



Australian Capital Territory

# **Territory Records Act 2002**

**A2002-18**

**Republication No 4**

**Effective: 12 April 2007 – 10 May 2007**

Republication date: 12 April 2007

Last amendment made by A2007-3

Not all provisions are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Territory Records Act 2002* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 12 April 2007. It also includes any amendment, repeal or expiry affecting the republished law to 12 April 2007.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Territory Records Act 2002

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Australian Capital Territory

# Territory Records Act 2002

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An Act about Territory records, and for other purposes

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Territory Records Act 2002*.

### 2 Commencement

- (1) Part 3 (Access to records) commences on 1 July 2007.

*Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

- (2) The remaining provisions commence on a day fixed by the Minister by written notice.

*Note* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

- (3) If the remaining provisions do not commence before 1 July 2003, they automatically commence on the first day after that day.

- (4) The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to this Act.

### 3 Main purposes of Act

The main purposes of this Act are—

- (a) to encourage open and accountable government by ensuring that Territory records are made, managed and, if appropriate, preserved in accessible form; and
- (b) to preserve Territory records for the benefit of present and future generations; and
- (c) to ensure that public access to records is consistent with the principles of the *Freedom of Information Act 1989*.



## 4 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*prescribed authority*—see the *Freedom of Information Act 1989*, dictionary.' means that the term 'prescribed authority' is defined in that dictionary and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

## 5 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

## 5A Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1* *Criminal Code*

The Criminal Code, ch 2 applies to the offences against this Act.

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2* *Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

**6 Application of Act**

- (1) This Act does not apply to records that are health records within the meaning of the *Health Records (Privacy and Access) Act 1997* (the ***Health Records Act***).
- (2) This Act does not apply to records of the human rights commission in relation to—
  - (a) a complaint made to the commission under the Health Records Act, section 18; or
  - (b) the exercise of a function under the *Human Rights Commission Act 2005* in relation to a complaint mentioned in paragraph (a).
- (3) This Act does not apply to records of the legal aid commission that relate to the exercise of a function of an officer or employee of the commission when practising as, or exercising a function of, a solicitor under the *Legal Aid Act 1977*.

## **Part 2                      Management and care of records**

### **Division 2.1              General**

#### **7                      Meaning of *agency***

For this Act, an *agency* is—

- (a) the Executive; or
- (b) the Supreme Court; or
- (c) the Magistrates Court or Coroner's Court; or
- (d) the Legislative Assembly Secretariat; or
- (e) an administrative unit; or
- (f) any other prescribed authority; or
- (g) a board of inquiry under the *Inquiries Act 1991*; or
- (h) a judicial commission under the *Judicial Commissions Act 1994*; or
- (i) a royal commission under the *Royal Commissions Act 1991*; or
- (j) an entity declared under the regulations to be an agency.

#### **8                      Meaning of *principal officer***

For this Act, the *principal officer* of an agency is—

- (a) for the Executive—the chief executive of the administrative unit that provides secretariat support to the Executive; or
- (b) for the Supreme Court—the Chief Justice; or
- (c) for the Magistrates Court or Coroner's Court—the Chief Magistrate; or
- (d) for the Legislative Assembly Secretariat—the clerk; or

- (e) for an administrative unit—the chief executive of the administrative unit; or
- (f) for a royal commission, board of inquiry or judicial commission—the chief executive of the administrative unit that provides secretariat support to the Executive; or
- (g) for a territory-owned corporation, or a subsidiary, under the *Territory-owned Corporations Act 1990*—the chief executive officer of the corporation or subsidiary; or
- (h) for any other entity—the person declared under the regulations to be the principal officer for the entity.

## 9 Meaning of *record* of an agency

- (1) For this Act, a *record* of the Executive is a record, in written, electronic or any other form, under the control of the Executive or that it is entitled to control, kept as a record of its activities, whether it was created or received by the Executive, and includes a record created or received by a Minister as a member of the Executive, but does not include—
  - (a) a record related to the Minister’s personal or political activities; or
  - (b) a record that was created or received by the Minister only in the Minister’s capacity as a member of the Legislative Assembly.
- (2) For this Act, a *record* of an agency other than the Executive is a record, in written, electronic or any other form, under the control of the agency or to which it is entitled to control, kept as a record of its activities, whether it was created or received by the agency.

## 10 Meaning of *records management*

- (1) For this Act, *records management*, in relation to an agency, is the managing of records of the agency—

- (a) to meet its operational needs; and
  - (b) to ensure its records are managed and, if appropriate, preserved in accessible form—
    - (i) to allow public access to them consistent with the principles of the FOI Act; and
    - (ii) for the benefit of future generations.
- (2) **Records management** covers, but is not limited to, the creation, keeping, protection, preservation, storage and disposal of, and access to, records of the agency.

**11 Meaning of *control* and *entitled to control* of a record**

- (1) For this Act, an agency has ***control*** of a record if the agency has possession of the record.
- (2) For this Act, an agency is ***entitled to control*** a record if it is entitled to possession of the record.

**12 Records to which Act applies**

This Act applies to a record of an agency whenever it was made.

**Division 2.2 Obligation of principal officers**

**13 Principal officers must ensure Act complied with**

The principal officer of an agency must ensure that the agency complies with this Act in relation to its records.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

## Division 2.3 Records management

### 14 Agencies to make and keep records

An agency must make and keep full and accurate records of its activities.

### 15 Agencies to ensure accessibility of information

An agency must take the steps necessary to ensure that the information in its records continues to be accessible in accordance with the FOI Act and this Act.

### 16 Approved records management programs

- (1) An agency must have an approved records management program.
- (2) The approved records management program must include arrangements—
  - (a) for ensuring that the agency complies with this Act and the records management program; and

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

  - (b) for establishing normal practices and procedures for the exercise of functions of the agency in relation to its records (*normal administrative practices*), including the disposal of records; and
  - (c) for telling the director about any arrangements entered into with an entity that is not an agency to carry out any aspect of its records management; and
  - (d) under which the director may examine the operation of the records management program and the agency's compliance with this Act and the records management program; and

- (e) for the resolution of disputes about whether the agency is complying with this Act or the records management program; and
  - (f) to allow the director to report on the agency's compliance with this Act and the records management program; and
  - (g) for allocating resources for the records management program; and
  - (h) for the proper care of records of the agency, particularly records of archival or enduring value; and
  - (i) for preserving records containing information that may allow people to establish links with their Aboriginal or Torres Strait Islander heritage; and
  - (j) for the regular review of records to which a declaration under section 28 (Declarations applying provisions of FOI Act) applies; and
  - (k) for the director, if asked by the agency, to provide assistance, advice and training to the agency in records management; and
  - (l) for review and replacement or amendment of the records management program.
- (3) Subsection (2) does not limit the matters that may be included in the approved records management program.
- (4) An agency may dispose of a record only in accordance with its records management program.
- (5) An agency may dispose of a record mentioned in subsection (2) (i) only after consulting the council.
- (6) An agency must comply with its records management program.
- (7) Subsection (6) has effect despite any other Territory law, including the *Inquiries Act 1991*, *Judicial Commissions Act 1994* or *Royal Commissions Act 1991*.

## **17 Procedure for approving records management programs**

- (1) The principal officer of an agency may, in writing, approve a records management program for the agency if satisfied that—
  - (a) it complies with the approved standards and codes; and
  - (b) the director has approved a schedule for the disposal of records of the agency; and
  - (c) it includes the arrangements mentioned in section 16 (2) (Approved records management programs); and
  - (d) for records of an agency containing information that may allow people to establish links with their Aboriginal or Torres Strait Islander heritage—the agency has consulted with the council.
- (2) However, the principal officer of an agency may approve an agency's records management program even though the program does not comply with an approved standard or code, only if the director has certified in writing that the noncompliance is necessary for the agency's operational needs.
- (3) If the principal officer of an agency approves an agency's records management program, the principal officer must give a copy of the program to the director.

## **18 Approved standards and codes for records management**

- (1) The director may, in writing, approve standards and codes for agency records management.
- (2) Before approving a standard or code, the director must give a copy to each agency and give the agency a reasonable opportunity to comment on the standard or code.
- (3) In deciding whether to approve a standard or code, the director must take into account any comments made by an agency.



- (4) An approved standard or code is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

## **19 Approval of schedules for the disposal of records**

- (1) The director may, in writing, approve schedules for the disposal of an agency's records.
- (2) An approved schedule is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

## **20 Review of approved standards and codes**

The director must keep the approved standards and codes under review.

## **21 Inspection of records management programs**

- (1) The principal officer of an agency must make the agency's records management program available for public inspection without charge during ordinary working hours at the office of the principal officer and any other place decided by the principal officer.
- (2) This section does not require the principal officer of an agency to include in the agency's records management program made available for public inspection information about the existence or non-existence of a document if that information would make the program an exempt document under the FOI Act, section 34 (1) or 37.

*Note* The FOI Act, s 34 deals with documents affecting relations with the Commonwealth and States and s 37 deals with documents affecting enforcement of the law and protection of public safety.

## Division 2.4 Protection of records

### 22 Protecting records

- (1) An agency must ensure the safekeeping and proper preservation of its records.
- (2) An agency must ensure that its records that are in someone else's possession are held under arrangements that provide for the safekeeping, proper preservation and return of the records.
- (3) If an agency does not have control of a record that it is entitled to control and the record is not held under arrangements mentioned in subsection (2), the agency must take reasonable steps to recover control of the record.
- (4) Subsection (3) does not apply if the record is under the control of someone else who has a right to control it.

### 23 Protection measures

- (1) An agency must not—
  - (a) abandon or dispose of a record; or
  - (b) transfer or offer to transfer, or be a party to arrangements for the transfer of, the possession or ownership of a record; or
  - (c) damage a record; or
  - (d) neglect a record in a way that causes, or is likely to cause, damage to the record.
- (2) However, an agency does not contravene subsection (1) by doing—
  - (a) anything in accordance with the agency's normal administrative practice; or
  - (b) anything authorised or required to be done under this Act, or a provision of another Act, or a subordinate law, prescribed under the regulations; or

- (c) anything with the written approval of the director or in accordance with a practice or procedure approved by the director; or
  - (d) anything in accordance with a resolution of the Legislative Assembly; or
  - (e) anything in accordance with an order or decision of a court or tribunal.
- (3) This section prevails over an Act enacted before the commencement of this section.
- (4) An Act enacted after the commencement of this section is not to be interpreted as prevailing over or otherwise changing the effect of this section except so far as the Act provides expressly for it to have that effect.

## **24 Normal administrative practice**

- (1) Something is taken to have been done in accordance with an agency's *normal administrative practice* if—
- (a) it is done in accordance with the normal practices and procedures for the exercise of functions in the agency; and
  - (b) the practices and procedures are consistent with the agency's approved records management program.
- (2) However, something is taken not to have been done in accordance with an agency's normal administrative practice if—
- (a) it is done corruptly or fraudulently, for the purpose of concealing evidence of wrongdoing, or for any other improper purpose; or
  - (b) it is conduct declared under the regulations to be unacceptable conduct; or
  - (c) it is done in accordance with a practice or procedure declared under the regulations to be unacceptable; or

- (d) it is done in accordance with a practice or procedure that the Minister has told the agency in writing is unacceptable.

## Division 2.5 Miscellaneous

### 25 Records of agency that no longer exists etc

- (1) If an agency (the *original agency*) is abolished or otherwise ceases to exist, the records of the agency become the records of—
- (a) the agency that exercises the functions of the original agency to which the record most closely relates; or
  - (b) if the relevant chief executive directs that the record becomes the record of an agency—that agency.
- (2) If a function of an agency (the *original agency*) is given or transferred to another agency, the records of the agency relating to the function become the records of—
- (a) the agency to which the functions of the original agency are transferred; or
  - (b) if the relevant chief executive directs that the record becomes the record of an agency—that agency.
- (3) If a function of an agency (the *original agency*) is discontinued, the records of the agency become the records of—
- (a) the agency that exercises the functions of the original agency to which the record most closely relates; or
  - (b) if the relevant chief executive directs that the record becomes the record of an agency—that agency.
- (4) In this section:

*relevant chief executive* means the chief executive of the administrative unit responsible for administering the *Public Sector Management Act 1994*.

**U Part 3 Access to records****U 26 Access to records**

- (1) *A record of an agency is open to public access under this Act if 20 years has elapsed since the record, or the original of which it is a copy, came into existence.*
- (2) *A person is entitled to access under this Act to a record of an agency that is open to public access.*

**U 27 Requests for access**

- (1) *A person who wishes to have access to a record of an agency that is open to public access may apply to the agency.*
- (2) *An agency must take reasonable steps to assist a person to make a request in accordance with this section.*
- (3) *An agency to which a request is made in accordance with this section must comply with the request within a reasonable time.*

**U 28 Declaration applying provisions of FOI Act**

- (1) *The director may, on application by an agency, declare a record to be a record to which the disapplied provisions of the FOI Act apply.*
- (2) *The director may make the declaration only if satisfied that the record contains a document that is (or, if the disapplied provisions applied, would be) an exempt document under 1 or more of the following provisions of the FOI Act:*
  - (a) *section 34 (1) (Documents affecting relations with Commonwealth and States);*
  - (b) *section 37 (Documents affecting enforcement of the law and protection of public safety);*

- (c) *section 41 (Documents affecting personal privacy);*
  - (d) *section 42 (Documents subject to legal professional privilege);*
  - (e) *section 46 (Documents disclosure of which would be contempt of Legislative Assembly or a court).*
- (3) *If the director makes a declaration under subsection (1) about a record of an agency—*
- (a) *a person is not entitled to access to the record under this Act; and*
  - (b) *for a record of a royal commission, board of inquiry or judicial commission—the FOI Act applies as if the commission or board were a prescribed authority.*

*Note* A record to which a declaration applies may be accessed under the FOI Act.

- (4) *In this section:*

***disapplied provisions** means the FOI Act, part 3 (Access to documents) (other than sections 24 (Information as to existence of certain documents) and 26 (Procedure on request in respect of documents likely to affect relations between the Territory and the Commonwealth or a State)) and part 4 (Exempt documents).*

**U 29 Giving access to records under this Act**

- (1) *If a person is entitled to access under this Act to a record of an agency, the person is entitled to be given access to the record by being given—*
- (a) *a reasonable opportunity to inspect the record; or*
  - (b) *a copy of the record; or*
  - (c) *if the record is a record from which information may be produced or made available by electronic or other means—access to the information by use of that means; or*

(d) *if the record is a record of words in a sound recording, or in shorthand or other encoded material—a written transcript of the words.*

*Note* A fee may be determined under s 55 for this provision.

- (2) *The person is entitled to choose how the person is to be given access, but the agency may decide to give access in another way if satisfied that access in the way chosen by the person—*
- (a) *is not practicable because the agency does not have, and cannot readily obtain, equipment necessary to give access that way; or*
  - (b) *would be unreasonable because of the cost to the agency in giving access that way; or*
  - (c) *would interfere unreasonably with the agency's operations; or*
  - (d) *would not be appropriate having regard to the physical nature of the record; or*
  - (e) *would be detrimental to the proper preservation of the record; or*
  - (f) *would be an infringement of copyright, other than copyright owned by the Territory or an agency.*
- (3) *The agency may give access subject to conditions to ensure the safe custody and proper preservation of the record.*

## **U** 30

### **Register of records**

*An agency must keep a register of its records in relation to which a declaration under section 28 (Declaration applying provisions of FOI Act) is in force.*

**U 31**      ***Protection from liability when access given***

*If an agency (the **access provider**) gives access under this Act to a record of the agency—*

- (a) an action for defamation or breach of confidence does not lie against the Territory, an agency, a public servant, or anyone else acting with the authority of the access provider, because of the giving of the access; and*
- (b) an action for defamation or breach of confidence in relation to a publication involved in, or resulting from, the giving of the access does not lie against the author of the record or anyone else because of the author or the other person having given the record to an agency; and*
- (c) the giving of the access is not, for a law about defamation or breach of confidence, an authorisation or approval of the publication of the record or its contents by the person to whom the access is given.*



## Part 4 Director of Territory Records

### 32 Establishment of position

The position of Director of Territory Records is established.

### 33 Functions

- (1) The director has the following functions:
  - (a) to develop and approve standards and codes for records management by agencies;
  - (b) to assist in the development of an agency's records management program and amendments of the program;
  - (c) to encourage consistency in records management programs between agencies;
  - (d) on behalf of the Territory or an agency, to recover possession or control of records that, for whatever reason, are not under the control of an agency;
  - (e) to give advice to agencies about the preparation of, and to approve, schedules for the disposal of records under records management programs;
  - (f) to examine the operation of the records management program of an agency and the agency's compliance with this Act and the program and report on the operation and compliance;
  - (g) to advise the Minister on any matter relevant to records management or the operation of this Act;
  - (h) to give assistance, advice and training to agencies in records management;
  - (i) to develop measures for the preservation of records about Aboriginal and Torres Strait Islander heritage;

- (j) to encourage consistency between agencies in the preparation of indexes and other guides to assist in the awareness of, and access to, records;
- (k) to encourage the development of appropriate records management training for agency staff;
- (l) on behalf of the Territory or an agency, to enter into and manage arrangements with the National Archives of Australia or any other entity about records management;
- (m) to assist in the development of facilities for access by the public to records;
- (n) to exercise any other function given to the director under this Act or any other Territory law;
- (o) to do anything else—
  - (i) incidental, complementary or helpful to the director's other functions; or
  - (ii) likely to improve the effective and efficient exercise of the director's other functions.

*Note 1* A provision of a law that gives an entity (including a person) a function also gives the entity the powers necessary and convenient to exercise the function (see Legislation Act, s 196 (1) and dict, pt 1, defs **entity** and **function**).

*Note 2* The *Annual Reports (Government Agencies) Act 2004*, s 6 (Annual report of public authority) deals with the annual report to be given by a statutory office-holder who is declared to be a public authority under that Act.

- (2) In subsection (1) (f):

**report** means—

- (a) for an agency mentioned in section 7 (Meaning of **agency**) other than a board of inquiry or royal commission—report to the Minister; and

- (b) for a board of inquiry or royal commission—report to the Legislative Assembly.

### **34 Appointment of the director**

The director is appointed by the Minister.

*Note 1* For the making of appointments generally, see Legislation Act, pt 19.3.

*Note 2* Certain statutory appointments made by a Minister require consultation with a Legislative Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

*Note 3* A power to appoint a person to a position includes power to appoint a person to act in the position (see Legislation Act, s 209).

### **35 Term of appointment of director**

The director is to be appointed for a term not longer than 5 years.

*Note* A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

### **36 Ending of appointment of director**

The Minister may end the director's appointment—

- (a) for misbehaviour or physical or mental incapacity; or
- (b) if the director becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
- (c) if the director is convicted or found guilty of an indictable offence; or
- (d) if the member fails to comply with section 51 (Disclosure of interests by members of council) without reasonable excuse; or

- (e) if the director is absent from duty for 14 consecutive days, or for 28 days in any 12 months, except on leave given by the Minister.

*Note* The director's appointment also ends if the director resigns (see Legislation Act, s 210).

### **37 Conditions of appointment generally**

The director holds the position on the conditions not provided by this Act or another Territory law that are decided by the Minister.

### **38 Delegation**

The director may delegate the director's powers under this Act (other than section 28 (Declaration applying provisions of FOI Act) to a public servant.

*Note* For the making of delegations and the exercise of delegated functions, see Legislation Act, pt 19.4.

### **39 Ministerial directions to the director**

- (1) The Minister may give written directions to the director about the exercise of the director's functions.
- (2) Before giving a direction, the Minister must—
  - (a) tell the director of the intent of the proposed direction; and
  - (b) give the director a reasonable opportunity to comment on the proposed direction; and
  - (c) consider any comments made by the director.
- (3) The Minister must present a copy of a direction given under this section to the Legislative Assembly within 6 sitting days after the day it is given.
- (4) The director must comply with a direction given to the director under this section.

- (5) For the *Trade Practices Act 1974* (Cwlth), this Act authorises—
- (a) the giving of a direction under this section; and
  - (b) the doing of, or the failure to do, anything by the director to comply with a direction under this section.

#### **40 Arrangements for staff**

- (1) The director may arrange with the chief executive to use public servants in the administrative unit under the chief executive's control.
- (2) The *Public Sector Management Act 1994* applies to the management by the director of public servants the subject of an arrangement under subsection (1).

## Part 5 Territory Records Advisory Council

### Division 5.1 Establishment, functions and members of council

#### 41 Territory Records Advisory Council

There is a Territory Records Advisory Council.

#### 42 Functions of council

The functions of the council are to advise the director about—

- (a) the development and review of standards and codes for agency records management; and
- (b) the disposal of agency records; and
- (c) the preservation of agency records about Aboriginal and Torres Strait Islander heritage.

*Note* A provision of a law that gives an entity (including a person) a function also gives the entity the powers necessary and convenient to exercise the function (see Legislation Act, s 196 (1) and dict, pt 1, defs of *entity* and *function*).

#### 43 Membership of council

The council consists of—

- (a) the director; and
- (b) not less than 4, and not more than 8, members (the *appointed members*) appointed by the Minister under section 44.

#### **44 Appointed members of council**

- (1) The Minister must appoint as a member at least 1 person to represent each of the following:
  - (a) agencies;
  - (b) professional organisations interested in records management and archives;
  - (c) community associations interested in historical or heritage issues;
  - (d) entities interested in Aboriginal and Torres Strait Islander heritage.

*Note 1* For the making of appointments generally, see Legislation Act, pt 19.3.

*Note 2* Certain statutory appointments made by a Minister require consultation with a Legislative Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

*Note 3* A power to appoint a person to a position includes power to appoint a person to act in the position (see Legislation Act, s 209).

- (2) The person appointed to represent entities mentioned in subsection (1) (d) must be an Aboriginal or Torres Strait Islander.

#### **45 Chairperson and deputy chairperson**

- (1) The Minister must appoint—
  - (a) an appointed member to be chairperson; and
  - (b) another appointed member to be deputy chairperson
- (2) A person appointed to be chairperson or deputy chairperson ceases to hold office if the person ceases to be an appointed member.

#### **46 Term of appointment of appointed members**

An appointed member is to be appointed for a term of not longer than 3 years.

*Note* A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

#### **47 Ending of appointment of appointed members**

- (1) The Minister must end the appointment of an appointed member if satisfied that the member is no longer an appropriate person to represent the relevant group of entities mentioned in section 44 (1) (a), (b), (c) and (d) (Appointed members of council).
- (2) The Minister may end the appointment of an appointed member—
  - (a) for misbehaviour or physical or mental incapacity; or
  - (b) if the member is absent for 3 consecutive meetings of the council without reasonable excuse; or
  - (c) if the member is convicted or found guilty of an indictable offence; or
  - (d) if the member fails to comply with section 51 (Disclosure of interests by members of council) without reasonable excuse.

*Note* A member's appointment also ends if the member resigns (see Legislation Act, s 210).

#### **48 Conditions of appointment generally**

An appointed member holds the position on the conditions not provided by this Act or another Territory law that are decided by the Minister.



## **Division 5.2 Proceedings of council**

### **49 Time and place of meetings of council**

- (1) The council is to meet at the times and places it decides.
- (2) However, the council must meet at least 4 times a year.
- (3) The chairperson—
  - (a) may at any time call a meeting of the council; and
  - (b) must call a meeting if asked by the Minister, the director or at least 3 appointed members.
- (4) If the chairperson is not available for any reason to call a meeting of the council, the deputy chairperson may call the meeting.

### **50 Procedures governing proceedings of council**

- (1) The chairperson of the council presides at all meetings of the council at which the chairperson is present.
- (2) If the chairperson is absent, the deputy chairperson presides.
- (3) If the chairperson and deputy chairperson are both absent, the member chosen by the members present presides.
- (4) Business may be carried out at a meeting of the council only if 3 appointed members are present.
- (5) At a meeting of the council each appointed member has a vote on each question to be decided.
- (6) A question is to be decided by a majority of the votes of the appointed members present and voting but, if the votes are equal, the member presiding has a casting vote.
- (7) The council may hold meetings, or allow members to take part in meetings, by telephone, closed-circuit television or another form of communication.

- (8) A member who takes part in a meeting conducted under subsection (7) is taken to be present at the meeting.
- (9) A resolution of the council is a valid resolution, even though it was not passed at a meeting of the council, if—
  - (a) all appointed members agree, in writing, to the proposed resolution; and
  - (b) notice of the resolution is given under procedures decided by the council.
- (10) The council must keep minutes of its meetings.
- (11) The council may conduct its proceedings (including its meetings) as it otherwise considers appropriate.

## **51 Disclosure of interests by members of council**

- (1) This section applies to a member of the council if—
  - (a) the member has a direct or indirect financial interest in an issue being considered, or about to be considered, by the council; and
  - (b) the interest could conflict with the proper exercise of the member's functions in relation to the council's consideration of the issue.
- (2) As soon as practicable after the relevant facts come to the member's knowledge, the member must disclose the nature of the interest to a meeting of the council.
- (3) The disclosure must be recorded in the council's minutes and, unless the council otherwise decides, the member must not—
  - (a) be present when the council considers the issue; or
  - (b) take part in a decision of the council on the issue.

- (4) Any other member who also has a direct or indirect financial interest in the issue must not—
  - (a) be present when the council is considering its decision under subsection (3); or
  - (b) take part in making the decision.
- (5) Within 14 days after the end of each financial year, the chairperson of the council must give the Minister a statement of any disclosure of interest made under this section during the financial year.

## Part 6 Miscellaneous

### 52 Secrecy

- (1) In this section:

*court* includes any tribunal or other entity having power to require the production of documents or the answering of questions.

*person to whom this section applies* means a person who is or has been—

- (a) the director; or
- (b) an appointed member of the council; or
- (c) anyone else who has exercised a function under this Act.

*produce* includes permit access to.

*protected information* means information about a person that is disclosed to, or obtained by, a person to whom this section applies because of the person's position under this Act or the exercise of a function under this Act.

- (2) A person to whom this section applies commits an offence if the person—
- (a) makes a record of protected information; or
  - (b) directly or indirectly, discloses or communicates to a person protected information about someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) Subsection (2) does not apply if the record is made, or the information is disclosed or communicated—
- (a) under this or any other Act; or

- (b) in relation to the exercise of a function, as a person to whom this section applies, under this or any other Act.
- (4) Subsection (2) does not prevent a person to whom this section applies from divulging or communicating protected information to a person about someone else with the consent of the other person.
- (5) A person to whom this section applies is not required—
  - (a) to divulge or communicate protected information to a court; or
  - (b) to produce a document containing protected information to a court;

unless it is necessary to do so for this Act or another Act.

### **53 Secrecy about information acquired under other Acts**

- (1) The provisions of another Act imposing restrictions or obligations of secrecy or nondisclosure of information acquired in the course of the administration of that Act apply to a person who, because of the person's position under this Act or in the exercise of functions under this Act, has access to the information because of the information having been acquired in the course of the administration of the other Act.
- (2) For subsection (1), the person who has access to the information in the exercise of functions under this Act is taken to be a person engaged in the administration of the other Act.
- (3) Subsection (1) does not prevent—
  - (a) the giving of access to records under part 3 (Access to records); or
  - (b) the preparation and dissemination of guides and aids to finding information contained in the records.

**54 Protection from liability**

- (1) In this section:  
*official* means—
- (a) the principal officer of an agency; or
  - (b) the director; or
  - (c) an appointed member of the council; or
  - (d) anyone else exercising a function under this Act.
- (2) An official does not incur civil or criminal liability for an act or omission done honestly and without negligence for this Act.
- (3) A civil liability that would, apart from this section, attach to an official attaches instead to the Territory.

**55 Determination of fees**

- (1) The Minister may, in writing, determine fees for this Act.
- Note* The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).
- (2) A determination is a disallowable instrument.
- Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

**56 Approved forms**

- (1) The Minister may, in writing, approve forms for this Act.
- Note* For other provisions about forms, see Legislation Act, s 255.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form is a notifiable instrument.
- Note* A notifiable instrument must be notified under the Legislation Act.

**57 Regulation-making power**

The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

**58 Review of Act**

- (1) The Minister must review the operation of this Act as soon as practicable after 5 years after the commencement of this Act.
- (2) The Minister must present a report on the outcome of the review to the Legislative Assembly within 6 months after the end of the 5 years.
- (3) This section expires 6 years after the day it commences.

## Dictionary

(see s 4)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- chief executive (see s 163)
- document
- entity
- Minister (see s 162)
- person.

**agency**—see section 7.

**appointed member**—see section 43 (b) (Membership of council).

**approved records management program** means a records management program approved under section 16 (Approved records management programs).

**approved code** means a code approved under section 18 (Approved standards and codes for records management).

**approved standard** means a standard approved under section 18 (Approved standards and codes for records management).

**arrangement** includes a contract.

**control**, of a record—see section 11.

**council** means the Territory Records Advisory Council.

**director** means the Director of Territory Records.

**disposal**, of a record, includes the deletion or destruction of the record from a record keeping system.

**entitled to control**, of a record—see section 11.

**FOI Act** means the *Freedom of Information Act 1989*.



***member*** means a member of the council.

***normal administrative practices***—see section 24 (Normal administrative practice).

***prescribed authority***—see the *Freedom of Information Act 1989*, dictionary.

***principal officer***—see section 8.

***record***—see section 9.

***records management***—see section 10.

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

### 3 Legislation history

#### **Territory Records Act 2002 A2002-18**

notified LR 13 June 2002  
s 1, s 2 commenced 13 June 2002 (LA s 75 (1))  
pt 3 commences 1 July 2007 (s 2 (1))  
remainder commenced 2 July 2003 (s 2 (3))

as amended by

#### **Criminal Code 2002 A2002-51 sch 1 pt 1.23**

notified LR 20 December 2002  
s 1, s 2 commenced 20 December 2002 (LA s 75 (1))  
sch 1 pt 1.23 commenced 2 July 2003 (s 2 (2) and see A2002-18,  
s 2 (3))

#### **Annual Reports Legislation Amendment Act 2004 A2004-9 sch 1 pt 1.33**

notified LR 19 March 2004  
s 1, s 2 commenced 19 March 2004 (LA s 75 (1))  
sch 1 pt 1.33 commenced 13 April 2004 (s 2 and see Annual Reports  
(Government Agencies) Act 2004 A2004-8, s 2 and CN2004-5)

#### **Human Rights Commission Legislation Amendment Act 2005 A2005-41 sch 1 pt 1.13 (as am by A2006-3 amdt 1.3)**

notified LR 1 September 2005  
s 1, s 2 commenced 1 September 2005 (LA s 75 (1))  
sch 1 pt 1.13 commenced 1 November 2006 (s 2 (3) (as am by  
A2006-3 amdt 1.3) and see Human Rights Commission Act 2005  
A2005-40, s 2 (as am by A2006-3 s 4) and CN2006-21)

#### **Human Rights Commission Legislation Amendment Act 2006 A2006-3 amdt 1.3**

notified LR 22 February 2006  
s 1, s 2 commenced 22 February 2006 (LA s 75 (1))  
amdt 1.3 commenced 23 February 2006 (s 2)

*Note* This Act only amends the Human Rights Commission  
Legislation Amendment Act 2005 A2005-41

## Endnotes

4 Amendment history

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### **Statute Law Amendment Act 2007 A2007-3 sch 3 pt 3.96**

notified LR 22 March 2007

s 1, s 2 taken to have commenced 1 July 2006 (LA s 75 (2))

sch 3 pt 3.96 commenced 12 April 2007 (s 2 (1))

## 4 Amendment history

### **Dictionary**

s 4 am A2007-3 amdt 3.483

### **Offences against Act—application of Criminal Code etc**

s 5A ins A2002-51 amdt 1.47

### **Application of Act**

s 6 am A2005-41 amdt 1.126

### **Functions**

s 33 am A2004-9 amdt 1.45

### **Functions of council**

s 42 am A2007-3 amdt 3.484

### **Secrecy**

s 52 am A2002-51 amdt 1.48; ss renum R1 LA (see A2002-51 amdt 1.49)

### **Review of Act**

s 58 [exp 2 July 2009 \(s 58 \(3\)\)](#)

### **Dictionary**

dict am A2007-3 amdt 3.485  
def **prescribed authority** sub A2007-3 amdt 3.486

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

<b>Republication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Republication for</b>
R1 2 July 2003	2 July 2003– 12 Apr 2004	A2002-51	new Act and amendments by A2002-51
R2 13 Apr 2004	13 Apr 2004– 31 Oct 2006	A2004-9	amendments by A2004-9
R3 1 Nov 2006	1 Nov 2006– 11 Apr 2007	A2006-3	amendments by A2005-41 as amended by A2006-3

## Endnotes

6 Uncommenced provisions

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### **6 Uncommenced provisions**

The following provisions have been included in this republication in italics because they were uncommenced at the republication date:

<b>Territory Records Act 2002 A2002-18 pt 3</b>
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## **Part 3 Access to records**

### **26 Access to records**

- (1) A record of an agency is open to public access under this Act if 20 years has elapsed since the record, or the original of which it is a copy, came into existence.
- (2) A person is entitled to access under this Act to a record of an agency that is open to public access.

### **27 Requests for access**

- (1) A person who wishes to have access to a record of an agency that is open to public access may apply to the agency.
- (2) An agency must take reasonable steps to assist a person to make a request in accordance with this section.
- (3) An agency to which a request is made in accordance with this section must comply with the request within a reasonable time.

### **28 Declaration applying provisions of FOI Act**

- (1) The director may, on application by an agency, declare a record to be a record to which the disappplied provisions of the FOI Act apply.
- (2) The director may make the declaration only if satisfied that the record contains a document that is (or, if the disappplied provisions

applied, would be) an exempt document under 1 or more of the following provisions of the FOI Act:

- (a) section 34 (1) (Documents affecting relations with Commonwealth and States);
  - (b) section 37 (Documents affecting enforcement of the law and protection of public safety);
  - (c) section 41 (Documents affecting personal privacy);
  - (d) section 42 (Documents subject to legal professional privilege);
  - (e) section 46 (Documents disclosure of which would be contempt of Legislative Assembly or a court).
- (3) If the director makes a declaration under subsection (1) about a record of an agency—
- (a) a person is not entitled to access to the record under this Act; and
  - (b) for a record of a royal commission, board of inquiry or judicial commission—the FOI Act applies as if the commission or board were a prescribed authority.

*Note* A record to which a declaration applies may be accessed under the FOI Act.

- (4) In this section:

*disapplied provisions* means the FOI Act, part 3 (Access to documents) (other than sections 24 (Information as to existence of certain documents) and 26 (Procedure on request in respect of documents likely to affect relations between the Territory and the Commonwealth or a State)) and part 4 (Exempt documents).

## 29 Giving access to records under this Act

- (1) If a person is entitled to access under this Act to a record of an agency, the person is entitled to be given access to the record by being given—

## Endnotes

- (a) a reasonable opportunity to inspect the record; or
- (b) a copy of the record; or
- (c) if the record is a record from which information may be produced or made available by electronic or other means—access to the information by use of that means; or
- (d) if the record is a record of words in a sound recording, or in shorthand or other encoded material—a written transcript of the words.

*Note* A fee may be determined under s 55 for this provision.

- (2) The person is entitled to choose how the person is to be given access, but the agency may decide to give access in another way if satisfied that access in the way chosen by the person—
  - (a) is not practicable because the agency does not have, and cannot readily obtain, equipment necessary to give access that way; or
  - (b) would be unreasonable because of the cost to the agency in giving access that way; or
  - (c) would interfere unreasonably with the agency's operations; or
  - (d) would not be appropriate having regard to the physical nature of the record; or
  - (e) would be detrimental to the proper preservation of the record; or
  - (f) would be an infringement of copyright, other than copyright owned by the Territory or an agency.
- (3) The agency may give access subject to conditions to ensure the safe custody and proper preservation of the record.



**30 Register of records**

An agency must keep a register of its records in relation to which a declaration under section 28 (Declaration applying provisions of FOI Act) is in force.

**31 Protection from liability when access given**

If an agency (the *access provider*) gives access under this Act to a record of the agency—

- (a) an action for defamation or breach of confidence does not lie against the Territory, an agency, a public servant, or anyone else acting with the authority of the access provider, because of the giving of the access; and
- (b) an action for defamation or breach of confidence in relation to a publication involved in, or resulting from, the giving of the access does not lie against the author of the record or anyone else because of the author or the other person having given the record to an agency; and
- (c) the giving of the access is not, for a law about defamation or breach of confidence, an authorisation or approval of the publication of the record or its contents by the person to whom the access is given.

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