

2006

**THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY**

FREEDOM OF INFORMATION AMENDMENT REGULATION 2006 (No 1)

SL2006-56

EXPLANATORY STATEMENT

Circulated by authority of
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Attorney General

Freedom of Information Amendment Regulation 2006 (No 1)

Background

The Government Solicitor for the Australian Capital Territory (government solicitor) is established by the *Government Solicitor Act 1989* as a body corporate that can act as a legal practitioner for the Territory and its agencies. As such an entity, the government solicitor falls within the definition of a prescribed authority in the *Freedom of Information Act 1989* (FOI Act), and is thus an agency bound by that Act separate and distinct from the administrative unit of which it forms part, the Department of Justice and Community Safety.

The amending Regulation exempts the government solicitor from the operation of the FOI Act in relation to documents of the government solicitor that relate to the government solicitor acting as legal practitioner under the *Government Solicitor Act 1989*. It also exempts the Department of Justice and Community Safety in relation to documents of the government solicitor that relate to the government solicitor acting as legal practitioner under the *Government Solicitor Act 1989*, because if the government solicitor alone is exempted, then FOI applicants could apply to the Department of Justice and Community Safety for access to documents of the government solicitor that relate to the government solicitor acting as legal practitioner under the *Government Solicitor Act 1989*. The government solicitor is still subject to the FOI Act in relation to its internal administrative documents.

The public interest in access to documents is still maintained because, despite the exemption of the government solicitor from the operation of the FOI Act, the public can still seek to obtain the documents from the government solicitor's clients and the clients can then determine whether or not to claim legal professional privilege.

The government solicitor's Commonwealth counterpart, the Australian Government Solicitor is exempted from the operation of the *Freedom of Information Act 1982* (Cth). The exemption of the government solicitor from the operation of the FOI Act will place the government solicitor and the Territory, in the Territory context, on a footing equivalent to that enjoyed by the Australian Government Solicitor and the Commonwealth, in the Commonwealth context. Critically, it will place the government solicitor in a better position to discharge its core obligations to provide efficient, timely and effective legal services to the Territory.

OUTLINE OF PROVISIONS

Section 1 – Name of regulation

Specifies the name of the Regulation – the *Freedom of Information Amendment Regulation 2006 (No 1)* (the Amending Regulation).

Section 2 – Commencement

States that the Amending Regulation commences on the day after it is notified on the ACT Legislation Register.

Section 3 – Legislation amended

The Amending Regulation amends the *Freedom of Information Regulation 1991* (the Regulation).

Section 4 – Substitution of section

Section 4 of the Amending Regulation substitutes section 3 of the Regulation that previously only provided for the exemption of agencies in relation to documents, but now also provides for the exemption of bodies in relation to documents.

Section 5 – Specification and exemption of certain bodies and agencies in relation to certain documents

Section 5 of the Amending Regulation inserts into Schedule 2 of the Regulation new items 2 and 3 that, respectively, exempt the government solicitor, in relation to documents of the government solicitor that relate to the government solicitor acting as legal practitioner under the *Government Solicitor Act 1989* and exempt the Department of Justice and Community Safety, in relation to documents of the government solicitor that relate to the government solicitor acting as legal practitioner under the *Government Solicitor Act 1989*.