

2006

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

FREEDOM OF INFORMATION AMENDMENT BILL 2006

EXPLANATORY STATEMENT

Circulated by the authority of
Mr Simon Corbell MLA
Attorney General

FREEDOM OF INFORMATION AMENDMENT BILL 2006

OVERVIEW

The *Freedom of Information Act 1989* (the Act) supports the 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 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 could prejudice the security of the Australian Capital Territory.

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

SUMMARY OF CLAUSES

Clause 1 sets out the name of the Bill once enacted.

Clause 2 provides for commencement of the new Act on the same day as the substantive provisions of the Act.

Clause 3 specifies that the Bill amends the Act.

Clause 4 adopts the Commonwealth FOI terminology with the insertion of a new definition of 'personal information', defined to refer to information or an opinion about an individual whose identity is apparent, or can reasonably be ascertained from the information or opinion. The ACT legislation is based on the Commonwealth Act and this amendment provides for greater consistency in

decision making by ensuring case law on the interpretation of the Commonwealth exemption may be applied by ACT decision makers.

Clause 5 replaces section 11(2)(a) of the Act referring to information relating to the personal affairs of a person and replaces it with a reference to personal information about a person.

Clause 6 substitutes section 18(4) of the Act with a provision that provides for an extension period of 30 days if the agency or the Minister dealing with the request determines it necessary to consult with other agencies in relation to the provision of documents under the Act.

Clause 7 substitutes a new section 23(1) for the existing section 23(1). The new section ensures that all work involved in an FOI request is taken into account in deciding whether a request involves an unreasonable diversion of resources.

Section 23(1) includes a requirement that the agency or Minister dealing with the request, when considering refusing a request because it involves an unreasonable diversion of resources, take into account the resources needed to undertake the following FOI work:

- identifying, locating and collating documents, including documents held outside the agency by external contractors or in the office of the Minister;
- examining the documents or consulting on the documents with any person or body in relation to the request;
- copying the documents;
- scheduling the documents; and
- notifying the applicant of any interim or final decision on the request.

Clause 8 inserts a new section 26(2)(b)(ia). This section provides that where documents are likely to affect relations between the Territory and the Commonwealth or a State, and consultation on the release of the documents has occurred and a decision has been made to not exempt the documents, the

documents cannot be released until notice has been given to the applicant, the parties consulted and the review process exhausted. This may be through expiry of the time to seek review, or confirmation of the decision following review. This amendment adds in expiry through dismissal of an application for review.

Clause 9 inserts a new section 27(2)(b)(ia). This section provides that where documents are likely to affect business relations, and consultation on the release of the documents has occurred and a decision has been made to not exempt the documents, the documents cannot be released until notice has been given to the applicant, the parties consulted and the review process exhausted. This may be through expiry of the time to seek review, or confirmation of the decision following review. This amendment adds in expiry through dismissal of an application for review.

Clause 10 inserts a new section 27A. This section establishes a consultation process in relation to documents containing personal information, to take into account the views of the person whose privacy is potentially affected by the disclosure of the information. Consultation may also reveal that a person has no objection to disclosure of their personal information. If the individual does object to the disclosure of the information, however, this is a factor, which, with others, may be sufficient to constitute unreasonable disclosure and lead to the exemption of that material.

Clause 11 omits section 29(3)(b) providing that FOI charges may be remitted for documents relating to the personal affairs of the applicant and replaces it with a new section 29(3)(b) allowing for the remission of charges for documents relating to personal information about the applicant.

Clause 12 substitutes the reference to 'personal affairs' in section 30(1)(b)(ii) of the Act with the new terminology of 'personal information'.

Clause 13 inserts a new section 37A. This section provides for the exemption of documents that may affect the national security or defence of the Commonwealth, the Territory or any State, and the international relations of the Commonwealth. The exemption includes documents that would divulge any information or matter communicated in confidence by or for a foreign government, an authority of a foreign government or an international organisation to the government, an authority, or a person on behalf of the Commonwealth or Territory.

Clause 14 substitutes the reference to 'personal affairs' in section 41(1) of the Act with the new terminology of 'personal information'.

Clause 15 substitutes the reference to 'personal affairs' in section 48 of the Act with the new terminology of 'personal information'.

Clause 16 inserts a new 69A. This provision allows a person, or a legal representative of a deceased person, in the case of a request for access to documents containing personal information about a person, to apply to the Administrative Appeals Tribunal for a review of a decision by an agency or Minister to release the information to the applicant.