

2010

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

TERRITORY RECORDS AMENDMENT BILL 2010

**EXPLANATORY STATEMENT
(Amended)**

Circulated by authority of

Simon Corbell MLA

A/g Minister for Territory and Municipal Services

Explanatory Statement (Amended)

A review of the operation of the *Territory Records Act 2002* was undertaken in 2009/10 as required by Section 58 of the Act.

The Review was undertaken by Mr Paul Macpherson with significant consultation, including Principal Officers and Chief Executives, Senior Managers and Records Managers from ACT Government agencies, the Territory Records Advisory Council, members of the recordkeeping professions, members of Canberra-based historical and genealogical societies, and with members of the general public.

The review and the government response to the review were tabled in the Legislative Assembly on 1 July 2010. The amendments in the accompanying Bill give effect to the recommendations.

The Bill strengthens the role of the *Territory Records Act 2002* in either managing or linking with other legislation to manage all records of the Territory.

The first explanatory statement related to the Bill as introduced into the ACT Legislative Assembly on 23 September 2010.

The explanatory statement was amended prior to debate to include the government amendments prepared following the receipt of the Scrutiny Report of 18 October 2010 from the Scrutiny of Bills and Subordinate Legislation Committee. The government amendments give effect to the issues raised by the Committee and were foreshadowed in the response to the Chair of the Committee.

OUTLINE OF PROVISIONS

PART 1 PRELIMINARY

Clause 1 Name of Act

This clause is a technical clause and names the Act as the *Territory Records Amendment Act 2010*.

Clause 2 Commencement

This clause is a technical clause and explains that the Bill, once enacted, will commence on the day after its notification day.

Clause 3 Legislation amended

This clause is a technical clause and explains that this Act amends the *Territory Records Act 2002* and the *Legal Aid Act 1977*. This Act also repeals the *Executive Documents Release Act 2001*. While this Act does not amend the *Health Records (Privacy and Access) Act 1997*, it does establish the relationship with the government records managed by that ACT.

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

This clause adds an additional purpose to the Act ‘to support the management and operation of Territory agencies’ to ensure that recognition is provided that records are created in the first instance to support the business operations of government.

Clause 5 Application of Act Section 6 (1)

This clause establishes the relationship between Territory records and Health records as set out in the *Health Records (Privacy and Access) Act 1997*. It enables ACT Health and other Departments with health records to have an integrated Records Management Program covering all records for which the Department is responsible. It enables those officers who manage health records as part of their responsibilities to utilise the Standards for Records Management established in the *Territory Records Act 2002* and to develop Records Disposal Schedules for the management and eventual disposal of the records that they manage. There will now be certainty in the length of time that health records will be kept and protection will be provided to those officers as they dispose of records according to the directions established in the relevant Records Disposal Schedules.

Clause 6 Application of Act Section 6 (3)

This clause sets out the specific records of the Legal Aid Commission that are exempt from the provisions of the *Territory Records Act 2002* and notes the amendment to the

Legal Aid Act 1977 requiring the Commission to have a Records Management Program which will now cover all records of the Commission.

Clause 7 Meaning of *record* of an agency etc
Section 9

This clause updates and extends the definition of a record to be consistent with the definition of a record in the Australian and International Standard for Records Management AS/ISO 15489.

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

This clause relates to agency Records Management Programs that will now incorporate health records and ensures that there is no inconsistency with the *Health Records (Privacy and Access) Act 1997*.

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

This clause relates to the approval of agency Records Management Programs that will now incorporate health records and ensures that there is no inconsistency with the *Health Records (Privacy and Access) Act 1997*.

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

This note points out that the Director of Territory Records has the ability to amend or repeal a Records Disposal Schedule as well approving a Schedule.

Clause 11 Records disposal schedules—suspension
New section 19A

This clause introduces a new provision that has been included so that the Director may suspend a Records Disposal Schedule in relation to a record or class of records referred to in the Schedule. The effect of this will enable the Director of Territory Records to issue a 'Disposal Freeze' to prevent records being disposed of that may be required to be kept for a longer timeframe and in particular as evidence in an impending or foreshadowed court case.

Clause 12
New section 23 (2A)

This clause introduces a new provision which has been included so that the Director may authorise the transfer of a record or records to another jurisdiction following the transfer of a person or responsibility to that jurisdiction. This will enable Personal Security Files to be transferred when a person moves to a position in another jurisdiction. It also recognises that functional responsibilities can move jurisdictions and

the records or copies of those records need to move with the function, such as occurred recently with the establishment of the Australian Health Practitioner Regulation Agency.

A government amendment was proposed following the receipt of the Scrutiny Report of 18 October 2010 from the Scrutiny of Bills and Subordinate Legislation Committee to address issues raised by the Committee. The phrase 'on reasonable grounds' was added at the suggestion of the Committee.

Clause 13

New section 23A Agencies with inter-government functions

This section acknowledges that on occasion a body or agency is established that crosses jurisdictional boundaries and allows for records management arrangements to be made for that body.

New section 23B Report about inter-government records agreements

A government amendment was proposed following the receipt of the Scrutiny Report of 18 October 2010 from the Scrutiny of Bills and Subordinate Legislation Committee to address an issue raised by the Committee. This section sets out the requirement to report agreements to the Legislative Assembly and was added at the suggestion of the Committee.

Clause 14 Part 3 heading Agency records - access

This clause establishes a new heading to recognise that Executive records now have been incorporated into this part of the Act.

Clause 15 Access to records

Section 26 (1)

This clause establishes a common release date for Territory records and Executive records, which is proposed as Canberra Day each year. It is hoped that by releasing Cabinet records at 10 years and Territory records at 20 years that significant recognition will be given to the documentary heritage of the ACT.

Clause 16 Declaration applying provisions of FOI Act

Section 28 (1)

This clause establishes that when an agency has a Section 28 declaration in force that it can apply to a single record or a class of records.

Clause 17 Executive records—access and release

New part 3A

The *Executive Documents Release Act 2001* has been integrated with the *Territory Records Act 2002*. These provisions have been included within the *Territory Records Act 2002* as a distinct part (Part 3A) so that the Cabinet Office, through the Chief

Minister's Department, still has responsibility for the for the approval and overseeing the release of Cabinet records. Amendments to the Administrative Arrangements will reflect these distinct responsibilities. The Explanatory Statement prepared for the *Executive Documents Release Act 2001* should still be read in conjunction with this Part.

Clause 18 Functions
Section 33 (1) (e)

This clause notes that the Director's functions have been extended through the introduction of the new section 19A, providing that the Director can now suspend as well as approve Records Disposal Schedules.

Clause 19
New section 33 (1) (ea)

This clause notes that the Director's functions have been extended through the introduction of a provision requiring that the Director can now monitor the disposal of records by agencies.

Clause 20 Functions of council
New section 42 (d)

This clause provides for a new function of the Territory Records Advisory Council and recognises that the Council representing the interests of the community as well as agencies has since its inception, expressed a strong interest in issues relating to the access to records that are open to public access under section 26 (Access to records).

Clause 21 Membership of council
Section 43 (b)

This clause increases the number of members appointed by the Minister and enables the new category of member established in the next clause to be accommodated.

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

This clause enhances the role and representation of the Territory Records Advisory Council and establishes a position on Council for organisations interested in public administration, governance or public accountability.

Clause 23 Transitional—Executive Documents Release Act 2001
New section 100

This is a technical clause and establishes that any matters undertaken under provisions of the *Executive Documents Release Act 2001* can be preserved as actions made under the *Territory Records Amendment Act 2010*.

Clauses 26, 27, 28, 29, 30 Dictionary, new definitions

This is a technical clause and updates the dictionary to include the new terms introduced in this amendment.

Clause 31 Repeal of Executive Documents Release Act 2001

This is a technical clause and notes that the *Executive Documents Release Act 2001* is now repealed