

EXECUTIVE DOCUMENTS RELEASE BILL 2000

Supplementary Explanatory Memorandum

Amendments to be moved by Mr Moore

19 June 2001

Introduction

The amendments aim to implement the following alterations to the Bill:

1. reducing the period of protection of Cabinet papers from 10 years to 6 years;
2. changing the annual release day from 11 May to 1 July;
3. simplifying the process for releasing Cabinet documents by establishing a procedure where a list is published (primarily on the ACT Government website) with individual documents then provided to applicants on request;
4. simplifying the grounds for exempting documents from release (which, as in the original Bill, will be determined by the relevant chief executive) by—
 - providing that the same grounds provided in the *Freedom of Information Act* apply to the release of Cabinet documents,
 - providing review of such decisions by the Administrative Appeals Tribunal; and
 - omitting a previous proposal for exemptions to be ratified by the Legislative Assembly.
5. clarifying and reinforcing the exemptions from disclosure of material containing individuals' personal and private information;
6. including a clause to confirm that the effect of the legislation applies to past Cabinet papers, not merely to papers created after the commencement of the legislation (thus ensuring that 1989-2001 papers are released); and
7. clarifying that the *Freedom of Information Act* rights are in no way diminished (reacting to a concern raised by the Scrutiny of Bills Committee).

Amendments 1, 2 3 and 4

Clause 3

Proposed new definitions

These four amendments together insert new definitions in appropriate alphabetical locations. The meaning of the new definitions is as follows.

- **"accessible executive document"** is a term used in the simplified process for releasing documents and managing exemptions - see the *Note* to proposed clause 6(1).
- **"earliest release day"** defines the release day for all Cabinet papers. This definition effectively sets down the annual release date (1 July) and the number of years of protection (6).
- **"later release day"** is a term used when a document has an exemption from protection. proposed clause 7A(7) provides the limits to the period of exemption.
- **"protected private information"** is a definition used in applying the stricter rules for exempting personal private information from release – see the proposed clause 7A(2)(b).
- **"release restraint determination"** is the new term for an exemption to the release of a Cabinet document.
- In Amendment 3, the definition of **"release day"** is omitted because it is replaced jointly by **"earliest release day"** and **"later release day"**.

Amendment 5

Clauses 5, 6 and 7

Proposed new clauses 5, 6, 7, 7A, 7B and 7C

This amendment omits the 3 original clauses dealing with release, exemption and private information and replaces them with 6 clauses covering the same matter but implementing changes mentioned in the Introduction (above).

(Note that the clauses would be renumbered automatically if the amendments are adopted).

The effect of the new clauses is set out below.

Clause 5

Application to previous executive documents

This is an "avoidance of doubt" style clause included to ensure that 1989-2001 Cabinet papers are covered by this legislation. This was the original intention (as is clear from the Presentation Speech and the Explanatory Memorandum), but the inclusion of this clause removes any possible doubt.

Clause 6

List of released executive documents must be published

This clause obliges the chief executive of the department responsible for this Act (the Chief Minister's Department) to maintain a public list of all accessible Cabinet papers.

The public list must also indicate all determinations of an exemption from release for a cabinet paper (or part of one). Such indications must include a notice alerting readers to the possibility of having such a determination reviewed by the Administrative Appeals Tribunal.

Clause 7

Availability of released documents

This section sets out the process for access to a document, including:

- the procedure for giving access to all non-exempt documents (subclause 1);
- the procedure for giving access to the accessible part of a document which is partially exempt (subclause 2);
- the procedure for refusing access to exempt parts of documents (subclause 3);
- the procedure for giving special access to exempt documents where the exemption is based on the privacy of the person who applies for access (subclause 4); and
- the procedure, whenever an exemption from access is determined, for giving the applicant a copy of that determination (subclause 5).

Clause 7A

Release delayed or denied

This clause sets out the procedures for granting exemptions from disclosure. These are called release restraint determinations.

Features of the clause include:

- that exemptions are made on the same grounds as provided in the *Freedom of Information Act 1989* (other than the exemption in that Act for cabinet documents themselves);
- provision is made for partial exemptions, so that material that has no grounds for exemption can be released even if some exempt material is in a Cabinet document;
- reasons must be given for granting exemptions;
- the determination must be filed with the document (and also provided to the applicant who has been refused access – see subclause 7(5) above)
- the exemption must be for a fixed period, of no more than 5 years, with a possibility of extension, up to a maximum period of 20 years from the year when the Cabinet paper was before Cabinet; and
- finally, special provision is made for personal private information to have no time limit on the length of a release exemption.

Note that, in accordance with the *Interpretation Act* (section 27D), the power of the chief executive to make a determination includes a power to vary or withdraw such a determination, according to the same procedures that are provided by this amendment.

Clause 7B

Freedom of Information Act access not prevented

This clause, inserted in response to a comment by the Scrutiny of Bills Committee of the Assembly, removes any doubt that this legislation might affect any other rights under the *Freedom of Information Act 1989*.

Clause 7C

Review of release restraint determination by AAT

This is a standard clause providing that decisions made by the chief executive to use an exemption to prevent a document from being released may be reviewed by the Administrative Appeals Tribunal.

This procedure is inserted in substitution for a procedure in the original Bill that provided review and ratification of such decisions by the Assembly. The two procedures would conflict. As the decision to apply exemptions based on the *Freedom of Information* law would be a decision made on legal grounds by an official, not a Minister, the revised procedure is more appropriate and more consistent with the separation of powers doctrine.

Note that Clause 8 (**No liability for complying with this Act**) and Clause 9 (**Regulation-making powers**) would remain unchanged in the Bill.

Circulated by Michael Moore MLA