

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN
CAPITAL TERRITORY**

**FREEDOM OF INFORMATION
(AMENDMENT) BILL 1997**

EXPLANATORY MEMORANDUM

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*Independent***

Outline

The Freedom of Information (Amendment) Bill 1997 amends certain provisions of the *Freedom of Information Act 1989* (the Principal Act).

The purpose of this Bill is to provide for increased access to government held information by members of the public through the following general provisions-

- making the application process easier to use by both the public and the government agencies concerned;
- reducing the cost of requests;
- shorter time periods for compliance
- rationalising exemptions so that they only applied to information for which there was an overriding public interest in withholding it;
- changing the objects of the Act to promote an attitude of pro-disclosure;
- reducing the power of Ministers to veto disclosure; and
- increasing the awareness on both sides that members of the public have a legal right of access to government-held information.

Additionally, a number of sections of the Principal Act have been rewritten in plain English in order to assist in their understanding and everyday application.

Clause Notes

Clauses 1, 2 and 3 are formal requirements. They refer to the short title of the Bill; specify that the Bill will commence on 1 July 1998, and identify the title of the Act being amended. The delay in the commencement of the Bill should provide an adequate time period to implement the proposed procedural changes within agencies.

Clause 4 repeals section 3 of the Principal Act and inserts new objects and establishes the overriding principal of availability. The right of access for members of the public to information held by an agency is emphasised and is to be limited only to the extent necessary to protect essential public interests, commercial confidentiality, or to preserve the privacy of individuals.

Clause 5 adds definitions for the terms used throughout the Bill, namely: "application fee", "personal information" and "records officer". Two subsections have also been rewritten in plain English.

Clause 6 repeals sections 7,8 and 9 of the Principal Act and new sections are inserted. These sections state the requirement to publish documents and reports as required by the relevant Minister and the *Annual Reports (Government Agencies) Act 1995*, and are essentially equivalent plain English versions of the repealed sections. Notable additions are that an agency must provide a wider range of material to members of the public and must also include clear details on how a person can obtain official information from the agency, and what information that person will need to provide in order to do so.

Clause 7 provides that an application for access to information made under the Act is not used as a substitute for going to the library and that access is given to documents created within agencies prior to the beginning of the freedom of information process in Australia in 1977.

Clause 8 repeals section 14 of the Principal Act and inserts new sections 13A, 13B and 14. These new sections establish the process of making an application under the Act. The most notable change is the identification of a records officer within an agency who would, if requested, be available to meet with an applicant for the purpose of giving all reasonable assistance to identify the relevant documents required.

Clause 9 tidy up errors in numbering which appear to have resulted from an earlier amendment to section 6.

Clause 10

Clause 11 is partially a consequential amendment relating to the process of making an application in section 14. Part (c) of the clause relates to not allowing access to documents to be given where granting access would be prejudicial to the physical or mental well-being of the applicant. This provision is covered in greater detail in Part V of the Bill.

Clause 12 removes the requirement for an agency to give an address for applications for access to information under this section as this is now covered in earlier provisions relating to the information that has to be made available by agencies to the public. The time period for making a decision on an application for access has been reduced from 30 days to 21 days.

Clause 13 provides three additional forms of access to a document. These are an excerpt from or summary of the document; an oral account of the document; and in the form of a document which can be produced by the use of a computer or other equipment ordinarily available to the agency. The latter form of access is in recognition of the focus of the Act on "documents" rather than "information". If, for example, information is present on a computer in such a way that a document could be produced very easily (eg. on a database designed to produce summaries or tables) than an agency is required to offer this form of access.

Clause 14 provides for access to a document to be deferred for a period not greater than 90 days.

Clause 15 provides that the decision to delete exempt material from a document is not be determined by the agency or Minister based on a discretionary assessment of the nature and extent of the work.

Clause 16 repeals section 23 of the Principal Act and a plain English version of the section is inserted.

Clause 17 repeals section 24 of the Principal Act with the effect that an agency or Minister is required, if requested, to acknowledge as to the existence of a document in all circumstances.

Clause 18 is an abbreviation of the section as section 13C of the Interpretation Act now provides that a reference to "Reasons for a decision" to any findings of fact and a summary of the material on which those findings were based

Clause 19 repeals sections 26 to 31 (inclusive) of the Principal Act and new sections 26 to 29 (inclusive) are inserted. The new sections are essentially a plain English condensation of the repealed sections. Further amendments are made to the structure of fees relating to an application for access to a document, however, two significant changes are made to fees in the new section 28. Subsection (2) of section 28 provides that where a person is required to pay a deposit where the total charge is likely to be over \$250, the deposit is not required until the applicant has been granted access in the form desired. Subsection (3) provides that a person is not liable for any charge where the agency or Minister does not comply with the time limits which are in place in relation to a request for access.

Clause 20 repeals Parts IV and V of the Principal Act and inserts new Parts relating to exempt documents and access to, and amendment of, personal records.

Part IV establishes two main categories of exemptions - documents which are fully exempt, and those which are subject to public interest exceptions. The exemption for the latter category of documents is only in force for a period not longer than 12 months from the time at which a certificate of exemption is issued for the document. Documents which have been prepared for consideration by the Executive and official records relating to decisions made by the Executive are only exempt until the decision to which the document relates has been put into effect and officially announced. Documents subject to legal professional privilege are only exempt where, at the time of application, they are not relevant to any current or prospective litigation.

Part V establishes a person's right of access to personal information held on them by an agency or Minister. Safeguards in place include the requirement for the Minister or agency to conduct a proper identity check on the person to ensure the validity of the agent representing the person. Also, information would not be released that would prejudice the physical or mental health, or the safety, the person making the application. A person would not be allowed access to evaluative material which has been compiled for the purposes of determining the suitability, eligibility or the qualifications of the person relating to employment and the awarding of contracts, scholarships or honours.

Clauses 21 to 33 (inclusive) are consequential amendments within the Principal Act relating to appeal procedures, protection against certain actions in respect of offences and reporting requirements to the Legislative Assembly.

Clause 34 provides for changes relating to fees and charges. These include that-

- deposits would only be required on account in cases where the total charge is likely to be more than \$250;
- no charge is to be levied relating to the cost of deciding whether or not to give access to a document, and
- no application fee or other charge shall apply to a request by a Member of the Legislative Assembly

Clause 35 is a schedule of further consequential amendments within the Principal Act.