

1996

LEGISLATIVE ASSEMBLY
FOR THE
AUSTRALIAN CAPITAL TERRITORY

FREEDOM OF INFORMATION (AMENDMENT) BILL
1996

EXPLANATORY MEMORANDUM

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ATTORNEY-GENERAL

FREEDOM OF INFORMATION (AMENDMENT) BILL 1996

Outline

The *Freedom of Information Act 1989* (the Principal Act) gives members of the public an enforceable right of access, subject to specified exemptions, to documents in the possession of agencies and to official documents in the possession of Ministers.

The Freedom of Information (Amendment) Bill 1996 will amend the Principal Act to automatically bring Territory owned corporations and their subsidiaries within the coverage of the Principal Act, to provide increased review rights in relation to fees and charges decisions and to alter the annual reporting requirements to reflect changed administrative responsibilities. The Bill will also make some housekeeping amendments.

Revenue/Cost Implications

The Bill has no significant revenue or cost implications.

Formal Clauses

Clauses 1, 2 and 3 are formal requirements. They refer to the short title of the Bill and its commencement and to the definition of the Principal Act. The Act will commence on the day on which it is notified in the *Gazette*.

Definitions

Clause 4 will amend subsection 4(1) of the Principal Act which defines various terms used in the Act. It also removes the specific references to the ACTEW Corporation Limited.

Paragraph 4(a) will amend the definition of “prescribed authority” to include a Territory owned corporation or a subsidiary within the meaning of the *Territory Owned Corporations Act 1990* and by so doing will provide that the Principal Act will automatically apply to such bodies.

Paragraphs 4(b) to 4(g) will amend the definition of “principal officer” to provide that the chief executive officer of a Territory owned corporation or a subsidiary will be the principal officer of that body for the purposes of the Principal Act.

Exemption in respect of competitive commercial documents

Clause 5 will amend section 6 of the Principal Act to provide that a Territory owned corporation or a subsidiary will be exempt from the application of the Principal Act in relation to documents in respect of its competitive commercial activities. This exemption recognises that such bodies may have to operate in a competitive market place and should not unduly be placed in a disadvantageous position with respect to their competitors.

Documents available for inspection and purchase

Clause 6 will amend subsection 8(5) to reflect the changed reporting arrangements. Section 8 requires principal officers of agencies to make available documents used in the decision making process for inspection or purchase and to prepare a statement of the documents available under the section and the places where they may be inspected and purchased. Subsection 8(5) requires the Minister administering the Principal Act to report annually on agencies' compliance with the requirements of section 8. Under the new reporting arrangements, individual Ministers will be responsible for reporting requirements and **clause 6** will consequentially amend subsection 8(5) to reflect these new arrangements.

Review of fees and charges decisions

Clauses 7 and 8 will provide additional review rights in respect of fees and charges decisions.

The Principal Act provides for the making of a declaration that application fees are payable. Application fees, as determined, apply in respect of applications for access to a document and to applications for internal reviews of decisions. The Principal Act also provides for a Minister or agency to whom an access request is made to decide on the liability of an applicant to pay a charge and on whether remission of a fee or charge in whole or in part should be made. An applicant may, at present, seek an internal review of a decision that a charge is payable and may appeal to the Administrative Appeals Tribunal against an unfavourable decision on internal review.

Clause 7 will amend subsection 59(1) to provide that decisions in relation to the amount of a charge and decisions not to remit all or part of a charge or an application fee will also be available for internal review and **clause 8** will amend section 60 to provide that application may be

made to the Administrative Appeals Tribunal for review by that body following an internal review.

Annual reports to the Legislative Assembly

Clause 9 will amend section 79 to introduce new reporting procedures.

Section 79 requires the Minister administering the Principal Act to produce an annual report on the operation of the Principal Act for the previous year and to table that report in the Legislative Assembly. Agencies have recently assumed full responsibility for the application of the Principal Act to their operations. Previously, the Attorney-General's Department had provided a centralised co-ordination and processing function. To reflect this change in administrative procedures, **Clause 9** will amend the section 79 requirements in relation to annual reporting to provide for responsible Ministers to report annually in respect of their own and their agencies' activities. The Minister administering the Principal Act will, however, still be required to provide an annual "overview" report to the Legislative Assembly on the operation of the Principal Act in the previous year.

Clause 9 sets out the requirements on Ministers in relation to annual reporting and will also omit subsections 79(2) and 79(6) which have become redundant over time.