

**GOVERNMENT TRANSPARENCY LEGISLATION AMENDMENT BILL
2007**

EXPLANATORY STATEMENT

Circulated by Vicki Dunne MLA

Overview

This Bill is a starting point in opening up processes of the ACT Government to closer public scrutiny by:

1. amending the Financial Management Act to make provisions for the publication of the Report of the Strategic and Functional Review of the ACT Public Sector and Services;
2. highlighting the responsibility of the respondent in a Freedom of Information matter to assist the Administrative Appeals Tribunal in reviewing the material in question;
3. removing most of the circumstances in which a minister can issue a so-called ‘conclusive certificate’ under the *Freedom of Information Act 1989*; and,
4. increasing the status and applicability of Model Litigant Guidelines.

The Stanhope Government was elected in 2001 on a platform for reform of

Summary of Clauses

Part 1

Clauses 1 – 3 are mechanical clauses relating to the naming and commencement of the legislation.

Clause 1 – Name of Act – This Act is the *Government Transparency Legislation Amendment Act 2007*.

Clause 2 – Commencement – This clause provides that this Act commences on the day after its notification day.

Clause 3 – Notes – This Refers to the role of notes as set out in the Legislation Act.

Clause 4 – Purpose – This clause sets out the purpose of the amendments, which is to:

- promote greater accountability and transparency of government decision-making by ensuring that decision makers take reasonable steps to assist in the review of their decisions;
- promote better access to documents under the Freedom of Information Act by limiting the circumstances in which ministers can issue conclusive certificates; and,
- establish a legislative basis for model litigant guidelines.

Clause 5 – Relates to the operation of notes under the Legislation Act.

Schedule 1

Inserts the changes to the Financial Management Act,

Part 1.1

Part 1.1 Amends the *Financial Management Act 1996* (“FMA”) by inserting a new Part 9A which relates to the Report of the Strategic and Functional Review of the ACT Public Sector and Services, sometimes referred to as the Functional Review or the Costello Report.

Creates a new Section 126 of the FMA which defines and describes the functional review as the Report of the Strategic and Functional Review of the ACT Public Sector and Service. To remove any doubt about the identity of the document it is the same document which is subject to the certificate under section 35(3) of the Freedom of Information Act 1989 issued by the Chief Executive of the Chief Minister’s Department on 5 September 2006 a copy of which is at Attachment A.

A new Section 127 in the FMA requires that three weeks after commencement the responsible Minister must publish, both electronically and in printed form, the functional review and make it available for purchase or inspection.

Part 1.2

Part 1.2 amends the Administrative Appeals Tribunal Act 1989

The amendments creates a new section 32(1A) which requires a respondent in a review of a decision to take all reasonable steps to assist the Tribunal in making its decisions. This provision largely mirrors Section 33(1AA) of the Commonwealth *Administrative Appeals Tribunal Act 1975*

Part 1.3

Part 1.3 amends the *Freedom of Information Act 1989* and removes the power of ministers to issue certificates under Sections 35 and 36.

Amendment 1.11 – Removes the power for the minister to issue certificates under section 35.

Amendment 1.12 – Removes the power for the minister to issue certificates under section 36.

The remaining Amendments of Part 1.3 are consequential amendments removing references to certificates issued under sections 35 and 36 of the Act.

Part 1.4

Part 1.4 amends the *Law Officer Act 1992* to give statutory recognition to the ACT Model Litigants Guidelines.

Amendment 1.24 - modifies the functions of the Attorney-General to explicitly state that litigation he overseas should be conducted according to proper standards

Amendment 1.25 – Creates new sections 5AA, 5AB and 5AC.

Section 5AA requires the Attorney-General to publish Model Litigant Guidelines and requires that any person performing legal work on behalf of the territory complies with the Model Litigant Guidelines.

Section 5AB provides routine protection to legal officers.

Section 5AC requires the Chief Executive to the Attorney-General to publish, in his annual report, measures taken to ensure compliance with the Model Litigant Guidelines and any breaches of the Model Litigant Guidelines.

Amendment 1.26 – Inserts a definition of “territory legal work” in the Dictionary.