



Australian Capital Territory

Territory Records Amendment Act 2010

A2010-48

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J2010-404

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Australian Capital Territory

Territory Records Amendment Act 2010

A2010-48

An Act to amend the *Territory Records Act 2002*, and for other purposes

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

1 Name of Act

This Act is the *Territory Records Amendment Act 2010*.

2 Commencement

This Act commences on the day after its notification day.

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

3 Legislation amended

This Act amends the *Territory Records Act 2002*.

Note 1 This Act also amends the *Legal Aid Act 1977* (see sch 1).

Note 2 This Act also repeals the *Executive Documents Release Act 2001* (see s 29).

**4 Main purposes of Act
New section 3 (aa)**

insert

(aa) to support the management and operation of Territory agencies; and

**5 Application of Act
Section 6 (1)**

substitute

- (1) This Act, except for the following provisions, does not apply to records that are health records:
- (a) section 16;
 - (b) section 17;
 - (c) section 19;
 - (d) section 21.

6 Section 6 (3)

substitute

- (3) This Act does not apply to records of the legal aid commission that relate to—
- (a) the provision of legal assistance to a person under the *Legal Aid Act 1977*, part 5 (Provision of legal assistance by commission); or
 - (b) a negotiation process conducted under the *Legal Aid Act 1977*, part 5A (Dispute resolution).

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

7 Section 9

substitute

9 Meaning of *record* of an agency etc

- (1) For this Act, a record of the Executive—
- (a) is a record under the Executive's control or that it is entitled to control, kept as a record of its activities; and
 - (b) includes a record created or received by a Minister as a member of the Executive; but
 - (c) does not include a record—
 - (i) relating to the Minister's personal or political activities; or
 - (ii) created or received by the Minister only in the Minister's capacity as a member of the Legislative Assembly.

- (2) For this Act, a record of an agency other than the Executive is a territory record under the agency's control or to which it is entitled to control.
- (3) For this Act, a *territory record* is a record made and kept, or received and kept, by a person in the course of exercising a function under a territory law.

**8 Approved records management programs
New section 16 (8)**

insert

- (8) Despite anything else in this section—
 - (a) an approved records management program for health records is in addition to, and must not be inconsistent with, the requirements of the Health Records Act; and
 - (b) the Health Records Act prevails to the extent of any inconsistency between the program and the Health Records Act.

**9 Procedure for approving records management programs
New section 17 (1) (e)**

insert

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

**10 Approval of schedules for the disposal of records
Section 19, new note**

insert

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

11 New section 19A

insert

19A Records disposal schedules—suspension

- (1) The director may suspend a schedule approved under section 19 in relation to a record or a class of records mentioned in the schedule.
- (2) A suspension is a notifiable instrument.

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

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

**12 Protection measures
New section 23 (2A)**

insert

- (2A) Despite section 23 (1) (b), the director may approve, in writing, the transfer of the possession or ownership of a record of an agency to a public body of the Commonwealth or a State if the director is satisfied on reasonable grounds—
 - (a) that the record is not a record the agency should retain control over; and
 - (b) in relation to any other matter prescribed by regulation for this subsection.

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

13 New sections 23A and 23B

insert

23A Agencies with inter-government functions

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

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

- (2) The director may enter into an agreement (an *inter-government records agreement*) with the agency about the agency's rights and obligations in relation to the making, keeping, protection and control of and access to the agency's inter-government records.
- (3) An inter-government records agreement may exclude or modify the operation of a provision of this Act in its application to inter-government records.
- (4) This Act has effect in relation to an inter-government record mentioned in subsection (3) in accordance with the inter-government records agreement.
- (5) In this section:

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

public body means a body established for a public purpose.

23B Report about inter-government records agreements

- (1) This section applies if the director enters into an inter-government records agreement with an agency under section 23A (2).
- (2) The director must give a report about the agreement to the Minister.

- (3) The report must include the following information:
- (a) the name of the agency;
 - (b) the date the agreement was entered into;
 - (c) a brief description of the agreement, including whether the agreement excludes or modifies the operation of a provision of this Act in its application to inter-government records.
- (4) If the Minister is given a report under subsection (2), the Minister must present the report to the Legislative Assembly within 6 sitting days after the day the Minister receives the report.

14 Part 3 heading

substitute

Part 3 Agency records—access**15 Access to records
Section 26 (1)**

substitute

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

**16 Declaration applying provisions of FOI Act
Section 28 (1)**

omit

a record to be a record

substitute

a record, or a class of records, to be a record, or a class of records,

17 **New part 3A**

insert

Part 3A **Executive records—access and
release**

31A **Application—pt 3A**

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

31B **Definitions—pt 3A**

In this part:

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

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

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

Example

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

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

Executive includes a committee of the Executive.

executive record means—

- (a) a record (or part of a record) that—
 - (i) has been, or is proposed by a Minister to be, submitted to the Executive for consideration; and
 - (ii) was brought into existence for the purpose of submission for consideration by the Executive; or
- (b) an official record (or part of an official record) of the Executive; or
- (c) a copy of a record (or part of a record) mentioned in paragraph (a) or (b); or
- (d) a record (or part of a record) the disclosure of which would involve the disclosure of any deliberation or decision of the Executive, other than a record (or part of a record) by which a decision of the Executive was officially published.

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

internal reviewer—see section 31J (2).

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

principal officer means principal officer of the Executive.

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

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

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

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

31C List of released executive records—publication

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

Example—electronic form

making an electronic copy of the list available on a website

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

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

- (2) If a release restraint determination is in force in relation to an executive record, the principal officer must—
- (a) arrange for the determination to be listed in relation to the entry for the executive record; and
 - (b) include a reviewable decision notice in the entry.

31D Requests for access

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

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

- (1) This section applies if—
- (a) the principal officer receives a request from a person under section 31D for access to an accessible executive record; and
 - (b) no release restraint determination is in force in relation to the record.

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

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

- (1) This section applies if—
- (a) the principal officer receives a request from a person under section 31D for access to an accessible executive record; and
 - (b) either—
 - (i) the principal officer has decided, or decides, to make a release restraint determination about the record (see section 31G (Release delayed or denied)); or
 - (ii) a release restraint determination about the record is in force.
- (2) If a release restraint determination about the record is in force, the principal officer must, without charge—
- (a) for any part of the record to which the determination does not apply—give the person a copy of the part as soon as practicable after receiving the request; and
 - (b) for any part of the record to which the determination applies—
 - (i) if the request is made before the later release day for the part—refuse the request; or
 - (ii) if the request is made on or after the later release day for the part—give the person a copy of the part as soon as practicable after receiving the request.

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

Example

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

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

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

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

31G Release delayed or denied

- (1) Before giving a copy of an accessible executive record to a person under section 31E or section 31F, the principal officer must assess whether it contains information that would, at the time of the assessment, make it an exempt document under the *Freedom of Information Act 1989*, part 4 (Exempt documents), other than section 35 (Executive documents).
- (2) The principal officer may determine (by a *release restraint determination*)—
 - (a) that any part of the record containing the information is only to be released on or after the later release day; or
 - (b) for any information (*protected private information*) that would, at the time of the assessment, make it an exempt document under the *Freedom of Information Act 1989*, section 41 (Documents affecting personal privacy)—
 - (i) that the part containing the information is only to be released on or after the later release day; or
 - (ii) that the part containing the information is not to be released at all.
- (3) The determination must state the reasons for making the determination.
- (4) Unless the determination states that the relevant part of the document is not to be released at all (see subsection (2) (b) (ii)), it—
 - (a) may determine a day for subsection (7) (a), by stating a particular day or providing a way of working out the day; and
 - (b) must explain how the later release day for the document is worked out under subsection (7).

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

Note The chief executive may, by instrument, change or revoke a release restraint determination at any time after its making. The power to change or revoke the determination is exercisable in the same way, and subject to the same conditions, as the power to make the determination (see Legislation Act, s 46).

31H Freedom of Information Act access not prevented

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

31I Internal review notice—release restraint determination

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

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

- (2) In particular, the reviewable decision notice must tell the person—
 - (a) whether the person has the right to apply for internal review of the determination or the right to apply to the ACAT for review of the determination, and how the application must be made; and

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

31J Internal review of certain determinations

- (1) A person whose interests are affected by a release restraint determination (an *internally reviewable determination*) may apply in writing to the principal officer for internal review of the determination.
- (2) The principal officer must arrange for someone else (the *internal reviewer*) to review the determination.
- (3) However, this section does not apply to a release restraint determination made personally by the principal officer.

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

31K Internal review—application

- (1) An application for internal review of an internally reviewable determination must be made within—
 - (a) 28 days after the day when the applicant is told about the determination by the principal officer; or
 - (b) any longer period allowed by the internal reviewer, whether before or after the end of the 28-day period.
- (2) The application must set out the grounds on which internal review of the determination is sought.
- (3) The making of the application for internal review does not affect the operation of the determination.

31L Internal review

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

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

- (2) If the determination is not varied or revoked within the 5-day period, the determination is taken to have been confirmed by the internal reviewer.
- (3) As soon as practicable after reviewing the determination, the internal reviewer must give written notice of the decision on the internal review to the applicant.

31M Review of determinations by ACAT

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

- (a) a decision made by an internal reviewer; or
- (b) a release restraint determination, other than an internally reviewable determination.

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

31N Protection from liability—executive records

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

**18 Functions
Section 33 (1) (e)**

after

approve

insert

or suspend

19 New section 33 (1) (ea)

insert

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

**20 Functions of council
New section 42 (d)**

insert

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

**21 Membership of council
Section 43 (b)**

omit

4

insert

5

**22 Appointed members of council
New section 44 (1) (e)**

insert

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

23 New section 100

insert

100 Transitional—Executive Documents Release Act 2001

- (1) A release restraint determination in force under the repealed Act immediately before the commencement day is taken, on and after the commencement day, to be a release restraint determination in force under this Act.
- (2) Subsection (3) applies if—
 - (a) a person applied to the ACAT under the repealed Act, section 10 for review of a release restraint determination; and
 - (b) immediately before the commencement day, the ACAT had not begun hearing the application.
- (3) The application is taken to be an application under this Act, section 31M (Review of determinations by ACAT).
- (4) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (5) This section expires 1 year after the day it commences.
- (6) In this section:

commencement day means the day the *Territory Records Amendment Act 2010* commences.

repealed Act means the *Executive Documents Release Act 2001*.

24 Dictionary, new definition of *accessible executive record*

insert

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

25 Dictionary, definition of *approved records management program*

omit

section 16 (Approved records management programs)

substitute

section 17 (Procedure for approving records management programs)

26 Dictionary, new definitions

insert

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

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

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

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

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

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

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

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

public body means a body established for a public purpose.

27 Dictionary, definition of *record*

substitute

record—

- (a) means information created and kept, or received and kept, as evidence and information by a person in accordance with a legal obligation or in the course of conducting business; and
- (b) includes information in written, electronic or any other form.

28 Dictionary, new definitions

insert

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

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

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

territory record—see section 9 (3).

29 Repeal of Executive Documents Release Act 2001

The *Executive Documents Release Act 2001* (A2001-53) is repealed.

Schedule 1 Legal Aid Act 1977— Consequential amendments

(see s 3)

[1.1] New division 8.3

insert

Division 8.3 Records management—legal services records

69A Definitions—div 8.3

In this division:

approved records management program means a records management program approved under section 69C.

director of territory records means the person appointed under the *Territory Records Act 2002*, section 34 (Appointment of the director) to be the director of territory records.

legal services record means a record of the commission that relates to—

- (a) the provision of legal assistance to a person under part 5 (Provision of legal assistance by commission); or
- (b) a negotiation process conducted under part 5A (Dispute resolution).

records management, in relation to legal services records means the management of legal services records to meet the commission's operational needs.

69B Records management—legal services records

- (1) The commission must have an approved records management program for the management of its legal services records.
- (2) The program must include arrangements for the creation, keeping, protection, preservation, storage and disposal of, and access to, legal services records.
- (3) The commission must comply with its approved records management program for legal services records.

69C Approval of records management program

- (1) The chief executive officer may, in writing, approve a records management program for legal services records if the chief executive officer is satisfied that the program includes arrangements for the matters mentioned in section 69B (2).
- (2) If the chief executive officer approves a records management program, the chief executive officer must give a copy of the program to the director of territory records.

[1.2] Dictionary, new definitions

insert

approved records management program, for division 8.3 (Records management—legal services records)—see section 69A.

director of territory records, for division 8.3 (Records management—legal services records)—see section 69A.

legal services record, for division 8.3 (Records management—legal services records)—see section 69A.

records management, for division 8.3 (Records management—legal services records)—see section 69A.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 23 September 2010.

2 Notification

Notified under the Legislation Act on 25 November 2010.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Territory Records Amendment Bill 2010, which was passed by the Legislative Assembly on 18 November 2010.

Acting Clerk of the Legislative Assembly

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