

2022

**Legislative Assembly for the
Australian Capital Territory**

Freedom of Information Amendment Bill 2022

Explanatory Statement

Presented by

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FREEDOM OF INFORMATION AMENDMENT BILL 2022

This explanatory statement relates to the Freedom of Information Amendment Bill 2022 as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the bill and to help inform debate on it. It does not form part of the bill and has not been endorsed by the Assembly. The Statement must be read in conjunction with the bill. It is not, and is not meant to be, a comprehensive description of the bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Purpose

The intent of the bill is to make decisions of the Executive more transparent and accountable. As a unicameral jurisdiction, measures that enhance government transparency and accountability in the Territory are desirable.

Background

The proposed bill would amend the *Freedom of Information Act 2016* (the Act) to create a proactive disclosure provision for the ACT Government to publicly release Cabinet records within 30 business days after being considered by Cabinet.

As a unicameral jurisdiction without the checks and balances provided by an upper house, it is incumbent on the ACT Government to continuously seek to enhance transparency and accountability mechanisms.

The bill has been modelled on the New Zealand Government's proactive release of Cabinet information policy, which has been in operation since 2018 (see New Zealand Cabinet Office circular (18) 4, Proactive release of Cabinet Material: Updated Requirements).

In the proposed bill, Cabinet records are defined as:

- a document given to Cabinet for its consideration or created for that purpose
- an official record of Cabinet.

Provision is made in the bill to exempt records that, if published, would reasonably be expected to:

- endanger the life or physical safety of a person
- be an unreasonable limitation on a person's rights
- prejudice an ongoing criminal investigation
- disclose information contrary to the public interest, per schedule 1, and schedule 2 (part 2.2) of the Act.

The bill describes mitigations to be undertaken by the relevant minister if a record is subject to exemptions. Should a decision be made by a minister not to publish a record for a prescribed reason, they would be required to provide an explanation for the decision not to publish, and give consideration to publishing any relevant factual material.

There is also provision to exempt publication of Cabinet decisions where government intends to make the decision and related materials public within 50 business days of the decision, or if it relates to a bill to be presented to the Legislative Assembly.

Human rights

The bill explicitly exempts publication of a Cabinet decision that would be an unreasonable limitation on a person's rights under the *Human Rights Act 2004*.

Clause notes

Clause 1 – Name of Act

This clause provides for the name of the bill upon enactment.

Clause 2 – Commencement

This clause provides that the Act will commence six months after its notification day.

Clause 3 – Legislation amended

This Act amends the *Freedom of Information Act 2016*.

Clause 4 – New part 4A

This clause inserts new part 4A, which provides definitions of specific terms, the purpose of the new part, the stipulation that a minister must publish a Cabinet record, and relevant timeframes and exemptions that apply. In part 4A:

Section 29A provides definitions of Cabinet, Cabinet record, relevant minister, and restricted information.

Section 29B describes the purpose of the new part, which is to allow the public to have better access to information considered by Cabinet, and participate more fully in government decision-making processes.

Section 29C stipulates that the minister must publish a Cabinet record, unless it contains restricted information that would reasonably be expected to:

- endanger the life or physical safety of a person
- be an unreasonable limitation on a person's rights
- prejudice an ongoing criminal investigation
- disclose information contrary to the public interest, per schedule 1, and schedule 2 (part 2.2) of the Act.

Section 29D describes what action must be taken by the minister if a Cabinet record contains restricted information per 29C (2).

Section 29E provides the time frames to be adhered to if a Cabinet record is required to be published. A Cabinet record must be published not later than 30 business days after it is considered by Cabinet. There is provision to exempt a record from publication if the government plans to make the record publicly available within 50 business days, or if the record relates to a bill that is to be presented to the Legislative Assembly.

Clause 5 – Dictionary, new definitions

This clause inserts the definitions included in new section 29A into the Dictionary of the *Freedom of Information Act 2016*.