

EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

Freedom of Information Bill 2013

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(Prepared by Parliamentary Counsel's Office)

Freedom of Information Bill 2013

A Bill for

An Act to give public access to government information, and for other purposes

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

Part 1 Preliminary

1 Name of Act

This Act is the *Freedom of Information Act 2013*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

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

Note 2 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)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see [Legislation Act](#), s 79).

3 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 in this Act.

For example, the signpost definition ‘*decision-maker*, for a reviewable decision, for part 8 (Notification and review of decisions)—see section 69.’ means that the term ‘decision-maker’ is defined in that section for part 8.

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)).

4 Notes

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

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

5 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 all offences against this Act (see Code, pt 2.1).

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.

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Part 2 Objects and general principles

6 Objects of Act

- (1) The objects of this Act are to—
 - (a) provide a right of access to information held by the government unless access to the information would, on balance, be contrary to the public interest; and
 - (b) recognise the importance of public access to information for the proper working of representative democracy; and
 - (c) enable the public to participate more effectively in governing the Territory; and
 - (d) make the people and bodies that are responsible for governing the Territory more accountable to the public; and
 - (e) ensure that to the fullest extent possible, government information is freely and publicly available to everyone; and
 - (f) facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of the maximum amount of government information; and
 - (g) ensure that personal information held by the Territory is accurate, complete, up-to-date and not misleading.
- (2) This Act is to be interpreted in a way that furthers the objects mentioned in subsection (1).

7 Right of access to government information

- (1) Subject to this Act, every person has an enforceable right to obtain access under this Act to government information.
- (2) This section applies to information even if it came into existence before the commencement of this Act.

8 Informal requests for government information

- (1) An agency is authorised to release government information held by the agency to a person in response to an informal request by the person.
- (2) This section is subject to a provision of another law that prohibits the disclosure of information.

9 Promoting access to government information

It is the intention of the Legislative Assembly that this Act be administered with a pro-disclosure bias and discretions given under it be exercised, as far as possible, in favour of disclosing government information.

10 Act not intended to prevent or discourage publication etc

This Act is not intended to prevent or discourage agencies or Ministers from publishing or giving access to government information (including contrary to the public interest information) otherwise than under this Act.

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11 Relationship with other laws requiring disclosure

This Act does not affect the operation of any other law that—

- (a) requires government information to be made available to the public; or
- (b) enables a member of the public to obtain access to government information; or
- (c) requires publication of government information.

12 Relationship with other laws prohibiting disclosure

This Act (other than section 8 (Informal requests for government information)) overrides a provision of another law that prohibits the disclosure of information.

13 Relationship with Territory Records Act 2002

- (1) This Act does not apply to—
 - (a) a record of an agency if a person is entitled to access the record under the *Territory Records Act 2002*, part 3 (Agency records—access); or
 - (b) an accessible executive record.
- (2) If the director makes a declaration under the *Territory Records Act 2002*, section 28 (Declaration applying provisions of FOI Act) in relation to a record, this Act applies to the record while the declaration is in force.

Note Unless sooner revoked, a declaration under that section is in force for 10 years or any shorter period stated in the declaration.

(3) If the principal officer makes a release restraint determination under the *Territory Records Act 2002*, section 31G (2) (b) (Release delayed or denied) in relation to a record, this Act applies to the record while the determination is in force.

(4) In this section:

accessible executive record—see the *Territory Records Act 2002*, section 31B.

director—see the *Territory Records Act 2002*, dictionary.

principal officer, of an agency—see the *Territory Records Act 2002*, section 8.

record—see the *Territory Records Act 2002*, dictionary.

14 What is government information?

In this Act:

government information—

(a) means information contained in a record—

(i) held by an agency or Minister; or

(ii) that an agency or Minister is entitled to access; but

(b) does not include information—

(i) relating to a Minister's personal or political activities; or

(ii) created or received by a Minister in the Minister's capacity as a member of the Legislative Assembly.

Note The *Territory Records Act 2002*, s 14 requires an agency to keep full and accurate records of its activities.

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15 Meaning of *agency*

In this Act:

agency means—

- (a) an administrative unit; or
- (b) a statutory office-holder and the staff assisting the statutory office-holder; or
- (c) a territory authority; or
- (d) a territory instrumentality; or
- (e) a territory-owned corporation or a subsidiary of a territory-owned corporation; or
- (f) the Office of the Legislative Assembly; or
- (g) an officer of the Assembly; or
- (h) the Supreme Court; or
- (i) the Magistrates Court or Coroner's Court; or
- (j) the ACAT; or
- (k) a board of inquiry under the *Inquiries Act 1991*; or
- (l) a judicial commission under the *Judicial Commissions Act 1994*; or
- (m) a royal commission under the *Royal Commissions Act 1991*; or
- (n) an entity prescribed by regulation to be an agency.

16 What is *contrary to the public interest information*?

In this Act:

contrary to the public interest information means—

- (a) information that is taken to be contrary to the public interest to disclose under schedule 1; or
- (b) information the disclosure of which would, on balance, be contrary to the public interest under the test set out in section 17.

17 Public interest test

- (1) An agency or Minister, in considering whether disclosure of information would, on balance, be contrary to the public interest, must take the following steps:
 - (a) identify any factor favouring disclosure that applies in relation to the information (a *relevant factor favouring disclosure*), including any factor mentioned in schedule 2, section 2.1;
 - (b) identify any factor favouring nondisclosure that applies in relation to the information (a *relevant factor favouring nondisclosure*), including any factor mentioned in schedule 2, section 2.2;
 - (c) balance any relevant factor or factors favouring disclosure against any relevant factor or factors favouring nondisclosure;
 - (d) decide whether, on balance, disclosure of the information would be contrary to the public interest;
 - (e) unless, on balance, disclosure would be contrary to the public interest, allow access to the information subject to this Act.

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- (2) The following factors must not be taken into account when deciding whether disclosure of information would, on balance, be contrary to the public interest:
- (a) access to the information could result in embarrassment to the government, or cause a loss of confidence in the government;
 - (b) access to the information could result in a person misinterpreting or misunderstanding the information;
 - (c) the author of the information was (or is) of high seniority in an agency;
 - (d) access to the information could result in confusion or unnecessary debate;
 - (e) access to the information could result in mischievous conduct by the applicant;
 - (f) access to the information could inhibit frankness in the provision of advice from the public service;
 - (g) the applicant's identity, circumstances, or reason for seeking access to the information.

Note Despite an agency or Minister being able to refuse access to all or part of a record, the agency or Minister may decide to give access (see s 10).

Part 3 Information officers

18 Information officers—appointment

- (1) The principal officer of an agency must appoint a person as the agency's information officer for this Act.

Note 1 For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see [Legislation Act](#), s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

- (2) An appointment is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

19 Information officers—functions

The information officer of an agency has the following functions:

- (a) to deal with access applications made to the agency under part 5;
- (b) at the request of the principal officer of another agency—to deal with access applications made to the other agency under part 5;
- (c) to ensure that the agency meets its obligation to publish open access information under part 4;
- (d) to consider the appropriateness of the agency's publication undertakings under part 4;
- (e) to proactively consider how and whether public access may be given to other government information held by the agency.

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20 Information officers not subject to directions

- (1) The information officer of an agency is not subject to direction in dealing with an access application.
- (2) However, the following may direct the officer to disclose information:
 - (a) the Minister responsible for the agency;
 - (b) the principal officer of the agency.

21 Information officers may act for other agencies

The information officer of an agency may, at the request of the principal officer of another agency, deal with an access application made to the other agency.

22 Information officers may consult with other information officers

- (1) An information officer may, in the exercise of a function under this Act, consult with another information officer.
- (2) In consulting with another information officer under subsection (1), an information officer is authorised to disclose government information that relates to the exercise of the function.

Part 4 Open access information

23 What is *open access information*?

(1) In this Act:

open access information, of an agency, means government information held by the agency that is or is in 1 or more of the following:

- (a) functional information including a statement setting out particulars of the agency, including agency structure, functions, kinds of government information held and how requests for information may be made;
- (b) information about the agency or the work of the agency contained in any document tabled in the Legislative Assembly by or for the agency;
- (c) the agency's policy documents;
- (d) budgetary papers including details of outputs for the agency;
- (e) information about government grants made or administered by the agency;
- (f) the agency's disclosure log;
- (g) a statement listing all boards, councils, committees, panels and other bodies that have been established by the agency (whether under an Act or otherwise) for the purpose of advising the agency or a Minister responsible for the agency;
- (h) the minutes of any meeting held by a body mentioned in paragraph (g);
- (i) any report or recommendation prepared by a body mentioned in paragraph (g);

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- (j) any report or study, including a survey or test, prepared for the agency, by a scientific or technical expert, whether employed in the agency or not, including a report expressing the expert's opinion on scientific or technical matters;

Examples—scientific or technical studies

- 1 a road safety or traffic management study
- 2 a report on environmental management or environmental impacts
- 3 a report on an identified risk to public health
- 4 a report on an initiative to improve public health

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (k) any of the following Ministerial briefs prepared by the agency that are 3 or more years old:
- (i) incoming ministerial briefs;
 - (ii) parliamentary estimates briefs;
 - (iii) annual reports briefs;
 - (iv) question time briefs;
- (l) information an agency undertakes to make publicly available under section 28 (Agency publication undertakings);
- (m) information declared by the ombudsman to be open access information;
- Note* See s 64 (Open access information declarations).
- (n) information prescribed by regulation to be open access information.

open access information, of a Minister—

- (a) means—
 - (i) information in the Minister’s disclosure log; and
 - (ii) information about Ministerial and Ministerial staff travel and hospitality expenses; and
 - (iii) a copy of the Minister’s diary that sets out all meetings, events and functions attended by the Minister that relate to the Minister’s responsibilities; and
- (b) for the Chief Minister—includes—
 - (i) information summarising Cabinet decisions; and
 - (ii) the triple bottom line assessments for the decisions.

(2) In this section:

policy document includes any of the following:

- (a) a document containing interpretations, rules, guidelines, statements of policy, practices or precedents;
- (b) a document containing a statement about how an Act or administrative scheme is to be administered;
- (c) a document describing the procedures to be followed in investigating a contravention or possible contravention of an Act or administrative scheme;
- (d) another document of a similar kind used to assist the agency to exercise its functions.

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24 Availability of open access information

- (1) An agency or Minister must make open access information of the agency or Minister publicly available unless—
- (a) the information is taken to be contrary to the public interest to disclose under schedule 1; or
 - (b) disclosure of the information would, on balance, be contrary to the public interest under the test set out in section 17.

Note For information on publication requirements, see s 91 (How government information to be published).

- (2) If open access information is not made available on the ground set out in subsection (1) (b), the agency or Minister must publish—
- (a) a description of the information; and
 - (b) a statement of reasons for the nondisclosure setting out—
 - (i) the findings on any material questions of fact referring to the material on which the findings were based; and
 - (ii) the relevant factors favouring disclosure; and
 - (iii) the relevant factors favouring nondisclosure; and
 - (iv) how the factors were balanced; and
 - (v) the harm to the public interest that can reasonably be expected to occur from the disclosure; and
 - (c) a statement that a person may apply to the ACAT or the ombudsman for review of a decision not to make open access information publicly available; and
 - (d) a statement on how to make the application for review of the decision; and

- (e) a statement of the other options available under ACT laws to have the decision reviewed.

25 Open access information—quality of information

Open access information published by an agency or Minister must as far as practicable be accurate, up-to-date and complete.

26 Open access information—effect of policy documents not being available

A person must not be subjected to any prejudice because of the application of the provisions of an agency's policy document (other than provisions it is permitted to delete from a copy of the document) to any act or omission of the person if, at the time of the act or omission—

- (a) the policy document was not publicly available; and
- (b) the person was not aware of the provisions of the policy document; and
- (c) the person could lawfully have avoided the prejudice had the person been aware of the provisions.

27 Requirement for disclosure log

- (1) An agency and Minister must keep a record (a *disclosure log*) of information about access applications made to the agency or Minister.
- (2) The disclosure log must include the following for each access application:
 - (a) the access application;
 - (b) the decision notice given under section 50;

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- (c) the information given in response to the application;
 - (d) if access to the information was refused—the statement made under section 53;
 - (e) if the respondent refused to deal with the application—the statement made under section 54;
 - (f) a statement of—
 - (i) the amount of any fees paid or waived in relation to the application; and
 - (ii) the amount of time spent dealing with the application.
- (3) If an agency or Minister decides not to disclose information in response to an access application, the disclosure log must also include a statement about—
- (a) who may apply to the ACAT or the ombudsman for review of the decision; and
 - (b) how to make the application for review of the decision; and
 - (c) the other options available under ACT laws to have the decision reviewed.
- (4) The information must be included in the disclosure log not earlier than 3 working days before and not later than 10 working days after the decision notice is given to the applicant.
- (5) An agency's disclosure log may also include government information released by the agency in response to an informal request.
- (6) A disclosure log must not include any personal information or any access applications for personal information.

28 Agency publication undertakings

- (1) An agency may publish a statement (a *publication undertaking*) setting out the kinds of government information, in addition to open access information, that the agency will make publicly available.
- (2) Every 12 months, an agency must review its publication undertaking or, if the agency does not have a publication undertaking, consider whether it has information it could include in a publication undertaking.

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Part 5 Access applications

Division 5.1 Making access applications

29 Making access application

- (1) A person may apply for access to government information to the agency or Minister responsible for the information.

Note 1 If a form is approved under s 101 for an application, the form must be used.

Note 2 A fee may be determined under s 97 for this provision.

- (2) The application must include—
- (a) enough detail to enable an agency or Minister to identify the government information applied for; and
 - (b) an email or postal address to which notices under this Act may be sent to the applicant.
- (3) If the application is for access to personal information about the applicant, the application must also include—
- (a) evidence of identity for the applicant; and
 - (b) if an agent is acting for the applicant—evidence of the agent's authorisation and evidence of identity for the agent.

Examples—agent's authorisation

1 the will or court order appointing the agent to act as the applicant's guardian

2 the client agreement authorising a lawyer to act for the applicant

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (4) The application may include a statement of the applicant's views on the public interest in disclosing the information.

30 Assistance with application

- (1) This section applies if an agency or Minister receives an application that does not comply with the requirements under section 29.
- (2) The agency or Minister must take reasonable steps to assist the person and give the person reasonable time to make the application comply.
- (3) The application is taken to have been made when it is made in accordance with the requirements.

31 Notice of date application received

- (1) An agency or Minister that receives an application complying with the requirements under section 29 must give the applicant written notice of—
 - (a) the day on which the application was received; and
 - (b) the date by which a decision is to be made (unless additional time is given under section 38, section 39 or section 40).
- (2) The notice must be given to the applicant as soon as practicable but in any case not later than 5 working days after the day the application was received.

Division 5.2 Deciding access applications

32 Who deals with access applications

- (1) An access application made to an agency must be dealt with by—
 - (a) the information officer of the agency; or
 - (b) at the request of the principal officer of the agency—the information officer of another agency.

- (2) An access application made to a Minister may be dealt with by the person the Minister directs.

33 Deciding access—identifying information within scope of application

- (1) An agency or Minister deciding an access application (the *respondent*) must take reasonable steps to identify all information within the scope of the application.
- (2) The respondent may, at any time, contact the applicant to clarify the scope of the application.

34 Deciding access—how applications are decided

- (1) The respondent decides an access application for government information by deciding—
- (a) to give access to the information; or
 - (b) that the information is not held by the respondent; or
 - (c) to refuse to give access to the information because the information is contrary to the public interest information; or
 - (d) to refuse to deal with the application (see section 41); or
 - (e) to refuse to confirm or deny that the information is held by the respondent because doing so would, or could reasonably be expected to—
 - (i) endanger the life or physical safety of a person; or
 - (ii) be an unreasonable limit on a person’s rights under the *Human Rights Act 2004*.
- (2) An access application may be decided in more than one way.

- (3) If, after deciding an access application, the respondent finds additional information that was held by the respondent when the application was decided, the respondent may make a further decision under this section in relation to the additional information.
- (4) If the respondent does not make a further decision in relation to the additional information, the respondent must tell the applicant that—
 - (a) additional information has been found; and
 - (b) an access application for the additional information may be made; and
 - (c) no fee is payable for the application, but a fee may be payable for any additional information provided.

35 Deciding access—considering applicant’s views on public interest

In deciding an access application, the respondent must consider any statement in the application of the applicant’s views on the public interest in disclosing the information.

36 Deciding access—relevant third parties

- (1) This section applies if the respondent to an access application considers that—
 - (a) some or all of the information applied for is not contrary to the public interest information; but
 - (b) disclosure of the information may reasonably be expected to be of concern to a person or another entity other than the Territory (a *relevant third party*).
- (2) The respondent must take reasonable steps to consult with the relevant third party before deciding to give access to the information.

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- (3) Disclosure of information may reasonably be expected to be of concern to a relevant third party if—
 - (a) for a relevant third party that is an individual—the information is personal information about the individual; or
 - (b) for a relevant third party that is a government or government agency—the information concerns the affairs of the government or agency; or
 - (c) the information concerns the trade secrets, business affairs, or research of the relevant third party.
- (4) If disclosure of information may reasonably be expected to be of concern to a person because the information is personal information about the person but the person is deceased, subsection (2) applies as if an eligible family member of the person were a relevant third party.
- (5) The respondent, in consulting with a relevant third party, must—
 - (a) ask the relevant third party whether it objects to the disclosure of the information; and
 - (b) if the relevant third party objects to the disclosure—invite the relevant third party to provide its views on whether the information is contrary to the public interest information; and
 - (c) tell the relevant third party that if access is given to the information because of the application, the information (other than personal information) will be made available to the public through the disclosure log of the respondent under section 27.

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- (6) After obtaining the views of a relevant third party—
- (a) the respondent must tell the relevant third party—
 - (i) of the respondent's decision on the access application; and
 - (ii) that if the relevant third party applies for review of the decision under part 8, the relevant third party must tell the respondent of the application (see section 71); and
 - (b) if the relevant third party has told the respondent that it considers the information to be contrary to the public interest information, the respondent must defer giving access to the information of concern to the relevant third party until after—
 - (i) the respondent is given written notice by the relevant third party that it does not intend to make an application for review of the decision; or
 - (ii) if notice is not given under subparagraph (i) and no application for review under part 8 is made by the end of the review period—the end of the review period; or
 - (iii) if an application for review under part 8 is made during the review period—the review has ended.
- (7) The respondent must give the applicant written notice when access is no longer deferred under subsection (6) (b).

- (8) In this section:

eligible family member, of a deceased person—see schedule 2, section 2.3.

review period means the period within which an application for review under part 8 may be made.

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37 Deciding access—decision not made in time taken to be refusal to give access

- (1) If a respondent does not decide an access application within the time allowed under section 38 or extended under section 39 or section 40, the respondent—
 - (a) is taken to have decided to refuse to give access to the information applied for; and
 - (b) must refund any fee paid by the applicant relating to the application; and
 - (c) must give written notice to the ombudsman that a decision relating to the application was not made within time.
- (2) However, the respondent may continue to deal with the application and give notice of a decision on the application.
- (3) If notice is given to the ombudsman under subsection (1) (c), the relevant Minister must ensure that a copy of it is presented to the Legislative Assembly within 3 sitting days after it is given to the ombudsman.
- (4) In this section:

relevant Minister means—

 - (a) for a notice relating to an access application for which a Minister is the respondent—the Minister; or
 - (b) for a notice relating to an access application for which an agency is the respondent—the Minister responsible for the agency.

38 Deciding access—time to decide

- (1) A respondent to an access application must decide the application not later than 20 working days after receiving it.
- (2) If the respondent consults with a relevant third party under section 36, the period under subsection (1) is extended by 15 working days.

39 Deciding access—respondent may ask for additional time to decide

- (1) At any time before the end of the period for deciding an access application under section 34, the respondent may ask the applicant for an additional stated amount of time to decide the application.
- (2) The respondent may ask the applicant for additional time under subsection (1) more than once.
- (3) The respondent may, after the end of the period for deciding an access application under section 34, continue to consider the application and make a decision in relation to it if—
 - (a) the respondent has asked the applicant for an additional stated amount of time under subsection (1); and
 - (b) the applicant has not refused the request; and
 - (c) the respondent has not received notice that the applicant has applied for review under this Act.

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40 Deciding access—extension of time given by ombudsman

- (1) A respondent to an access application may apply to the ombudsman for an extension of time to decide the application if—
 - (a) the respondent has asked the applicant for additional time under section 39; and
 - (b) the applicant has refused the request.
- (2) The ombudsman may, on application under subsection (1), extend the time to decide an access application if the ombudsman believes it is not reasonably possible for the respondent to deal with the application within the period for deciding the application under section 38 because—
 - (a) the application involves dealing with a large volume of information; or
 - (b) the application involves complicated issues with competing public interest factors.
- (3) An extension of time given by the ombudsman must not be for longer than 15 working days.
- (4) The ombudsman may extend the time to decide subject to conditions.
- (5) If the ombudsman extends the time to decide, the ombudsman must tell the respondent and the applicant of the period for which the extension is given.

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Division 5.3 Refusing to deal with applications

41 Refusing to deal with application—general

- (1) A respondent may refuse to deal with an access application in whole or in part only if—
 - (a) dealing with the application would require an unreasonable and substantial diversion of the respondent's resources (see section 42); or
 - (b) the application is frivolous or vexatious; or
 - (c) the application involves an abuse of process; or
 - (d) the information is already available to the applicant (see section 44); or
 - (e) all the requested information is taken to be contrary to the public interest to disclose (see section 45); or
 - (f) an earlier access application relating to the information—
 - (i) was made in the 12 months before the application was made; and
 - (ii) access to the information was refused under the earlier application; and
 - (iii) the application and relevant public interest factors are materially the same as the earlier application.
- (2) A respondent is entitled to consider 2 or more applications as 1 application if the applications are related and are made by the same applicant or by people acting together in relation to the applications.
- (3) An applicant is not entitled to a refund of any application fee paid if the respondent refuses to deal with the application.

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(4) In this section:

abuse of process includes—

- (a) harassment or intimidation of a person; and
- (b) an unreasonable request for personal information about a person.

42 Refusing to deal with application—unreasonable and substantial diversion of resources

(1) For section 41 (1) (a), dealing with an access application would require an unreasonable and substantial diversion of the respondent's resources only if—

- (a) the resources required to identify, locate, collate and examine any records of the respondent and the resources required in obtaining the views of relevant third parties under section 36 would substantially inhibit the ability of the respondent to exercise its functions; and
- (b) the extent to which the public interest would be advanced by granting the access application does not justify the use of the required resources.

(2) For subsection (1), the respondent—

- (a) is not required to have regard to any extension by agreement between the applicant and the respondent of the period within which the application is required to be decided; and
- (b) must not have regard to—
 - (i) any reasons the applicant gives for applying for access; or
 - (ii) the respondent's belief about the applicant's reasons for applying for access.

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43 Refusing to deal with application—consulting applicant before refusing to deal with certain applications

- (1) Before refusing to deal with an access application on a ground mentioned in section 41 (1) (a), (b) or (c), the respondent must—
 - (a) tell the applicant, in writing—
 - (i) of the intention to refuse to deal with the application; and
 - (ii) of the ground for refusal; and
 - (iii) that during the consultation period the applicant may consult with the respondent on how the application may be made in a form that would remove the ground for refusal; and
 - (b) give the applicant—
 - (i) a reasonable opportunity to consult with the respondent during the consultation period; and
 - (ii) any information that may assist the applicant make an application in a form that would remove the ground for refusal.
- (2) After any consultation with the respondent, the applicant may give the respondent an amended application.
- (3) If an amended application is given to the respondent under subsection (2), the original application is taken to have been made at the time the amended application is given.
- (4) In this section:

consultation period means—

 - (a) the period of 10 working days starting on the day after the notice was given under subsection (1) (a); or

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- (b) any longer period agreed between the respondent and the applicant before or after the end of the 10 working days.

44 Refusing to deal with application—information already available to applicant

For section 41 (1) (d), information is already available to the applicant only if the information—

- (a) is made publicly available under this Act by the respondent or by another agency or Minister; or
- (b) is available to the applicant from, or for inspection at, a place the respondent, another agency or Minister operates, free of charge; or
- (c) is available as part of a public register established under a Territory law; or
- (d) is available to the applicant because it has been produced in accordance with a subpoena or court order; or
- (e) has previously been given to the applicant under this Act or the *Freedom of Information Act 1989* (repealed); or
- (f) is in a record that is usually available for purchase.

45 Refusing to deal with application—information taken to be contrary to the public interest to disclose

- (1) This section applies if—
 - (a) an access application is expressed to relate to information of a stated kind; and
 - (b) all the requested information is information that is taken to be contrary to the public interest to disclose under schedule 1.

- (2) The respondent may refuse to deal with the application without having identified any or all of the information.

Division 5.4 Giving access to information

46 Giving access—form of access

- (1) Access to information under this part may be given to a person in 1 or more of the following ways:
- (a) by giving a copy of an electronic record containing the information;
 - (b) by giving a printed copy of the information;
 - (c) by giving a written transcript of words recorded or contained in a record containing the information, if the record—
 - (i) is a record by which words are recorded in a way that is capable of being reproduced in the form of sound; or
 - (ii) in which words are contained in the form of shorthand writing or in codified form;
 - (d) if the application relates to information that is not contained in a written record in the possession or under the control of an agency or Minister—by providing a written document using equipment usually available to the agency or Minister for retrieving or collating stored information.
- (2) For subsection (1) (a) to (c), a reference to information or a record includes a reference to a copy from which information has been deleted under section 49.

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- (3) As far as practicable, access to information under this part must be given—
- (a) in a way that complies with the web content accessibility guidelines, level AA; and
- Note* The guidelines are accessible at www.w3.org.
- (b) in a form that provides at least the same range of functions to the applicant as was available to the respondent before the access was given.

Examples—par (b)

- 1 electronically searchable text document
- 2 unsecured text document that allows a user to copy and paste from the document

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (4) Subject to this section and section 49, if an applicant has requested access in a particular form, access must be given in that form.
- (5) Access may be given in a form other than that requested by the applicant if access in the form requested—
- (a) would interfere unreasonably with the operations of the agency, or the performance of the respondent's functions; or
- (b) would involve an infringement of the copyright of a person other than the Territory.
- (6) If an applicant is given access to information in a form different to the form requested by the applicant, the applicant must not be required to pay a fee that is more than would have been payable if access had been given in the form requested by the applicant.

47 Giving access—access to be unconditional

If access to information is given under this part, the access must be unconditional.

48 Giving access—deferral of access

The respondent to an access application may defer giving access to information for a reasonable period (not longer than 3 months) if—

- (a) the information was prepared—
 - (i) for presentation to the Assembly or a committee of the Assembly; or
 - (ii) for release to the media; or
 - (iii) for inclusion, in the same or an amended form, in a document to be prepared for a purpose mentioned in subparagraph (i) or (ii); and
- (b) the information has not been presented or released in a way mentioned in paragraph (a).

49 Giving access—deletion of contrary to the public interest information

- (1) This section applies if—
 - (a) an access application is made for information in a record containing contrary to the public interest information; and
 - (b) it is practicable to give access to a copy of the record from which the contrary to the public interest information has been deleted.
- (2) Subject to section 34 (1) (e), the respondent must—
 - (a) give access to a copy of the record; and

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- (b) tell the applicant the original record contained contrary to the public interest information that has been deleted from the copy.

Division 5.5 Notice of access decisions and reasons

50 Notice of decision to be given

- (1) The respondent to an access application must give written notice (a *decision notice*) to the applicant of the decision on the application.
- (2) The respondent is not required to include any contrary to the public interest information in a decision notice.

51 Content of notice—access to information given

- (1) For a decision to give access to information, the decision notice must include a statement of the following:
 - (a) an itemisation of any fee payable by the applicant;
 - (b) that the access application and information given in response to the application (other than personal information) will be made available to the public through the disclosure log of the respondent under section 27;
 - (c) if access is given to a copy of a record that had information deleted from it under section 49—the fact that the record is a copy.
- (2) If the giving of access to information is deferred under section 36 (6), the decision notice must include a statement—
 - (a) that a relevant third party objected to the disclosure; and
 - (b) that the relevant third party may apply for review of the decision; and

- (c) of the period under section 36 (6) (b) for which access may be deferred.
- (3) If the giving of access to information is deferred under section 48, the decision notice must include a statement of—
 - (a) the reason for the deferral; and
 - (b) when access will be given.

52 Content of notice—information not held by respondent

If an access application relates to information that is not held by the respondent, the decision notice must state that the information is not held by the respondent.

53 Content of notice—refusing to give access to information

For a decision to refuse to give access to information, the decision notice must include a statement of the following:

- (a) if the information is taken to be contrary to the public interest to disclose under schedule 1—the ground under schedule 1 for the refusal;
- (b) if disclosure of the information would, on balance, be contrary to the public interest under the test set out in section 17—
 - (i) the findings on any material questions of fact, referring to the material on which the findings were based; and
 - (ii) the relevant factors favouring disclosure; and
 - (iii) the relevant factors favouring nondisclosure; and
 - (iv) how the factors were balanced; and
 - (v) the harm to the public interest that can be reasonably expected to occur from disclosure.

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54 Content of notice—refusal to deal with application

For a decision to refuse to deal with an application, the decision notice must include a statement of the following:

- (a) the ground for the refusal under section 41 (1);
- (b) if the ground is that the information is already available to the applicant—how the applicant can access the information;
- (c) that the applicant is not entitled to a refund of any application fee paid if the respondent refuses to deal with the application.

55 Content of notice—refusing to confirm or deny existence of information

For a decision to refuse to confirm or deny the existence of information, the decision notice must include a statement of reasons for the decision.

Division 5.6 Access applications for information held by other agencies or Ministers

56 Transfer of access applications

- (1) An agency or Minister (the *respondent*) to which an access application has been made may transfer the application to another agency or Minister (the *receiver*) if—
 - (a) the information to which the application relates is not in the respondent's possession but the respondent believes it may be in the receiver's possession; and
 - (b) the receiver agrees it may possess the information.
- (2) An access application transferred under this section is taken to have been made to the receiver at the time it was transferred.

- (3) The receiver receiving an application complying with the requirements under section 29 must give to the applicant written notice of—
 - (a) the day on which the application was received; and
 - (b) the date by which a decision is to be made (unless additional time is to be given under section 38, section 39 or section 40).
- (4) The notice must be given to the applicant as soon as practicable but in any case not later than 5 working days after the day the application was received.

57 Access applications if two or more agencies or Ministers have relevant information

- (1) If the respondent to an access application believes that information relevant to an application is in its possession and may also be in the possession of another agency or Minister (the *other entity*), the respondent must give a copy of the access application to the other entity.
- (2) If the other entity believes that it may be in possession of relevant information, the other entity must—
 - (a) tell the respondent that it may have relevant information; and
 - (b) take reasonable steps to identify all relevant information within the scope of the application; and
 - (c) if it identifies relevant information—
 - (i) give the relevant information to the respondent; or
 - (ii) tell the respondent and the applicant that it will decide the application as if it were the respondent.

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- (3) If the other entity gives the relevant information to the respondent, the respondent is, for the purpose of making a decision on the application, taken to hold the information.
- (4) If the other entity is to decide the application as if it were the respondent, the application is taken to have been made to the other entity when it received the application under subsection (1).
- (5) If the other entity believes it is not in the possession of relevant information, it must tell the respondent of the belief.

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Part 6 Amendment of personal information

58 Requesting amendment of personal information

- (1) This section applies if a person who has access to government information held by an agency or Minister considers that the information—
- (a) contains personal information about the person; and
 - (b) is incomplete, incorrect, out-of-date or misleading; and
 - (c) is used, has been used or is available for use by the agency or Minister.

- (2) The person may, in writing, request the agency or Minister to amend the information.

Note If a form is approved under s 101 for this provision, the form must be used.

- (3) The request must—
- (a) include enough detail to enable an agency or Minister to identify the government information to be amended; and
 - (b) state how the government information is incomplete, incorrect, out-of-date or misleading; and
 - (c) state the amendments the person considers necessary for the information to be complete, correct, up-to-date or for it to be no longer misleading; and
 - (d) include an email or postal address to which notices under this Act may be sent to the person.

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59 Who deals with requests to amend personal information

- (1) A request under section 58 made to an agency must be dealt with by the information officer of the agency.
- (2) A request under section 58 made to a Minister may be dealt with by the person the Minister directs.

60 Deciding requests to amend personal information

- (1) An agency or Minister receiving a request from a person under section 58 must decide to—
 - (a) amend the government information; or
 - (b) refuse to amend the government information.
- (2) The agency or Minister must amend the government information if the information is incomplete, incorrect, out-of-date or misleading.
- (3) Before refusing to amend the government information, the agency or Minister must—
 - (a) tell the person of the intention to refuse to amend the information; and
 - (b) give the person a reasonable opportunity to respond and to provide any additional information relevant to the request.

61 Time to decide request

An agency or Minister that receives a request under section 58 must decide the request not later than 20 working days after receiving it.

62 Notifying person affected of decision

An agency or Minister that makes a decision under section 60 must—

- (a) tell the person of the agency's or Minister's decision; and
- (b) if the decision is to amend the information—give the person a copy of the amended information; and
- (c) if the decision is to refuse to amend the information—give the person a statement of reasons for the refusal.

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Part 7 Role of ombudsman

Division 7.1 Ombudsman functions and general powers

63 Functions of ombudsman

The ombudsman has the following functions for this Act:

- (a) to review decisions under division 8.2;
- (b) to monitor the operation of the Act including—
 - (i) the publication of open access information by agencies; and
 - (ii) the implementation of publication undertakings by agencies under section 28; and
 - (iii) agency compliance with guidelines under section 65; and
 - (iv) agency compliance with the expectations set out in the Chief Minister's annual statement under section 89 and with the Act generally;
- (c) to make open access information declarations under section 64;
- (d) to make guidelines for the Act under section 65;
- (e) to report on the operation of the Act under section 66;
- (f) to investigate complaints made under section 68.

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64 Open access information declarations

- (1) The ombudsman may declare government information to be open access information.

Note Power to make a statutory instrument includes power to make different provision for different categories (see [Legislation Act](#), s 48).

- (2) Before making a declaration under this section, the ombudsman—
- (a) must consult the information officer of each agency; and
 - (b) may consult anyone else the ombudsman considers appropriate.
- (3) A declaration is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

65 Guidelines for Act

- (1) The ombudsman may make guidelines for this Act.
- (2) The guidelines may make provision for 1 or more of the following:
- (a) the release of government information in response to an informal request;
 - (b) the application of the public interest test set out in section 17;
 - (c) how open access information is published;
 - (d) how information is given to an access application applicant;
 - (e) circumstances in which, for section 100 (2) (Fee waiver), information may be of special benefit to the public generally;
 - (f) anything else consistent with the objects of this Act.

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- (3) Before making a guideline under this section, the ombudsman—
 - (a) must consult the information officer of each agency; and
 - (b) may consult anyone else the ombudsman considers appropriate.
- (4) A guideline is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

66 Annual report on operation of Act

The ombudsman must, for each financial year, prepare a report on the operation of this Act during the year and give the report to the Speaker for presentation to the Legislative Assembly.

67 Access to information for ombudsman review

The ombudsman, in undertaking an ombudsman review, is entitled to full and free access at reasonable times to all relevant government information of the agency or Minister concerned.

Division 7.2 Complaints to ombudsman

68 Complaints to ombudsman

- (1) A person may complain to the ombudsman about an agency's action, or failure to take action, in relation to any of the agency's functions under this Act.
- (2) Without limiting subsection (1), a complaint may be about—
 - (a) the adequacy of an agency's response to an access application;
or

- (b) for an agency that has published a publication undertaking—
the agency's failure to comply with the undertaking or with
section 28 (2).
- (3) Nothing in this Act is intended to limit the ombudsman's powers
under the *Ombudsman Act 1989*.

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Part 8 Notification and review of decisions

Division 8.1 Review of decisions—definitions and notices

69 Definitions—pt 8

In this part:

decision-maker, for a reviewable decision, means a decision-maker mentioned in schedule 3, column 5 for the decision.

reviewable decision means a decision mentioned in schedule 3, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

70 Reviewable decision notices

- (1) If a decision-maker makes a reviewable decision mentioned in schedule 3, items 2, 5 or 7, the decision-maker must give a reviewable decision notice only to each entity mentioned in schedule 3, column 4 in relation to the decision.
- (2) If the ombudsman makes a decision on an ombudsman review, the ombudsman must give a reviewable decision notice only to the participants in the review.

Note The requirements for a reviewable decision notice are prescribed under the [ACT Civil and Administrative Tribunal Act 2008](#).

71 Applicant for review to tell decision-maker of application

A person applying for review of a reviewable decision must, in writing, tell the decision-maker of the application.

72 Onus

In a review under this part, a person seeking to prevent disclosure of information, has the onus of establishing that it is, on balance, contrary to the public interest to disclose the information.

Division 8.2 Ombudsman review

73 Ombudsman review of certain decisions

An entity mentioned in schedule 3, column 4 in relation to a reviewable decision may apply to the ombudsman for review of the reviewable decision (*ombudsman review*).

Note A fee may be determined under s 97 for this provision.

74 Applications for ombudsman review

- (1) An application for ombudsman review must be made within—
 - (a) 20 working days after the day the decision is made; or
 - (b) any longer period allowed by the ombudsman, whether before or after the end of the 20 working day period.

Note If a form is approved under s 101 for this provision, the form must be used.

- (2) The making of the application for ombudsman review of the decision does not affect the operation of the decision.

75 Notice to give information or attend ombudsman review

- (1) If the ombudsman has reason to believe that a person has information relevant to an ombudsman review, the ombudsman may give the person a written notice requiring the person to give the information to the ombudsman.

- (2) A notice under subsection (1) must state—
 - (a) how the information is to be given to the ombudsman; and
 - (b) a reasonable time at which, or a reasonable period within which, the information must be given.
- (3) If the ombudsman has reason to believe that a person has information relevant to an ombudsman review, the ombudsman may give the person a written notice requiring the person to attend before the ombudsman at a reasonable time and place stated in the notice to answer questions relevant to the review.

76 Participation in ombudsman reviews

- (1) A person may apply to the ombudsman to participate in an ombudsman review.
- (2) The ombudsman may allow the person to participate in the review in the way the ombudsman directs.

77 Mediation for applications

- (1) This section applies if, the ombudsman considers that a matter (the *subject matter*) to which an application for ombudsman review relates—
 - (a) is suitable for mediation; and
 - (b) is reasonably likely to be resolved by mediation.
- (2) The ombudsman may—
 - (a) refer the subject matter to a registered mediator for mediation; and
 - (b) require the parties to attend the mediation.

- (3) If the parties resolve the matter by mediation, the parties must tell the ombudsman that the matter is resolved.
- (4) In this section:
registered mediator—see the *Mediation Act 1997*, dictionary.

78 Ombudsman review

- (1) Unless resolved by mediation under section 77, the ombudsman must review the decision and, within 30 working days—
 - (a) confirm the decision; or
 - (b) vary the decision; or
 - (c) set aside the decision and—
 - (i) make a substitute decision; or
 - (ii) remit the matter that is the subject of the decision for reconsideration by the decision-maker in accordance with any direction or recommendation of the ombudsman.
- (2) The ombudsman may exercise any function given under this Act to the agency or Minister for making the decision.
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).
- (3) The ombudsman may decide not to review the decision if—
 - (a) the applicant for review does not give the ombudsman enough information to review the decision; or
 - (b) satisfied there is no reasonable prospect that the original decision would be varied or set aside.

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- (4) If the ombudsman decides to vary or set aside the decision, the ombudsman may direct that any fee paid by the applicant for the application for review be refunded.
- (5) The ombudsman must publish the ombudsman's decision and the reasons for the decision as soon as practicable after making the decision.

Note The ombudsman must also give a reviewable decision notice to the participants in the review (see s 70 (2)).

79 Questions of law to ACAT

- (1) The ombudsman may, at the request of a participant in a review or on the ombudsman's own initiative refer a question of law arising on the review to the ACAT.
- (2) The ACAT must be constituted by 3 members.
- (3) If a question of law is referred to the ACAT under this section, the ombudsman must not make a decision on the review while the reference is pending.
- (4) If the ACAT decides a question of law referred to it under this section, the ombudsman is bound by the decision.

Division 8.3 ACAT review

80 Review of decisions by ACAT

- (1) An entity mentioned in schedule 3, column 4 in relation to a reviewable decision may apply to the ACAT for review of—
 - (a) the reviewable decision; or

- (b) a decision of the ombudsman on an ombudsman review of the reviewable decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

- (2) The application must be made within—
 - (a) 20 working days after the day the decision is made; or
 - (b) any longer period allowed by the ACAT.
- (3) The ACAT, in reviewing a decision of the ombudsman, must be constituted by 3 members.

81 Participation in ACAT reviews

- (1) A person may apply to the ACAT to participate in a review under section 80.
- (2) The ACAT may allow the person to participate in the review in the way the ACAT directs.

82 Remitting applications for consideration by ombudsman

- (1) This section applies if—
 - (a) a decision-maker is told under section 71 of more than 1 application for review of a particular decision; and
 - (b) 1 or more of the applications is made to the ombudsman; and
 - (c) 1 or more of the applications is made to the ACAT.
- (2) The ACAT must by order remit the application or applications made to the ACAT for consideration by the ombudsman.

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Division 8.4 Costs on appeal to Supreme Court

83 Costs on appeal to Supreme Court

- (1) This section applies if an agency or Minister makes an application to the Supreme Court to appeal the decision of the ACAT on an application to the ACAT under section 80.
- (2) The court must not award costs to an agency or Minister relating to the appeal.

Part 9 Offences

84 Making decision contrary to Act

A person commits an offence if—

- (a) the person purports to make a decision under this Act; and
- (b) the person knows the decision is not a decision that can be made under this Act.

Maximum penalty: 100 penalty units.

85 Giving direction to act contrary to Act

(1) A person commits an offence if—

- (a) the person gives a direction to someone else who is required to make a decision under this Act; and
- (b) the direction is to make a decision that is not a decision that can be made under this Act; and
- (c) the person knows the decision is not a decision that can be made under this Act.

Maximum penalty: 100 penalty units.

(2) A person commits an offence if—

- (a) the person gives a direction to someone else who is required to exercise a function under this Act; and
- (b) the direction is to engage in conduct that is contrary to the requirements of this Act; and

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- (c) the person knows the conduct is contrary to the requirements of this Act.

Maximum penalty: 100 penalty units.

86 Improperly influencing decision on access application

A person commits an offence if the person—

- (a) influences the making of a decision by someone else who is required to make a decision under this Act; and
- (b) does so with the intention of causing the other person to make a decision that is not a decision that can be made under this Act.

Maximum penalty: 100 penalty units.

87 Gaining unlawful access to government information

A person commits an offence if the person—

- (a) intentionally deceives or misleads a person who is exercising a function under this Act; and
- (b) does so with the intention of gaining access to government information.

Maximum penalty: 100 penalty units.

88 Destroying etc records to prevent disclosure

A person commits an offence if the person—

- (a) destroys, conceals or alters a record of government information; and
- (b) does so for the purpose of preventing the disclosure of information as authorised or required under this Act.

Maximum penalty: 100 penalty units.

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Part 10 Miscellaneous

89 Annual statements by Chief Minister

- (1) Each year the Chief Minister must issue a statement about improving the public accessibility of government information.
- (2) The statement must set out—
 - (a) the government’s aims for increasing proactive disclosure of information and reducing the need for members of the public to make access applications; and
 - (b) the government’s expectations of agencies for the provision of information; and
 - (c) the government’s response to address information access issues identified by the ombudsman in the previous 12 months.
- (3) In preparing the statement, the Chief Minister must—
 - (a) consider the ombudsman’s most recent report under section 66 (Annual report on operation of Act) and may ask the ombudsman for additional information; and
 - (b) consult the information officer of each agency.
- (4) A statement is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

90 Annual reports to Legislative Assembly

- (1) Each Minister must, for each financial year—
 - (a) prepare a report on the operation of this Act in relation to the Minister’s government information, and each agency for which the Minister is responsible, during the year; and

- (b) present the report to the Legislative Assembly when the report for the agency under the *Annual Reports (Government Agencies) Act 2004* must be presented to the Assembly.
- (2) A report under subsection (1) must set out particulars of the operations of the agency and Minister under this Act during the year, including—
- (a) the number of each of the following:
 - (i) access applications received;
 - (ii) access applications decided within the time to decide under section 39;
 - (iii) access applications not decided within the time to decide under section 39;
 - (iv) access applications where access to all information requested was given;
 - (v) access applications where access to only some of the information requested was given;
 - (vi) access applications where access to the information requested was refused; and
 - (b) the number of applications made to the ombudsman under section 74 (Applications for ombudsman review) and particulars of the results of the applications; and
 - (c) the number of applications made to the ACAT under section 80 (Review of decisions by ACAT) and particulars of the results of the applications.

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91 How government information to be published

- (1) If an agency or Minister responsible for government information is required under a Territory law to publish or make publicly available the information, the agency or Minister must—
 - (a) publish the information on a website under its control, or include on the website a link to another website where the information is published; and
 - (b) make a hard copy of the information available for public inspection on request and without charge during ordinary working hours at the agency's or Minister's place of business.
- (2) The agency or Minister must as far as practicable publish the information—
 - (a) in a way that complies with the web content accessibility guidelines, level AA; and
Note The guidelines are accessible at www.w3.org.
 - (b) in a form that provides at least the same range of functions to the user of the information as was available to the agency or Minister before the information was published.

Examples—par (b)

- 1 electronically searchable text document
- 2 unsecured text document that allows a user to copy and paste from the document

Note 1 The ombudsman may make guidelines about how open access information is published (see s 65).

Note 2 This Act does not affect the operation of another law requiring disclosure (see s 11).

Note 3 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

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92 Administrative unit entitled to access information of entity performing regulatory function

If an entity that is not an agency performs a regulatory function under a territory law, the administrative unit responsible for the law is entitled to access information held by the entity that relates to the exercise of the function.

93 Government contracting obligations

- (1) This section applies to an agency if a service is, or is to be, provided under a government contract in connection with the exercise of a function of the agency.
- (2) The agency must take contractual measures to ensure that the agency is entitled to access the information if—
 - (a) the information is created by, or is in the possession of—
 - (i) a contracted service provider for the government contract; or
 - (ii) a subcontractor for the government contract; and
 - (b) the information relates to the performance of the government contract and not to the entry into the contract.
- (3) In this section:

contracted service provider, for a government contract, means an entity that is, or was—

 - (a) a party to the government contract; and
 - (b) responsible for the provision of services under the government contract.

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government contract means a contract to which the following apply:

- (a) the Territory or an agency is, or was, a party to the contract;
- (b) under the contract, services are or were to be provided—
 - (i) by another party; and
 - (ii) for an agency; and
 - (iii) to a person who is not the Territory or an agency;
- (c) the services are in connection with the exercise of the functions of an agency.

subcontractor, for a government contract, means an entity—

- (a) that is, or was, a party to a contract (the **subcontract**)—
 - (i) with a contracted service provider for the government contract; or
 - (ii) with another subcontractor for the government contract (under a previous application of this definition); and
- (b) that is, or was, responsible under the subcontract for the provision of services for the purposes (whether direct or indirect) of the government contract.

94 Government information of abolished agencies

- (1) This section applies if an agency is abolished.
- (2) If the abolished agency's functions are acquired by another agency—
 - (a) any access application made to the abolished agency is taken to have been made to the other agency; and

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- (b) any decision made by the abolished agency in relation to an access application made to it is taken to have been made by the other agency.
- (3) If the abolished agency's functions are acquired by more than 1 other agency—
 - (a) any access application made to the abolished agency is taken to have been made to whichever of the other agencies has acquired the functions of the abolished agency that are most clearly related to the subject matter of the application (the *relevant acquiring agency*); and
 - (b) any decision made by the abolished agency in relation to an access application made to it is taken to have been made by the relevant acquiring agency.
- (4) If the agency to which an access application is taken to have been made, or by which a decision on an access application is taken to have been made, under subsection (2) or (3) was not itself in existence when the application or decision was taken to have been made, then, for the purposes only of dealing with the request or decision under this Act, that agency is taken to have been in existence at that time.

95 Transfer of Ministerial responsibility

A Minister in possession of government information relating to an agency the Minister is responsible for must, when no longer responsible for the agency, give the information to the agency.

96 Protection from liability

- (1) An official is not civilly or criminally liable for conduct engaged in honestly and without recklessness—
 - (a) in the exercise of a function under this Act; or

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- (b) in the reasonable belief that the conduct was in the exercise of a function under this Act.
- (2) Any civil liability that would, apart from this section, attach to the official attaches instead to the Territory.
- (3) In this section:
 - conduct* means an act or omission to do an act.
 - official* means—
 - (a) a Minister; or
 - (b) the principal officer of an agency; or
 - (c) the information officer of an agency; or
 - (d) the ombudsman; or
 - (e) anyone else exercising a function under this Act.

97 Determination of fees

- (1) The Minister may 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 fee for a service must not vary according to—
 - (a) the identity of an applicant or agency; or
 - (b) the amount of time spent by an agency in—
 - (i) searching for or retrieving information; or
 - (ii) making, or doing things related to making, a decision on an access application.
- (3) A fee for a service may vary according to the amount of information provided in response to the application.

- (4) However, the first 50 pages of information provided in response to an application must be provided free of charge.
- (5) The Minister must consult the ombudsman before determining a fee.
- (6) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (7) In this section:

fee includes charge.

98 No fees for certain matters

- (1) A fee must not be determined for—
 - (a) making an access application for personal information about the applicant; or
 - (b) making an access application for additional information as mentioned in section 34 (3); or
 - (c) making an application for ombudsman review of a decision refusing to give access to information if the decision is taken to have been made under section 37.
- (2) Subsection (1) (b) does not prevent a fee being determined for providing information in response to an application mentioned in that subsection.

99 Fee estimate

- (1) An agency or Minister who receives an access application may give to the applicant a written estimate of the fee (if any) likely to be payable for information provided in response to the application.
- (2) If the estimate is that a fee is payable, the Minister or agency may ask the applicant to confirm or vary the application.

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100 Fee waiver

- (1) A person making an access application to an agency or Minister may apply to the agency or Minister for waiver of a fee associated with the application.
- (2) In deciding whether to waive a fee, the agency or Minister must consider whether the information requested or being disclosed is of special benefit to the public generally.

Note The ombudsman may make guidelines about circumstances in which information may be of special benefit to the public generally (see s 65).

- (3) The agency or Minister must waive the fee if—
 - (a) the applicant is a concession card holder and demonstrates a material connection with the information requested; or
 - (b) the applicant is a not-for-profit organisation and the application relates to the activities or purposes of the organisation; or
 - (c) the applicant is a member of the Legislative Assembly.
- (4) Also, the agency or Minister must waive the fee if—
 - (a) the fee is for providing information; and
 - (b) the information was not publicly available when the application was made; and
 - (c) the agency makes the information publicly available before or within 3 working days after giving it to the applicant.

- (5) In this section:

concession card means any of the following cards:

- (a) a current health care card issued under the *Social Security Act 1991* (Cwlth);

- (b) a current pensioner concession card issued under the *Social Security Act 1991* (Cwlth);
- (c) a current pensioner concession card issued in relation to a pension under the *Veterans' Entitlements Act 1986* (Cwlth) or the *Military Rehabilitation and Compensation Act 2004* (Cwlth);
- (d) a current gold card;
- (e) a card prescribed by regulation.

gold card means a card known as the Repatriation Health Card—For All Conditions that evidences a person's eligibility, under the *Veterans' Entitlements Act 1986* (Cwlth) or the *Military Rehabilitation and Compensation Act 2004* (Cwlth), to be provided with treatment for all injuries or diseases.

101 Approved forms

- (1) The Minister may approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for the purpose.

Note For other provisions about forms, see the [Legislation Act](#), s 255.

- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

102 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (2) The Executive must consult the ombudsman before making a regulation for this Act.

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103 Review of Act

- (1) The Minister must arrange for an independent entity to review the operation of this Act as soon as practicable after the end of its 3rd year of operation.
- (2) The Minister must present a report of the review to the Legislative Assembly within 6 months after the day the review is started.
- (3) The Minister must consult the ombudsman on the entity to undertake the review.
- (4) This section expires 5 years after the day it commences.

Part 11 Repeals and consequential amendments

104 Legislation repealed

- (1) The following legislation is repealed:
 - *Freedom of Information Act 1989* (A1989-46)
 - *Freedom of Information Regulation 1991* (SL1991-3).
- (2) All other legislative instruments under the *Freedom of Information Act 1989* are repealed.

105 Legislation amended—sch 4

This Act amends the legislation mentioned in schedule 4.

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Part 20 Transitional

200 Requests made under repealed FOI Act before commencement day

- (1) This section applies to a request for access to a document that was made under the repealed [FOI Act](#), section 14 and not finally decided before the commencement day.
- (2) Despite its repeal, the repealed FOI Act continues to apply in relation to the request.
- (3) In this section:

commencement day means the day this Act, section 6 commences.

repealed FOI Act means the [Freedom of Information Act 1989](#) (repealed).

201 Expiry—pt 20

This part expires 1 year after the day it commences.

Note Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

Schedule 1 Information disclosure of which is taken to be contrary to the public interest

(see s 16)

1.1 Information disclosure of which would be contempt of court or Legislative Assembly etc

It is taken to be contrary to the public interest to disclose information if its public disclosure would, apart from this Act and any immunity of the Crown—

- (a) be in contempt of court; or
- (b) be contrary to an order made or direction given by a tribunal or other entity having power to take evidence on oath; or

Examples

- 1 board of inquiry under the *Inquiries Act 1991*
- 2 commission under the *Judicial Commissions Act 1994*
- 3 royal commission under the *Royal Commissions Act 1991*

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (c) infringe the privileges of—
 - (i) the Legislative Assembly; or
 - (ii) a house of the Commonwealth parliament; or
 - (iii) the parliament of a State; or
 - (iv) the Legislative Assembly of the Northern Territory; or
 - (v) the Legislative Assembly of Norfolk Island.

1.2 Adoption records

- (1) It is taken to be contrary to the public interest to disclose information that is confidential under the *Adoption Act 1993*, section 60.
- (2) Subsection (1) does not apply to a disclosure to a person to whom the information relates.

1.3 Audit records of auditor-general

It is taken to be contrary to the public interest to disclose information that is obtained or generated in relation to an audit under the *Auditor-General Act 1996*.

1.4 Courts and ACAT

It is taken to be contrary to the public interest to disclose information that relates to a function, other than an administrative function, of a court or the ACAT.

1.5 Protected information about children and young people

- (1) It is taken to be contrary to the public interest to disclose information that is protected information under the *Children and Young People Act 2008*, section 844.
- (2) Subsection (1) does not apply to a disclosure to a person to whom the information relates.

1.6 Protected information—Crimes (Child Sex Offenders) Act 2005

It is taken to be contrary to the public interest to disclose information that is protected information under the *Crimes (Child Sex Offenders) Act 2005*, section 133A.

1.7 Protected information—Crimes (Restorative Justice) Act 2004

It is taken to be contrary to the public interest to disclose information that is protected information under the *Crimes (Restorative Justice) Act 2004*, section 64 (1).

1.8 Examinations under Australian Crime Commission (ACT) Act 2003

It is taken to be contrary to the public interest to disclose information obtained through an examination conducted under the *Australian Crime Commission (ACT) Act 2003*, section 20.

1.9 Information relating to requests to cost election commitments

- (1) It is taken to be contrary to the public interest to disclose information about requests to cost election commitments under the *Election Commitments Costing Act 2012*, section 5.
- (2) Subsection (1) does not apply to a disclosure after the costing period in which the request was made.

1.10 Information in electoral rolls and related documents

- (1) It is taken to be contrary to the public interest to disclose information in any of the following documents:
 - (a) an electoral roll, whether in printed or electronic form or on microfiche or microfilm;
 - (b) a copy of a document mentioned in paragraph (a);
 - (c) a document setting out particulars of only 1 enrolled person that was used in keeping an electoral roll;
 - (d) a copy of a document mentioned in paragraph (c);
 - (e) a document containing only copies mentioned in paragraph (d);

- (f) a document derived from an electoral roll setting out particulars of enrolled people.
- (2) However, it is not taken to be contrary to the public interest to disclose information in a document mentioned in subsection (1) to a person to the extent that it sets out only the particulars of the person.
- (3) In this section:
 - electoral roll* means—
 - (a) a roll of electors kept under the *Electoral Act 1992*; or
 - (b) a roll extract within the meaning of the *Electoral Act 1992*.

1.11 Protected information about housing assistance

- (1) It is taken to be contrary to the public interest to disclose information that is protected information under the *Housing Assistance Act 2007*, section 28.
- (2) Subsection (1) does not apply to a disclosure to a person to whom the information relates.

1.12 Information in health records

It is taken to be contrary to the public interest to disclose information in a health record under the *Health Records (Privacy and Access) Act 1997*.

1.13 Information about complaints under the Human Rights Commission Act 2005

It is taken to be contrary to the public interest to disclose information about a complaint under the *Human Rights Commission Act 2005*, part 4.

1.14 Information relating to investigations and reviews by ombudsman

It is taken to be contrary to the public interest to disclose information relating to an ombudsman review, or an investigation undertaken by the ombudsman under the *Ombudsman Act 1989*, section 9.

Schedule 2 Factors to be considered when deciding the public interest

(see s 17 (1))

2.1 Factors favouring disclosure in the public interest

The following are factors favouring disclosure in the public interest:

- (a) disclosure of the information could reasonably be expected to do any of the following:
 - (i) promote open discussion of public affairs and enhance the government's accountability;
 - (ii) contribute to positive and informed debate on important issues or matters of public interest;
 - (iii) inform the community of the government's operations, including the policies, guidelines and codes of conduct followed by the government in its dealings with members of the community;
 - (iv) ensure effective oversight of expenditure of public funds;
 - (v) allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official;
 - (vi) reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct or has acted maliciously or in bad faith;
 - (vii) advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies;
 - (viii) reveal the reason for a government decision and any background or contextual information that informed the decision;

- (ix) reveal that the information was—
 - (A) incorrect; or
 - (B) out-of-date; or
 - (C) misleading; or
 - (D) gratuitous; or
 - (E) unfairly subjective; or
 - (F) irrelevant;
- (x) contribute to the protection of the environment;
- (xi) reveal environmental or health risks or measures relating to public health and safety;
- (xii) contribute to the maintenance of peace and order;
- (xiii) contribute to the administration of justice generally, including procedural fairness;
- (xiv) contribute to the administration of justice for a person;
- (xv) contribute to the enforcement of criminal law;
- (xvi) contribute to innovation and the facilitation of research;
- (b) the information is personal information of—
 - (i) the person making the request; or
 - (ii) a child and the information is to be given to the child's parent or guardian and the disclosure of the information to the child's parent or guardian is reasonably considered to be in the best interests of the child; or
 - (iii) a deceased person and the person making the request for the information is an eligible family member of the deceased person.

2.2 Factors favouring nondisclosure in the public interest

The following are factors favouring nondisclosure in the public interest:

- (a) disclosure of the information could reasonably be expected to do any of the following:
 - (i) prejudice the collective responsibility of Cabinet or the individual responsibility of members to the Assembly;
 - (ii) prejudice the protection of an individual's right to privacy or any other right under the *Human Rights Act 2004*;
 - (iii) prejudice security, law enforcement or public safety;
 - (iv) impede the administration of justice generally, including procedural fairness;
 - (v) impede the administration of justice for a person;
 - (vi) prejudice the security or good order of a correctional centre;
 - (vii) impede the protection of the environment;
 - (viii) prejudice the economy of the Territory;
 - (ix) prejudice the flow of information to the police or another law enforcement or regulatory agency;
 - (x) prejudice intergovernmental relations;
 - (xi) prejudice trade secrets, business affairs or research of an agency or person;
 - (xii) prejudice an agency's ability to obtain confidential information;
 - (xiii) prejudice the competitive commercial activities of an agency;

- (xiv) prejudice the conduct of considerations, investigations, audits or reviews by the ombudsman, auditor-general or human rights commission;
 - (xv) prejudice the management function of an agency or the conduct of industrial relations by an agency;
 - (xvi) prejudice a deliberative process of government;
 - (xvii) prejudice the effectiveness of testing or auditing procedures;
 - (xviii) prejudice the conservation of any place or object of natural, cultural or heritage value, or reveal any information relating to Aboriginal or Torres Strait Islander traditional knowledge;
- (b) the information—
- (i) is personal information of a child and the disclosure of the information is reasonably considered not to be in the best interests of the child; or
 - (ii) is privileged from production in a legal proceeding on the ground of legal professional privilege; or
 - (iii) is personal information of a deceased person and the person making the request is an eligible family member of the deceased person and the disclosure of the information could reasonably be expected to impact on the deceased person's privacy if the deceased person were alive; or
 - (iv) is information disclosure of which is prohibited by an Act of the Territory, a State or the Commonwealth; or
 - (v) is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct and disclosure of the information could prejudice the fair treatment of an individual.

2.3 Meaning of *eligible family member*—sch 2

- (1) For this schedule, *eligible family member*, of a deceased person, means—
 - (a) a domestic partner of the deceased person; or
 - (b) if a domestic partner is not reasonably available—an adult child of the deceased person; or
 - (c) if a domestic partner or adult child is not reasonably available—an adult sibling of the deceased person; or
 - (d) if a person mentioned in paragraph (a), (b) or (c) is not reasonably available and the deceased person was not an Aboriginal or Torres Strait Islander person—the next nearest adult relative of the deceased person who is reasonably available; or
 - (e) if a person mentioned in paragraph (a), (b) or (c) is not reasonably available and the deceased person was an Aboriginal or Torres Strait Islander person—a person who is an appropriate person according to the tradition or custom of the Aboriginal or Torres Strait Islander community to which the deceased person belonged and who is reasonably available.
- (2) For this section, a person is not *reasonably available* if a person of that description—
 - (a) does not exist; or
 - (b) cannot reasonably be contacted; or
 - (c) is unable or unwilling to act as the eligible family member of the deceased person for the purposes of this Act.

Schedule 3 Reviewable decisions

(see s 69, def *reviewable decision*)

column 1 item	column 2 section	column 3 decision	column 4 entity	column 5 decision- maker
1	24 (1)	not make open access information publicly available	any person	agency or Minister
2	34 (1) (a)	give access to information	relevant third party	agency or Minister
3	34 (1) (b)	information not held	any person	agency or Minister
4	34 (1) (c)	refuse to give access to information	any person	agency or Minister
5	34 (1) (d)	refuse to deal with application	person whose interests are affected	agency or Minister
6	34 (1) (e)	refuse to confirm or deny information held	any person	agency or Minister
7	60 (1) (b)	refuse to amend personal information	applicant	agency or Minister

Schedule 4 Consequential amendments

(see s 105)

Part 4.1 ACT Civil and Administrative Tribunal Act 2008

[4.1] New section 48A

insert

48A Costs of proceedings relating to review of decisions under Freedom of Information Act 2013

- (1) This section applies if—
 - (a) an agency or Minister decides to refuse to give access to information sought by an applicant under the *Freedom of Information Act 2013*; and
 - (b) the applicant applies for review of the decision under that Act, section 80; and
 - (c) the tribunal makes an order giving access to some or all of the information sought.
- (2) The tribunal may order the agency or Minister to pay the reasonable costs of the applicant arising from the application.

Part 4.2 Children and Young People Act 2008

[4.2] Section 848 (2), note, 1st dot point

substitute

- *Freedom of Information Act 2013*, s 7 (Right of access to government information) and s 12 (Relationship with other laws prohibiting disclosure)

Part 4.3 Construction Occupations (Licensing) Act 2004

[4.3] Section 102 (1), note 2

substitute

Note 2 Access to the register may be sought under the *Freedom of Information Act 2013* (which also provides that it is contrary to the public interest to disclose certain information).

Part 4.4 Crimes (Restorative Justice) Act 2004

[4.4] Section 64 (6), note

omit

Part 4.5 Election Commitments Costing Act 2012

[4.5] Section 12

omit

Part 4.6 Gene Technology Act 2003

[4.6] Section 187 (4) and (5)

omit

Part 4.7 Government Procurement Act 2001

[4.7] Section 32 (1), note 1 and section 41, note 1

substitute

Note 1 The *Freedom of Information Act 2013* and the *Territory Records Act 2002* provide for how government held information and Territory records may be accessed.

Part 4.8 Health (National Health Funding Pool and Administration) Act 2013

[4.8] Section 31 (a)

omit

Freedom of Information Act 1989

substitute

Freedom of Information Act 2013

Part 4.9 Housing Assistance Act 2007

[4.9] Section 29

omit

Part 4.10 **Independent Competition and Regulatory Commission Act 1997**

[4.10] Dictionary, definition of *confidential information*, paragraph (b)

substitute

- (b) determined to be contrary to the public interest information under the *Freedom of Information Act 2013*.

Part 4.11 **Ombudsman Act 1989**

[4.11] New section 4A (ba)

insert

- (ba) to exercise other functions given to the ombudsman under the *Freedom of Information Act 2013*; and

[4.12] Section 5 (3)

substitute

- (3) Nothing in subsection (2) prevents the ombudsman from—
- (a) exercising a function given to the ombudsman under—
 - (i) the *Freedom of Information Act 2013*; or
 - (ii) the *Public Interest Disclosure Act 2012*; or
 - (b) investigating a complaint made under—
 - (i) the *Freedom of Information Act 2013*, section 68; or
 - (ii) the *Public Interest Disclosure Act 2012*, section 34 (1).

Part 4.12 Planning and Development Act 2007

[4.13] Section 311

omit

Part 4.13 Road Transport (General) Act 1999

[4.14] Section 83E, note 2

substitute

Note 2 Access to the register may be sought under the *Freedom of Information Act 2013*.

Part 4.14 Road Transport (Public Passenger Services) Act 2001

[4.15] Section 7, note 2

substitute

Note 2 Access to the register may be sought under the *Freedom of Information Act 2013*.

Part 4.15 Road Transport (Vehicle Registration) Act 1999

[4.16] Section 11, note 2

substitute

Note 2 Access to the register may be sought under the *Freedom of Information Act 2013*.

Part 4.16 Territory Records Act 2002

[4.17] Section 3 (d)

omit

Freedom of Information Act 1989

substitute

FOI Act

[4.18] Section 4, note 1

substitute

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 '*health record*—see the [Health Records \(Privacy and Access\) Act 1997](#), dictionary.' means that the term 'health record' is defined in that dictionary and the definition applies to this Act.

[4.19] Section 7

substitute

7 Meaning of *agency*

In this Act:

agency means—

- (a) the Executive; or
- (b) an administrative unit; or
- (c) a statutory office-holder and the staff assisting the statutory office-holder; or
- (d) a territory authority; or

- (e) a territory instrumentality; or
- (f) a territory-owned corporation or a subsidiary of a territory-owned corporation; or
- (g) the Office of the Legislative Assembly; or
- (h) an officer of the Assembly; or
- (i) the Supreme Court; or
- (j) the Magistrates Court or Coroner's Court; or
- (k) the ACAT; or
- (l) a board of inquiry under the *Inquiries Act 1991*; or
- (m) a judicial commission under the *Judicial Commissions Act 1994*; or
- (n) a royal commission under the *Royal Commissions Act 1991*; or
- (o) an entity prescribed by regulation to be an agency.

[4.20] Section 8

substitute

8 Meaning of *principal officer*

In this Act:

principal officer, of an agency, means—

- (a) for the Executive—the director-general of the administrative unit that provides secretariat support to the Executive; or
- (b) for an administrative unit—the director-general of the administrative unit; or
- (c) for the Supreme Court—the Chief Justice; or
- (d) for the Magistrates Court or Coroner's Court—the Chief Magistrate; or

- (e) for the ACAT—the registrar of the ACAT; or
- (f) for the Office of the Legislative Assembly—the clerk of the Legislative Assembly; or
- (g) for the office of an officer of the Assembly—the officer; or
- (h) for a territory-owned corporation or a subsidiary of a territory-owned corporation—the chief executive officer of the corporation or subsidiary; or
- (i) for a royal commission, board of inquiry or judicial commission—the director-general of the administrative unit that provides secretariat support to the Executive; or
- (j) for any other agency—the person prescribed by regulation to be the principal officer of the agency.

[4.21] Section 21 (2) and note

substitute

- (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 contrary to the public interest information.

[4.22] Section 28

substitute

28 Declaration applying provisions of FOI Act

- (1) The director may, on application by an agency, declare a record of the agency to be a record to which the FOI Act, part 5 (Access applications) applies.

- (2) The director may make the declaration only if the disclosure of the record would, or could reasonably be expected to—
 - (a) endanger the life or physical safety of a person; or
 - (b) prejudice law enforcement; or
 - (c) unreasonably disclose personal information about any person (including a deceased person).
- (3) Unless sooner revoked, a declaration is in force for—
 - (a) 10 years after it is made; or
 - (b) if a shorter period is stated in the declaration—the stated period.
- (4) A declaration can only be made once for a record.
- (5) While a declaration about a record is in force, a person is not entitled to access to the record under this Act.

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

[4.23] Section 31G (1)

substitute

- (1) Before giving a copy of an accessible executive record to a person under section 31E or section 31F, the principal officer must assess whether it contains information that would, or could reasonably be expected to—
 - (a) endanger the life or physical safety of a person; or
 - (b) prejudice law enforcement; or
 - (c) unreasonably disclose personal information about any person (including a deceased person).

[4.24] Section 31G (2) (b)

omit everything before subparagraph (i), substitute

- (b) for any information (*protected private information*) that would or could reasonably be expected to disclose personal information about any person (including a deceased person)—

[4.25] Section 31H heading

substitute

31H FOI Act access not prevented

[4.26] Section 31H

omit

Freedom of Information Act 1989

substitute

FOI Act

[4.27] Dictionary, definition of *FOI Act*

substitute

FOI Act means the *Freedom of Information Act 2013*.

[4.28] Dictionary, definition of *prescribed authority*

omit

Part 4.17 Territory Records Regulation 2009

[4.29] Section 5

substitute

5 Meaning of *principal officer*—Act, s 8 (j)

The person mentioned in an item in schedule 1, column 3 is prescribed to be the principal officer for the entity mentioned in the item, column 2.

Part 4.18 Utilities Act 2000

[4.30] Section 51 (3)

omit

a prescribed authority, within the meaning of the *Freedom of Information Act 1989*

substitute

an agency, within the meaning of the *Freedom of Information Act 2013*

Dictionary

(see s 3)

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:

- ACAT
- administrative unit
- auditor-general
- document
- human rights commission
- law
- officer of the Assembly
- ombudsman
- reviewable decision notice
- territory law
- territory-owned corporation.

access application means an application under section 29 for access to government information.

agency—see section 15.

contrary to the public interest information—see section 16.

decision-maker, for a reviewable decision, for part 8 (Notification and review of decisions)—see section 69.

decision notice—see section 50 (1).

disclosure log—see section 27.

eligible family member, of a deceased person, for schedule 2 (Factors to be considered when deciding the public interest)—see schedule 2, section 2.3.

government information—see section 14.

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information officer, of an agency, means the person appointed as the agency's information officer under section 18.

ombudsman review—see section 73.

open access information—see section 23.

personal information—

- (a) means information or an opinion (including information forming part of a database), whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion; but
- (b) for an individual who is or has been an officer of an agency or staff member of a Minister, does not include information about—
 - (i) the individual's position or functions as an officer or staff member; or
 - (ii) things done by the individual in exercising functions as an officer or staff member.

principal officer, of an agency, means—

- (a) for an administrative unit—the director-general of the administrative unit; 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 ACAT—the registrar of the ACAT; or
- (e) for a statutory office-holder and the staff assisting the statutory office-holder—the statutory office-holder; or
- (f) for the Office of the Legislative Assembly—the clerk of the Legislative Assembly; or

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-
- (g) for a territory-owned corporation or a subsidiary of a territory-owned corporation—the chief executive officer of the corporation or subsidiary; or
 - (h) for any other agency—the person prescribed by regulation to be the principal officer of the agency.

publication undertaking—see section 28.

record—

- (a) means any document or other source of information compiled, recorded or stored in written form or by electronic process, or in any other manner or by any other means; and
- (b) includes a reference to a copy of the record.

relevant third party—see section 36 (1).

respondent, in relation to an access application, means the agency or Minister deciding the application.

reviewable decision, for part 8 (Notification and review of decisions)—see section 69.

territory authority means a body established for a public purpose under an Act or statutory instrument.

territory instrumentality means a corporation that is established under an Act or statutory instrument, or under the [Corporations Act](#), and—

- (a) is comprised of people, or has a governing body comprised of people, a majority of whom are appointed by a Minister or an agency or instrumentality of the Territory; or
- (b) is subject to control or direction by a Minister.

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web content accessibility guidelines means the guidelines recommended by the World Wide Web Consortium on 11 December 2008 for making web content more accessible.

Note See www.w3.org/TR/WCAG20/.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2013.

2 Notification

Notified under the [Legislation Act](#) on 2013.

3 Republications of amended laws

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

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