

2017

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

FREEDOM OF INFORMATION REGULATION 2017

SL2017-42

EXPLANATORY STATEMENT

**Presented by
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Attorney-General**

FREEDOM OF INFORMATION REGULATION 2017

Introduction

This explanatory statement relates to the *Freedom of Information Regulation 2017* (the Regulation). It has been prepared in order to assist the reader of the Regulation. It does not form part of the Regulation and has not been endorsed by the Assembly.

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

Outline

Purpose of the Regulation

The purpose of this Regulation is to prescribe the principal officer for territory authorities and instrumentalities for the purposes of the *Freedom of Information Act 2016*.

The Act accords particular functions and obligations to the principal officer of an agency, including to appoint a person as the agency's information officer under section 18. Agency is defined in section 15(1) to include administrative units (within the meaning of section 13 of the *Public Sector Management Act 1994*), statutory office-holders and their staff, territory authorities, territory instrumentalities and several other entities.

Section 15(2) of the Act clarifies that a 'territory authority' is a body established for a public purpose under an Act or a statutory instrument. Section 15(2) also defines a 'territory instrumentality' to be a corporation established under an Act or statutory instrument, or under the *Corporations Act 2001* (Cth) and in which a majority of the governing body is appointed by a Minister, agency or instrumentality of the Territory or is otherwise subject to ministerial control or direction.

Examples of territory authorities include the ACT Insurance Authority under the *ACT Insurance Authority Act 2005*, the City Renewal Authority, the ACT Public Cemeteries Authority under the *Cemeteries and Crematoria Act 2003*. Examples of territory instrumentalities include the Cultural Facilities Corporation and the University of Canberra.

The Act's dictionary defines the principal officer for each agency by reference to each prescribed agency (eg the Principal Registrar for ACT Courts and Tribunal), however omits a specific definition of the principal officer for territory authorities and instrumentalities.

The Regulation clarifies that, for the purposes of the Act, the principal officer for both territory authorities and instrumentalities is the person who has responsibility for managing the affairs of the entity. This construction reflects the definition of head of a public sector agency present in the *Public Interest Disclosure Act 2012*.

Examples of positions within territory authorities that may be considered to have responsibility for managing the authority's affairs include positions:

- the Chief Planning Executive for the Planning and Land Authority (under the [Planning and Development Act 2007](#))
- the Chief Executive Officer of the Canberra Institute of Technology (C.I.T.) (under the [Canberra Institute of Technology Act 1987](#))
- the Chairperson of the ACT Scientific Committee (under the [Nature Conservation Act 2014](#)).

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

The Regulation does not engage the *Human Rights Act 2004*.

Detail

Clause 1 (Name of regulation) names the Regulation – the *Freedom of Information Regulation 2017*.

Clause 2 (Commencement) provides that the Regulation commences on 1 January 2018.

Clause 3 (Principal officer for territory authorities and territory instrumentalities – Act, s 15(2)) provides that the principal officer for a territory authority is the person who has responsibility for managing the affairs of the territory authority.

For a territory instrumentality, the Regulation clarifies that the principal officer is the person with responsibility for managing the affairs of the territory instrumentality.