



Australian Capital Territory

# Freedom of Information Act 2016

A2016-55

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Australian Capital Territory

# Freedom of Information Act 2016

A2016-55

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An Act to give public access to government information, and for other purposes

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

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Freedom of Information Act 2016*.

### 2 Commencement

This Act commences on 1 July 2017.

*Note* The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

### 3 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 ‘*public official*—see the [Criminal Code](#), section 300.’ means that the term ‘public official’ is defined in that section 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)).

### 4 Notes

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

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

## 5 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 all offences against this Act (see Code, pt 2.1).

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.

## Part 2 Objects and important concepts

### 6 Objects of Act

The objects of this Act are to—

- (a) provide a right of access to government information unless access to the information would, on balance, be contrary to the public interest; and
- (b) recognise the importance of public access to government information for the proper working of representative democracy; and
- (c) enable the public to participate more effectively in government processes and to promote improved decision-making within government; and
- (d) make the people and bodies that are responsible for governing the Territory more accountable to the public; and
- (e) ensure that, to the fullest extent possible, government information is freely and publicly available to everyone; and
- (f) facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of the maximum amount of government information; and
- (g) ensure that personal information held by the Territory is accurate, complete, up-to-date and not misleading.

### 7 Right of access to government information

- (1) Subject to this Act, every person has an enforceable right to obtain access under this Act to government information.
- (2) This section applies to information even if it came into existence before the commencement of this Act.

**8 Informal requests for government information**

- (1) An agency is authorised to release government information held by the agency to a person in response to an informal request by the person.
- (2) This section is subject to a provision of another law that prohibits the disclosure of information.

**9 Promoting access to government information**

It is the intention of the Legislative Assembly that this Act be administered with a pro-disclosure bias and discretions given under it be exercised as far as possible in favour of disclosing government information.

**10 Act not intended to prevent or discourage publication etc**

This Act is not intended to prevent or discourage agencies or Ministers from publishing or giving access to government information (including contrary to the public interest information) otherwise than under this Act.

**11 Relationship with other laws requiring disclosure**

This Act does not affect the operation of any other law that—

- (a) requires government information to be made available to the public; or
- (b) enables a member of the public to obtain access to government information; or
- (c) requires publication of government information.

**12 Relationship with Health Records (Privacy and Access) Act 1997**

This Act does not apply to information in a health record under the *Health Records (Privacy and Access) Act 1997*.

### 13 Relationship with Territory Records Act 2002

- (1) This Act does not apply to—
  - (a) a record of an agency if a person is entitled to access the record under the *Territory Records Act 2002*, part 3 (Agency records—access); or
  - (b) an accessible executive record.
- (2) If the director makes a declaration under the *Territory Records Act 2002*, section 28 (Declaration applying provisions of FOI Act) in relation to a record, this Act applies to the record while the declaration is in force.

*Note* Unless sooner revoked, a declaration under the *Territory Records Act 2002*, s 28 is in force for 10 years or any shorter period stated in the declaration.

- (3) If the principal officer makes a release restraint determination under the *Territory Records Act 2002*, section 31G (2) (b) (Release delayed or denied) in relation to a record, this Act applies to the record while the determination is in force.
- (4) In this section:

*accessible executive record*—see the *Territory Records Act 2002*, section 31B.

*director*—see the *Territory Records Act 2002*, dictionary.

*principal officer*, of an agency—see the dictionary.

*record*—see the *Territory Records Act 2002*, dictionary.

### 14 What is government information?

In this Act:

*government information*—

- (a) means information held by an agency or Minister; but

- (b) does not include information—
- (i) relating to a Minister's personal or political activities; or
  - (ii) created or received by a Minister in the Minister's capacity as a member of the Legislative Assembly.

**held**—information is **held** by an agency or Minister if it is—

- (a) contained in a record held by the agency or Minister; or
- (b) contained in a record that the agency or Minister is entitled to access.

## 15 **Meaning of *agency***

- (1) In this Act:

***agency*** means—

- (a) an administrative unit; or
- (b) a statutory office-holder and the staff assisting the statutory office-holder; or
- (c) a territory authority; or
- (d) a territory instrumentality; or
- (e) a territory-owned corporation or a subsidiary of a territory-owned corporation; or
- (f) the Office of the Legislative Assembly; or
- (g) an officer of the Assembly; or
- (h) the Supreme Court; or
- (i) the Magistrates Court or Coroner's Court; or
- (j) the ACAT; or
- (k) a board of inquiry under the *Inquiries Act 1991*; or
- (l) a judicial commission under the *Judicial Commissions Act 1994*; or

- (m) a royal commission under the *Royal Commissions Act 1991*; or
- (n) an entity prescribed by regulation.

(2) In this section:

***territory authority*** means a body established for a public purpose under an Act or statutory instrument.

***territory instrumentality*** means a corporation that is established under an Act or statutory instrument, or under the *Corporations Act*, and—

- (a) is comprised of people, or has a governing body comprised of people, a majority of whom are appointed by a Minister or an agency or instrumentality of the Territory; or
- (b) is subject to control or direction by a Minister.

**16 What is *contrary to the public interest information*?**

In this Act:

***contrary to the public interest information*** means information—

- (a) that is taken to be contrary to the public interest to disclose under schedule 1; or
- (b) the disclosure of which would, on balance, be contrary to the public interest under the test set out in section 17.

**17 Public interest test**

- (1) An agency or Minister, in deciding whether disclosure of information would, on balance, be contrary to the public interest, must take the following steps:
  - (a) identify any factor favouring disclosure that applies in relation to the information (a ***relevant factor favouring disclosure***), including any factor mentioned in schedule 2, section 2.1;



- (b) identify any factor favouring nondisclosure that applies in relation to the information (a *relevant factor favouring nondisclosure*), including any factor mentioned in schedule 2, section 2.2;
  - (c) balance any relevant factor or factors favouring disclosure against any relevant factor or factors favouring nondisclosure;
  - (d) decide whether, on balance, disclosure of the information would be contrary to the public interest;
  - (e) unless, on balance, disclosure would be contrary to the public interest, allow access to the information subject to this Act.
- (2) The following factors must not be taken into account when deciding whether disclosure of information would, on balance, be contrary to the public interest:
- (a) access to the information could result in embarrassment to the government, or cause a loss of confidence in the government;
  - (b) access to the information could result in a person misinterpreting or misunderstanding the information;
  - (c) the author of the information was (or is) of high seniority in an agency;
  - (d) access to the information could result in confusion or unnecessary debate;
  - (e) access to the information could inhibit frankness in the provision of advice from the public service;
  - (f) the applicant's identity, circumstances, or reason for seeking access to the information.

## Part 3 Information officers

### 18 Information officers—appointment

- (1) The principal officer of an agency must appoint a person as the agency's information officer for this Act.

*Note 1* For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see [Legislation Act](#), s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

- (2) An appointment is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

### 19 Information officers—functions

The information officer of an agency has the following functions:

- (a) to deal with access applications made to the agency under part 5;
- (b) at the request of the principal officer of another agency—to deal with access applications made to the other agency under part 5;
- (c) to ensure that the agency meets its obligation to publish open access information under part 4;
- (d) to consider the appropriateness of the agency's publication undertakings under part 4;
- (e) to proactively consider whether and how public access may be given to other government information held by the agency.

**20 Information officers not subject to directions**

- (1) An information officer of an agency is not subject to direction in the exercise of a function under this Act unless the direction is given under subsection (2).
- (2) The following people may direct the information officer of an agency to disclose information:
  - (a) the Minister responsible for the agency;
  - (b) the principal officer of the agency.

**21 Information officers may act for other agencies**

The information officer of an agency may, at the request of the principal officer of another agency, deal with an access application made to the other agency.

**22 Information officers may consult with other information officers**

- (1) An information officer may, in the exercise of a function under this Act, consult with another information officer.
- (2) In consulting with another information officer under subsection (1), an information officer is authorised to disclose government information that relates to the exercise of the function.

## Part 4 Open access information

### 23 What is open access information?

(1) In this Act:

*open access information*, of an agency, means government information held by the agency that is or is in 1 or more of the following:

- (a) functional information including a statement setting out particulars of the agency, including agency structure, functions, kinds of government information held and how requests for information may be made;
- (b) information about the agency or the work of the agency contained in any document tabled in the Legislative Assembly by or for the agency;
- (c) the agency's policy documents;
- (d) budgetary papers including details of appropriations by appropriation units for classes of outputs;
- (e) information about government grants made or administered by the agency;
- (f) the agency's disclosure log;  
*Note Disclosure log—see s 28.*
- (g) a statement listing all boards, councils, committees, panels and other bodies that have been established by the agency (whether under an Act or otherwise) for the purpose of advising the agency or a Minister responsible for the agency;
- (h) any report or recommendation prepared by a body mentioned in paragraph (g);
- (i) any of the following ministerial briefs prepared by the agency that are 5 or more years old:
  - (i) incoming ministerial briefs;

- (ii) parliamentary estimates briefs;
- (iii) annual reports briefs;
- (iv) question time briefs;
- (j) information an agency undertakes to make publicly available under section 29 (Agency publication undertakings);
- (k) information declared by the ombudsman to be open access information;

*Note* See s 65 (Open access information declarations).

- (l) information prescribed by regulation.

***open access information***, of a Minister—

- (a) means government information held by the Minister that is, or is in, 1 or more of the following:
  - (i) the Minister's disclosure log;
  - (ii) information about ministerial and ministerial staff travel and hospitality expenses;
  - (iii) a copy of the Minister's diary that sets out all meetings, events and functions attended by the Minister that relate to the Minister's responsibilities;
  - (iv) information declared by the ombudsman to be open access information;
  - (v) information prescribed by regulation; and
- (b) for the Chief Minister—includes the following information about each Cabinet or Cabinet committee decision made after the commencement of this Act:
  - (i) a summary of the decision;
  - (ii) the decision reference number;
  - (iii) the date when the decision was made;
  - (iv) the triple bottom line assessment for the decision.

(2) In this section:

*policy document*—

- (a) includes any of the following:
  - (i) a document containing interpretations, rules, guidelines, statements of policy, practices or precedents;
  - (ii) a document containing a statement about how an Act or administrative scheme is to be administered;
  - (iii) a document describing the procedures to be followed in investigating a contravention or possible contravention of an Act or administrative scheme;
  - (iv) another document of a similar kind used to assist the agency to exercise its functions; but
- (b) does not include a draft of a document mentioned in paragraph (a).

## 24 Availability of open access information

(1) An agency or Minister must make open access information of the agency or Minister publicly available unless the information is contrary to the public interest information.

*Note* *Contrary to the public interest information*—see s 16.

(2) If open access information is not made available because it is contrary to the public interest information, the agency or Minister must publish—

- (a) a description of the information unless the disclosure of the description would, or could reasonably be expected to—
  - (i) endanger the life or physical safety of a person; or
  - (ii) be an unreasonable limitation on a person's rights under the *Human Rights Act 2004*; or
  - (iii) significantly prejudice an ongoing criminal investigation; and

- (b) for information not made available because it is taken to be contrary to the public interest to disclose the information under schedule 1—
    - (i) the ground under schedule 1 for the nondisclosure; and
    - (ii) the findings on any material questions of fact referring to the evidence or other material on which the findings were based; and
  - (c) for information not made available because disclosure of the information would, on balance, be contrary to the public interest under the test set out in section 17, a statement of reasons for the decision setting out—
    - (i) the findings on any material questions of fact referring to the evidence or other material on which the findings were based; and
    - (ii) the relevant factors favouring disclosure; and
    - (iii) the relevant factors favouring nondisclosure; and
    - (iv) how the factors were balanced; and
    - (v) the harm to the public interest that can reasonably be expected to occur from the disclosure; and
  - (d) a statement that a person may apply to the ombudsman for review of a decision not to make open access information publicly available; and
  - (e) a statement on how to make the application for review of the decision; and
  - (f) a statement of the other options available under ACT laws to have the decision reviewed.
- (3) If open access information is not made available because it is contrary to the public interest information and the agency or Minister decides not to publish a description of the information for a reason mentioned in subsection (2) (a), the agency or Minister must tell the ombudsman about the decision and the reason for it.

**25 Open access information—quality of information**

Open access information published by an agency or Minister must as far as practicable be accurate, up-to-date and complete.

**26 Open access information—deletion of contrary to the public interest information**

- (1) This section applies if—
  - (a) a record containing open access information of an agency or Minister also contains contrary to the public interest information; and
  - (b) it is practicable to make publicly available a copy of the record from which the contrary to the public interest information has been deleted.
- (2) The agency or Minister must—
  - (a) make a copy of the record publicly available; and
  - (b) publish a statement that the original record contained contrary to the public interest information that has been deleted from the copy.

**27 Open access information—effect of policy documents not being available**

A person must not be subjected to any prejudice because of the application of the provisions of an agency's policy document (other than provisions it is permitted to delete from a copy of the document) to any act or omission of the person if, at the time of the act or omission—

- (a) the policy document was not publicly available; and
- (b) the person was not aware of the provisions of the policy document; and
- (c) the person could lawfully have avoided the prejudice had the person been aware of the provisions.



**28 Requirement for disclosure log**

- (1) An agency and Minister must keep a record of access applications made to the agency or Minister (a *disclosure log*).
- (2) The disclosure log must include the following for each access application:
  - (a) the access application;
  - (b) the decision notice or notices given under section 51;
  - (c) if government information was given to the applicant in response to the application—the information;
  - (d) if additional government information was given to the applicant under section 36—the information;
  - (e) a statement of—
    - (i) the amount of any fees paid or waived in relation to the application; and
    - (ii) the amount of time spent dealing with the application;
  - (f) details of any decision made by the ombudsman in relation to the application;
  - (g) any additional information the ombudsman decides to disclose when making a decision mentioned in paragraph (f);
  - (h) details of any decision made by the ACAT in relation to the application;
  - (i) any additional information the ACAT decides to disclose when making a decision mentioned in paragraph (h).
- (3) If an agency or Minister decides not to disclose government information in response to an access application, the disclosure log must also include a statement about—
  - (a) who may apply to the ombudsman for review of the decision; and

- (b) how to make the application for review of the decision; and
  - (c) the other options available under ACT laws to have the decision reviewed.
- (4) The information required to be recorded in the disclosure log under subsections (2) and (3) must be included in the disclosure log not earlier than 3, and not later than 10, working days after the day the decision notice is given to the applicant.
- (5) An agency's disclosure log may also include government information released by the agency in response to an informal request.
- (6) A disclosure log must not include any access applications for personal information.

## 29 Agency publication undertakings

- (1) An agency may publish a statement setting out the kinds of government information it holds, that would not otherwise be open access information, that the agency will make publicly available (a *publication undertaking*).

*Note* Information an agency undertakes to make publicly available becomes open access information (see s 23 (1) (j)).

- (2) Every 12 months an agency must review its publication undertaking or, if the agency does not have a publication undertaking, consider whether it has information it could include in a publication undertaking.

## **Part 5**                      **Access applications**

### **Division 5.1**                **Making access applications**

#### **30**                      **Making access application**

- (1) A person may apply for access to government information to the agency or Minister responsible for the information.

*Note 1*    If a form is approved under s 108 for an application, the form must be used.

*Note 2*    A fee may be determined under s 104 for an application.

- (2) The application must include—
- (a) enough detail to enable an agency or Minister to identify the government information applied for; and
  - (b) an email or postal address to which notices under this Act may be sent to the applicant.
- (3) If the application is for access to personal information about the applicant, the application must also include—
- (a) evidence of identity for the applicant; and
  - (b) if an agent is acting for the applicant—evidence of the agent’s authorisation and evidence of identity for the agent.

**Examples—agent’s authorisation**

1    the ACAT order appointing the agent as the applicant’s guardian

2    the client agreement authorising a lawyer to act for the applicant

*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).

- (4) The application may include a statement of the applicant’s views on the public interest in disclosing the information.

**31 Assistance with application**

- (1) This section applies if an agency or Minister receives an application that does not comply with the requirements under section 30.
- (2) The agency or Minister must take reasonable steps to assist the person and give the person reasonable time to make the application comply.
- (3) The application is taken to have been made when it is made in accordance with the requirements.

**32 Notice of date application received**

- (1) An agency or Minister that receives an application complying with the requirements under section 30 must give the applicant written notice of—
  - (a) the day on which the application was received; and
  - (b) the date by which a decision is to be made (unless additional time is given under section 40, section 41 or section 42).
- (2) The notice must be given to the applicant as soon as practicable but in any case not later than 5 working days after the day the application was received.

**Division 5.2 Deciding access applications**

**33 Who deals with access applications**

- (1) An access application made to an agency must be dealt with by—
  - (a) the information officer of the agency; or
  - (b) at the request of the principal officer of the agency—the information officer of another agency.
- (2) An access application made to a Minister may be dealt with by the person the Minister directs.

**34 Deciding access—identifying information within scope of application**

- (1) An agency or Minister deciding an access application (the *respondent*) must take reasonable steps to identify all government information within the scope of the application.
- (2) The respondent is not required to search for the information from a backup system (but may if appropriate).
- (3) The respondent may, at any time, contact the applicant to clarify the scope of the application.

**35 Deciding access—how applications are decided**

- (1) The respondent decides an access application for government information by deciding—
  - (a) to give access to the information; or
  - (b) that the information is not held by the respondent; or
  - (c) to refuse to give access to the information because the information is contrary to the public interest information; or
  - (d) to refuse to deal with the application (see section 43); or
  - (e) to refuse to confirm or deny that the information is held by the respondent because—
    - (i) the information is contrary to the public interest information; and
    - (ii) doing so would, or could reasonably be expected to—
      - (A) endanger the life or physical safety of a person; or
      - (B) be an unreasonable limitation on a person's rights under the *Human Rights Act 2004*; or
      - (C) significantly prejudice an ongoing criminal investigation.
- (2) An access application may be decided in more than 1 way.

**36 Deciding access—additional government information**

- (1) This section applies if, after deciding an access application, the respondent finds additional government information that was held by the respondent when the application was decided.
- (2) The respondent may make a further decision under section 35 in relation to the additional information.
- (3) If the respondent does not make a further decision in relation to the additional information, the respondent must tell the applicant that—
  - (a) additional information has been found; and
  - (b) an access application for the additional information may be made; and
  - (c) no fee is payable for the application, but a fee may be payable for any additional information provided.

**37 Deciding access—considering applicant’s views on public interest**

In deciding an access application, the respondent must consider any statement in the application of the applicant’s views on the public interest in disclosing the government information applied for.

**38 Deciding access—relevant third parties**

- (1) This section applies if the respondent to an access application considers that—
  - (a) some or all of the government information applied for is not contrary to the public interest information; but
  - (b) disclosure of the information may reasonably be expected to be of concern to a person or another entity other than the Territory (a *relevant third party*).
- (2) The respondent must take reasonable steps to consult with the relevant third party before deciding to give access to the information.

- (3) Disclosure of government information may reasonably be expected to be of concern to a relevant third party if—
- (a) for a relevant third party that is an individual—
    - (i) the information is personal information about the individual; or
    - (ii) the disclosure of the information would, or could reasonably be expected to, affect the person's rights under the *Human Rights Act 2004*; or
  - (b) for a relevant third party that is a government or government agency—the information concerns the affairs of the government or agency; or
  - (c) the information concerns the trade secrets, business affairs, or research of the relevant third party.
- (4) If disclosure of government information may reasonably be expected to be of concern to a person because the information is personal information about the person but the person is deceased, subsection (2) applies as if an eligible family member of the person were a relevant third party.
- (5) The respondent, in consulting with a relevant third party, must—
- (a) ask the relevant third party whether it objects to the disclosure of the government information; and
  - (b) if the relevant third party objects to the disclosure—invite the relevant third party to provide its views, within 15 working days, on whether the information is contrary to the public interest information; and
  - (c) tell the relevant third party that if access is given to the information in response to the application, the information (other than personal information) will be made available to the public through the disclosure log of the respondent under section 28.

- (6) After obtaining the views of a relevant third party, the respondent must—
- (a) tell the relevant third party of the respondent's decision on the access application; and
  - (b) if the relevant third party has told the respondent that it objects to the disclosure of the government information—defer giving access to the information of concern to the relevant third party until after—
    - (i) the respondent is given written notice by the relevant third party that it does not intend to make an application for review of the decision; or
    - (ii) if notice is not given under subparagraph (i) and no application for review under part 8 is made by the end of the review period—the end of the review period; or
    - (iii) if an application for review under part 8 is made during the review period—the review has ended.
- (7) The respondent must give the applicant written notice when access is no longer deferred under subsection (6) (b).
- (8) In this section:
- eligible family member*, of a deceased person—see schedule 2 (Factors to be considered when deciding the public interest), section 2.3.
- review period* means the period within which an application for review under part 8 may be made.

**39 Deciding access—decision not made in time taken to be refusal to give access**

- (1) If a respondent does not decide an access application within the time allowed under section 40 or extended under section 41 or section 42, the respondent—
- (a) is taken to have decided to refuse to give access to the government information applied for; and



- (b) must refund any fee paid by the applicant relating to the application; and
  - (c) must give written notice to the ombudsman that a decision relating to the application was not made within time.
- (2) However, the respondent may continue to deal with the application and give notice of a decision on the application.
  - (3) If notice is given to the ombudsman under subsection (1) (c), the relevant Minister must ensure that a copy of the notice is presented to the Legislative Assembly within 3 sitting days after the day it is given to the ombudsman.
  - (4) In this section:  
*relevant Minister* means—
    - (a) for a notice relating to an access application for which a Minister is the respondent—the Minister; or
    - (b) for a notice relating to an access application for which an agency is the respondent—the Minister responsible for the agency.

#### **40 Deciding access—time to decide**

- (1) A respondent to an access application must decide the application not later than 20 working days after receiving it.
- (2) If the respondent consults with a relevant third party under section 38, the period under subsection (1) is extended by 15 working days.

#### **41 Deciding access—respondent may ask for additional time to decide**

- (1) At any time before the end of the period for deciding an access application under section 40, the respondent may ask the applicant for an additional stated amount of time to decide the application.
- (2) The respondent may ask the applicant for additional time under subsection (1) more than once.

- (3) If—
- (a) the respondent has asked the applicant for an additional stated amount of time under subsection (1); and
  - (b) the applicant has not refused the request; and
  - (c) the respondent has not received notice that the applicant has applied for review under part 8;

the respondent may decide the application before the end of the additional time requested under subsection (1).

#### **42 Deciding access—extension of time given by ombudsman**

- (1) A respondent to an access application may apply to the ombudsman for an extension of time to decide the application if—
- (a) the respondent has asked the applicant for additional time under section 41; and
  - (b) the applicant has refused the request; and
  - (c) the time to decide the application under section 40 has not expired.
- (2) The ombudsman may, on application under subsection (1), extend the time to decide an access application if the ombudsman believes it is not reasonably possible for the respondent to deal with the application within the period for deciding the application under section 40 because the application involves dealing with—
- (a) a large volume of information; or
  - (b) complex and potentially conflicting public interest factors.
- (3) An extension of time given by the ombudsman must not be for longer than 15 working days.
- (4) The ombudsman may extend the time to decide subject to conditions.

- (5) If the ombudsman extends the time to decide, the ombudsman must tell the respondent and the applicant of the period for which the extension is given.

## **Division 5.3 Refusing to deal with applications**

### **43 Refusing to deal with application—general**

- (1) A respondent may refuse to deal with an access application wholly or in part only if—
- (a) dealing with the application would require an unreasonable and substantial diversion of the respondent's resources (see section 44); or
  - (b) the application is frivolous or vexatious; or
  - (c) the application involves an abuse of process; or
  - (d) the government information is already available to the applicant (see section 45); or
  - (e) the access application is expressed to relate to government information of a stated kind and government information of that kind is taken to be contrary to the public interest to disclose under schedule 1; or
  - (f) an earlier access application for the same government information—
    - (i) was made in the 12 months before the application was made; and
    - (ii) access to the information was refused; and
    - (iii) the relevant public interest factors are materially the same as those considered in deciding the earlier application.
- (2) A respondent is entitled to consider 2 or more applications as 1 application if the applications are related and are made by the same applicant or by people acting together in relation to the applications.

- (3) An applicant is not entitled to a refund of any application fee paid if the respondent refuses to deal with the application.
- (4) In this section:
  - abuse of process* includes—
  - (a) harassment or intimidation of a person; and
  - (b) an unreasonable request for personal information about a person.

**44 Refusing to deal with application—unreasonable and substantial diversion of resources**

- (1) For section 43 (1) (a), dealing with an access application would require an unreasonable and substantial diversion of the respondent's resources only if—
  - (a) the resources required to identify, locate, collate and examine any information held by the respondent, including the resources required in obtaining the views of relevant third parties under section 38, would substantially inhibit the ability of the respondent to exercise its functions; and
  - (b) the extent to which the public interest would be advanced by giving access to the information does not justify the use of the required resources.
- (2) For subsection (1), the respondent—
  - (a) is not required to have regard to any extension by agreement between the applicant and the respondent of the period within which the application is required to be decided; and
  - (b) must not have regard to—
    - (i) any reasons the applicant gives for applying for access; or
    - (ii) the respondent's belief about the applicant's reasons for applying for access.

**45 Refusing to deal with application—information already available to applicant**

For section 43 (1) (d), government information is already available to the applicant only if the information—

- (a) is made publicly available by the respondent or by another agency or Minister; or
- (b) is available to the applicant from, or for inspection at, a place the respondent, another agency or Minister operates, free of charge; or
- (c) is available as part of a public register established under a territory law; or
- (d) is available to the applicant because it has been produced in accordance with a subpoena or court order; or
- (e) has previously been given to the applicant under this Act or the *Freedom of Information Act 1989* (repealed); or
- (f) is usually available for purchase.

**46 Refusing to deal with application—consulting applicant before refusing to deal with certain applications**

- (1) Before refusing to deal with an access application on a ground mentioned in section 43 (1) (a), (b), (c), (e) or (f), the respondent must—
  - (a) tell the applicant, in writing, of—
    - (i) the intention to refuse to deal with the application; and
    - (ii) the ground for refusal; and
    - (iii) the period for consultation on the proposed refusal (the *consultation period*); and

- (b) give the applicant—
  - (i) a reasonable opportunity to consult with the respondent and to provide any additional information relevant to the application during the consultation period; and
  - (ii) any information that may assist the applicant make an application in a form that would remove the ground for refusal.
- (2) After any consultation with the respondent, the applicant may give the respondent an amended application.
- (3) If an amended application is given to the respondent under subsection (2), the original application is taken to have been made at the time the amended application is given.
- (4) In this section:  
*consultation period* means—
  - (a) the period of 10 working days starting on the day after the day the notice was given under subsection (1) (a); or
  - (b) any longer period agreed between the respondent and the applicant before or after the end of the 10 working days.

## **Division 5.4 Giving access to information**

### **47 Giving access—form of access**

- (1) Access to government information under this part may be given to a person in 1 or more of the following ways:
  - (a) by giving a copy of an electronic record containing the information;
  - (b) by giving a printed copy of the record containing the information;

- (c) if the information is contained in a sound recording or a record in which words are in shorthand writing or in a codified form—by giving a written transcript of words contained in the record;
  - (d) if the application relates to information that is not contained in a written record held by an agency or Minister—by providing a written document using equipment usually available to the agency or Minister for retrieving or collating stored information.
- (2) For subsection (1) (a) to (c), a reference to government information or a record includes a reference to a copy from which information has been deleted under section 50.
- (3) As far as practicable, access to government information under this part must be given—
- (a) either—
    - (i) in a way that complies with the web content accessibility guidelines, level AA; or
    - (ii) if another way is prescribed by regulation—in that way; and
  - (b) in a form that provides at least the same range of functions to the applicant as was available to the respondent before the access was given.

**Examples—par (b)**

- 1 electronically searchable text document
- 2 unsecured text document that allows a user to copy and paste from the document

*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).

- (4) Subject to this section and section 50, if an applicant has requested access in a particular form, access must be given in that form.

- (5) Access may be given in a form other than that requested by the applicant if access in the form requested—
- (a) would interfere unreasonably with the exercise of the respondent's functions; or
  - (b) would involve an infringement of the copyright of a person other than the Territory.
- (6) If an applicant is given access to government information in a form different to the form requested by the applicant, the applicant must not be required to pay a fee that is more than would have been payable if access had been given in the form requested by the applicant.

**48 Giving access—access to be unconditional**

If access to government information is given under this part, the access must be unconditional.

**49 Giving access—deferral of access**

The respondent to an access application may defer giving access to government information for a reasonable period (not longer than 3 months) if—

- (a) the information was prepared—
  - (i) for presentation to the Assembly or a committee of the Assembly; or
  - (ii) for release to the media; or
  - (iii) for inclusion, in the same or an amended form, in a document to be prepared for a purpose mentioned in subparagraph (i) or (ii); and
- (b) the information has not been presented or released in a way mentioned in paragraph (a).



**50 Giving access—deletion of contrary to the public interest information**

- (1) This section applies if—
  - (a) an access application is made for government information in a record containing contrary to the public interest information; and
  - (b) it is practicable to give access to a copy of the record from which the contrary to the public interest information has been deleted.
- (2) Subject to section 35 (1) (e), the respondent must—
  - (a) give access to a copy of the record; and
  - (b) tell the applicant the original record contained contrary to the public interest information that has been deleted from the copy.

**Division 5.5 Notice of access decisions and reasons**

**51 Notice of decision to be given**

- (1) The respondent to an access application must give written notice (a *decision notice*) to the applicant of the decision on the application.
- (2) If the respondent makes a further decision on the application, the respondent must give a decision notice to the applicant of the further decision.
- (3) The respondent is not required to include any contrary to the public interest information in a decision notice.

**52 Content of notice—access to information given**

- (1) For a decision to give access to government information, the decision notice must include a statement of the following:
  - (a) an itemisation of any fee payable by the applicant;

- (b) that the access application and information given in response to the application (other than personal information) will be made available to the public through the disclosure log of the respondent under section 28;
  - (c) if access is given to a copy of a record that had information deleted from it under section 50—the fact that the record is a copy.
- (2) If the giving of access to government information is deferred under section 38 (6), the decision notice must include a statement—
- (a) that a relevant third party objected to the disclosure; and
  - (b) that the relevant third party may apply for review of the decision; and
  - (c) of the period under section 38 (6) (b) for which access may be deferred.
- (3) If the giving of access to government information is deferred under section 49, the decision notice must include a statement of—
- (a) the reason for the deferral; and
  - (b) when access will be given.

**53 Content of notice—information not held by respondent**

If an access application relates to government information that is not held by the respondent, the decision notice must state that the information is not held by the respondent.

**54 Content of notice—refusing to give access to information**

- (1) If a decision is made to refuse to give access to government information because it is taken to be contrary to the public interest to disclose the information under schedule 1, the decision notice must include—
- (a) a description of the information; and

- (b) the ground under schedule 1 for the refusal; and
  - (c) the findings on any material questions of fact referring to the evidence or other material on which the findings were based.
- (2) If a decision is made to refuse to give access to government information because disclosure of the information would, on balance, be contrary to the public interest under the test set out in section 17, the decision notice must include—
- (a) a description of the information; and
  - (b) a statement of reasons for the decision setting out—
    - (i) the findings on any material questions of fact referring to the evidence or other material on which the findings were based; and
    - (ii) the relevant factors favouring disclosure; and
    - (iii) the relevant factors favouring nondisclosure; and
    - (iv) how the factors were balanced; and
    - (v) the harm to the public interest that can be reasonably expected to occur from disclosure.

## **55 Content of notice—refusal to deal with application**

For a decision to refuse to deal with an application, the decision notice must include a statement of the following:

- (a) the ground under section 43 (1) for the refusal;
- (b) the findings on any material questions of fact referring to the evidence or other material on which the findings were based;
- (c) if the ground is that the government information is already available to the applicant—how the applicant can access the information;
- (d) that the applicant is not entitled to a refund of any application fee paid if the respondent refuses to deal with the application.

**56 Content of notice—refusing to confirm or deny existence of information**

For a decision to refuse to confirm or deny the existence of government information, the decision notice must include a statement of reasons for the decision setting out why the information, if it did exist—

- (a) would be contrary to the public interest information; and
- (b) would, or could reasonably be expected to, have a result mentioned in section 35 (1) (e) (ii).

**Division 5.6 Access applications for information held by other agencies or Ministers**

**57 Transfer of access applications**

- (1) This section applies if—
  - (a) an access application has been made to an agency or Minister; and
  - (b) the government information to which the application relates is not held by the agency or Minister but the agency or Minister believes it may be held by another agency or Minister (the *transferee*); and
  - (c) the transferee agrees it may hold the information.
- (2) The agency or Minister must transfer the application to the transferee.
- (3) An access application transferred under this section is taken to have been made to the transferee at the time it was transferred.
- (4) The transferee receiving an access application must give the applicant written notice of—
  - (a) the day on which the application was received; and
  - (b) the date by which a decision is to be made (unless additional time is given under section 40, section 41 or section 42).

- (5) The notice must be given to the applicant as soon as practicable but in any case not later than 5 working days after the day the application was received.

**58 Access applications if two or more agencies or Ministers hold relevant information**

- (1) If the respondent to an access application believes that it holds government information relevant to an application and relevant information and may also be held by another agency or Minister (the *other entity*), the respondent must give a copy of the access application to the other entity.
- (2) If the other entity believes that it may hold relevant government information, the other entity must—
- (a) tell the respondent that it may hold relevant information; and
  - (b) take reasonable steps to identify all relevant information within the scope of the application; and
  - (c) if it identifies relevant information—
    - (i) give the relevant information to the respondent; or
    - (ii) tell the respondent and the applicant that it will decide the application as if it were the respondent.
- (3) If the other entity gives the relevant government information to the respondent, the respondent is, for the purpose of making a decision on the application, taken to hold the information.
- (4) If the other entity is to decide the application as if it were the respondent—
- (a) the application is taken to have been made to the other entity when it received the application under subsection (1); and

- (b) the other entity must give the applicant written notice of—
  - (i) the day on which the application was received; and
  - (ii) the date by which a decision is to be made (unless additional time is given under section 40, section 41 or section 42).
- (5) The notice must be given to the applicant as soon as practicable but in any case not later than 5 working days after the day the application was received.
- (6) If the other entity believes it does not hold relevant information, it must tell the respondent of the belief.

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## Part 6                      Amendment of personal information

### 59                      Requesting amendment of personal information

- (1) This section applies if a person who has access to government information held by an agency or Minister considers that the information—
  - (a) contains personal information about the person; and
  - (b) is incomplete, incorrect, out-of-date or misleading; and
  - (c) is used, has been used or is available for use by the agency or Minister.
- (2) The person may, in writing, request the agency or Minister to amend the information.

*Note*        If a form is approved under s 108 for this provision, the form must be used.

- (3) The request must—
  - (a) include enough detail to enable an agency or Minister to identify the government information to be amended; and
  - (b) state how the government information is incomplete, incorrect, out-of-date or misleading; and
  - (c) state the amendments the person considers necessary for the information to be complete, correct, up-to-date or for it to be no longer misleading; and
  - (d) include an email or postal address to which notices under this Act may be sent to the person.

**60 Who deals with requests to amend personal information**

- (1) A request under section 59 made to an agency must be dealt with by the information officer of the agency.
- (2) A request under section 59 made to a Minister may be dealt with by the person the Minister directs.

**61 Deciding requests to amend personal information**

- (1) An agency or Minister receiving a request from a person under section 59 must decide to—
  - (a) amend the government information; or
  - (b) refuse to amend the government information.
- (2) The agency or Minister must amend the government information if the information is incomplete, incorrect, out-of-date or misleading.
- (3) Before refusing to amend the government information, the agency or Minister must—
  - (a) tell the person of the intention to refuse to amend the information; and
  - (b) give the person a reasonable opportunity to respond and to provide any additional information relevant to the request.
- (4) The agency or Minister must keep a record of amendments of government information made under this section.

**62 Time to decide request**

- (1) An agency or Minister that receives a request under section 59 must decide the request not later than 20 working days after receiving it.
- (2) The 20 working days does not include any time given to the person under section 61 (3) (b) to respond and provide additional information relevant to the request.



**63 Notifying person affected of decision**

An agency or Minister that makes a decision under section 61 must—

- (a) tell the person of the agency's or Minister's decision; and
- (b) if the decision is to amend the information—give the person a copy of the amended information; and
- (c) if the decision is to refuse to amend the information—give the person a statement of reasons for the refusal.

## Part 7 Role of ombudsman

### Division 7.1 Ombudsman functions and general powers

#### 64 Ombudsman—functions

The ombudsman has the following functions for this Act:

- (a) to review decisions under division 8.2;
- (b) to grant extensions of time under section 42;
- (c) to monitor the operation of this Act including—
  - (i) the publication of open access information by agencies; and
  - (ii) the publication of open access information by Ministers; and
  - (iii) agency compliance with the expectations set out in the Chief Minister’s annual statement under section 95 and with the Act generally;
- (d) to make open access information declarations under section 65;
- (e) to make guidelines under section 66;
- (f) to report on the operation of this Act under section 67;
- (g) to investigate complaints made under section 69.

#### 65 Open access information declarations

- (1) The ombudsman may declare government information to be open access information.

*Note* Power to make a statutory instrument includes power to make different provision for different categories (see [Legislation Act](#), s 48).

- (2) Before making a declaration, the ombudsman—
  - (a) must consult—
    - (i) for information held by an agency—the information officer of each agency; and
    - (ii) for information held by a Minister—each Minister; and
  - (b) may consult anyone else the ombudsman considers appropriate.
- (3) A declaration is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

## **66 Guidelines for Act**

- (1) The ombudsman may make guidelines for this Act.
- (2) The guidelines may make provision for 1 or more of the following:
  - (a) the release of government information in response to an informal request;
  - (b) the application of the public interest test set out in section 17;
  - (c) how, for section 25, open access information is to be kept accurate, up-to-date and complete;
  - (d) circumstances in which, for section 107 (2) (Fee waiver), information may be of special benefit to the public generally;
  - (e) anything else consistent with the objects of this Act.
- (3) Before making a guideline, the ombudsman—
  - (a) must consult the information officer of each agency; and
  - (b) may consult anyone else the ombudsman considers appropriate.
- (4) A guideline is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

**67                    Annual report on operation of Act**

The ombudsman must, for each financial year, prepare a report on the operation of this Act during the year and give the report to the Speaker for presentation to the Legislative Assembly.

**68                    Access to information for ombudsman review**

The ombudsman, in undertaking an ombudsman review, is entitled to full and free access at reasonable times to all relevant government information of the agency or Minister concerned.

**Division 7.2                    Complaints to ombudsman**

**69                    Complaints to ombudsman**

- (1) A person may complain to the ombudsman about an agency's or Minister's action, or failure to take action, in relation to any of the agency's or Minister's functions under this Act.
- (2) Without limiting subsection (1), a complaint may be about—
  - (a) the adequacy of an agency's or Minister's response to an access application; or
  - (b) for an agency that has published a publication undertaking—the agency's failure to comply with the undertaking or with section 29 (2).
- (3) Nothing in this Act is intended to limit the ombudsman's powers under the *Ombudsman Act 1989*.

## **Part 8**                      **Notification and review of decisions**

### **Division 8.1**              **Review of decisions—definitions and notices**

#### **70**              **Definitions—pt 8**

In this part:

*decision-maker*, for a reviewable decision, means the agency or Minister that made the decision.

*reviewable decision* means a decision mentioned in schedule 3, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

#### **71**              **FOI reviewable decision notices and reviewable decision notices**

- (1) If a decision-maker makes a reviewable decision mentioned in schedule 3, item 2, 5 or 7, the decision-maker must give notice (an *FOI reviewable decision notice*) to each entity mentioned in schedule 3, column 4 in relation to the decision.
- (2) If a decision-maker makes a reviewable decision mentioned in schedule 3, item 3, 4 or 6, the decision-maker must give notice (also an *FOI reviewable decision notice*) to the applicant for the access application that the decision relates to.
- (3) A decision-maker required to give an FOI reviewable decision notice to a person under subsection (1) or (2) must give the notice to the person with the decision.

- (4) The FOI reviewable decision notice must state—
- (a) the decision; and
  - (b) that the person may apply to the ombudsman for review of the decision; and
  - (c) how to make the application; and
  - (d) the other options available under ACT laws to have the decision reviewed.
- (5) If the ombudsman makes a decision on an ombudsman review, the ombudsman must give a reviewable decision notice to the participants in the review.
- Note 1* The requirements for a reviewable decision notice are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.
- Note 2* The decision-maker must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).
- (6) A failure to comply with this section in relation to a reviewable decision does not affect the validity of the decision.

## **72 Onus**

In a review under this part, a person seeking to prevent disclosure of government information has the onus of establishing that the information is contrary to the public interest information.

## **Division 8.2 Ombudsman review**

### **73 Ombudsman review of certain decisions**

An entity mentioned in schedule 3, column 4 in relation to a reviewable decision may apply to the ombudsman for review of the reviewable decision (*ombudsman review*).

*Note* A fee may be determined under s 104 for an application.

## **74 Applications for ombudsman review**

- (1) An application for ombudsman review must be made within—
- (a) 20 working days after—
    - (i) the day notice of the decision was published in the disclosure log; or
    - (ii) for a deemed decision—the day the decision was taken to have been made; or
    - (iii) for a decision not to make open access information available because it is contrary to the public interest information—the day the matters under section 24 (2) were published; or
  - (b) any longer period allowed by the ombudsman.

*Note 1* If a form is approved under s 108 for an application, the form must be used.

*Note 2* The ombudsman may extend the period even if it has ended (see [Legislation Act](#), s 151C).

- (2) In this section:

***deemed decision*** means a decision taken to have been made under section 39 (1) (a) (Deciding access—decision not made in time taken to be refusal to give access).

## **75 Notice of ombudsman review**

If the ombudsman receives an application for ombudsman review, the ombudsman must tell the decision-maker for the decision of the application.

**76 Decision-maker to tell relevant third parties etc**

- (1) The decision-maker, on receiving notice under section 75 of an application, must tell each relevant third party consulted under section 38 of the application.
- (2) The decision-maker must also take reasonable steps to tell any other person or entity of the application if a decision by the ombudsman to disclose government information that relates to the ombudsman review may reasonably be expected to be of concern to the person or entity because—
  - (a) for an individual—
    - (i) the information is personal information about the individual; or
    - (ii) the disclosure of the information would, or could reasonably be expected to, affect the person’s rights under the *Human Rights Act 2004*; or
  - (b) for an entity that is a government or government agency—the information concerns the affairs of the government or agency; or
  - (c) the information concerns the trade secrets, business affairs, or research of the person or entity.
- (3) If disclosure of government information may reasonably be expected to be of concern to a person because the information is personal information about the person but the person is deceased, subsection (2) applies as if an eligible family member of the person were the person.



**77 Participants in ombudsman reviews**

- (1) The applicant for ombudsman review and the decision-maker for the relevant reviewable decision are participants in the review.
- (2) Any other person may apply to the ombudsman to participate in the review.
- (3) The ombudsman may allow the person to participate in the review in the way the ombudsman directs.

**78 Ombudsman review—extension of time when decision not made in time**

- (1) This section applies if—
  - (a) the respondent to an access application has not made an application under section 42 (Deciding access—extension of time given by ombudsman); and
  - (b) a decision to refuse access to information is taken to have been made under section 39 (Deciding access—decision not made in time taken to be refusal to give access) (the *deemed decision*); and

*Note* A decision to refuse access to information is a reviewable decision (see sch 3, item 4).

- (c) the ombudsman is reviewing the decision.
- (2) The respondent may apply to the ombudsman—
  - (a) to set aside the deemed decision; and
  - (b) for an extension of time to deal with the access application.
- (3) The ombudsman may, on application under subsection (2)—
  - (a) set aside the deemed decision; and
  - (b) extend the time to decide the access application.
- (4) An extension of time given by the ombudsman must not be for longer than 15 working days.

- (5) The ombudsman may extend the time to decide subject to conditions.
- (6) If the respondent does not decide the access application within the extended time given by the ombudsman under this section, the respondent is taken to have refused to give access to the government information applied for.

## **79 Notice to give information or attend ombudsman review**

- (1) If the ombudsman has reason to believe that a person has information relevant to an ombudsman review, the ombudsman may give the person a written notice requiring the person to give the information to the ombudsman.

*Note* The [Legislation Act](#), s 170 and s 171 deal with the application of the privilege against self-incrimination and client legal privilege.

- (2) A notice under subsection (1) must state—
  - (a) how the information is to be given to the ombudsman; and
  - (b) a reasonable time at which, or a reasonable period within which, the information must be given.
- (3) If the ombudsman has reason to believe that a person has information relevant to an ombudsman review, the ombudsman may give the person a written notice requiring the person to attend before the ombudsman at a reasonable time and place stated in the notice to answer questions relevant to the review.

## **80 Ombudsman direction to conduct further searches**

- (1) This section applies if—
  - (a) the ombudsman is undertaking an ombudsman review in relation to an access application; and
  - (b) it appears that not all government information within the scope of the application has been identified.

- (2) The ombudsman may, at the request of a participant in the review or on the ombudsman's own initiative, direct the decision-maker or another agency or Minister to conduct a further search for information.
- (3) In this section:  
*conduct a further search*, for information, includes make inquiries to locate the information.

## **81 Mediation for applications**

- (1) This section applies if the ombudsman considers that a matter (the *subject matter*) to which an application for an ombudsman review relates—
  - (a) is suitable for mediation; and
  - (b) is reasonably likely to be resolved by mediation.
- (2) The ombudsman may—
  - (a) refer the subject matter to an accredited mediator for mediation; and
  - (b) require the parties to attend the mediation.
- (3) If the parties resolve the matter by mediation, the parties must tell the ombudsman that the matter is resolved.  
*Note* If the respondent to an access application makes a further decision on the application as a result of the mediation, the respondent must give a decision notice to the applicant (see s 52).
- (4) Unless the ombudsman directs otherwise, the decision-maker must pay the costs of the mediation.

- (5) In this section:

*accredited mediator* means a person who is entered as a mediator in the register of nationally accredited mediators maintained by the Mediator Standards Board.

*Mediator Standards Board* means the incorporated body registered under the [Corporations Act](#) as the Mediator Standards Board Limited (ACN 145 829 812).

## 82 Ombudsman review

- (1) Unless resolved by mediation under section 81, the ombudsman must review the decision and, within 30 working days—
- (a) confirm the decision; or
  - (b) vary the decision; or
  - (c) set aside the decision and make a substitute decision.

- (2) The ombudsman may exercise any function given under this Act to the agency or Minister for making the decision.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

- (3) The ombudsman may decide not to review the decision if—
- (a) the applicant for review does not give the ombudsman enough information to review the decision; or
  - (b) there is no reasonable prospect that the original decision would be varied or set aside.
- (4) If the ombudsman decides to vary or set aside the decision, the ombudsman may direct that any fee paid by the applicant for the application for review be refunded.

- (5) The ombudsman must publish the ombudsman's decision and the reasons for the decision as soon as practicable after making the decision.

*Note* The ombudsman must also give a reviewable decision notice to the participants in the review (see s 71 (5)).

### **83 Questions of law to ACAT**

- (1) The ombudsman may, at the request of a participant in a review or on the ombudsman's own initiative, refer a question of law arising on the review to the ACAT.
- (2) For this section, the ACAT must be constituted by 3 members as follows:
- (a) at least 1 member must be a presidential member;
  - (b) any other member must be a senior member who is a lawyer and has been a lawyer for 5 years or more.
- (3) The ombudsman must not make a decision on the review while the reference is pending.
- (4) The ombudsman is bound by the ACAT's decision.

## **Division 8.3 ACAT review**

### **84 Review of decisions by ACAT**

- (1) If the ombudsman makes a decision under section 82 (1) on an ombudsman review, an entity that was a participant in the review may apply to the ACAT for review of the decision.

*Note* If a form is approved under the [ACT Civil and Administrative Tribunal Act 2008](#) for an application, the form must be used.

- (2) The application must be made within—
- (a) 20 working days after the day the ombudsman's decision was published under section 82 (5); or

(b) any longer period allowed by the ACAT.

*Note* The ACAT may extend the period even if it has ended (see [Legislation Act](#), s 151C).

(3) For the review, the ACAT must be constituted by 3 members as follows:

(a) at least 1 member must be a presidential member;

(b) any other member must be a senior member.

*Note* The tribunal may join a person as a new party to the application if the person has an interest in the application (see [ACT Civil and Administrative Tribunal Act 2008](#), s 29).

## **85 Participants in review by ACAT**

(1) The applicant for ACAT review and the decision-maker for the relevant reviewable decision are participants in the review.

(2) Any other person may apply to the ACAT to participate in the review.

(3) The ACAT may allow the person to participate in the review in the way the ACAT directs.

## **86 ACAT direction to conduct further searches**

(1) This section applies if—

(a) the ACAT is reviewing a decision under this division in relation to an access application; and

(b) it appears that not all government information within the scope of the application has been identified.

(2) The ACAT may, at the request of a participant in the review or on the ACAT's own initiative, direct the decision-maker or another agency or Minister to conduct a further search for information.

(3) In this section:

*conduct a further search*, for information, includes make inquiries to locate the information.

## **Division 8.4                      Costs of review by ACAT or appeal to Supreme Court**

### **87                      Costs of review by ACAT**

- (1) This section applies if—
  - (a) a decision-maker applies for review under section 84 (Review of decisions by ACAT); and
  - (b) the decision that is the subject of the review is a decision to give access to information that the decision-maker had refused to give access to.
- (2) The decision-maker must pay the costs of the review.

### **88                      Costs of appeal to Supreme Court**

- (1) This section applies if—
  - (a) a decision-maker makes an application to the Supreme Court to appeal the decision of the ACAT on an application to the ACAT under section 84; and
  - (b) the decision that is the subject of the appeal is a decision to give access to information that the decision-maker had refused to give access to.
- (2) The decision-maker must pay the costs of the appeal.

## Part 9 Offences

### 89 Making decision contrary to Act

A person commits an offence if the person—

- (a) purports to make a decision under this Act; and
- (b) knows the decision is not a decision that can be made under this Act.

Maximum penalty: 100 penalty units.

### 90 Giving direction to act contrary to Act etc

(1) A person commits an offence if—

- (a) the person gives a direction to someone else who is required to exercise a function under this Act; and
- (b) the direction is to engage in conduct that is contrary to the requirements of this Act; and
- (c) the person knows the conduct is contrary to the requirements of this Act.

Maximum penalty: 100 penalty units.

(2) A person commits an offence if—

- (a) the person gives a direction to someone else to engage in conduct; and
- (b) the person gives the direction with the intention that the conduct would prevent the disclosure of government information; and
- (c) the disclosure of the information would, or could reasonably be expected to, be required under this Act.

Maximum penalty: 100 penalty units.



**91 Preventing disclosure of information**

A person commits an offence if—

- (a) the person engages in conduct with the intention of preventing the disclosure of government information; and
- (b) the disclosure of the information would, or could reasonably be expected to, be required under this Act.

Maximum penalty: 100 penalty units.

**92 Failing to identify information**

A person commits an offence if the person—

- (a) is required under this Act to identify government information within the scope of an access application; and
- (b) intentionally fails to identify the information (or any part of it).

Maximum penalty: 100 penalty units.

**93 Improperly influencing exercise of function**

A person commits an offence if the person—

- (a) influences the conduct of someone else who is required to exercise a function under this Act; and
- (b) does so with the intention of causing the other person to engage in conduct that is contrary to the requirements of this Act.

Maximum penalty: 100 penalty units.

**94 Gaining unlawful access to government information**

A person commits an offence if the person—

- (a) intentionally deceives or misleads a person who is exercising a function under this Act; and
- (b) does so with the intention of gaining access to government information.

Maximum penalty: 100 penalty units.

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## Part 10 Miscellaneous

### 95 Annual statements by Chief Minister

- (1) Each year the Chief Minister must issue a statement about improving the public accessibility of government information.
- (2) The statement must set out the government's—
  - (a) aims for increasing proactive disclosure of government information and reducing the need for members of the public to make access applications; and
  - (b) expectations of agencies for the provision of government information; and
  - (c) response to address information access issues identified by the ombudsman in the previous 12 months.
- (3) In preparing the statement, the Chief Minister must—
  - (a) consider the ombudsman's most recent report under section 67 (Annual report on operation of Act) and may ask the ombudsman for additional information; and
  - (b) consult the information officer of each agency.
- (4) A statement is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

### 96 Annual reports to Legislative Assembly

- (1) The principal officer of an agency must, for each financial year, prepare a report on the operation of this Act in relation to the agency during the year (an *agency annual report*).
- (2) Each Minister must, for each financial year—
  - (a) prepare a report on the operation of this Act in relation to the Minister during the year (the *Minister's annual report*); and

- (b) present the Minister's annual report and the agency annual report of each agency the Minister is responsible for, to the Legislative Assembly when the report for the agency under the *Annual Reports (Government Agencies) Act 2004* must be presented to the Assembly.
- (3) An agency annual report and a Minister's annual report must set out particulars of the operations of the agency or Minister under this Act during the year, including—
  - (a) the number of each of the following:
    - (i) decisions to publish open access information under section 24 (1);
    - (ii) decisions not to publish open access information under section 24 (1);
    - (iii) decisions under section 24 (2) (a) not to publish a description of open access information not made available;
    - (iv) access applications received;
    - (v) access applications decided within the time to decide under section 40;
    - (vi) access applications not decided within the time to decide under section 40;
    - (vii) access applications where access to all information requested was given;
    - (viii) access applications where access to only some of the information requested was given;
    - (ix) access applications where access to the information requested was refused;
    - (x) requests made to amend personal information under section 59; and

- (b) the number of applications made to the ombudsman under section 74 and particulars of the results of the applications; and
- (c) the number of applications made to the ACAT under section 84 and particulars of the results of the applications; and
- (d) for each access application mentioned in subsection (3) (a) (vi)—the number of days taken to decide the application over the time to decide under section 40; and
- (e) for each request to amend personal information mentioned in subsection (3) (a) (x)—the decision made under section 61; and
- (f) the total charges and application fees collected from access applications.

## **97 How government information to be published**

- (1) If an agency or Minister responsible for government information is required under a territory law to publish the information or make it publicly available, the agency or Minister must (in addition to any other requirement under that law)—
  - (a) publish the information on a website under its control, or include on the website a link to another website where the information is published; and
  - (b) make a hard copy of the information available for public inspection on request and without charge during ordinary working hours at the agency's or Minister's place of business.
- (2) The agency or Minister must as far as practicable publish the information—
  - (a) either—
    - (i) in a way that complies with the web content accessibility guidelines, level AA; or

*Note* The guidelines are accessible at [www.w3.org](http://www.w3.org).

- (ii) if another way is prescribed by regulation—in that way; and
- (b) in a form that provides at least the same range of functions to the user of the information as was available to the agency or Minister before the information was published.

**Examples—par (b)**

- 1 electronically searchable text document
- 2 unsecured text document that allows a user to copy and paste from the document

*Note 1* This Act does not affect the operation of another law requiring disclosure (see s 11).

*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).

**98 Access applications taken not to include application for access to metadata**

- (1) An access application for government information is taken not to include an application for access to metadata about a record containing the information unless the access application expressly states that it does.
- (2) If an access application for government information expressly states that access to metadata about a record containing the information is sought, access to the metadata does not need to be given unless access is reasonably practicable.
- (3) In this section:  
*metadata* about a record, includes information about the record's content, author, publication date and physical location.

**99 Administrative unit entitled to access information of entity performing regulatory function**

If an entity that is not an agency performs a regulatory function under a territory law, the administrative unit responsible for the law is entitled to access information held by the entity that relates to the exercise of the function.

**100 Agency entitled to access to information about government contracts**

- (1) This section applies to an agency if a service is, or is to be, provided under a government contract in connection with the exercise of a function of the agency.
- (2) The agency is entitled to access information that—
  - (a) is created by, or is in the possession of—
    - (i) a contracted service provider for the government contract;  
or
    - (ii) a subcontractor for the government contract; and
  - (b) relates to the performance of the government contract and not to the entry into the contract.
- (3) In this section:

*contracted service provider*, for a government contract, means an entity that is, or was—

  - (a) a party to the government contract; and
  - (b) responsible for the provision of services under the government contract.

**government contract** means a contract to which the following apply:

- (a) the Territory or an agency is, or was, a party to the contract;
- (b) under the contract, services are or were to be provided—
  - (i) by another party; and
  - (ii) for an agency; and
  - (iii) to a person who is not the Territory or an agency;
- (c) the services are in connection with the exercise of the functions of an agency.

**subcontractor**, for a government contract, means an entity—

- (a) that is, or was, a party to a contract (the **subcontract**)—
  - (i) with a contracted service provider for the government contract; or
  - (ii) with another subcontractor for the government contract (under a previous application of this definition); and
- (b) that is, or was, responsible under the subcontract for the provision of services for the purposes (whether direct or indirect) of the government contract.

## **101 Government information of abolished agencies**

- (1) This section applies if an agency is abolished.
- (2) Any access application made to the abolished agency, and any decision made by the abolished agency in relation to an access application, is taken to have been made to or by—
  - (a) the agency that acquired the abolished agency's functions; or
  - (b) if the abolished agency's functions are acquired by more than 1 other agency—whichever of the other agencies has acquired the functions of the abolished agency that are most clearly related to the subject matter of the application; or



- (c) if no agency acquired the abolished agency's functions—the agency with functions most similar to those functions.
- (3) If the agency to which an access application is taken to have been made, or by which a decision on an access application is taken to have been made, under subsection (2) was not itself in existence when the application or decision was taken to have been made, then, for the purpose only of dealing with the request or decision under this Act, that agency is taken to have been in existence at that time.

## **102 Transfer of Ministerial responsibility**

A Minister in possession of government information relating to an agency the Minister is responsible for must, when no longer responsible for the agency, give the information to the agency.

## **103 Protection from liability**

- (1) An official is not civilly or criminally liable for conduct engaged in honestly and without recklessness—
  - (a) in the exercise of a function under this Act; or
  - (b) in the reasonable belief that the conduct was in the exercise of a function under this Act.

- (2) In this section:

**conduct** means an act or omission to do an act.

**official** means—

- (a) a Minister; or
- (b) the principal officer of an agency; or
- (c) the information officer of an agency; or
- (d) the ombudsman; or
- (e) anyone else exercising a function under this Act.

**104 Determination of fees**

- (1) The Minister may 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 fee for a service must not vary according to—
- (a) the identity of an applicant, agency or Minister; or
  - (b) the amount of time spent by an agency or Minister in—
    - (i) searching for or retrieving information; or
    - (ii) making, or doing things related to making, a decision on an access application.
- (3) A fee for a service may vary according to the amount of information provided in response to the application.
- (4) However, the first 50 pages of information provided in response to an application must be provided free of charge.
- (5) The Minister must consult the ombudsman before determining a fee.
- (6) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (7) In this section:

*fee* includes charge.

**105 No fees for certain matters**

- (1) A fee must not be determined for—
- (a) making an access application for personal information about the applicant; or
  - (b) making an access application for additional information as mentioned in section 36 (3); or

- (c) making an application for ombudsman review of a decision refusing to give access to information if the decision is taken to have been made under section 39.
- (2) Subsection (1) (b) does not prevent a fee being determined for providing information in response to an application mentioned in that subsection.

#### **106 Fee estimate**

- (1) An agency or Minister that receives an access application may give the applicant a written estimate of the fee (if any) likely to be payable for information provided in response to the application.
- (2) If the estimate is that a fee is payable, the Minister or agency may ask the applicant to confirm or vary the application.

#### **107 Fee waiver**

- (1) A person making an access application to an agency or Minister may apply to the agency or Minister for waiver of a fee associated with the application.
- (2) The agency or Minister must waive the fee if—
  - (a) the information that is the subject of the request was previously publicly available but is no longer publicly available; or
  - (b) the information that is the subject of the request is of special benefit to the public; or

*Note* The ombudsman may make guidelines about circumstances in which information may be of special benefit to the public generally (see s 66).

  - (c) the applicant is a concession card holder and demonstrates a material connection with the information requested; or
  - (d) the applicant is a not-for-profit organisation and the application relates to the activities or purposes of the organisation; or
  - (e) the applicant is a member of the Legislative Assembly.

- (3) Also, the agency or Minister must waive or refund the fee if—
- (a) the fee is for providing information; and
  - (b) the information was not publicly available when the application was made; and
  - (c) the agency makes the information publicly available before or within 3 working days after giving it to the applicant.

- (4) In this section:

**concession card** means any of the following cards:

- (a) a current health care card issued under the *Social Security Act 1991* (Cwlth);
- (b) a current pensioner concession card issued under the *Social Security Act 1991* (Cwlth);
- (c) a current pensioner concession card issued in relation to a pension under the *Veterans' Entitlements Act 1986* (Cwlth) or the *Military Rehabilitation and Compensation Act 2004* (Cwlth);
- (d) a current gold card;
- (e) a card prescribed by regulation.

**gold card** means a card known as the 'Repatriation Health Card—For All Conditions' that evidences a person's eligibility, under the *Veterans' Entitlements Act 1986* (Cwlth) or the *Military Rehabilitation and Compensation Act 2004* (Cwlth), to be provided with treatment for all injuries or diseases.

## 108 Approved forms

- (1) The Minister may approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for the purpose.

*Note* For other provisions about forms, see the [Legislation Act](#), s 255.

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

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

### **109 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* A regulation must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (2) The Executive must consult the ombudsman before making a regulation for this Act.

### **110 Review of Act**

- (1) The Minister must arrange for an independent entity to review the operation of this Act as soon as practicable after the end of its 5th year of operation.
- (2) The Minister must present a report of the review to the Legislative Assembly within 6 months after the day the review is started.
- (3) The Minister must consult the ombudsman on the entity to undertake the review.
- (4) This section expires 7 years after the day it commences.

## Part 11 Repeals and consequential amendments

### 111 Legislation repealed

- (1) The following legislation is repealed:
  - *Freedom of Information Act 1989* (A1989-46)
  - *Freedom of Information Regulation 1991* (SL1991-3).
- (2) All other legislative instruments under the *Freedom of Information Act 1989* are repealed.

### 112 Legislation amended—sch 4

This Act amends the legislation mentioned in schedule 4.

## Part 20 Transitional

### 200 Definitions—pt 20

In this part:

*commencement day* means the day this Act, section 3 commences.

*repealed FOI Act* means the [Freedom of Information Act 1989](#) (repealed).

### 201 Requests made under repealed FOI Act before commencement day

- (1) This section applies to a request for access to a document that was made under the [repealed FOI Act](#), section 14 and not finally decided before the commencement day.
- (2) Despite its repeal, the repealed FOI Act continues to apply in relation to the request.

### 202 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.

### 203 Expiry—pt 20

This part expires 1 year after the commencement day.

*Note* Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

## **Schedule 1 Information disclosure of which is taken to be contrary to the public interest**

(see s 16)

Information mentioned in this schedule is taken to be contrary to the public interest to disclose unless the information identifies corruption or the commission of an offence by a public official or that the scope of a law enforcement investigation has exceeded the limits imposed by law.

### **1.1 Information disclosure of which would be contempt of court or Legislative Assembly etc**

Information the disclosure of which would, apart from this Act and any immunity of the Crown—

- (a) be in contempt of court; or
- (b) be contrary to an order made or direction given by a tribunal or other entity having power to take evidence on oath; or

#### **Examples**

- 1 board of inquiry under the *Inquiries Act 1991*
- 2 commission under the *Judicial Commissions Act 1994*
- 3 royal commission under the *Royal Commissions Act 1991*

*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).

- (c) infringe the privileges of—
  - (i) the Legislative Assembly; or
  - (ii) a house of the Commonwealth parliament; or
  - (iii) the parliament of a State; or
  - (iv) the Legislative Assembly of the Northern Territory.



## 1.2 Information subject to legal professional privilege

Information that would be privileged from production or admission into evidence in a legal proceeding on the ground of legal professional privilege.

## 1.3 Information disclosure of which is prohibited under law

- (1) Information that is confidential under the *Adoption Act 1993*, section 60 other than information disclosed to a person to whom the information relates.
- (2) Information that is protected information under the *Children and Young People Act 2008*, section 844, other than information disclosed to a person to whom it relates.
- (3) Information that is protected information under the *Crimes (Child Sex Offenders) Act 2005*, section 133A.
- (4) Information that is protected information under the *Crimes (Restorative Justice) Act 2004*, section 64.
- (5) Information that is protected information under the *Housing Assistance Act 2007*, section 28 other than information disclosed to a person to whom the information relates.
- (6) Any other information the disclosure of which is prohibited by a secrecy provision of a law.
- (7) In this section:  
*secrecy provision*—a provision of a law is a *secrecy provision* if it—
  - (a) applies to information obtained in the exercise of a function under the law; and
  - (b) prohibits people mentioned in the provision from disclosing the information, whether the prohibition is absolute or subject to stated exceptions or qualifications.

**1.4 Sensitive information**

Information the disclosure of which would involve the unreasonable disclosure of sensitive information about any individual (including a deceased person).

**1.5 Information in possession of auditor-general**

Information in the possession of the auditor-general that has been obtained or generated in relation to an audit under the *Auditor-General Act 1996*.

**1.6 Cabinet information**

(1) Information—

- (a) that has been submitted, or that a Minister proposes to submit, to Cabinet for its consideration and that was brought into existence for that purpose; or
- (b) that is an official record of Cabinet; or
- (c) that is a copy of, or part of, or contains an extract from, information mentioned in paragraph (a) or (b); or
- (d) the disclosure of which would reveal any deliberation of Cabinet (other than through the official publication of a Cabinet decision).

(2) Subsection (1) does not apply to purely factual information that—

- (a) is mentioned in subsection (1) (a); or
- (b) is mentioned in subsection (1) (b) or (c) and is a copy of, or part of, or contains an extract from, a document mentioned in subsection (1) (a);

unless the disclosure of the information would involve the disclosure of a deliberation or decision of Cabinet and the fact of the deliberation or decision has not been officially published.

(3) In this section:

*Cabinet* includes a Cabinet committee or subcommittee.

**1.7 Examinations under Australian Crime Commission (ACT) Act 2003**

Information obtained through an examination conducted under the *Australian Crime Commission (ACT) Act 2003*, section 20.

**1.8 Information in possession of human rights commission**

Information in the possession of the human rights commission that has been obtained or generated in relation to—

- (a) a commission-initiated consideration under the *Human Rights Commission Act 2005*, section 48; or
- (b) a complaint made under the *Human Rights Commission Act 2005*, part 4.

**1.9 Identities of people making disclosures**

Information that would, or could reasonably be expected to, disclose the identity of a person who has made—

- (a) a public interest disclosure under the *Public Interest Disclosure Act 2012*; or
- (b) a mandatory report under the *Children and Young People Act 2008*; or
- (c) a confidential report under the *Children and Young People Act 2008*, section 876.

**1.10 Information relating to requests to cost election commitments**

Information about requests to cost election commitments under the *Election Commitments Costing Act 2012*, section 5 unless the costing period in which the request was made has ended.

**1.11 Information in electoral rolls and related documents**

- (1) Information in any of the following documents other than information disclosed to a person to whom it relates:
- (a) an electoral roll, whether in printed or electronic form or on microfiche or microfilm;
  - (b) a copy of a document mentioned in paragraph (a);
  - (c) a document setting out particulars of only 1 enrolled person that was used in keeping an electoral roll;
  - (d) a copy of a document mentioned in paragraph (c);
  - (e) a document containing only copies mentioned in paragraph (d);
  - (f) a document derived from an electoral roll setting out particulars of enrolled people.
- (2) In this section:
- electoral roll* means—
- (a) a roll of electors kept under the *Electoral Act 1992*; or
  - (b) a roll extract within the meaning of the *Electoral Act 1992*.

**1.12 Information in possession of ombudsman**

Information in the possession of the ombudsman that has been obtained or generated in relation to—

- (a) an ombudsman review; or
- (b) an investigation undertaken by the ombudsman under the *Ombudsman Act 1989*, section 9.

**1.13 National, Territory or State security information**

- (1) Information the disclosure of which would, or could reasonably be expected to damage the security of the Commonwealth, the Territory or a State.

- (2) For subsection (1), the security of the Commonwealth includes—
- (a) matters relating to detecting, preventing or suppressing activities, whether within or outside Australia, that are subversive of, or hostile to, the interests of the Commonwealth or a country allied or associated with the Commonwealth; and
  - (b) the security of a communications system or cryptographic system of the Commonwealth or another country used for—
    - (i) the defence of the Commonwealth or a country allied or associated with the Commonwealth; or
    - (ii) the conduct of the international relations of the Commonwealth.
- (3) For subsection (1), the security of the Territory or State includes matters relating to detecting, preventing or suppressing activities within or outside the Territory or State, that are subversive of, or hostile to, the interests of the Territory or a State.

#### **1.14 Law enforcement or public safety information**

- (1) Information the disclosure of which would, or could reasonably be expected to—
- (a) prejudice the investigation of a contravention or possible contravention of the law in a particular case; or
  - (b) identify the existence or identity of a confidential source of information in relation to the enforcement or administration of the law; or
  - (c) endanger a person's life or physical safety; or
  - (d) result in a person being subject to a serious act of harassment or intimidation; or
  - (e) prejudice a person's fair trial or the impartial adjudication of a matter before a court or tribunal; or

- (f) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law; or
  - (g) prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety; or
  - (h) endanger the security of a building, structure or vehicle; or
  - (i) prejudice a system or procedure for the protection of people, property or the environment; or
  - (j) facilitate a person's escape from lawful custody; or
  - (k) prejudice the wellbeing of a cultural or natural resource or the habitat of animals or plants.
- (2) Information given in the course of an investigation of a contravention or possible contravention of the law if the information was given under compulsion under an Act that abrogated the privilege against self-incrimination.
- (3) Information obtained, used or prepared for an investigation by an entity prescribed by regulation in the exercise of a function prescribed by regulation.
- (4) However this section does not apply to—
- (a) information revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law; or
  - (b) information containing a general outline of the structure of a program adopted by an agency for dealing with a contravention or possible contravention of the law; or
  - (c) a report on the degree of success achieved in a program adopted by an agency for dealing with a contravention or possible contravention of the law; or

- (d) a report prepared in the course of a routine law enforcement inspection or investigation by an agency whose functions include that of enforcing the law (other than the criminal law or the law relating to corruption); or
- (e) a report on a law enforcement investigation that has already been disclosed to the entity the subject of the investigation.

(5) In this section:

*law* includes law of the Commonwealth, a State or a foreign country.

## Schedule 2      Factors to be considered when deciding the public interest

(see s 17 (1))

### 2.1      Factors favouring disclosure in the public interest

The following are factors favouring disclosure in the public interest:

- (a) disclosure of the information could reasonably be expected to do any of the following:
  - (i) promote open discussion of public affairs and enhance the government's accountability;
  - (ii) contribute to positive and informed debate on important issues or matters of public interest;
  - (iii) inform the community of the government's operations, including the policies, guidelines and codes of conduct followed by the government in its dealings with members of the community;
  - (iv) ensure effective oversight of expenditure of public funds;
  - (v) allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or public official;
  - (vi) reveal or substantiate that an agency or public official has engaged in misconduct or negligent, improper or unlawful conduct or has acted maliciously or in bad faith;
  - (vii) advance the fair treatment of individuals and other entities in accordance with the law in their dealings with the government;
  - (viii) reveal the reason for a government decision and any background or contextual information that informed the decision;



- (ix) reveal that the information was—
  - (A) incorrect; or
  - (B) out-of-date; or
  - (C) misleading; or
  - (D) gratuitous; or
  - (E) unfairly subjective; or
  - (F) irrelevant;
- (x) contribute to the protection of the environment;
- (xi) reveal environmental or health risks or measures relating to public health and safety;
- (xii) contribute to the maintenance of peace and order;
- (xiii) contribute to the administration of justice generally, including procedural fairness;
- (xiv) contribute to the administration of justice for a person;
- (xv) contribute to the enforcement of criminal law;
- (xvi) contribute to innovation and the facilitation of research;
- (b) the information is personal information of—
  - (i) the person making the request; or
  - (ii) a child and the information is to be given to the child's parent or guardian and the disclosure of the information to the child's parent or guardian is reasonably considered to be in the best interests of the child; or
  - (iii) a deceased person and the person making the request for the information is an eligible family member of the deceased person.

## 2.2 Factors favouring nondisclosure in the public interest

The following are factors favouring nondisclosure in the public interest:

- (a) disclosure of the information could reasonably be expected to do any of the following:
  - (i) prejudice the collective responsibility of Cabinet or the individual responsibility of members to the Assembly;
  - (ii) prejudice the protection of an individual's right to privacy or any other right under the *Human Rights Act 2004*;
  - (iii) prejudice security, law enforcement or public safety;
  - (iv) impede the administration of justice generally, including procedural fairness;
  - (v) impede the administration of justice for a person;
  - (vi) prejudice the security or good order of a correctional centre;
  - (vii) impede the protection of the environment;
  - (viii) prejudice the economy of the Territory;
  - (ix) prejudice the flow of information to the police or another law enforcement or regulatory agency;
  - (x) prejudice intergovernmental relations;
  - (xi) prejudice trade secrets, business affairs or research of an agency or person;
  - (xii) prejudice an agency's ability to obtain confidential information;
  - (xiii) prejudice the competitive commercial activities of an agency;

- (xiv) prejudice the conduct of considerations, investigations, audits or reviews by the ombudsman, auditor-general or human rights commission;
  - (xv) prejudice the management function of an agency or the conduct of industrial relations by an agency;
  - (xvi) prejudice a deliberative process of government;
  - (xvii) prejudice the effectiveness of testing or auditing procedures;
  - (xviii) prejudice the conservation of any place or object of natural, cultural or heritage value, or reveal any information relating to Aboriginal or Torres Strait Islander traditional knowledge;
- (b) the information—
- (i) is personal information of a child and the disclosure of the information is reasonably considered not to be in the best interests of the child; or
  - (ii) would be privileged from production in a legal proceeding on the ground of legal professional privilege; or
  - (iii) is personal information of a deceased person and the person making the request is an eligible family member of the deceased person and the disclosure of the information could reasonably be expected to impact on the deceased person's privacy if the deceased person were alive; or
  - (iv) is information disclosure of which is prohibited by an Act of the Territory, a State or the Commonwealth; or
  - (v) is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct and disclosure of the information could prejudice the fair treatment of an individual.

**2.3 Meaning of *eligible family member*—sch 2**

- (1) For this schedule, *eligible family member*, of a deceased person, means—
- (a) a domestic partner of the deceased person; or
  - (b) if a domestic partner is not reasonably available—an adult child of the deceased person; or
  - (c) if a domestic partner or adult child is not reasonably available—an adult sibling of the deceased person; or
  - (d) if a person mentioned in paragraph (a), (b) or (c) is not reasonably available and the deceased person was not an Aboriginal or Torres Strait Islander person—the next nearest adult relative of the deceased person who is reasonably available; or
  - (e) if a person mentioned in paragraph (a), (b) or (c) is not reasonably available and the deceased person was an Aboriginal or Torres Strait Islander person—a person who is an appropriate person according to the tradition or custom of the Aboriginal or Torres Strait Islander community to which the deceased person belonged and who is reasonably available.

*Note* **Domestic partner**—see the [Legislation Act](#), s 169 (1).

- (2) For this section, a person is not *reasonably available* if a person of that description—
- (a) does not exist; or
  - (b) cannot reasonably be contacted; or
  - (c) is unable or unwilling to act as the eligible family member of the deceased person for the purposes of this Act.

## Schedule 3 Reviewable decisions

(see pt 8)

<b>column 1 item</b>	<b>column 2 section</b>	<b>column 3 decision</b>	<b>column 4 entity</b>
1	24 (1)	not make open access information publicly available	any person
2	35 (1) (a)	give access to government information	relevant third party
3	35 (1) (b)	government information not held	any person
4	35 (1) (c)	refuse to give access to government information	any person
5	35 (1) (d)	refuse to deal with application	applicant, person whose interests are affected
6	35 (1) (e)	refuse to confirm or deny government information held	any person
7	61 (1) (b)	refuse to amend personal information	applicant

## Schedule 4 Consequential amendments

(see s 112)

### Part 4.1 ACT Civil and Administrative Tribunal Act 2008

#### [4.1] New section 48A

*insert*

#### 48A Costs of proceedings relating to review of decisions under Freedom of Information Act 2016

- (1) This section applies if—
  - (a) an agency or Minister decides to refuse to give access to government information sought by an applicant under the *Freedom of Information Act 2016*; and
  - (b) the applicant applies for review of the decision under that Act, section 84; and
  - (c) the tribunal makes an order giving access to some or all of the information sought.
- (2) The tribunal may order the agency or Minister to pay the reasonable costs of the applicant arising from the application.

#### [4.2] Section 79 (2)

*before*

the [Heritage Act 2004](#),

*insert*

the *Freedom of Information Act 2016*,

**[4.3] Section 86 (1)**

*substitute*

- (1) A party to an application, other than an application mentioned in subsection (2), for an appeal may appeal to the Supreme Court on a question of fact or law from either—
- (a) one of the following:
- (i) a decision of the appeal tribunal;
  - (ii) if the appeal president dismissed the appeal under section 80—the original decision of the tribunal;
  - (iii) if the appeal president decides not to deal with the appeal under section 85—the original decision of the tribunal; or
- (b) a decision of the tribunal in relation to a review of a decision under the *Freedom of Information Act 2016*.

**Part 4.2 Children and Young People Act 2008**

**[4.4] Section 848 (2), note, 1st dot point**

*substitute*

- *Freedom of Information Act 2016*, s 7 (Right of access to government information)

## Part 4.3 Construction Occupations (Licensing) Act 2004

### [4.5] Section 102 (1), note 2

*substitute*

*Note 2* Access to the register may be sought under the *Freedom of Information Act 2016* (which also provides that it is contrary to the public interest to disclose certain information).

## Part 4.4 Crimes (Assumed Identities) Act 2009

### [4.6] Section 7 (a)

*omit*

*Freedom of Information Act 1989*

*substitute*

*Freedom of Information Act 2016*

## Part 4.5 Crimes (Controlled Operations) Act 2008

### [4.7] Section 7 (5) (a)

*omit*

*Freedom of Information Act 1989*

*substitute*

*Freedom of Information Act 2016*



## **Part 4.6**                      **Crimes (Protection of Witness Identity) Act 2011**

### **[4.8]      Section 7 (a)**

*omit*

*Freedom of Information Act 1989*

*substitute*

*Freedom of Information Act 2016*

## **Part 4.7**                      **Crimes (Restorative Justice) Act 2004**

### **[4.9]      Section 64 (6), note**

*omit*

## **Part 4.8**                      **Crimes (Surveillance Devices) Act 2010**

### **[4.10]     Section 7 (6) (a)**

*omit*

*Freedom of Information Act 1989*

*substitute*

*Freedom of Information Act 2016*

## Part 4.9 Education and Care Services National Law (ACT) Act 2011

### [4.11] Section 7 (1) (b)

*omit*

*Freedom of Information Act 1989*

*substitute*

*Freedom of Information Act 2016*

## Part 4.10 Election Commitments Costing Act 2012

### [4.12] Section 12

*omit*

## Part 4.11 Gene Technology Act 2003

### [4.13] Section 187 (4) and (5)

*omit*

## Part 4.12 Government Procurement Act 2001

### [4.14] Section 32 (1), note 1, section 41, note 1 and section 42G, note 1

*substitute*

*Note 1* The *Freedom of Information Act 2016* and the *Territory Records Act 2002* provide for how government information and Territory records may be accessed.

**Part 4.13**                      **Health (National Health Funding  
Pool and Administration)  
Act 2013**

**[4.15] Section 31 (a)**

*omit*

*Freedom of Information Act 1989*

*substitute*

*Freedom of Information Act 2016*

**Part 4.14**                      **Health Practitioner Regulation  
National Law (ACT) Act 2010**

**[4.16] Section 9 (e)**

*omit*

*Freedom of Information Act 1989*

*substitute*

*Freedom of Information Act 2016*

**Part 4.15**                      **Heavy Vehicle National Law  
(ACT) Act 2013**

**[4.17] New section 9 (1) (ba)**

*insert*

(ba) the *Freedom of Information Act 2016*;

**[4.18] Section 9 (1), note**

*omit*

**[4.19] Section 9 (2) (b)**

*omit*

## **Part 4.16 Housing Assistance Act 2007**

**[4.20] Section 29**

*omit*

## **Part 4.17 Independent Competition and Regulatory Commission Act 1997**

**[4.21] Dictionary, definition of *confidential information*,  
paragraph (b)**

*substitute*

- (b) determined to be contrary to the public interest information under the *Freedom of Information Act 2016*.

## **Part 4.18 Information Privacy Act 2014**

**[4.22] Section 6 (a)**

*omit*

*Freedom of Information Act 1989*

*substitute*

*Freedom of Information Act 2016*

**[4.23] Section 23 (1) (a)**

*substitute*

- (a) the agency is prescribed by regulation; and

**[4.24] Section 25 (1) (e)**

*substitute*

- (e) an act done, or a practice engaged in, by a public sector agency in relation to information that is taken to be contrary to the public interest to disclose under the FOI Act, schedule 1;

**[4.25] Section 25 (2), definition of *FOI Act***

*omit*

*Freedom of Information Act 1989*

*substitute*

*Freedom of Information Act 2016*

**[4.26] Section 25 (2), definition of *FOI exempt agency***

*omit*

**[4.27] Schedule 1, part 1.5, principle 12, TPP 12.2**

*omit*

*Freedom of Information Act 1989*

*substitute*

*Freedom of Information Act 2016*

## Part 4.19 Ombudsman Act 1989

### [4.28] New section 4C (ba)

*insert*

- (ba) to exercise other functions given to the ombudsman under the *Freedom of Information Act 2016*; and

### [4.29] Section 5 (3)

*substitute*

- (3) Nothing in subsection (2) prevents the ombudsman from—
- (a) exercising a function given to the ombudsman under—
    - (i) the *Freedom of Information Act 2016*; or
    - (ii) the *Public Interest Disclosure Act 2012*; or
  - (b) investigating a complaint made under—
    - (i) the *Freedom of Information Act 2016*, section 69; or
    - (ii) the *Public Interest Disclosure Act 2012*, section 34 (1).

## Part 4.20 Planning and Development Act 2007

### [4.30] Section 311

*omit*

## **Part 4.21 Rail Safety National Law (ACT) Act 2014**

### **[4.31] Section 8 (e)**

*omit*

*Freedom of Information Act 1989*

*substitute*

*Freedom of Information Act 2016*

## **Part 4.22 Road Transport (Driver Licensing) Act 1999**

### **[4.32] Section 9, note 2 and section 37 (1), note 2**

*omit*

*Freedom of Information Act 1989*

*substitute*

*Freedom of Information Act 2016*

## **Part 4.23 Road Transport (General) Act 1999**

### **[4.33] Section 83E, note 2**

*substitute*

*Note 2* Access to the register may be sought under the *Freedom of Information Act 2016*.

## Part 4.24 Road Transport (Public Passenger Services) Act 2001

### [4.34] Section 7, note 2

*substitute*

*Note 2* Access to the register may be sought under the *Freedom of Information Act 2016*.

## Part 4.25 Road Transport (Vehicle Registration) Act 1999

### [4.35] Section 11, note 2

*substitute*

*Note 2* Access to the register may be sought under the *Freedom of Information Act 2016*.

## Part 4.26 Territory Records Act 2002

### [4.36] Section 3 (d)

*omit*

*Freedom of Information Act 1989*

*substitute*

FOI Act



**[4.37] Section 4, note 1**

*substitute*

*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 '*health record*—see the *Health Records (Privacy and Access) Act 1997*, dictionary.' means that the term 'health record' is defined in that dictionary and the definition applies to this Act.

**[4.38] Sections 7 and 8**

*substitute*

**7 Meaning of agency**

In this Act:

*agency* means—

- (a) the Executive; or
- (b) an administrative unit; or
- (c) a statutory office-holder and the staff assisting the statutory office-holder; or
- (d) a territory authority; or
- (e) a territory instrumentality; or
- (f) a territory-owned corporation or a subsidiary of a territory-owned corporation; or
- (g) the Office of the Legislative Assembly; or
- (h) an officer of the Assembly; or
- (i) the Supreme Court; or
- (j) the Magistrates Court or Coroner's Court; or

- (k) the ACAT; or
- (l) a board of inquiry under the *Inquiries Act 1991*; or
- (m) a judicial commission under the *Judicial Commissions Act 1994*; or
- (n) the judicial council under the *Judicial Commissions Act 1994*, section 5A; or
- (o) a royal commission under the *Royal Commissions Act 1991*; or
- (p) an entity prescribed by regulation to be an agency.

## 8 **Meaning of *principal officer***

In this Act:

*principal officer*, of an agency, means—

- (a) for the Executive—the director-general of the administrative unit that provides secretariat support to the Executive; or
- (b) for an administrative unit—the director-general of the administrative unit; or
- (c) for the Supreme Court—the Chief Justice; or
- (d) for the Magistrates Court or Coroner’s Court—the Chief Magistrate; or
- (e) for the ACAT—the registrar of the ACAT; or
- (f) for the Office of the Legislative Assembly—the clerk of the Legislative Assembly; or
- (g) for an officer of the Assembly—the officer; or
- (h) for a statutory office-holder and the staff assisting the statutory office-holder—the statutory office-holder; or

- (i) for a territory-owned corporation or a subsidiary of a territory-owned corporation—the chief executive officer of the corporation or subsidiary; or
- (j) for a royal commission, board of inquiry, judicial commission or the judicial council—the director-general of the administrative unit that provides secretariat support to the Executive; or
- (k) for any other agency—the person prescribed by regulation to be the principal officer of the agency.

**[4.39] Section 21 (2) and note**

*substitute*

- (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 contrary to the public interest information.

**[4.40] Section 28**

*substitute*

**28 Declaration applying provisions of FOI Act**

- (1) The director may, on application by an agency, declare a record of the agency to be a record to which the FOI Act, part 5 (Access applications) applies.
- (2) The director may make the declaration only if—
  - (a) the disclosure of the record would, or could reasonably be expected to—
    - (i) endanger the life or physical safety of a person; or
    - (ii) prejudice law enforcement; or

- (iii) unreasonably disclose information about any person (including a deceased person); or
    - (iv) be a contempt of court or the Legislative Assembly; or
  - (b) the record is subject to legal professional privilege.
- (3) Unless sooner revoked, a declaration is in force for—
  - (a) 10 years after the day it is made; or
  - (b) if a shorter period is stated in the declaration—the stated period.
- (4) A declaration can be made more than once for a record.
- (5) While a declaration about a record is in force, a person is not entitled to access to the record under this Act.

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

#### **[4.41] Section 31G (1)**

*substitute*

- (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, or could reasonably be expected to—
  - (a) endanger the life or physical safety of a person; or
  - (b) be an unreasonable limitation on a person's rights under the *Human Rights Act 2004*; or
  - (c) significantly prejudice an ongoing criminal investigation.

**[4.42] Section 31G (2) (b)**

*omit everything before subparagraph (i), substitute*

- (b) for any information (*protected private information*) that would, or could reasonably be expected to, disclose personal information about any person (including a deceased person) and is contrary to the public interest information—

**[4.43] Section 31H heading**

*substitute*

**31H FOI Act access not prevented**

**[4.44] Section 31H**

*omit*

*Freedom of Information Act 1989*

*substitute*

FOI Act

**[4.45] Dictionary, new definition of *contrary to the public interest information***

*insert*

*contrary to the public interest information*—see the FOI Act, section 16.

**[4.46] Dictionary, definition of *FOI Act***

*substitute*

*FOI Act* means the *Freedom of Information Act 2016*.

**[4.47] Dictionary, definition of *prescribed authority***

*omit*

## Part 4.27 Territory Records Regulation 2009

### [4.48] Section 5

*substitute*

#### 5 Meaning of *principal officer*—Act, s 8

The person mentioned in an item in schedule 1, column 3 is prescribed to be the principal officer for the entity mentioned in the item, column 2.

## Part 4.28 Utilities Act 2000

### [4.49] Section 51 (2) and note

*substitute*

- (1) A utility, when dealing with personal information, must comply with—
  - (a) the Australian Privacy Principles; and
  - (b) the [Privacy Act](#), part 3A (Credit reporting); and
  - (c) the registered CR code.

### [4.50] Section 51 (3), definition of *prescribed authority*

*omit*

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## Dictionary

(see s 3)

*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
- administrative unit
- auditor-general
- document
- human rights commission
- law
- officer of the Assembly
- ombudsman
- reviewable decision notice
- territory law
- territory-owned corporation.

***access application*** means an application under section 30 for access to government information.

***agency***—see section 15.

***contrary to the public interest information***—see section 16.

***decision-maker***, for a reviewable decision, for part 8 (Notification and review of decisions)—see section 70.

***decision notice***—see section 51 (1).

***disclosure log***—see section 28.

***eligible family member***, of a deceased person, for schedule 2 (Factors to be considered when deciding the public interest)—see schedule 2, section 2.3.

***government information***—see section 14.

***held***, in relation to information—see section 14.

**information officer**, of an agency, means the person appointed as the agency's information officer under section 18.

**ombudsman review**—see section 73.

**open access information**, of an agency or a Minister—see section 23.

**personal information**—

- (a) means information or an opinion (including information forming part of a database), whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion; but
- (b) for an individual who is or has been an officer of an agency or staff member of a Minister, does not include information about—
  - (i) the individual's position or functions as an officer or staff member; or
  - (ii) things done by the individual in exercising functions as an officer or staff member.

**principal officer**, of an agency, means—

- (a) for an administrative unit—the director-general of the administrative unit; or
- (b) for the Supreme Court—the Chief Justice; or
- (c) for the Magistrates Court or Coroner's Court—the Chief Magistrate; or
- (d) for the ACAT—the registrar of the ACAT; or
- (e) for the Office of the Legislative Assembly—the clerk of the Legislative Assembly; or
- (f) for an officer of the Assembly—the officer; or
- (g) for a statutory office-holder and the staff assisting the statutory office-holder—the statutory office-holder; or



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- (h) for a territory-owned corporation or a subsidiary of a territory-owned corporation—the chief executive officer of the corporation or subsidiary; or
  - (i) 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
  - (j) for any other agency—the person prescribed by regulation to be the principal officer of the agency.

**publication undertaking**—see section 29.

**public official**—see the [Criminal Code](#), section 300.

**record**—

- (a) means any document or other source of information compiled, recorded or stored in written form or by electronic process, or in any other manner or by any other means; and
- (b) includes a reference to a copy of the record.

**relevant third party**—see section 38 (1).

**respondent**, in relation to an access application—see section 34 (1).

**reviewable decision**, for part 8 (Notification and review of decisions)—see section 70.

**sensitive information**—see the [Information Privacy Act 2014](#), section 14.

**web content accessibility guidelines** means the guidelines recommended by the World Wide Web Consortium on 11 December 2008 for making web content more accessible.

*Note* The guidelines are accessible at [www.w3.org](http://www.w3.org).

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 5 May 2016.

**2 Notification**

Notified under the [Legislation Act](#) on 26 August 2016.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Freedom of Information Bill 2016, which was passed by the Legislative Assembly on 11 August 2016.

Clerk of the Legislative Assembly

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