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THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

FREEDOM OF INFORMATION AMENDMENT BILL 2006

GOVERNMENT AMENDMENTS

AMENDED SUPPLEMENTARY EXPLANATORY STATEMENT

Circulated by the authority of
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FREEDOM OF INFORMATION AMENDMENT BILL 2006

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

OVERVIEW

The *Freedom of Information Act 1989* (the Act) supports the ACT Government's commitment to open government and transparency principles. The Act creates a legal right for any member of the public to access documents held by government agencies, subject to a number of exemptions on grounds such as the protection of personal privacy, public safety and law enforcement activities.

The Freedom of Information Amendment Bill 2006 (the Bill) amends the Act to provide for a consultation process prior to the release of personal information, and to provide for an exemption where disclosure of information may cause damage to the security of the Australian Capital Territory.

The Bill also amends the Act to ensure that all work involved in a Freedom of Information (FOI) request is taken into account in a determination whether to refuse the request on the grounds that it involves an unreasonable diversion of resources.

These amendments are modelled on Commonwealth FOI legislation, to ensure consistency in application and interpretation. The Government amendments to the Bill make several corrections, and include consequential changes that should have been identified in the Bill.

In particular, the Government amendments make provision for the review by the Administrative Appeals Tribunal (AAT) of a conclusive certificate issued to support a claim for exemption under the proposed new section 37A. The intention is to permit the AAT to review the reasonableness of a decision of the Minister to issue a conclusive certificate on the same grounds that are currently allowed under Commonwealth FOI legislation.

GOVERNMENT AMENDMENTS

1. Amendment to clause 13 Page 9, Line 8

This amendment addresses an inconsistency between the proposed wording of new section 37A(3) and the Commonwealth legislation, on which the Bill is modelled. It clarifies that there is no discretion – the Minister must identify the part of the document that contains the relevant matter.

2. Amendment to clause 16 page 11, line 4

This amendment corrects the heading to the proposed new section 69A, which is inserted by clause 16 of the Bill. The heading to section 69A should refer to “personal information” rather than “personal affairs”.

3. Amendment to clause 15A page10, line20

This amendment corrects a deficiency in the Bill in relation to review rights. The amendment inserts a provision, which allows for an application to the AAT for review of the reasonableness of the decision to issue a conclusive certificate under section 37A. That is, the AAT may determine whether there are reasonable grounds for the claim that information about the existence or non-existence of a document would cause the document to be an exempt document under section 34(1) and new section 37A(1). It may not, however, overturn that decision.

Review of decisions made under section 34(1) currently exist in the Act and are not changed by this provision.

4. Insertion of new clause 17 Page 12, line 3

This new clause provides consequential amendments to a number of sections in the Act dealing with to review rights, to ensure consistency of treatment of conclusive certificates, issued under section 37A, with conclusive certificates issued under sections 34, 35, 36 and 37.