



## LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

2012–2013–2014–2015–2016

# MINUTES OF PROCEEDINGS

No. 147

**THURSDAY, 11 AUGUST 2016**

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1 The Assembly met at 10 a.m., pursuant to adjournment. The Speaker (Mrs Dunne) took the Chair and asked Members to stand in silence and pray or reflect on their responsibilities to the people of the Australian Capital Territory.

2 **PETITIONS, E-PETITION AND MINISTERIAL RESPONSE—STATEMENT BY MINISTER**

**Petitions and e-petition**

Clerk announced that the following Members had lodged petitions for presentation:

Dr Bourke, from 13 residents, requesting that the Assembly call on the Government to commit to a timeline and funding to complete the Belconnen Arts Centre by 2021 (Pet 7-16).

Mrs Dunne, from 204 residents, requesting that the Assembly repeal the provision of the *Health (Patient Privacy) Amendment Act 2015* which bans pro-life actions in designated areas (Pet 8-16).

Dr Bourke, from 528 residents, requesting that the Assembly call on the Government to commit to a timeline and funding to complete the Belconnen Arts Centre by 2021 (E-Pet 4-16).

Pursuant to standing order 99A, this petition stands referred to the Standing Committee on Education, Training and Youth Affairs.

**Ministerial response**

The Clerk announced that the following response to a petition had been lodged:

Mr Gentleman (Minister for Planning and Land Management), dated 10 August 2016—Response to petition No. 6-16, lodged by Mr Corbell on 3 August 2016, concerning the rezoning of Mr Fluffy houses in Bragg Street, Hackett.



Dr Bourke (Minister for Small Business and the Arts), by leave, made a statement in relation to the Belconnen Arts Centre petitions.

### 3 VALEDICTORY

Mr Corbell, by leave, made a statement regarding his retirement from the Assembly.

Mr Barr (Chief Minister), Mr Hanson (Leader of the Opposition) and Mr Rattenbury (Minister for Education), by leave, also made statements

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*Suspension of sitting:* The Speaker, at 10.58 a.m., suspended the sitting and announced that the Chair would be resumed at the ringing of the bells.

*Resumption of sitting:* The bells having been rung, the Speaker resumed the Chair at 11.09 a.m.

### 4 EXECUTIVE MEMBERS' BUSINESS—PRECEDENCE

Ordered—That Executive Members' business be called on forthwith.

### 5 FREEDOM OF INFORMATION BILL 2016

The order of the day having been read for the resumption of the debate on the question—That this Bill be agreed to in principle—

Debate resumed.

Question—That this Bill be agreed to in principle—put and passed.

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#### *Detail Stage*

Bill, by leave, taken as a whole—

Mr Rattenbury was granted leave to move amendments that had not been circulated in accordance with standing order 178A.

On the motion of Mr Rattenbury, his amendment No. 1 (*see* [Schedule 1](#)), was made, after debate.

On the motion of Mr Corbell (Attorney-General), by leave, his amendments Nos. 2 and 63 (*see* [Schedule 2](#)) were made together, after debate.

On the motion of Mr Corbell, by leave, his amendments Nos. 3 and 58 (*see* [Schedule 2](#)) were made together, after debate.

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It being 60 minutes after the commencement of Executive Members' business—

Ordered—That the time allotted to Executive Members' business be extended by 30 minutes.

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On the motion of Mr Corbell, by leave, his amendments Nos. 4, 5, 8, 21, 31, 37, 40, 41, 67 and 71 (*see* [Schedule 2](#)) were taken together and negatived, after debate.

On the motion of Mr Corbell, his amendment No. 6 (*see* [Schedule 2](#)) was negatived, after debate.

On the motion of Mr Corbell, his amendment No. 7 (*see* [Schedule 2](#)) was made, after debate.

On the motion of Mr Corbell, his amendment No. 9 (*see* [Schedule 2](#)) was negatived, after debate.

Debate interrupted in accordance with standing order 74 and the resumption of the debate made an order of the day for a later hour this day.

## **6 QUESTIONS**

Questions without notice were asked.

## **7 PROPOSED REFERRAL TO THE COMMISSIONER FOR STANDARDS—STATEMENT BY MEMBER**

Ms Burch, by leave, made a statement in relation to a matter she had raised with the Speaker concerning a proposed referral to the Commissioner for Standards.

## **8 EXPANSION OF THE ASSEMBLY UPDATE—STATEMENT BY SPEAKER**

The Speaker made a statement concerning an update on the expansion of the Assembly.

## **9 PRESENTATION OF PAPERS**

The Speaker presented the following papers:

Commissioner for Standards—Annual Report for the period 1 July 2015 to 30 June 2106, dated 18 July 2016.

Ombudsman Act, pursuant to section 21—Ombudsman complaint statistics—Quarterly report for the period 1 April to 30 June 2016 and annual statistics for 2015-16, dated 29 July 2015.

Standing orders for the 9<sup>th</sup> Assembly—Speaker's discussion paper, dated August 2016.

## **10 FINANCIAL MANAGEMENT ACT—CONSOLIDATED FINANCIAL REPORT—PAPER AND STATEMENT BY MINISTER**

Mr Barr (Treasurer) presented the following papers:

Financial Management Act, pursuant to section 26—Consolidated Financial Report—Financial quarter ending 30 June 2016—2015-16 Interim Result, including financial instruments signed during the quarter—

and, by leave, made a statement in relation to the paper.

## **11 PUBLIC ACCOUNTS—STANDING COMMITTEE—REPORT 24—REPORT ON ANNUAL AND FINANCIAL REPORTS 2014-2015—RECOMMENDATIONS NOS. 17 AND 18—REVISED GOVERNMENT RESPONSE**

Mr Barr (Treasurer) presented the following paper:

Public Accounts—Standing Committee—Report 24—Report on Annual and Financial Reports 2014-2015—Recommendations Nos. 17 and 18—Revised Government response.

**12 PRESENTATION OF PAPER**

Mr Barr (Treasurer) presented the following paper:

Icon Water—Results to a Series of Questions conducted for Icon Water—Interview conducted 15 to 21 April 2016—Reported 28 April 2016.

**13 PRESENTATION OF PAPER**

Mr Barr (Chief Minister), on behalf of Mr Corbell (Minister for Police and Emergency Services), presented the following paper:

Evaluation of the Community Fire Unit Program in the ACT, dated June 2016, prepared by Risk Frontiers for ACT Emergency Services Agency.

**14 FREEDOM OF INFORMATION BILL 2016**

The Assembly, according to order, resumed consideration at the detail stage.

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*Detail Stage*

Bill as a whole—

On the motion of Mr Corbell, by leave, his amendments Nos. 10, 11, 12 and 15 ([see Schedule 2](#)) were made together, after debate.

Mr Corbell, by leave, moved his amendments Nos. 13, 14, 16 to 20, 23 to 25, 27, 29, 30, 32 to 36, 38, 39, 42 to 44, 46, 47, 59, 62, 64, 66, 68 and 69 ([see Schedule 2](#)).

The time allotted to Executive Members' business having expired—

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*Continuation of debate:* Mr Rattenbury, by leave, moved—That the time allotted to Executive Members' business be extended to allow the Assembly to complete its consideration of the Freedom of Information Bill 2016.

Question—put and passed.

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Debate continued.

Amendments negatived.

On the motion of Mr Corbell, his amendment No. 22 ([see Schedule 2](#)) was made, after debate.

On the motion of Mr Corbell, his amendment No. 28 ([see Schedule 2](#)) was negatived, after debate.

On the motion of Mr Corbell, his amendment No. 26 ([see Schedule 2](#)) was negatived, after debate.

On the motion of Mr Corbell, his amendment No. 45 ([see Schedule 2](#)) was negatived, after debate.

On the motion of Mr Corbell, his amendment No. 48 ([see Schedule 2](#)) was made, after debate.

On the motion of Mr Corbell, his amendment No. 49 ([see Schedule 2](#)) was made, after debate.

On the motion of Mr Corbell, his amendment No. 50 (*see* [Schedule 2](#)) was negatived, after debate.

On the motion of Mr Corbell, by leave, his amendments Nos. 51, 52 and 54 to 57 (*see* [Schedule 2](#)) were made together, after debate.

On the motion of Mr Corbell, his amendment No. 72 (*see* [Schedule 2](#)) was made.

On the motion of Mr Rattenbury, his amendment No. 2 (*see* [Schedule 1](#)) was made, after debate.

On the motion of Mr Corbell, his amendment No. 60 (*see* [Schedule 2](#)) was made, after debate.

On the motion of Mr Rattenbury, by leave, his amendments Nos. 3 and 4 (*see* [Schedule 1](#)) were made together, after debate.

On the motion of Mr Corbell, his amendment No. 61 (*see* [Schedule 2](#)) was made, after debate.

On the motion of Mr Corbell, his amendment No. 65 (*see* [Schedule 2](#)) was made, after debate.

Bill, as a whole, as amended, agreed to, after debate.

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Question—That this Bill, as amended, be agreed to—put and passed.

**15 JUSTICE AND COMMUNITY SAFETY—STANDING COMMITTEE (LEGISLATIVE SCRUTINY ROLE)—SCRUTINY REPORT 48—2016 AUSTRALIA–NEW ZEALAND SCRUTINY OF LEGISLATION CONFERENCE—REPORT NOTED**

Mr Doszpot (Chair) presented the following report:

Justice and Community Safety—Standing Committee (Legislative Scrutiny Role)—Scrutiny Report 48—2016 *Australia–New Zealand Scrutiny of Legislation Conference*, dated 10 August 2016, together with a copy of an extract from the relevant minutes of proceedings—

and moved—That the report be noted.

Question—put and passed.

**16 PUBLIC ACCOUNTS—STANDING COMMITTEE—AUDITOR-GENERAL'S REPORTS NOS. 3/2016, 4/2016, 5/2016 AND 6/2016—STATEMENT BY CHAIR**

Ms Lawder (Chair), pursuant to standing order 246A, informed the Assembly of the status of the following Auditor-General's reports which stand automatically referred to the Standing Committee on Public Accounts:

No. 3/2016—ACT Policing Arrangement.

No. 4/2016—The Management of the Financial Arrangements for the Delivery of the Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme.

No. 5/2016—Initiation of the Light Rail Project.

No. 6/2016—Management and administration of credit cards by ACT Government entities.

**17 PUBLIC ACCOUNTS—STANDING COMMITTEE—CONSIDERATION OF STATUTORY APPOINTMENTS—STATEMENT BY CHAIR—PAPER**

Ms Lawder (Chair), pursuant to standing order 246A and Continuing Resolution 5A, made a statement concerning consideration of statutory appointments by the Standing Committee on Public Accounts.

*Paper:* Ms Lawder, pursuant to Continuing Resolution 5A, presented the following paper:

Public Accounts—Standing Committee—Schedule of Statutory Appointments—8<sup>th</sup> Assembly—Period 1 January to 30 June 2016.

**18 SUSPENSION OF STANDING ORDERS—EXTENSION OF ADJOURNMENT DEBATE**

Mr Gentleman (Manager of Government Business) moved—That so much of the standing orders be suspended as would prevent the adjournment debate for this sitting extending beyond the 30 minute time limit.

Question—put and passed, with the concurrence of an absolute majority.

**19 LEAVE OF ABSENCE TO MEMBERS**

Mr Gentleman (Manager of Government Business) moved—That leave of absence from 12 August to 14 October 2016 inclusive be given to all Members.

Question—put and passed.

**20 SUSPENSION OF STANDING ORDERS—CONSIDERATION OF EXECUTIVE BUSINESS**

Mr Gentleman (Manager of Government Business) moved—That so much of the standing orders be suspended as would prevent order of the day No. 1, Executive business—Election Commitments Costing Amendment Bill 2016 being called on and debated forthwith.

Question—put and passed, with the concurrence of an absolute majority.

**21 ELECTION COMMITMENTS COSTING AMENDMENT BILL 2016**

The order of the day having been read for the resumption of the debate on the question—That this Bill be agreed to in principle—

Debate adjourned (Mr Coe) and the resumption of the debate made an order of the day for a later hour this day.

**22 RECONCILIATION DAY PUBLIC HOLIDAY**

Dr Bourke (Minister for Aboriginal and Torres Strait Islander Affairs), pursuant to notice, moved—That this Assembly:

(1) notes:

- (a) the ministerial statement by the Minister for Aboriginal and Torres Strait Islander Affairs on 9 June 2016 regarding commencement of a public consultation on a Reconciliation Day public holiday in the ACT;
- (b) the Reconciliation Day public holiday consultation report tabled in the Assembly by the Minister for Aboriginal and Torres Strait Islander Affairs on 9 August 2016;

- (c) the consultation report recommends that a Reconciliation Day public holiday be trialled in the ACT; and
  - (d) the significant opportunity to progress the work of reconciliation in the ACT presented by the 50<sup>th</sup> Anniversary of the 1967 referendum and the 25<sup>th</sup> Anniversary of the Mabo Ruling in 2017; and
- (2) calls on the ACT Government to:
- (a) work with the ACT community to establish a Reconciliation Day to commence in 2018; and
  - (b) mark the 50<sup>th</sup> Anniversary of the 1967 referendum and 25<sup>th</sup> Anniversary of the Mabo Ruling with significant public events.

Debate ensued.

Question—put and passed.

## 23 APPROPRIATION BILL 2016-2017

The Assembly resumed further consideration at the detail stage.

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### *Detail Stage*

Schedule 1—Appropriations—Proposed expenditure—

Consideration resumed on Part 1.14—Justice and Community Safety Directorate—

Debate continued.

Proposed expenditure agreed to.

Part 1.15—Legal Aid Commission (ACT)—debated and agreed to.

Part 1.16—Public Trustee and Guardian—debated and agreed to.

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*Adjournment negated:* It being approximately 6 p.m.—The question was proposed—That the Assembly do now adjourn.

Mr Gentleman (Manager of Government Business) requiring the question to be put forthwith without debate—

Question—put and negated.

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Part 1.17—Superannuation Provision Account—debated and agreed to.

Part 1.18—Transport Canberra and City Services Directorate—debated and agreed to.

Total appropriated to territory entities—agreed to.

Part 1.19—Treasurer's Advance—debated and agreed to.

Total appropriations—agreed to.

Clauses 1 to 10, by leave, taken together and agreed to.

Title agreed to.

Question—That this Bill be agreed to—put.

The Assembly voted—

AYES, 8		NOES, 7	
Mr Barr	Ms Fitzharris	Mr Coe	Mrs Jones
Dr Bourke	Mr Gentleman	Mr Doszpot	Ms Lawder
Ms Burch	Mr Hinder	Mrs Dunne	Mr Wall
Mr Corbell	Mr Rattenbury	Mr Hanson	

And so it was resolved in the affirmative—Bill agreed to.

**24 APPROPRIATION (OFFICE OF THE LEGISLATIVE ASSEMBLY) BILL 2016-2017**

The order of the day having been read for the resumption of the debate on the question—That this Bill be agreed to in principle—

Debate resumed.

Question—That this Bill be agreed to in principle—put and passed.

Leave granted to dispense with the detail stage.

Question—That this Bill be agreed to—put and passed.

**25 ESTIMATES 2016-2017—SELECT COMMITTEE—REPORT—APPROPRIATION BILL 2016-2017 AND APPROPRIATION (OFFICE OF THE LEGISLATIVE ASSEMBLY) BILL 2016-2017—GOVERNMENT RESPONSE—PAPER NOTED**

The order of the day having been read for the resumption of the debate on the motion of Mr Barr (Treasurer)—That the Assembly take note of the paper (*presented 9 August 2016*), viz:

Estimates 2016-2017—Select Committee—Report—*Appropriation Bill 2016-2017 and Appropriation (Office of the Legislative Assembly) Bill 2016-2017*—Government response—

Question—put and passed.

**26 ELECTION COMMITMENTS COSTING AMENDMENT BILL 2016**

The order of the day having been read for the resumption of the debate on the question—That this Bill be agreed to in principle—

Debate adjourned (Mr Coe) and the resumption of the debate made an order of the day for the next sitting.

**27 ADJOURNMENT**

Mr Gentleman (Manager of Government Business) moved—That the Assembly do now adjourn.

Debate ensued.

Question—put and passed.

And then the Assembly, at 9.41 p.m. adjourned until a day and hour to be fixed by the Speaker.

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**MEMBERS' ATTENDANCE:** All Members were present at some time during the sitting.

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**Tom Duncan**  
Clerk of the Legislative Assembly

# SCHEDULES OF AMENDMENTS

## Schedule 1

### **FREEDOM OF INFORMATION BILL 2016**

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Amendment circulated by Mr Rattenbury

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**1**

#### **Clause 2**

**Page 2, line 4—**

*omit clause 2, substitute*

**2**

#### **Commencement**

This Act commences on 1 July 2017.

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

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**2**

#### **Schedule 1, clauses 1.4 and 1.5**

**Page 76, line 9—**

*omit clauses 1.4 and 1.5, substitute*

#### **1.4 Cabinet information**

(1) Information—

- (a) that has been submitted, or that a Minister proposes to submit, to Cabinet for its consideration and that was brought into existence for that purpose; or
- (b) that is an official record of Cabinet; or
- (c) that is a copy of, or part of, or contains an extract from, information mentioned in paragraph (a) or (b); or
- (d) the disclosure of which would reveal any deliberation of Cabinet (other than through the official publication of a Cabinet decision).

(2) Subsection (1) does not apply to purely factual information that—

- (a) is mentioned in subsection (1) (a); or
- (b) is mentioned in subsection (1) (b) or (c) and is a copy of, or part of, or contains an extract from, a document mentioned in subsection (1) (a);

unless the disclosure of the information would involve the disclosure of a deliberation or decision of Cabinet and the fact of the deliberation or decision has not been officially published.

(3) In this section:

*Cabinet* includes a Cabinet committee or subcommittee.

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**3**

**Schedule 1, clause 1.17**

**Page 79, line 10—**

*[oppose the clause]*

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**4**

**Schedule 1, clause 1.18**

**Page 80, line 2—**

*[oppose the clause]*

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## **Schedule 2**

### **FREEDOM OF INFORMATION BILL 2016**

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Amendments circulated by the Attorney-General

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**1**

**Clause 2**

**Page 2, line 4—**

*omit clause 2, substitute*

**2**

**Commencement**

This Act commences on 1 July 2018.

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

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**2**

**Clause 12**

**Page 5, line 24—**

*[oppose the clause]*

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**3**

**Proposed new clause 12A**

**Page 5, line 27—**

*insert*

**12A Relationship with Health Records (Privacy and Access) Act 1997**

This Act does not apply to information in a health record under the *Health Records (Privacy and Access) Act 1997*.

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**4**

**Clause 13 (3)**

**Page 6, line 14—**

*omit clause 13 (3), substitute*

- (3) If a release restraint determination is made 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.
- 

**5**

**Clause 13 (4), definition of *principal officer***

**Page 6, line 22—**

*omit*

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6

Clause 17 (2) (d)  
Page 9, line 27—

*omit*

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7

Clause 17 (2) (e)  
Page 10, line 1—

*omit*

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8

Part 3  
Page 11, line 1—

*omit*

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9

Clause 23 (1), definition of *open access information*, paragraph (d)  
Page 13, line 15—

*omit*

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10

Clause 23 (1), definition of *open access information*, paragraph (h)  
Page 13, line 25—

*omit*

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11

Clause 23 (1), definition of *open access information*, paragraph (j) and  
examples and note  
Page 14, line 1—

*omit*

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12

Clause 23 (1), definition of *open access information*, paragraph (k)  
Page 14, line 14—

*omit*

3 or more years

*substitute*

5 or more years

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13

Clause 23 (1), definition of *open access information*, paragraph (m) and  
note  
Page 14, line 21—

*omit*

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**14****Clause 23 (1), definition of *open access information*, paragraph (a) (iv)**  
**Page 15, line 6—**

*omit*

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**15****Clause 23 (2), definition of *policy document***  
**Page 15, line 17—**

*omit the definition, substitute*

***policy document*—**

- (a) includes any of the following:
- (i) a document containing interpretations, rules, guidelines, statements of policy, practices or precedents;
  - (ii) a document containing a statement about how an Act or administrative scheme is to be administered;
  - (iii) a document describing the procedures to be followed in investigating a contravention or possible contravention of an Act or administrative scheme;
  - (iv) another document of a similar kind used to assist the agency to exercise its functions; but
- (b) does not include a draft of a document mentioned in paragraph (a).

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**16****Clause 24 (2) (d)**  
**Page 17, line 6—**

*omit*

to the ombudsman

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**17****Clause 24 (3)**  
**Page 17, line 13—**

*omit*

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**18****Clause 28 (2) (f) and (g)**  
**Page 19, line 9—**

*omit*

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**19****Clause 28 (3) (a)**  
**Page 19, line 20—**

*omit*

to the ombudsman

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**20****Clause 32 (1) (b)****Page 22, line 15—***omit*

, section 41 or section 42

*substitute*

or section 41

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**21****Clause 33****Page 22, line 20—***[oppose the clause]*

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**22****Proposed new clause 34 (1A)****Page 23, line 5—***insert*

(1A) The respondent is not required to search for the information from a backup system (but may if appropriate).

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**23****Clause 39 (1)****Page 27, line 4—***omit*

or section 42

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**24****Clause 39 (1) (c)****Page 27, line 10—***omit*

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**25****Clause 39 (3) and (4)****Page 27, line 14—***omit*

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**26****Clause 40 (2)****Page 28, line 3—***omit*

15 working days

*substitute*

20 working days

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**27****Clause 42****Page 28, line 19—***[oppose the clause]*

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**28****Clause 47 (1) (c)****Page 33, line 20—***omit*

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**29****Clause 57 (4) (b)****Page 40, line 2—***omit*

, section 41 or section 42

*substitute*

or section 41

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**30****Clause 58 (4) (b) (ii)****Page 41, line 4—***omit*

, section 41 or section 42

*substitute*

or section 41

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**31****Clause 60****Page 42, line 25—***[oppose the clause]*

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**32****Part 7****Page 45, line 1—***omit*

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**33****Part 8****Page 48, line 1—***omit part 8, substitute***Part 8****Notification and review of  
decisions**

**70 Definitions—pt 8**

In this part:

*internally reviewable decision* means a decision mentioned in schedule 3, column 3, decided by an agency, under a provision of this Act mentioned in column 2 in relation to the decision.

*internal reviewer*—see section 73.

*reviewable decision* means—

- (a) an internal reviewer's decision in relation to an internally reviewable decision; or
- (b) a decision mentioned in schedule 3, column 3, decided by a Minister, under a provision of this Act mentioned in column 2 in relation to the decision.

**71 Internal review notices**

If an agency makes an internally reviewable decision, the agency must give an internal review notice only to each entity mentioned in schedule 3, column 4 in relation to the decision.

*Note 1* **Internal review notice**—see the *ACT Civil and Administrative Tribunal Act 2008*, s 67B (1).

*Note 2* The requirements for internal review notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

**72 Applications for internal review**

- (1) An entity mentioned in schedule 3, column 4 in relation to an internally reviewable decision may apply to the agency for internal review of the decision.
- (2) The application must be made within 28 days after the day the notice of decision is given to the entity.
- (3) The application must be in writing and must set out the grounds on which internal review of the decision is sought.

*Note* If a form is approved under s 108 for an application, the form must be used.

- (4) If the application is made in accordance with this section, the making of the application automatically stays the operation of the decision until the application is finally dealt with.

**73 Internal reviewer**

The agency must arrange for a person who did not make the internally reviewable decision (the *internal reviewer*) to review the decision.

**74 Review by internal reviewer**

- (1) The internal reviewer for an internally reviewable decision must review the decision within 28 days (the **28-day period**) after the day the agency receives the application for review of the internally reviewable decision.
- (2) The internal reviewer must—
  - (a) confirm the decision; or
  - (b) vary the decision; or
  - (c) set aside the decision and substitute the reviewer's own decision.
- (3) If the decision is not varied or set aside within the 28-day period, the decision is taken to have been confirmed by the internal reviewer.

**75 Reviewable decision notice**

If a person makes a reviewable decision, the person must give a reviewable decision notice to each entity mentioned in schedule 3, column 4 in relation to the decision.

*Note* The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

**76 Applications for review**

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

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

**77 ACAT may make recommendation that costs be available in certain cases**

- (1) This section applies if—
  - (a) a person applies to the ACAT under section 76 for review of a reviewable decision; and
  - (b) the person is successful, or substantially successful, in the application.
- (2) The ACAT may, in its discretion, recommend to the Minister that the costs of the applicant in relation to the proceeding be paid by the Territory.
- (3) Without limiting the matters to which the ACAT may consider in deciding whether to make a recommendation under subsection (2), the ACAT may consider—
  - (a) whether payment of the costs or any part of the costs would cause financial hardship to the applicant; and
  - (b) whether the decision of the ACAT on review will be of benefit to the public generally; and

- (c) whether the decision of the ACAT on review will be of commercial benefit to the person making the application; and
  - (d) the reasonableness of the decision reviewed by the ACAT.
- (4) The Minister may, under a recommendation of the ACAT under subsection (2), authorise the payment of costs to an applicant.

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34

**Proposed new clauses 94A and 94B**

**Page 62, line 1—**

*insert*

**94A Guidelines for Act**

- (1) The Minister 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, for section 25, open access information is kept accurate, up-to-date and complete;
  - (d) circumstances in which, for section 107 (2) (Fee waiver), information may be of special benefit to the public generally;
  - (e) anything else consistent with the objects of this Act.
- (3) A guideline is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

**94B Complaints to ombudsman**

- (1) A person may complain to the ombudsman about an agency's or a Minister's action, or failure to take action, in relation to any of the agency's or Minister's functions under this Act.
  - (2) Without limiting subsection (1), a complaint may be about—
    - (a) the adequacy of an agency's or Minister'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 29 (2).
  - (3) Nothing in this Act is intended to limit the ombudsman's powers under the *Ombudsman Act 1989*.
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**35****Clause 95 (2) (c)**  
**Page 62, line 11—***omit*

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**36****Clause 95 (3)**  
**Page 62, line 13—***omit*

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**37****Clause 96 (1)**  
**Page 62, line 21—***omit*

The principal officer of an agency

*substitute*

An agency

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**38****Clause 96 (3) (b)**  
**Page 64, line 1—***omit*

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**39****Clause 96 (3) (c)**  
**Page 64, line 3—***omit*

section 84

*substitute*

section 76

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**40****Clause 103 (2), definition of *official*, paragraph (b)**  
**Page 68, line 27—***omit*

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**41****Clause 103 (2), definition of *official*, paragraph (c)**  
**Page 69, line 1—***omit*

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**42****Clause 104 (5)**  
**Page 69, line 18—***omit*

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**43****Clause 105 (1) (c)****Page 70, line 7—***omit*

ombudsman review

*substitute*

internal review

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**44****Clause 107 (2) (b), note****Page 71, line 3—***omit the note, substitute*

*Note* The Minister may make guidelines about circumstances in which information may be of special benefit to the public generally (see s 94A).

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**45****Clause 107 (2) (e)****Page 71, line 10—***omit*

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**46****Clause 109 (2)****Page 72, line 17—***omit*

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**47****Clause 110 (3)****Page 72, line 25—***omit*

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**48****Proposed new clause 201A****Page 74, line 13—***insert***201A Transitional regulations**

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
  - (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
  - (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.
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**49****Schedule 1, proposed new clause 1.1A****Page 75, line 28—***insert***1.1A Information subject to legal professional privilege**

Information that would be privileged from production or admission into evidence in a legal proceeding on the ground of legal professional privilege.

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**50****Schedule 1, proposed new clause 1.1B****Page 75, line 28—***insert***1.1B Information obtained in confidence**

Information the disclosure of which would found an action for breach of confidence.

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**51****Schedule 1, proposed new clauses 1.1C and 1.1D****Page 75, line 28—***insert***1.1C Information disclosure of which is prohibited under law**

- (1) Information that is confidential under the *Adoption Act 1993*, section 60 other than information disclosed to a person to whom the information relates.
- (2) Information that is protected information under the *Children and Young People Act 2008*, section 844, other than information disclosed to a person to whom it relates.
- (3) Information that is protected information under the *Crimes (Child Sex Offenders) Act 2005*, section 133A.
- (4) Information that is protected information under the *Crimes (Restorative Justice) Act 2004*, section 64.
- (5) Information that is protected information under the *Housing Assistance Act 2007*, section 28 other than information disclosed to a person to whom the information relates.
- (6) Any other information the disclosure of which is prohibited by a secrecy provision of a law.
- (7) In this section:  
*secrecy provision*—a provision of a law is a *secrecy provision* if it—
  - (a) applies to information obtained in the exercise of a function under the law; and

- (b) prohibits people mentioned in the provision from disclosing the information, whether the prohibition is absolute or subject to stated exceptions or qualifications.

#### **1.1D Sensitive information**

Information the disclosure of which would involve the unreasonable disclosure of sensitive information about any individual (including a deceased person).

**52**

**Schedule 1, clause 1.2**

**Page 76, line 1**

*[oppose the clause]*

**53**

**Schedule 1, clauses 1.4 and 1.5**

**Page 76, line 9—**

*omit clauses 1.4 and 1.5, substitute*

#### **1.4 Cabinet information**

- (1) Information that came into existence less than 10 years after its relevant date if—
  - (a) it was brought into existence for the consideration of Cabinet; or
  - (b) its disclosure would reveal any consideration of Cabinet or would otherwise prejudice the confidentiality of Cabinet considerations or operations; or
  - (c) it was brought into existence in the course of the budgetary process.
- (2) Subsection (1) does not apply to information officially published by decision of Cabinet.
- (3) Without limiting subsection (1), it is taken to include the following:
  - (a) Cabinet submissions;
  - (b) Cabinet briefing notes;
  - (c) Cabinet agendas;
  - (d) notes of discussions in Cabinet;
  - (e) Cabinet minutes;
  - (f) Cabinet decisions;
  - (g) a draft of a document mentioned in any of paragraphs (a) to (f).
- (4) A report of factual or statistical information attached to a document mentioned in subsection (3) is information under subsection (1) only if—

- (a) its disclosure would have an effect mentioned in subsection (1) (b); or
  - (b) it was brought into existence for the consideration of Cabinet or for the budgetary process.
- (5) In this section:

**Cabinet** includes a Cabinet committee or subcommittee.

**consideration** includes—

- (a) discussion, deliberation, noting (with or without discussion) or decision; and
- (b) consideration for any purpose including, for example, for information or to make a decision.

*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).

**draft** includes a preliminary or working draft.

**relevant date**, for information, means—

- (a) for information considered by Cabinet—the date the information was most recently considered by Cabinet; or
- (b) for other information—the date the information was brought into existence.

**54**

**Schedule 1, clause 1.6**

**Page 76, line 21—**

*[oppose the clause]*

**55**

**Schedule 1, clause 1.7**

**Page 76, line 25—**

*[oppose the clause]*

**56**

**Schedule 1, clause 1.8**

**Page 77, line 1—**

*[oppose the clause]*

**57**

**Schedule 1, clause 1.14**

**Page 78, line 22—**

*[oppose the clause]*

**58**

**Schedule 1, clause 1.15**

**Page 79, line 1—**

*[oppose the clause]*

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**59****Schedule 1, clause 1.16 (a)****Page 79, line 7—***omit*

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**60****Schedule 1, proposed new clause 1.16A****Page 79, line 9—***insert***1.16A National, Territory or State security information**

- (1) Information the disclosure of which would, or could reasonably be expected to damage the security of the Commonwealth, the Territory or a State.
- (2) For subsection (1), the security of the Commonwealth includes—
  - (a) matters relating to detecting, preventing or suppressing activities, whether within or outside Australia, that are subversive of, or hostile to, the interests of the Commonwealth or a country allied or associated with the Commonwealth; and
  - (b) the security of a communications system or cryptographic system of the Commonwealth or another country used for—
    - (i) the defence of the Commonwealth or a country allied or associated with the Commonwealth; or
    - (ii) the conduct of the international relations of the Commonwealth.
- (3) For subsection (1), the security of the Territory or State includes matters relating to detecting, preventing or suppressing activities within or outside the Territory or State, that are subversive of, or hostile to, the interests of the Territory or a State.

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**61****Schedule 1, clause 1.19****Page 80, line 6—***omit clause 1.19, substitute***1.19 Law enforcement or public safety information**

- (1) Information the disclosure of which would, or could reasonably be expected to—
  - (a) prejudice the investigation of a contravention or possible contravention of the law in a particular case; or
  - (b) identify the existence or identity of a confidential source of information in relation to the enforcement or administration of the law; or
  - (c) endanger a person's life or physical safety; or

- (d) result in a person being subject to a serious act of harassment or intimidation; or
  - (e) prejudice a person's fair trial or the impartial adjudication of a matter before a court or tribunal; or
  - (f) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law; or
  - (g) prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety; or
  - (h) endanger the security of a building, structure or vehicle; or
  - (i) prejudice a system or procedure for the protection of people, property or the environment; or
  - (j) facilitate a person's escape from lawful custody; or
  - (k) prejudice the wellbeing of a cultural or natural resource or the habitat of animals or plants.
- (2) Information given in the course of an investigation of a contravention or possible contravention of the law if the information was given under compulsion under an Act that abrogated the privilege against self-incrimination.
- (3) Information obtained, used or prepared for an investigation by an entity prescribed by regulation in the exercise of a function prescribed by regulation.
- (4) However this section does not apply to—
- (a) information revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law; or
  - (b) information containing a general outline of the structure of a program adopted by an agency for dealing with a contravention or possible contravention of the law; or
  - (c) a report on the degree of success achieved in a program adopted by an agency for dealing with a contravention or possible contravention of the law; or
  - (d) a report prepared in the course of a routine law enforcement inspection or investigation by an agency whose functions include that of enforcing the law (other than the criminal law or the law relating to corruption); or
  - (e) a report on a law enforcement investigation that has already been disclosed to the entity the subject of the investigation.
- (5) In this section:
- law* includes law of the Commonwealth, a State or a foreign country.
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62

**Schedule 4, part 4.1**  
**page 87, line 3—**

*omit*

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63

**Schedule 4, part 4.2**  
**Amendment 4.4**  
**Proposed new section 848 (2), note, 1st dot point**  
**Page 88, line 19—**

*omit everything after*  
 government information)

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64

**Schedule 4, part 4.19**  
**Amendment 4.29**  
**Page 95, line 6—**

*omit amendment 4.29, substitute*

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**[4.29] Section 5 (3) (b)**

*substitute*

- (b) investigating a complaint made under—
- (i) the Freedom of Information Act 2016, section 94B; or
  - (ii) the Public Interest Disclosure Act 2012, section 34 (1).
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65

**Schedule 4, part 4.26**  
**Amendment 4.40**  
**Proposed new section 28 (2)**  
**Page 100, line 23—**

*omit proposed new section 28 (2), substitute*

- (2) The director may make the declaration only if—
- (a) the disclosure of the record would, or could reasonably be expected to—
    - (i) endanger the life or physical safety of a person; or
    - (ii) prejudice law enforcement; or
    - (iii) unreasonably disclose information about any person (including a deceased person); or
    - (iv) be a contempt of court or the Legislative Assembly; or
  - (a) the record is subject to legal professional privilege.
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**66****Dictionary, definition of *decision-maker*****Page 104, line 21—***omit*

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**67****Dictionary, definition of *information officer*****Page 105, line 1***omit*

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**68****Dictionary, proposed new definitions****Page 105, line 2—***insert*

*internally reviewable decision*, for part 8 (Notification and review of decisions)—see section 70.

*internal review notice*—see the *ACT Civil and Administrative Tribunal Act 2008*, section 67B (1).

*internal reviewer*, for part 8 (Notification and review of decisions)—see section 70.

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**69****Dictionary, definition of *ombudsman review*****Page 105, line 3—***omit*

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**70****Dictionary, definition of *personal information*, proposed new paragraph (aa)****Page 105, line 10—***insert*

(aa) does not include sensitive information about the individual;  
and

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**71****Dictionary, definition of *principal officer*****Page 105, line 18—***omit*

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**72****Dictionary, proposed new definition of *sensitive information*****Page 106, line 21—***insert*

**sensitive information**—see the *Information Privacy Act 2014*, section 14.

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