

2007

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mrs Vicki Dunne)

Government Transparency Legislation Amendment Bill 2007 (No 2)

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(Mrs Vicki Dunne)

Government Transparency Legislation Amendment Bill 2007 (No 2)

A Bill for

An Act to amend legislation to improve transparency and accountability in government, and for related purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

J2007-459

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 **1 Name of Act**

2 This Act is the *Government Transparency Legislation Amendment*
3 *Act 2007 (No 2)*.

4 **2 Commencement**

5 This Act commences on the day after its notification day.

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

8 **3 Legislation amended—sch 1**

9 This Act amends the legislation mentioned in schedule 1.

10 **4 Purpose**

11 The purpose of this Act is to improve transparency and
12 accountability in the exercise of functions of the Australian Capital
13 Territory Executive by—

- 14 (a) ensuring that decision-makers take all reasonable steps to assist
15 in proceedings for administrative review of decisions; and
16 (b) promoting freedom of information by limiting the ability of
17 Ministers to issue conclusive certificates; and
18 (c) establishing a statutory basis for model litigant guidelines.

19 **5 Notes**

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

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

1 **Schedule 1** **Consequential amendments**

2 (see s 3)

3 **Part 1.1** **Financial Management Act 1996**

4 **[1.1] New part 9A**

5 *insert*

6 **Part 9A** **Functional review**

7 **126** **Definitions—pt 9A**

8 In this part:

9 *department of Treasury* means the administrative unit responsible
10 for the administration of this Act.

11 *functional review report* means the Report of the Strategic and
12 Functional Review of the ACT Public Sector and Services prepared
13 by Mr Michael Costello for the ACT government in relation to the
14 functional review of the ACT budget announced by the Chief
15 Minister on 9 November 2005.

16 **127** **Publication of functional review report**

17 (1) The Minister must, not later than 3 weeks after the day this part
18 commences—

19 (a) publish the functional review report on the department of
20 Treasury website; and

21 (b) make printed copies of the report available for public
22 inspection at—

23 (i) an office of the department of Treasury; or

- 1 (ii) a declared place.
- 2 (2) The Minister may declare a place for subsection (1).
- 3 (3) A declaration under this section is a notifiable instrument.
- 4 *Note* A notifiable instrument must be notified under the Legislation Act.
- 5 **128 Freedom of Information Act—application**
- 6 This part has effect despite the functional review report being
7 identified as an exempt document in a certificate issued under the
8 *Freedom of Information Act 1989*, section 35.
- 9 **[1.2] Dictionary, new definitions**
- 10 *insert*
- 11 *department of Treasury*, for part 9A (Functional review)—see
12 section 126.
- 13 *functional review report*, for part 9A (Functional review)—see
14 section 126.

1 **Part 1.2** **Administrative Appeals Tribunal**
2 **Act 1989**

3 **[1.3] New section 32 (1A)**

4 *insert*

5 (1A) In a proceeding before the tribunal for review of a decision, the
6 person who made the decision must take all reasonable steps to
7 assist the tribunal to make its decision in relation to the proceeding.

- 1 **[1.11] Section 63 (2) (a)**
- 2 *omit*
- 3 , section 35 (3), section 35 (5)
- 4 **[1.12] Section 63 (8)**
- 5 *omit*
- 6 , section 35, section 36
- 7 **[1.13] Section 63 (9)**
- 8 *substitute*
- 9 (9) In this section:
- 10 *appropriate Minister* means, for a document for which a certificate
- 11 is in force under section 34 or section 37A—the Minister who gave,
- 12 or whose delegate gave, the certificate.
- 13 **[1.14] Section 64**
- 14 *omit*
- 15 section 62 (4), (5) or (6)
- 16 *substitute*
- 17 section 62 (4) or (6)
- 18 **[1.15] Section 65 (2) (a) (iv)**
- 19 *omit*
- 20 , section 35
- 21 **[1.16] Section 65 (2) (a) (v)**
- 22 *omit*

1 **[1.17] Section 67 (1)**
2 *omit*
3 , section 35, section 36

4 **[1.18] Section 67 (2)**
5 *omit*
6 section 62 (4), (5) or (6)
7 *substitute*
8 section 62 (4) or (6)

9 **[1.19] Section 70 (c)**
10 *omit*
11 section 62 (4), (5) or (6)
12 *substitute*
13 section 62 (4) or (6)

14 **[1.20] Section 74 (5)**
15 *omit*
16 section 62 (4), (5) or (6)
17 *substitute*
18 section 62 (4) or (6)

19 **[1.21] Section 74 (5) (a)**
20 *omit*
21 , section 35, section 36

1 **[1.22] Section 74 (6)**
2 *omit*
3 section 35 (4), section 36 (4) or

4 **[1.23] Section 75**
5 *omit*
6 , section 35, section 36

1 **Part 1.4 Law Officer Act 1992**

2 **[1.24] Section 4 (e) and (f)**

3 *substitute*

4 (e) to ensure that litigation mentioned in paragraph (d) is started
5 and conducted in accordance with proper standards; and

6 (f) to exercise any function given to the Attorney-General under
7 another Act; and

8 (g) to exercise any other function prescribed by regulation.

9 **[1.25] New sections 5AA, 5AB and 5AC**

10 *after section 5A, insert*

11 **5AA Model litigant guidelines**

12 (1) The Attorney-General may issue model litigant guidelines to ensure
13 that proper standards in litigation apply to Territory legal work.

14 (2) A guideline issued under subsection (1) is a notifiable instrument.

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

16 (3) Anyone performing Territory legal work must comply with the
17 model litigant guidelines.

18 **5AB Protection from liability**

19 (1) A person performing Territory legal work is not personally liable for
20 anything done, or omitted to be done, honestly and without
21 recklessness—

22 (a) in complying with a model litigant guideline; or

23 (b) in the reasonable belief that the act or omission complied with
24 a model litigant guideline.

- 1 (2) Any civil liability that would, apart from this section, attach to a
2 person attaches instead to the Territory.

3 **5AC Reporting on model litigant guidelines**

4 Each report prepared by the chief executive under the *Annual*
5 *Reports (Government Agencies) Act 2004* must—

- 6 (a) describe the measures taken by the administrative unit during
7 the financial year to ensure compliance with the model litigant
8 guidelines; and
9 (b) provide information concerning any breaches of the model
10 litigant guidelines during the financial year.

11 **[1.26] Dictionary, new definition of *Territory legal work***

12 *insert*

13 *Territory legal work* means legal work associated with litigation
14 conducted by a person for any of the following:

- 15 (a) the Territory;
16 (b) a body established by an Act or regulations or by a law of the
17 Territory;
18 (c) a company in which the Territory has a controlling interest.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2007.

2 Notification

Notified under the Legislation Act on 2007.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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