

**2016**

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

**FREEDOM OF INFORMATION AMENDMENT REGULATION 2016 (No 2)**

**SL2016-32**

**EXPLANATORY STATEMENT**

**Presented by  
Gordon Ramsay MLA  
Attorney-General**



## ***FREEDOM OF INFORMATION AMENDMENT REGULATION 2016 (No 2)***

### **Introduction**

This explanatory statement relates to the *Freedom of Information Amendment Regulation 2016 (No 2)* (the Amending Regulation). It has been prepared in order to assist the reader of the Amending Regulation.

The statement is to be read in conjunction with the Amending Regulation. It is not, and is not meant to be, a comprehensive description of the Amending Regulation.

### **Outline**

#### **Purpose of the Regulation**

The Amending Regulation exempts the Justice and Community Safety Directorate (JACS) in relation to documents given or produced in relation to the independent inquiry into the management of the custody and care of detainee Steven Freeman at the Alexander Maconochie Centre (AMC).

The inquiry was conducted by Mr Philip Moss AM, with the support of JACS, to review the effectiveness of ACT Corrective Services systems.

The inquiry considered:

- the adequacy of the management, care and custody of detainee Steven Freeman at the AMC and the compliance of this care and custody with human rights obligations;
- the overall effectiveness of the application of relevant policies and procedures in the care and custody of Steven Freeman;
- the adequacy of induction and risk assessment policies and procedures relating to separation of vulnerable detainees at the AMC and how these were applied to Steven Freeman;
- the adequacy of policies and procedures relating to separation of vulnerable detainees at the AMC and how these were applied to Steven Freeman;
- the extent of the consideration given to Aboriginal culture, traditions and beliefs in the management, care and custody of Steven Freeman;
- the effectiveness of information sharing arrangements between the ACT Policing and ACT Corrective Services around new and remand detainees at AMC; and
- the accessibility and appropriateness of health and other support services within the AMC for Steven Freeman.

Particularly sensitive information was produced during the course of the Inquiry, including submissions from members of the public who did not consent to those submissions being made public. Mr Moss raised concerns that the submissions had been provided on the basis that they would be confidential, and releasing them or part of them would be contrary to the public interest as it would breach confidentiality and lead to a loss of faith in future inquiry processes.

As an ACT Government agency, JACS is bound by the *Freedom of Information Act 1989* (FOI Act).

### Scope of the Regulation

Section 6(4) of the FOI Act provides that a regulation may exempt an entity from the operation of the Act in relation to particular documents. The Amending Regulation exempts documents given or produced in relation to the inquiry into the management of the custody and care of detainee Steven Freeman at the AMC from the operation of the FOI Act, other than documents of an administrative nature.

While the material that was provided to the inquiry may already be captured by existing FOI Act exemptions, the Amending Regulation puts this beyond doubt, which is appropriate given the importance of protecting this particularly sensitive information.

### **Regulatory impact statement**

A regulatory impact statement is not required for this regulation as it does not impose any appreciable costs on the community, or a part of the community.

### **Human Rights Implications**

#### Right to privacy and reputation

The Amending Regulation engages and promotes section 12 of the *Human Rights Act 2004*, which promotes the right to privacy and reputation. As noted above, the Amending Regulation prevents sensitive material provided to the inquiry from being disclosed to third parties outside of the formal reporting process.

This is an important protection of the privacy and reputation of vulnerable individuals who have participated in the inquiry. Most of the information has been provided to the inquiry on the express basis that it will remain confidential. The Amending Regulation reinforces assurances of confidentiality and safety to these individuals. Information not provided confidentially has already been published.

#### Freedom of expression – right to seek and receive information

The Amending Regulation arguably engages the right to freedom of expression in section 16 of the Human Rights Act, which includes the right to seek and receive information under section 16(2). The Amending Regulation limits the ability of an individual to seek and receive information under the FOI Act. However, the limitation has been made for the purpose of promoting the right to privacy and reputation in section 12 of the Human Rights Act. This limitation is justifiable in a free and democratic society.

The Amending Regulation is confined in its scope; it does not apply to documents relating to matters of an administrative nature, such as documents relating to the appointment of the officers conducting the inquiry.

Other information about the inquiry is available to the community on the JACS website, including terms of reference for the review and submissions where the author has consented to publication.

#### Right to take part in public affairs

The Amending Regulation does not engage the right to take part in public affairs, directly or through freely chosen representatives, in section 17(a) of the Human Rights Act.

In *Law Society of the ACT & Treasury Directorate and NRMA Insurance (Appeal)* [2013] ACAT 36 (21 May 2013), Presidential Member Professor Spender observed, “Unlike section 16 which expressly includes within its ambit the ‘freedom to seek, receive and impart information’, section 17 does not necessarily contemplate a right to access information or documents”.<sup>1</sup>

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<sup>1</sup> *Law Society of the ACT & Treasury Directorate and NRMA Insurance (Appeal)* [2013] ACAT 36 (21 May 2013) at para 114.

## Clause Notes

### **Clause 1**      **Name of regulation**

This clause provides that the name of this regulation is the *Freedom of Information Amendment Regulation 2016 (No 2)*.

### **Clause 2**      **Commencement**

This clause provides that this regulation commences on the day after its notification day.

### **Clause 3**      **Legislation amended**

This clause provides that this regulation amends the *Freedom of Information Regulation 1991*.

### **Clause 4**      **Schedule 2, new item 8**

This clause adds a new item 8 to schedule 2 of the Freedom of Information Regulation.

Schedule 2 lists agencies that are exempt from the operation of the *Freedom of Information Act 1989* with respect to particular documents. This clause provides that the Justice and Community Safety Directorate is exempt from the operation of the Freedom of Information Act in relation to documents given or produced in relation to the independent inquiry into the management of the custody and care of detainee Steven Freeman at the Alexander Maconochie Centre, conducted by Mr Philip Moss AM. However, this exemption does not apply to documents that relate to matters of an administrative nature.