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

ELEVENTH ASSEMBLY

TERRITORY RECORDS (EXECUTIVE RECORDS) AMENDMENT BILL 2025

**GOVERNMENT AMENDMENTS
SUPPLEMENTARY EXPLANATORY STATEMENT**

**Presented by
RACHEL STEPHEN-SMITH MLA
MINISTER FOR THE PUBLIC SERVICE
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TERRITORY RECORDS (EXECUTIVE RECORDS) AMENDMENT BILL 2025

This Supplementary Explanatory Statement relates to the Territory Records (Executive Records) Amendment Bill 2025 (the Bill) as presented to the Legislative Assembly by Mr Andrew Braddock MLA. It has been prepared to assist the reader of the government amendments and to help inform debate. It does not form part of the Bill or government amendment and has not been endorsed by the Legislative Assembly. The statement is to be read in conjunction with the Bill and government amendments. It is not, and it not meant to be, a comprehensive description of the Bill or government amendments.

The Territory Records (Executive Record) Amendment Bill 2025 **is not** a Significant Bill and these Government Amendments are similarly not significant. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

OVERVIEW OF GOVERNMENT AMENDMENTS

The Government proposes amendments to the Bill, presented to the Legislative Assembly by Mr Braddock on 26 June 2025.

The amendments seek to support operationalisation of the Bill and provide for transitional arrangements in 2026.

The proposed amendments achieve this by providing modest increases in the time allowed for decision-making and review. For example, providing that the principal officer can extend the release period by up to 30 days and providing the Ombudsman with 30 instead of 15 days to decide an application for review.

To support implementation of the Bill, the amendments establish 2026 as a transitional year. The new Part 7 provides that requests for access to accessible executive records made before the commencement day will continue to be dealt with under existing Part 3A.

The new Part 7 also delays the commencement of the new functions provided to the Ombudsman until 1 July 2026.

Additional reporting arrangements will be considered separately to these amendments, such as through Annual Report (Government Agencies) Directions to support operationalisation of the Bill and provide transparency over principal officer compliance with timelines, particularly under new section 31FAA.

CONSULTATION ON THE PROPOSED APPROACH

The Ombudsman has been consulted on the implementation of the Bill and proposed government amendments.

CONSISTENCY WITH HUMAN RIGHTS

During the development of the Bill and the amendments, due regard was given to compatibility with human rights as set out in the *Human Rights Act 2004* (HR Act)

The explanatory statement that accompanied the presentation of the Bill notes that the Bill engages the following rights under the HR Act:

- Right to privacy and reputation (promoted and limited)
- Freedom of expression (promoted and limited)
- Taking part in public life (promoted)

The amendments engage, promote and limit certain human rights under the HR Act:

- Right to privacy and reputation (promoted and limited)
- Freedom of expression (promoted and limited)
- Taking part in public life (promoted)

The proposed government amendment to insert new section 31KA to the Bill may have implications for the right to privacy and reputation. Under this new section, the Ombudsman may require additional information from an applicant or principal officer where this is deemed to be reasonably needed to support a decision by the Ombudsman. Though generally unlikely, it is possible that this could include personal information.

The scope of information able to be required by the Ombudsman is limited to information that is considered by the Ombudsman to be reasonably needed to decide the application. The ability for the Ombudsman to require additional information is necessary to enable them to make informed, evidence-based and clear decisions when performing the functions assigned to them under the Bill.

The applicant or principal officer cannot be compelled to provide the additional information. If the applicant or principal officer fails to provide the required information, which the Ombudsman considers is reasonably needed to make a decision, the Ombudsman *may* refuse to consider the application further. However, while the Ombudsman *may* refuse to deal with an application on this basis, this clause is not intended to restrict or constrain the Ombudsman's power to continue dealing with, or otherwise make decisions regarding, an application.

The ACT Ombudsman is a trusted Officer of the Assembly and is required to protect private and personal information while performing their functions. New section 31KA is the least restrictive means of ensuring the Ombudsman can make informed decisions under the Bill.

The remainder of the proposed government amendments will not limit any human rights. However, the amendments to the Bill could be viewed as reducing the extent to which the Bill promotes human rights, specifically the right to freedom of opinion and expression as supported by the ability to access government information. Notwithstanding this, the Government is of the view that the amendments do not represent a limitation of rights.

CLAUSE NOTES

Proposed new clause 4A

This clause inserts a new definition of release period.

Proposed amended clause 7

The proposed amendments allow a principal officer to extend the release period for the request by not more than 30 days where the request involves a large volume of information, is complex or where the principal officer considers an extension is reasonable in the circumstances.

The proposed amendments also outline factors on which the ombudsman may extend the release period upon application by the principal officer.

Proposed amended clause 11

The proposed amendments include a new clause to enable the Ombudsman to require additional information from the applicant or the principal officer.

The proposed amendments allow the Ombudsman to refuse to deal with an application if the required information is not received within the stated time. However, while the Ombudsman *may* refuse to deal with an application on this basis, this clause is not intended to restrict or constrain the Ombudsman's power to continue dealing with, or otherwise make decisions regarding, an application.

The proposed amendments increase the time allowed for review by the Ombudsman to 30 working days and confirm that the time allowed for Ombudsman review does not commence until the Ombudsman is given access to the relevant Accessible Executive Record. Additionally, the amendments enable the Ombudsman to extend the review period by not more than 30 working days where a request involves large volumes of information, is complex, or an extension is otherwise reasonable in the circumstances.

Proposed new clause 11A

This clause inserts a new Part 7.

Part 7 states that requests for access to accessible executive records made before the commencement day will continue to be dealt with in accordance with Part 3A as in force immediately before commencement day.

Part 7 also delays the commencement of the new Ombudsman functions for requests for access to accessible executive records made on or after commencement day but before 1 July 2026. Principal officers deciding requests for access to accessible executive records made during this time will be required to

decide within 30 days, or extended timeframe. Failure to decide an application within the relevant timeframe becomes a deemed decision to fully restrain the document. An applicant can still apply for an internal review of a determination and apply to the ACAT for review.