A2002-51 amdt 1.47

Application of Act
s 6 am A2005-41 amdt 1.126; A2010-48 s 5, s 6

Meaning of *agency*
s 7 am A2008-36 amdt 1.630; pars renum R8 LA; A2012-26 amdt 1.49; A2013-41 amdt 1.41; pars renum R15 LA

Meaning of *principal officer*
s 8 am A2008-36 amdt 1.631; pars renum R8 LA; A2011-22 amdt 1.420; A2012-26 amdt 1.50; A2013-41 amdt 1.42; pars renum R15 LA; A2016-37 amdt 1.41; pars renum R16 LA

Meaning of *record* of an agency etc
s 9 sub A2010-48 s 7

Approved records management programs
s 16 am A2010-48 s 8

Procedure for approving records management programs
s 17 am A2010-48 s 9

Approval of schedules for the disposal of records
s 19 am A2010-48 s 10

Records disposal schedules—suspension
s 19A ins A2010-48 s 11

Protection measures
s 23 am A2010-48 s 12; ss renum R10 LA

Agencies with inter-government functions
s 23A ins A2010-48 s 13

Report about inter-government records agreements
s 23B ins A2010-48 s 13

Records of agency that no longer exists etc
s 25 am A2011-22 amdt 1.421

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Agency records—access
pt 3 hdg sub A2010-48 s 14

Access to records
s 26 am A2010-48 s 15

Declaration applying provisions of FOI Act
s 28 am A2010-48 s 16

Executive records—access and release
pt 3A hdg ins A2010-48 s 17

Application—pt 3A
s 31A ins A2010-48 s 17

Definitions—pt 3A
s 31B ins A2010-48 s 17
def ***accessible executive record*** ins A2010-48 s 17
def ***Assembly*** ins A2010-48 s 17
def ***earliest release day*** ins A2010-48 s 17
def ***Executive*** ins A2010-48 s 17
def ***executive record*** ins A2010-48 s 17
def ***internally reviewable determination*** ins A2010-48 s 17
def ***internal reviewer*** ins A2010-48 s 17
def ***later release day*** ins A2010-48 s 17
def ***principal officer*** ins A2010-48 s 17
def ***protected private information*** ins A2010-48 s 17
def ***release restraint determination*** ins A2010-48 s 17
def ***reviewable decision notice*** ins A2010-48 s 17
def ***submission day*** ins A2010-48 s 17

List of released executive records—publication
s 31C ins A2010-48 s 17

Requests for access
s 31D ins A2010-48 s 17

Giving access to accessible executive records—no release restraint determination
s 31E ins A2010-48 s 17

Giving access to accessible executive records—release restraint determination
s 31F ins A2010-48 s 17

Release delayed or denied
s 31G ins A2010-48 s 17
am A2011-22 amdt 1.422

Freedom of Information Act access not prevented
s 31H ins A2010-48 s 17

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Internal review notice—release restraint determination
s 31I ins A2010-48 s 17

Internal review of certain determinations
s 31J ins A2010-48 s 17

Internal review—application
s 31K ins A2010-48 s 17

Internal review
s 31L ins A2010-48 s 17

Review of determinations by ACAT
s 31M ins A2010-48 s 17

Protection from liability—executive records
s 31N ins A2010-48 s 17

Functions
s 33 am A2004-9 amdt 1.45; A2010-48 s 18, s 19; pars renum R10 LA

Ending of appointment of director
s 36 am A2008-28 amdt 3.167; A2009-49 amdt 3.188

Ministerial directions to the director
s 39 am A2010-54 amdt 3.59

Arrangements for staff
s 40 am A2011-22 amdt 1.423

Functions of council
s 42 am A2007-3 amdt 3.484; A2010-48 s 20

Membership of council
s 43 am A2010-48 s 21

Appointed members of council
s 44 am A2010-48 s 22

Secrecy
s 52 am A2002-51 amdt 1.48; ss renum R1 LA (see A2002-51 amdt 1.49)

Review of Act
s 58 sub A2007-9 s 5
exp 31 December 2010 (s 58 (3))

Transitional—Executive Documents Release Act 2001
s 100 ins A2010-48 s 23
exp 26 November 2011 (s 100 (5) (LA s 88 declaration applies))

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Dictionary

dict

am A2007-3 amdt 3.485; A2008-36 amdt 1.632; A2009-49 amdt 3.189; A2011-22 amdt 1.424; A2012-26 amdt 1.51; A2013-41 amdt 1.43
def ***accessible executive record*** ins A2010-48 s 24
def ***approved records management program*** am A2010-48 s 25
def ***Assembly*** ins A2010-48 s 26
def ***Canberra Day*** ins A2010-48 s 26
def ***earliest release day*** ins A2010-48 s 26
def ***Executive*** ins A2010-48 s 26
def ***health record*** ins A2010-48 s 26
def ***Health Records Act*** ins A2010-48 s 26
def ***later release day*** ins A2010-48 s 26
def ***prescribed authority*** sub A2007-3 amdt 3.486
def ***protected private information*** ins A2010-48 s 26
def ***public body*** ins A2010-48 s 26
def ***record*** sub A2010-48 s 27
def ***release restraint determination*** ins A2010-48 s 28
def ***reviewable decision notice*** ins A2010-48 s 28
def ***submission day*** ins A2010-48 s 28
def ***territory record*** ins A2010-48 s 28

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5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 2 July 2003	2 July 2003– 12 Apr 2004	A2002-51	new Act and amendments by A2002-51
R2 13 Apr 2004	13 Apr 2004– 31 Oct 2006	A2004-9	amendments by A2004-9
R3 1 Nov 2006	1 Nov 2006– 11 Apr 2007	A2006-3	amendments by A2005-41 as amended by A2006-3
R4 12 Apr 2007	12 Apr 2007– 10 May 2007	A2007-3	amendments by A2007-3
R5 11 May 2007	11 May 2007– 30 June 2008	A2007-9	amendments by A2007-9
R6 1 July 2008	1 July 2008– 25 Aug 2008	A2007-9	commenced provisions
R7 26 Aug 2008	26 Aug 2008– 1 Feb 2009	A2008-28	amendments by A2008-28
R8 2 Feb 2009	2 Feb 2009– 16 Dec 2009	A2008-36	amendments by A2008-36
R9 17 Dec 2009	17 Dec 2009– 25 Nov 2010	A2009-49	amendments by A2009-49
R10 26 Nov 2010	26 Nov 2010– 31 Dec 2010	A2010-48	amendments by A2010-48

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Republication No and date	Effective	Last amendment made by	Republication for
R11 1 Jan 2011	1 Jan 2011– 30 June 2011	A2010-54	amendments by A2010-54 and expiry of provision (s 58)
R12 1 July 2011	1 July 2011– 26 Nov 2011	A2011-22	amendments by A2011-22
R13 27 Nov 2011	27 Nov 2011– 30 June 2012	A2011-22	expiry of transitional provision (s 100)
R14 1 July 2012	1 July 2012– 30 June 2014	A2012-26	amendments by A2012-26
R15 1 July 2014	1 July 2014– 28 June 2016	A2013-41	amendments by A2013-41

6 Expired transitional or validating provisions

This Act may be affected by transitional or validating provisions that have expired. The expiry does not affect any continuing operation of the provisions (see *Legislation Act 2001*, s 88 (1)).

Expired provisions are removed from the republished law when the expiry takes effect and are listed in the amendment history using the abbreviation 'exp' followed by the date of the expiry.

To find the expired provisions see the version of this Act before the expiry took effect. The ACT legislation register has point-in-time versions of this Act.

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