

2002

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Urban Services)

Territory Records Bill 2002

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2002

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Urban Services)

Territory Records Bill 2002

A Bill for

An Act about Territory records, and for other purposes

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Territory Records Act 2002*.

4 **2 Commencement**

5 (1) Part 3 (Access to records) commences on 1 July 2007.

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

8 (2) The remaining provisions commence on a day fixed by the Minister
9 by written notice.

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

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

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

17 **3 Main purposes of Act**

18 The main purposes of this Act are—

19 (a) to encourage open and accountable government by ensuring
20 that Territory records are made, managed and, if appropriate,
21 preserved in accessible form; and

22 (b) to preserve Territory records for the benefit of present and
23 future generations; and

24 (c) to ensure that public access to records is consistent with the
25 principles of the *Freedom of Information Act 1989*.

1 **4 Dictionary**

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

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

7 For example, the signpost definition ‘*agency*—see section 7 (Meaning
8 of *agency*)’ means that the word ‘agency’ is defined in that section.

9 *Note 2* A definition in the dictionary (including a signpost definition) applies to
10 the entire Act unless the definition, or another provision of the Act,
11 provides otherwise or the contrary intention otherwise appears
12 (see *Legislation Act 2001*, s 155 and s 156 (1)).

13 **5 Notes**

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

15 *Note* See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of
16 notes.

17 **6 Application of Act**

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

21 (2) This Act does not apply to records of the commissioner for health
22 complaints in relation to—

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

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

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

Part 1 Preliminary

Section 6

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

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

3 **Division 2.1** **General**

4 **7** **Meaning of *agency***

5 For this Act, an *agency* is—

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

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

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

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

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

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

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

1 **10 Meaning of *records management***

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

4 (a) to meet its operational needs; and

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

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

9 (ii) for the benefit of future generations.

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

13 **11 Meaning of *control* and *entitled to control* of a record**

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

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

18 **12 Records to which Act applies**

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

20 **Division 2.2 Obligation of principal officers**

21 **13 Principal officers must ensure Act complied with**

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

24 *Note* A reference to an Act includes a reference to the statutory instruments
25 made or in force under the Act, including regulations
26 (see *Legislation Act 2001*, s 104).

1 **Division 2.3 Records management**

2 **14 Agencies to make and keep records**

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

5 **15 Agencies to ensure accessibility of information**

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

9 **16 Approved records management programs**

- 10 (1) An agency must have an approved records management program.
- 11 (2) The approved records management program must include
12 arrangements—
- 13 (a) for ensuring that the agency complies with this Act and the
14 records management program; and
- 15 *Note* A reference to an Act includes a reference to the statutory instruments
16 made or in force under the Act, including regulations
17 (see *Legislation Act 2001*, s 104).
- 18 (b) for establishing normal practices and procedures for the
19 exercise of functions of the agency in relation to its records
20 (*normal administrative practices*), including the disposal of
21 records; and
- 22 (c) for telling the director about any arrangements entered into
23 with an entity that is not an agency to carry out any aspect of
24 its records management; and
- 25 (d) under which the director may examine the operation of the
26 records management program and the agency's compliance
27 with this Act and the records management program; and

- 1 (e) for the resolution of disputes about whether the agency is
2 complying with this Act or the records management program;
3 and
- 4 (f) to allow the director to report on the agency's compliance with
5 this Act and the records management program; and
- 6 (g) for allocating resources for the records management program;
7 and
- 8 (h) for the proper care of records of the agency, particularly
9 records of archival or enduring value; and
- 10 (i) for preserving records containing information that may allow
11 people to establish links with their Aboriginal or Torres Strait
12 Islander heritage; and
- 13 (j) for the regular review of records to which a declaration under
14 section 28 (Declarations applying provisions of FOI Act)
15 applies; and
- 16 (k) for the director, if asked by the agency, to provide assistance,
17 advice and training to the agency in records management; and
- 18 (l) for review and replacement or amendment of the records
19 management program.
- 20 (3) Subsection (2) does not limit the matters that may be included in the
21 approved records management program.
- 22 (4) An agency may dispose of a record only in accordance with its
23 records management program.
- 24 (5) An agency may dispose of a record mentioned in subsection (2) (i)
25 only after consulting the council.
- 26 (6) An agency must comply with its records management program.
- 27 (7) Subsection (6) has effect despite any other Territory law, including
28 the *Inquiries Act 1991*, *Judicial Commissions Act 1994* or
29 *Royal Commissions Act 1991*.
-

1 **17 Criteria for approval of records management programs**

- 2 (1) The principal officer of an agency may, in writing, approve a
3 records management program for the agency if satisfied that—
- 4 (a) it complies with the approved standards and codes; and
- 5 (b) the director has approved a schedule for the disposal of records
6 of the agency; and
- 7 (c) it includes the arrangements mentioned in section 16 (2)
8 (Approved records management programs); and
- 9 (d) for records of an agency containing information that may allow
10 people to establish links with their Aboriginal or Torres Strait
11 Islander heritage—the agency has consulted with the council.
- 12 (2) However, the principal officer of an agency may approve an
13 agency's records management program even though the program
14 does not comply with an approved standard or code, only if the
15 director has certified in writing that the noncompliance is necessary
16 for the agency's operational needs.

17 **18 Approved standards and codes for records management**

- 18 (1) The director may, in writing, approve standards and codes for
19 agency records management.
- 20 (2) Before approving a standard or code, the director must give a copy
21 to each agency and give the agency a reasonable opportunity to
22 comment on the standard or code.
- 23 (3) In deciding whether to approve a standard or code, the director must
24 take into account any comments made by an agency.
- 25 (4) An approved standard or code is a notifiable instrument.

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

1 **19 Approval of schedules for the disposal of records**

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

4 (2) An approved schedule is a notifiable instrument.

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

6 **20 Review of approved standards and codes**

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

9 **21 Inspection of records management programs**

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

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

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

23 **Division 1.4 Protection of records**

24 **22 Protecting records**

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

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

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

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

7 **23 Protection measures**

8 (1) An agency must not—

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

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

12 (c) damage a record; or

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

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

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

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

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

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

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

28 (3) This section prevails over an Act enacted before the commencement
29 of this section.

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

5 **24 Normal administrative practice**

- 6 (1) Something is taken to have been done in accordance with an
7 agency's *normal administrative practice* if—
8 (a) it is done in accordance with the normal practices and
9 procedures for the exercise of functions in the agency; and
10 (b) the practices and procedures are consistent with the agency's
11 approved records management program.
- 12 (2) However, something is taken not to have been done in accordance
13 with an agency's normal administrative practice if—
14 (a) it is done corruptly or fraudulently, for the purpose of
15 concealing evidence of wrongdoing, or for any other improper
16 purpose; or
17 (b) it is conduct declared under the regulations to be unacceptable
18 conduct; or
19 (c) it is done in accordance with a practice or procedure declared
20 under the regulations to be unacceptable; or
21 (d) it is done in accordance with a practice or procedure that the
22 Minister has told the agency in writing is unacceptable.

23 **Division 1.5 Miscellaneous**

24 **25 Records of agency that no longer exists etc**

- 25 (1) If an agency (the *original agency*) is abolished or otherwise ceases
26 to exist, the records of the agency become the records of—
27 (a) the agency that exercises the functions of the original agency to
28 which the record most closely relates; or

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

1 **Part 3** **Access to records**

2 **26 Access to records**

- 3 (1) A record of an agency is open to public access under this Act if
4 20 years has elapsed since the record, or the original of which it is a
5 copy, came into existence.
- 6 (2) A person is entitled to access under this Act to a record of an agency
7 that is open to public access.

8 **27 Requests for access**

- 9 (1) A person who wishes to have access to a record of an agency that is
10 open to public access may apply to the agency.
- 11 (2) An agency must take reasonable steps to assist a person to make a
12 request in accordance with this section.
- 13 (3) An agency to which a request is made in accordance with this
14 section must comply with the request within a reasonable time.

15 **28 Declaration applying provisions of FOI Act**

- 16 (1) The director may, on application by an agency, declare a record to
17 be a record to which the disappplied provisions of the FOI Act apply.
- 18 (2) The director may make the declaration only if satisfied that the
19 record contains a document that is (or, if the disappplied provisions
20 applied, would be) an exempt document under 1 or more of the
21 following provisions of the FOI Act:
- 22 (a) section 34 (1) (Documents affecting relations with
23 Commonwealth and States);
- 24 (b) section 37 (Documents affecting enforcement of the law and
25 protection of public safety);
- 26 (c) section 41 (Documents affecting personal privacy);

- 1 (d) section 42 (Documents subject to legal professional privilege);
2 (e) section 46 (Documents disclosure of which would be contempt
3 of Legislative Assembly or a court).
- 4 (3) If the director makes a declaration under subsection (1) about a
5 record of an agency—
- 6 (a) a person is not entitled to access to the record under this Act;
7 and
- 8 (b) for a record of a royal commission, board of inquiry or judicial
9 commission—the FOI Act applies as if the commission or
10 board were a prescribed authority.

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

- 13 (4) In this section:

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

19 29 Giving access to records under this Act

- 20 (1) If a person is entitled to access under this Act to a record of an
21 agency, the person is entitled to be given access to the record by
22 being given—
- 23 (a) a reasonable opportunity to inspect the record; or
24 (b) a copy of the record; or
25 (c) if the record is a record from which information may be
26 produced or made available by electronic or other
27 means—access to the information by use of that means; or
28 (d) if the record is a record of words in a sound recording, or in
29 shorthand or other encoded material—a written transcript of
30 the words.

Part 3 Access to records

Section 31

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

Section 34

- 1 (j) to encourage consistency between agencies in the preparation
2 of indexes and other guides to assist in the awareness of, and
3 access to, records;
- 4 (k) to encourage the development of appropriate records
5 management training for agency staff;
- 6 (l) on behalf of the Territory or an agency, to enter into and
7 manage arrangements with the National Archives of Australia
8 or any other entity about records management;
- 9 (m) to assist in the development of facilities for access by the
10 public to records;
- 11 (n) to exercise any other function given to the director under this
12 Act or any other Territory law;
- 13 (o) to do anything else—
- 14 (i) incidental, complementary or helpful to the director's
15 other functions; or
- 16 (ii) likely to improve the effective and efficient exercise of
17 the director's other functions.
- 18 *Note 1* A provision of a law that gives an entity (including a person) a function
19 also gives the entity the powers necessary and convenient to exercise
20 the function (see *Legislation Act 2001*, s 196 (1) and dict, pt 1, defs of
21 *entity* and *function*).
- 22 *Note 2* The *Annual Reports (Government Agencies) Act 1995*, s 8 deals with
23 the annual report to be given by a statutory officeholder who is
24 declared, under that Act, to be a public authority.
- 25 (2) In subsection (1) (f):
- 26 *report* means—
- 27 (a) for an agency mentioned in section 7 (Meaning of *agency*)
28 other than a board of inquiry or royal commission—report to
29 the Minister; and
- 30 (b) for a board of inquiry or royal commission—report to the
31 Legislative Assembly.
-

1 **34 Appointment of the director**

2 The director is appointed by the Minister.

3 *Note 1* For the making of appointments generally, see *Legislation Act 2001*,
4 div 18.3.

5 *Note 2* Certain statutory appointments made by a Minister require consultation
6 with a Legislative Assembly committee and are disallowable
7 (see *Legislation Act 2001*, div 18.3.3).

8 *Note 3* A power to appoint a person to a position includes power to appoint a
9 person to act in the position (see *Legislation Act 2001*, s 209).

10 **35 Term of appointment of director**

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

12 *Note* A person may be reappointed to a position if the person is eligible to be
13 appointed to the position (see *Legislation Act 2001*, s 208 and dict , pt 1,
14 def of *appoint*).

15 **36 Ending of appointment of director**

16 The Minister may end the director's appointment—

- 17 (a) for misbehaviour or physical or mental incapacity; or
- 18 (b) if the director becomes bankrupt, applies to take the benefit of
19 any law for the relief of bankrupt or insolvent debtors,
20 compounds with creditors or makes an assignment of
21 remuneration for their benefit; or
- 22 (c) if the director is convicted or found guilty of an indictable
23 offence; or
- 24 (d) if the member fails to comply with section 51 (Disclosure of
25 interests by members of council) without reasonable excuse; or
- 26 (e) if the director is absent from duty for 14 consecutive days, or
27 for 28 days in any 12 months, except on leave given by the
28 Minister.

29 *Note* The director's appointment also ends if the director resigns
30 (see *Legislation Act 2001*, s 210).

1 **37 Conditions of appointment generally**

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

4 **38 Delegation**

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

8 *Note* For the making of delegations and the exercise of delegated functions,
9 see *Legislation Act 2001*, pt 18.4.

10 **39 Ministerial directions to the director**

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

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

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

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

17 (c) consider any comments made by the director.

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

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

23 (5) For the *Trade Practices Act 1974* (Cwlth), this Act authorises—

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

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

1 **40 Arrangements for staff**

2 (1) The director may arrange with the chief executive to use public
3 servants in the administrative unit under the chief executive's
4 control.

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

- 1 **Part 5** **Territory Records Advisory**
2 **Council**
- 3 **Division 5.1** **Establishment, functions and**
4 **members of council**
- 5 **41** **Territory Records Advisory Council**
6 There is a Territory Records Advisory Council.
- 7 **42** **Functions of council**
8 The functions of the council are to advise the director about—
9 (a) the development and review of standards and codes for agency
10 records management; and
11 (b) the disposal of agency records; and
12 (c) the preservation of agency records about Aboriginal and Torres
13 Strait Islander heritage.
- 14 **43** **Membership of council**
15 The council consists of—
16 (a) the director; and
17 (b) not less than 4, and not more than 8, members (the *appointed*
18 *members*) appointed by the Minister under section 44.
- 19 **44** **Appointed members of council**
20 (1) The Minister must appoint as a member at least 1 person to
21 represent each of the following:
22 (a) agencies;
23 (b) professional organisations interested in records management
24 and archives;

- 1 (c) community associations interested in historical or heritage
2 issues;
- 3 (d) entities interested in Aboriginal and Torres Strait Islander
4 heritage.
- 5 *Note 1* For the making of appointments generally, see *Legislation Act 2001*,
6 div 18.3.
- 7 *Note 2* Certain statutory appointments made by a Minister require consultation
8 with a Legislative Assembly committee and are disallowable
9 (see *Legislation Act 2001*, div 18.3.3).
- 10 *Note 3* A power to appoint a person to a position includes power to appoint a
11 person to act in the position (see *Legislation Act 2001*, s 209).
- 12 (2) The person appointed to represent entities mentioned in
13 subsection (1) (d) must be an Aboriginal or Torres Strait Islander.

14 **45 Chairperson and deputy chairperson**

- 15 (1) The Minister must appoint—
- 16 (a) an appointed member to be chairperson; and
- 17 (b) another appointed member to be deputy chairperson
- 18 (2) A person appointed to be chairperson or deputy chairperson ceases
19 to hold office if the person ceases to be an appointed member.

20 **46 Term of appointment of appointed members**

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

- 23 *Note* A person may be reappointed to a position if the person is eligible to be
24 appointed to the position (see *Legislation Act 2001*, s 208 (1) (c) and
25 dict, pt 1, def of *appoint*).

1 **47 Ending of appointment of appointed members**

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

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

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

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

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

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

14 *Note* A member's appointment also ends if the member resigns
15 (see *Legislation Act 2001*, s 210).

16 **48 Conditions of appointment generally**

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

20 **Division 5.2 Proceedings of council**

21 **49 Time and place of meetings of council**

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

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

24 (3) The chairperson—

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

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

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

3 **50 Procedures governing proceedings of council**

- 4 (1) The chairperson of the council presides at all meetings of the
5 council at which the chairperson is present.
- 6 (2) If the chairperson is absent, the deputy chairperson presides.
- 7 (3) If the chairperson and deputy chairperson are both absent, the
8 member chosen by the members present presides.
- 9 (4) Business may be carried out at a meeting of the council only if 3
10 appointed members are present.
- 11 (5) At a meeting of the council each appointed member has a vote on
12 each question to be decided.
- 13 (6) A question is to be decided by a majority of the votes of the
14 appointed members present and voting but, if the votes are equal,
15 the member presiding has a casting vote.
- 16 (7) The council may hold meetings, or allow members to take part in
17 meetings, by telephone, closed-circuit television or another form of
18 communication.
- 19 (8) A member who takes part in a meeting conducted under
20 subsection (7) is taken to be present at the meeting.
- 21 (9) A resolution of the council is a valid resolution, even though it was
22 not passed at a meeting of the council, if—
- 23 (a) all appointed members agree, in writing, to the proposed
24 resolution; and
- 25 (b) notice of the resolution is given under procedures decided by
26 the council.
- 27 (10) The council must keep minutes of its meetings.
- 28 (11) The council may conduct its proceedings (including its meetings) as
29 it otherwise considers appropriate.
-

- 1 **51 Disclosure of interests by members of council**
- 2 (1) This section applies to a member of the council if—
- 3 (a) the member has a direct or indirect financial interest in an issue
- 4 being considered, or about to be considered, by the council;
- 5 and
- 6 (b) the interest could conflict with the proper exercise of the
- 7 member’s functions in relation to the council’s consideration of
- 8 the issue.
- 9 (2) As soon as practicable after the relevant facts come to the member’s
- 10 knowledge, the member must disclose the nature of the interest to a
- 11 meeting of the council.
- 12 (3) The disclosure must be recorded in the council’s minutes and, unless
- 13 the council otherwise decides, the member must not—
- 14 (a) be present when the council considers the issue; or
- 15 (b) take part in a decision of the council on the issue.
- 16 (4) Any other member who also has a direct or indirect financial interest
- 17 in the issue must not—
- 18 (a) be present when the council is considering its decision under
- 19 subsection (3); or
- 20 (b) take part in making the decision.
- 21 (5) Within 14 days after the end of each financial year, the chairperson
- 22 of the council must give the Minister a statement of any disclosure
- 23 of interest made under this section during the financial year.

1 **Part 6** **Miscellaneous**

2 **52** **Secrecy**

3 (1) In this section:

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

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

8 (a) the director; or

9 (b) an appointed member of the council; or

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

11 *produce* includes permit access to.

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

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

17 (a) make a record of protected information; or

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

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

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

Section 53

- 1 (3) Subsection (2) does not prevent a person to whom this section
2 applies from divulging or communicating protected information to a
3 person about someone else with the consent of the other person.
- 4 (4) A person to whom this section applies is not required—
- 5 (a) to divulge or communicate protected information to a court; or
- 6 (b) to produce a document containing protected information to a
7 court;
- 8 unless it is necessary to do so for this Act or another Act.

9 53 Secrecy about information acquired under other Acts

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

1 **54 Protection from liability**

2 (1) In this section:

3 *official* means—

- 4 (a) the principal officer of an agency; or
5 (b) the director; or
6 (c) an appointed member of the council; or
7 (d) anyone else exercising a function under this Act.

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

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

12 **55 Determination of fees**

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

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

16 (2) A determination is a disallowable instrument.

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

19 **56 Approved forms**

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

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

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

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

1 **57 Regulation-making power**

2 The Executive may make regulations for this Act.

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

5 **58 Review of the Act**

- 6 (1) The Minister must review the operation of this Act as soon as
7 practicable after 5 years after the commencement of this Act.
- 8 (2) The Minister must present a report on the outcome of the review to
9 the Legislative Assembly within 6 months after the end of the
10 5 years.
- 11 (3) This section expires 6 years after the day it commences.

1 **Part 7** **Amendment of Freedom of**
2 **Information Act 1989**

3 **59 Act amended in pt 7**

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

5 **60 New section 6A, part 1**

6 *insert*

7 **6A How Act applies to certain older records**

8 (1) The disapplied provisions do not apply to a record of an agency if
9 20 years have elapsed since the record, or the original of which it is
10 a copy, came into existence unless, before the end of the 20 years,
11 the director makes a declaration (a *section 28 declaration*) under the
12 *Territory Records Act 2002*, section 28 that the disapplied
13 provisions apply.

14 (2) However, if the director makes the declaration, part 4 of this Act
15 (other than an excepted provision) ceases to apply to the record at
16 the end of 20 years after the making of the declaration.

17 (3) If—

18 (a) the disapplied provisions do not apply to a record of an agency
19 because 20 years have elapsed since the record, or the original
20 of which it is a copy, came into existence and the director did
21 not make a section 28 declaration before the end of the 20
22 years; but

23 (b) the director makes a section 28 declaration in relation to the
24 record after the end of the 20 years;

25 the disapplied provisions again apply to the record.

Section 60

- 1 (4) However, if the director makes the declaration, part 4 of this Act
2 (other than an excepted provision) does not again apply to the
3 record.
- 4 (5) In this section:
- 5 *agency*—see the *Territory Records Act 2002*, dictionary.
6 *director*—see the *Territory Records Act 2002*, dictionary.
7 *disapplied provisions* means part 3 (other than sections 24 and 26)
8 and part 4.
9 *excepted provisions* means the following provisions:
- 10 (a) section 34 (1) (Documents affecting relations with
11 Commonwealth and States);
- 12 (b) section 37 (Documents affecting enforcement of the law and
13 protection of public safety);
- 14 (c) section 41 (Documents affecting personal privacy);
- 15 (d) section 42 (Documents subject to legal professional privilege);
- 16 (e) section 46 (Documents disclosure of which would be contempt
17 of Legislative Assembly or a court).
- 18 *record*—see the *Territory Records Act 2002*, dictionary.

Dictionary

(see s 4)

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

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

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

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

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

arrangement includes a contract.

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

council means the Territory Records Advisory Council.

director means the Director of Territory Records.

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

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

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

member means a member of the council.

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

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

- 1 ***principal officer***—see section 8 (Meaning of *principal officer*).
- 2 ***record***—see section 9 (Meaning of *record* of an agency).
- 3 ***records management***—see section 10 (Meaning of *records*
- 4 *management*).
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Endnotes

Republications of amended laws

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

Penalty units

- 2 The *Legislation Act 2001*, s 133 deals with the meaning of offence penalties that are expressed in penalty units.