

2002

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

INQUIRIES AMENDMENT BILL 2002

EXPLANATORY MEMORANDUM

Circulated by the authority of Gary Humphries MLA
Leader of the Opposition

Inquiries Amendment Bill 2002

Outline

The *Inquiries Act 1991* (“the Act”) allows the Executive to establish boards of inquiry to inquire into particular matters.

Section 14A of the Act deals with how reports from boards can be made public.

Relevantly, subsection 14A(3) provides that where a report (or part of a report) is made public by the Chief Minister before it has been laid before the Assembly, it “attracts the same privileges and immunities as if report or part has been laid before the Assembly”.

During 2001, the Government referred to a board of inquiry the issue of disability services.

The expectation was that the Chief Minister would make the report public as soon as it was received.

However, it wasn’t released.

The Government was in receipt of advice from the ACT Government Solicitor (“the advice”), which said that although the Government could release the Report at the time it was received, it would be “prudent” not to release the report until it could be laid before the Assembly.

The reason appeared to be that if the Government released the report earlier, it wouldn’t have “absolute privilege”. This is because of the way the Government Solicitor’s construed section 16 of the *Parliamentary Privileges Act 1987* (C’th), which sets out the privileges of the Assembly.

The advice forms an attachment to this memorandum.

Assuming the Government Solicitor’s construction is correct, it would defeat the evident purpose of subsection 14A(3) of the Act, which is to allow:

- (a) the Government to release inquiry reports whilst the Assembly isn’t sitting; and
- (b) people to discuss the contents of the report

without fear of legal action.

To remove any doubt about the matter, this Bill is drafted in a way which accepts the Government Solicitor’s advice, so future Chief Ministers can publish reports from Boards of Inquiry when the Assembly isn’t sitting, safe in the knowledge the report will attract absolute privilege.

Financial Implications

There are no financial implications arising from the Bill.

Detail of Clauses

Name of the Act

Clause 1 names the Act the *Inquiries Amendment Act 2002*.

Commencement

Clause 2 sets the Act's commencement as the day it's Gazetted.

Act Amended

Clause 3 identifies the Act being amended as the *Inquiries Act 1991*.

Subsection 14(3)

Clause 4 amends subsection 14A(3) of the Act. Subsection 14A(3) is a deeming provision, treating a report made public by the Chief Minister whilst the Assembly isn't sitting as having the same privileges and immunities as something "laid before" the Assembly.

The advice says that a report merely tabled in the Assembly doesn't attract absolute privilege. To attain this status, the Assembly must have ordered the report be published.

In recognition of the advice, the amendment changes this deeming provision so when the Chief Minister publishes a report when the Assembly isn't sitting, it doesn't merely have the privileges and immunities as if the report was "laid before the Assembly"; it has the privileges &c. of a report which has been ordered to have been published by the Assembly.

The object is to remove any doubt that an inquiry report published by the Chief Minister when the Assembly isn't sitting has anything other than absolute privilege.