



**ACT Government Response
to the
Standing Committee on
Justice and Community Safety
Report No. 5 of 2011**

**Inquiry into the
*Freedom of Information Act 1989***

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Freedom of Information and Open Government Reform in the Territory: Technology, Enhanced Legislation, and Improved Administration

I. OVERVIEW OF GOVERNMENT COMMITMENTS

Better use of technology, enhanced legislation, and improved administration are all elements of the Government's program to ensure that information actually reaches the community. The Government will commit to supporting reform of the *Freedom of Information Act 1989* to align with the Commonwealth Act, strengthening administration of the FOI Act by developing guidelines and policies to support decision-makers and improve consistency by the end of the year, and using the web to disseminate FOI materials as broadly as possible, thereby adopting the so-called "push-model" of information sharing.

Details of the Government's legislative, administrative, and online policies are considered below.

II. BACKGROUND – OPEN GOVERNMENT IN THE TERRITORY

The Government is committed to active engagement with the community, and proactive improvement of its administration, legislation, and communication strategies to share information. Reform of the *Freedom of Information Act 1989*, and the Government's response to this report, must be understood in the context of a broader strategy to improve transparency and openness in the ACT.

The Chief Minister's statement of 23 June 2011 on Open Government details the Government's policies and objectives on transparency and openness. The commitment to Open Government extends beyond freedom of information reform, and encompasses all areas of governance. The Government will focus on using technology, enhanced legislation, and improved administration to achieve a higher level of transparency, and to ensure that the whole community benefits from Government information.

As the Chief Minister outlined in her 23 June 2011 statement on Open Government, there are three core principles that guide efforts to open government:

- transparency of process and information;
- participation by citizens in Government; and
- public collaboration in finding solutions to problems and participation in the improved well-being of the community.

Open government strengthens the ability of the community to participate in the decision-making process, and to hold government accountable for its actions. To that end, the following measures have already been adopted by Government:

- The Government provides summaries of key issues considered by Cabinet on the web, currently at <http://www.cmd.act.gov.au/policystrategic/cabinet/cabaccess> ;
- Within 3 months, the Government will make information released to the public available on a broader scale through a new website; and
- Within 3 months, Government will establish a website for disseminating information to the public, including links to existing websites, and further information that is of interest.

These new measures will give the ACT community an unprecedented level of access and understanding of the workings of Government. The use of web technology ensures that information is widely available, in a format that promotes ease of access at a low cost. These transparency initiatives will be enhanced even further if the amendments considered in this response are adopted by the Legislative Assembly.

The importance of sharing information with the community, to enable active participation and transparency in Government, has long been recognised in the Territory. The *Human Rights Act 2004*¹ explicitly recognises the right of people to seek, receive, and impart information.

The Government views its policies on the *Freedom of Information Act 1989* in light of these important rights. Fully embracing the human right to seek information requires diligent review, and continuous improvement of the Government's freedom of information program. Improved administration will ensure that access to Government information through the Freedom of Information Act is efficient, timely, and accessible, and updated and enhanced legislation will expand the rights of the public to seek information. The Government detailed its policy of maintaining best practice in its submission to the Standing Committee on Justice Community Safety's inquiry into the *Freedom of Information Act 1989*. The Government's efforts to reform the Freedom of Information Act and associated processes will be guided by the principle that information is a public resource, and that it is therefore necessary to manage information to maximise public benefits.

Recognising the importance and amount of information that is held by Government, the Government's response to the Standing Committee, and all of its proposals in relation to information, will begin with a presumption that information must be released unless there are compelling reasons to do otherwise.

¹ Section 16(2)

III. GENERAL RESPONSE TO THE COMMITTEE'S REPORT

Technology and Freedom of Information

Greater use of technology ensures that information is more available to the public. Online access is a key component of both the Open Government strategy, and the Government's freedom of information policy. The publication of Cabinet consideration summaries online, and the community Cabinet forum, are two immediate benefits offered through this strategy. The object of using web technology is to provide access to information as broadly as possible, in a low cost, easily accessible format.

The importance of technology in both freedom of information reform and broader open government initiatives was emphasised in the ACT Public Service review. The *Governing the City State* report detailed the benefits of using web tools to share information about the Government.² Following the recommendations of the Government 2.0 Taskforce,³ the Commonwealth recently adopted a declaration of open government that emphasises the importance of technology:

"The Australian Government now declares that, in order to promote greater participation in Australia's democracy, it is committed to open government based on a culture of engagement, built on better access to and use of government held information, and sustained by the innovative use of technology."⁴

The ACT Government, in accordance with its long standing support for transparency and open government, agrees that the innovative use of technology is a primary means of improving access to information. For that reason, a Government Information Office was created within the Chief Minister and Cabinet Directorate in the 2011-12 ACT Budget.

The initial \$297,000 in funding for a Government Information Office will help promote information policy and administration in the Territory with a focus on technology. As indicated in Budget Paper 3, along with a focus on ICT strategy, the Office will also undertake preliminary work on a knowledge management framework and related initiatives. The Government's strategies for improving access to information and taking advantage of web resources to publish FOI materials will be supported by policies that make the presumption in favour of releasing information stronger and more explicit across agencies.

Enhanced FOI legislation

Improvements to the drafting of the *Freedom of Information Act 1989*, and improving the procedures for administering the Act, are also part of the Government's overarching strategy

² *Governing the City State, One ACT Government – One ACT Public Service*, p.89

³ *Engage: Getting on with Governance*, Report of the Government 2.0 Taskforce, <http://www.finance.gov.au/publications/gov20taskforcereport/doc/Government20TaskforceReport.pdf>

⁴ Australian Declaration of Open Government, <http://agimo.govspace.gov.au/2010/07/16/declaration-of-open-government/>

to increase openness and ensure the free flow of information to the public. As part of its commitment to improving access to information, the Government has been mindful of developments in other jurisdictions. Particularly in the Commonwealth, the Government has observed the implementation of legislative reforms that make the rights of the public clearer and more expansive, and that would more strongly favour the release of information.⁵

Based on its review of developments in the Commonwealth and to support its overall program for transparency, the Government will develop amendments to the *Freedom of Information Act 1989* (the FOI Act) to:

- enumerate the objects of the Act, including that the Act is intended to treat information as a public resource
- more clearly distinguish between exemptions that are subject to the public interest test and those that are not; and
- provide a single, clear, and more informative public interest test that is weighted in favour of releasing information.

The Commonwealth *Freedom of Information Act 1982*, as amended in November 2010, will serve as a guide in the Government's evaluation of drafting changes. The Government's submission to this inquiry emphasised the value of maintaining alignment with the Commonwealth *Freedom of Information Act 1982*, because the Territory benefits from the experiences of the Commonwealth in administering its legislation. All legislative reforms proposed by the Government to the FOI Act will be supported by a renewed and vigorous effort to make information widely and freely available to the public.

Improved administration

In addition to web publication, the Government is working to improve procedures for handling and responding to Freedom of Information requests. The Government will introduce a complete set of policies and procedures to support FOI administration. These policies and procedures will enhance FOI administration and improve consistency by providing clear and detailed instructions to decision-makers.

The final report cites discordant practices between agencies as a key challenge in FOI administration, and as one of the factors that tends to support having an Information Commission. The new ACT Public Service structure, supported by the Government Information Office, will allow for better implementation of the Government's policies on FOI administration. The Directorates of the ACT share a closer relationship with each other than, for example, Commonwealth Departments. This feature of the ACT Public Service allows for improvements in FOI administration to be developed and implemented that will offer

⁵ The Commonwealth introduced major reforms to the *Freedom of Information Act 1982* (Cwlth) via the *Freedom of Information Amendment (Reform) Act 2010*, which commenced in November 2010.

many of the benefits that come from guidelines and other services provided by the Commonwealth Information Commission.

The Government is mindful of the differences in scale and structure of the ACT Government's system for administering FOI requests. While the Commonwealth now relies on the Office of the Australian Information Commissioner for functions ranging from guidelines to dispute resolution, the ACT will initially continue to apportion the functions of initially reviewing decisions and developing guidelines for FOI processing between the Directorates, with improved support from the Justice & Community Safety Directorate and online publication support from the Chief Minister and Cabinet Directorate.

An Information Commission for the ACT should not be adopted until the review of privacy legislation is complete, and the issue of funding a new statutory office in addition to numerous statutory offices already in existence across the ACT must be given more detailed consideration than that available in the Standing Committee's report. The Government's new policies on open government, and the reforms to the FOI Act described in this response, will offer immediate benefits to the community while the privacy review and more detailed examinations of funding, including reviewing the Ombudsman agreement, are underway.

Administration of the FOI Act will be improved by the ongoing changes following the *Governing the City State, One ACT Government – One ACT Public Service* report. In the 2011-2012 Budget, the Government approved \$297,000 for a Government Information Office that will promote open government and transparency through improved use of information technology and open access to information. The Government Information Office will ensure implementation of the Government's commitments to increasing access to information on the web. In relation to FOI, the Government Information Office is developing a website and policy for publishing FOI materials that will be operational by the end of September 2011.

The additional funding for an Information Office demonstrates the high priority that this Government places on transparency. The Auditor-General has estimated that, on average, each FOI request costs \$12,000⁶ in officer time and other resources. While the costs of administering the FOI scheme are already substantial, the additional resources given to the Government Information Office to develop high level policies and implementing IT strategies will greatly enhance the availability of information to the community.

Government achievements in relation to Freedom of Information

It is important to note that this response builds on a consistent, long-standing Government policy of promoting transparency. This Government has consistently worked over time to improve both the legislation and the administrative procedures that ensure freedom of information.

⁶ ACT Auditor-General's Office, *Administration of the Freedom of Information Act 1989*, Report No. 5 of 2008

The ACT has the most open legislative framework for access to Cabinet documents of any State or Territory. The *Territory Records Act 2002* makes Cabinet papers available after just 10 years. For comparison, the Commonwealth Government is currently phasing in a requirement to make Cabinet papers available after 20 years. Also, the new policy of publishing Cabinet considerations online brings the ACT's practice into line with Queensland, which is regarded by the Committee's report as a model jurisdiction for information sharing.

In July 2010, this Government created a new fee determination to simplify the charges applicable to freedom of information requests. As a result, the ACT's fees and charges regime leads the nation in promoting access to information at minimal cost.⁷ For example, no fees are payable in relation to requests for personal information. Neither are fees payable for requests that seek information about Aboriginal and Torres Strait Islander family links. All applicants for information receive a generous 10 hours of processing time and 200 pages of copy free of charge. The Government's efforts to minimise expenses contribute to a responsive, effective freedom of information regime.

The internal procedures for processing requests have also been strengthened, to help ensure timely and consistent responses by the public service. In the last year, the Justice & Community Safety Directorate has offered assistance to other Directorates in the form of general advice on processing requests. These efforts included creating guidelines to assist decision makers in deciding whether to waive fees on public interest grounds. The guidelines are available to the public on the web at www.justice.act.gov.au.

The openness and transparency measures adopted by this Government will greatly enhance the ability of the public to collaborate in making decisions and improving the well-being of the community. Making information available on the web, making more information available under the Territory's legislation, and committing to active publication of key matters considered by Government will give the public the information it needs to participate actively and meaningfully in making decisions about life in the Territory.

The public interest in preserving some exemptions under the FOI Act

The Government will propose re-drafted provisions that reflect a policy of favouring release under the FOI Act, unless there are compelling reasons to withhold information that has been requested. Amendments can be drafted that will improve the directions given to decision makers under the Act, and that will weight considerations of the public interest further in favour of sharing the information. Preserving some limited exemptions for documents under the FOI regime is necessary to protect important public functions. Detailed consideration of the Government's position on the different exemptions considered in the Committee's report is below, in response to recommendations 1, 3, and 13-15.

⁷ A comparison of the ACT's fees and charges to the Commonwealth is discussed in response to recommendation 16

It is important to note that the exemption categories which the Government intends to preserve do protect the public, and are not unique to the ACT. The Queensland *Right to Information Act 2009*, which is the product of the Queensland reform efforts cited repeatedly by the Committee, is instructive in this regard. Exemptions have been preserved in the Queensland legislation by declaring, as a matter of statute, that it is against the public interest to release certain kinds of information.⁸ This approach is functionally equivalent to the “exempt” documents category in the Commonwealth Act, and to those exemptions in the ACT legislation that are not subject to a public interest test.⁹

The importance of keeping the deliberations of Cabinet confidential is well established in Australian jurisprudence,¹⁰ and is recognised in the FOI legislation of all Australian jurisdictions.¹¹ Protecting the deliberations of Cabinet is necessary to ensure that decisions are made on the basis of collective responsibility, following a robust discussion between Ministers. In particular, both the Queensland and Commonwealth FOI legislation cited by the Standing Committee as examples of successful reform maintain that documents which would disclose a deliberation of Cabinet are not subject to release.¹² The ACT’s *Freedom of Information Act 1989* and *Territory Records Act 2002* lead these jurisdictions in access to Cabinet material.

The existing scheme for releasing executive documents under the *Territory Records Act 2002* provides the Territory with a level of access to Cabinet material that is consistent with best practice in other Australian jurisdictions, and superior to Commonwealth practice.¹³

Maintaining the protections in the FOI Act for Cabinet deliberations does not preclude the Cabinet from adopting a policy of disclosing information. The Queensland model of releasing summaries of the matters considered by Cabinet is also useful example of this practice.¹⁴ Although the Queensland *Right to Information Act 2009* allows for much of this material to be withheld, the Government publishes information about Cabinet considerations as a matter of policy.

The ACT’s new policy of releasing summaries of key Cabinet considerations regularly will give the community direct access to Government, while allowing the Cabinet to maintain the confidentiality of its deliberations. Similar to the Queensland model, control over the

⁸ Queensland Right to Information Act 2009, s.48(2) and schedule 3.

⁹ The ACT’s exempt categories of information are listed at p.9 of the Government’s submission to this inquiry; exemptions subject to a public interest test are listed at p.10.

¹⁰ See for example *Commonwealth v Northern Land Council* [1993] HCA 24, cited p.12 in the ACT Government submission to the Standing Committee inquiry into the *Freedom of Information Act 1989*.

¹¹ *Freedom of Information Act 1989* (ACT) – (Section 35); *Freedom of Information Act 1982* (Cwlth) – (Section 34); *Government Information (Public Access) Act 2009* (NSW) – (Schedule 1, s.2); *Information Act* (NT) – (Section 45); *Right to Information Act 2009* (Tas) – (section 26); *Right to Information Act 2009* (Qld) – (Schedule 3); *Freedom of Information Act 1991* (SA) – (Schedule 1, part 1); *Freedom of Information Act 1982* (Vic) – (section 28); *Freedom of Information Act 1992* (WA) – (Schedule 1, section 1).

¹² See, for example, par 1.16 of the Standing Committee’s *Report No. 5 of 2011, The Freedom of Information Act 1989*.

¹³ The *Territory Records Act 2002* (ACT), Part 3A, gives public access to Cabinet documents after 10 years. The Commonwealth is currently phasing in a 20 year requirement for public access.

¹⁴ <http://www.rti.cabinet.qld.gov.au>

information that is released will be maintained in order to preserve the collective nature of Cabinet decisions. Decisions, however, and information about the reasons for those decisions will become available to the public.

Other kinds of sensitive information will continue to be protected in the Government's reform program. The Committee's recommendations imply that, apart from Cabinet material, all other FOI exemptions should be subject to a public interest test. There are materials other than Cabinet documents that need to be protected. Exemptions for law enforcement matters and national security should be maintained to protect the public safety. They are appropriate, particularly in a small jurisdiction where the protections available in administrative review processes are more limited, for example, compared to the protections that are available for sensitive information in the Commonwealth Administrative Appeals Tribunal.

Internal briefs between agencies and Ministers also warrant some continuing protection, as has been maintained in both Queensland and the Commonwealth. There is a strong public interest in ensuring that Ministers are able to receive some policy advice in confidence from the public service. In relation to post-election and estimates hearings briefs, for example, the Queensland *Right to Information Report* noted that "If individual ministerial responsibility is to be preserved and to be meaningful, it is essential that ministers should be fully informed, and not fed 'anodyne' guff. That will not happen unless the information is protected from disclosure."¹⁵ This approach is consistent with the latest Commonwealth reforms, where the exemption for internal documents has been preserved but clarified and restructured to increase the presumption in favour of public release.

IV. RESPONSES TO THE COMMITTEE'S RECOMMENDATIONS

With regard to the positions stated above on re-drafting the ACT's FOI Act, and improving FOI administration in the context of the Public Service restructure instead of through an Information Commission, the Government responds to the Committee's recommendations as follows:

RECOMMENDATION 1

4.16 The Committee recommends that the ACT Government introduce into the Legislative Assembly Bills to repeal the current FOI Act 1989 and to replace it with a revised FOI Act. The new FOI legislation should adopt as far as possible the key features of the current Commonwealth FOI Act 1982, including in particular the amendments of 1 November 2010. The exception to this principle of consistency should be arrangements for cabinet documents where, under Recommendation No.13, the new ACT legislation should follow the example of the New Zealand Official Information Act 1982.

¹⁵ David Solomon, *The Right to Information*, p.126.

Agreed

The Government agrees that redrafting the *Freedom of Information Act 1989* would be useful to enhance the public's access to information, to increase clarity for decision makers, and to maintain greater alignment with the Commonwealth Act. Each provision of the recent Commonwealth amendments will be reviewed on its own merits for possible implementation in the ACT, but the Government's stated policy of maintaining alignment will guide the process. With the recent Government commitment to developing by the end of September 2011 a website and policy for releasing FOI materials on the web, amendments to the Freedom of Information Act would, if adopted, greatly expand the availability of information to the public.

The Government notes that its current legal framework for releasing Cabinet material leads all Australian jurisdictions in openness and therefore does not require amendment. The Government's current policy of releasing Cabinet decisions on the web proactively provides the ACT with an unprecedented level of access to information.

The Government does not agree with the Committee that it should depart from Australian FOI practice and adopt the New Zealand *Official Information Act 1982* approach to Cabinet documents. First, it is important to consider that, as noted above, all jurisdictions in Australia and New Zealand accord heightened protection to Cabinet material under FOI legislation.¹⁶ As the Standing Committee's report noted, even the Law Reform Commission of New Zealand has proposed clarifying the exemptions available for Cabinet deliberations in the *Official Information Act 1982*, and the existing public interest factors already offer some protection.¹⁷

Comparison: The New Zealand and Australian models

There is a fundamental difference between the New Zealand approach to FOI and Australian approaches. The distinguishing feature of the *Official Information Act 1982* (NZ) is that it does not categorize different kinds of information. Rather than specifying general categories of information that may be withheld (for example, Executive documents¹⁸, or documents affecting personal privacy¹⁹ under the ACT FOI Act), decisions under the New Zealand Act in relation to any document must be made on the basis of certain statutory principles. The *Official Information Act 1982* gives a set of factors that favour releasing information,²⁰ which must be weighed against reasons not to release the information.²¹

In contrast, Australian FOI legislation specifically defines (and thereby limits) the kinds of information that can be withheld from release, with specific tests for each exemption. Any

¹⁶ See footnote 12 above

¹⁷ Ibid, par 4.41

¹⁸ Section 35

¹⁹ S.41

²⁰ S.5, Official Information Act 1982 (NZ)

²¹ S.6, Official Information Act 1982 (NZ)

official information that does not fall within one of the specific exemptions cannot be withheld.

Rather than adopt the New Zealand model in respect of Cabinet material, the Government prefers to maintain alignment with the Commonwealth and other Australian jurisdictions, both for the reason that spelling out categories of exempt information is a good way to promote openness, and because alignment with the Commonwealth allows the ACT to benefit from Commonwealth experience and jurisprudence.

Release of the Territory's Cabinet documents is also governed by the *Territory Records Act 2002*, and overall the Territory's regime represents best practice when compared with other Australian jurisdictions' legislative provisions.

The Commonwealth *Freedom of Information Act 1982*, which the Committee recommends using as a model for the ACT, creates two overarching categories of exempt information: exempt, and public interest conditionally exempt documents. These two categories were created to take existing exemption categories and clearly delineate between those that are subject to a public interest test, and those that are not.

"Exempt documents" can be withheld if they satisfy the statutory criteria pertaining to each kind of relevant document. Cabinet documents, for example, are "exempt under the Commonwealth Act."²² The Commonwealth Act specifies that if a document is created for the purpose of informing Cabinet, or if it would reveal the deliberations of Cabinet, it may be withheld from release under the Act.

"Conditionally exempt" documents are, under the Commonwealth Act, documents for which a public interest test must be conducted. In order to withhold a conditionally exempt document, an agency must find that to release it would be against the public interest. Documents relating to the "deliberative process of Government,"²³ (equivalent to the ACT's exemption for internal working documents²⁴) are conditionally exempt. This means that, in addition to determining that a document relates to deliberative processes, an agency that wishes to withhold the material must also prove that it would not be in the public interest to release the document.

Overview of the Government's proposal to follow the Commonwealth model

The Government's agreement to this recommendation includes agreement to reform ACT legislation so that the difference between exempt documents, and conditionally exempt documents, is clear and unambiguous in the legislation. Under the current ACT legislation,

²² S.34, *Freedom of Information Act 1982* (Cwlth)

²³ FOI Act 1982 (Cwlth), s.45

²⁴ FOI Act 1989, section 36

several categories of exemption²⁵ can only be invoked by agencies if releasing the information would not be in the public interest. An amendment to follow the Commonwealth model would involve redrafting the Act so that these exemptions are consolidated into a single, coherent list within the Act. The public interest test that would apply will also be spelled out in a non-exhaustive list, as occurred with the November 2010 amendments to the Commonwealth Act.²⁶

RECOMMENDATION 2

4.17 The Committee recommends that the ACT Government introduce an appropriate model so that this legislation can incorporate future amendments which reflect amendments of the Commonwealth Act, subject to the will of the ACT Legislative Assembly, so that the ACT Act as far as possible maintains consistency with that of the Commonwealth.

Agreed

The Government has clearly adopted a policy of maintaining alignment with the Commonwealth in this area of law, and has been active in monitoring amendments to the Commonwealth Act. This was demonstrated in the Government's submission to the Standing Committee's inquiry.

The Government will continue to treat Cabinet documents in accordance with its current, leading approach that makes Cabinet documents available after only 10 years.

RECOMMENDATION 3

4.18 The Committee recommends that, in framing the new FOI legislation, the ACT Government adopt contemporary Australian practice in relation to FOI such that:

- **there is a presumption of release of government information unless there are public interest grounds for withholding it in particular instances;**
- **government adopt a 'push' model, publishing public sector information as a matter of routine, at nil charge; and**
- **within this model, FOI operates an avenue of 'last resort', as part of a larger framework within which public sector information is made widely available.**

Agreed

²⁵ Section 34 (Documents affecting relations with the Commonwealth and States) section 36 (internal working documents); section 39 (documents affecting financial or property interest of the Territory); section 40 (documents concerning certain operations of agencies); and section 44 (documents affecting economy).

²⁶ S.11B, Commonwealth Act.

Presumption in favour of release

The Government reaffirms its commitment to open government, and to presuming that information should be released unless there is a compelling reason to withhold it. The right to obtain information about Government is firmly rooted in the ACT's *Human Rights Act 2004*. The re-drafting of the *Freedom of Information Act 1989* to better align with recent Commonwealth amendments will strengthen the presumption in favour of releasing information through a new set of public interest factors. These public interest factors will, again in line with the Commonwealth amendments, apply to every exemption category that is currently subject to public interest considerations.²⁷

It is important to note, however, that some essential protections must be maintained, including the exemption for Executive documents and the exemption for information that could affect public safety. (A discussion of executive documents is above in response to recommendation 1; a more detailed discussion of exemptions generally is below at recommendation 13.) Both of these categories remain "exempt" under the Commonwealth Act, which means that they are not subject to the public interest criteria which must be applied to requests for other kinds of information. This heightened protection reflects the sensitivity of the information at issue.

The "push model" of releasing information

This Government has embraced a push-model of releasing information on the Open Government website. Legislative changes to the FOI Act will only further strengthen this commitment to releasing information proactively. Already under the FOI Act, section 7 and 8, Agencies are required to publish certain information in their Annual Reports.

The Government will develop policies for releasing greater amounts of information on the web within 3 months. The information released will include, but will not be limited to, information made available pursuant to FOI requests. Once implemented, the core requirements of these policies will be incorporated into the FOI Act, including a timeframe within which documents must be published following release.

It is important to note that along with increased publication of FOI materials, procedures will need to be developed to ensure the protection of personal and other sensitive information. Many FOI requests that have historically been handled by the ACT Government, for example, deal with personal details that are not appropriate for publication on the web. The Government will develop procedures to ensure that online publication comes with safeguards to ensure that personal information or copyright material issues are addressed.

²⁷ Current exemptions that require decision makers to find a public interest in withhold the document are listed above in footnote 27

The Government's policy of making information available online, including pro-actively publishing Cabinet decisions, will contribute to making the FOI process a process of "last resort" in the Territory.

RECOMMENDATION 4

4.19 The Committee recommends that, in framing the new FOI legislation, the ACT Government amend the objects clause of the Act so that it provides for a single public interest test to show whether documents should be released.

Agreed

The Government will develop amendments that recognise the objects of the Act as favouring the release of information, treating information as a public resource, and to include an expanded public interest test that provides clearer instructions to decision makers. As in the Commonwealth model, exemptions will be divided into two broad categories: those that are exempt on grounds of being a certain type of sensitive information ("exempt documents" under the Commonwealth Act²⁸), and those that can be withheld only where a public interest test is also met ("conditionally exempt" documents under the Commonwealth Act²⁹). The exemptions which apply only where the public interest test is met will be subject to a single public interest test, which will instruct decision makers to strongly favour releasing information.

It is important that, as in the Commonwealth FOI Act, the list of public interest considerations is non-exhaustive. The Government maintains its position, outlined in the Government submission to this inquiry,³⁰ that flexibility in applying public interest tests is an important consideration. However, the Act could benefit from including a non-exhaustive list of public interest factors, similar to the approach taken in the recent Commonwealth amendments. It is possible to improve the guidance available to decision makers without restricting "public interest" to an unyielding statutory definition.

RECOMMENDATION 5

4.20 The Committee recommends that, in framing the new FOI legislation the ACT Government amend its objects clause so that it clearly states the context and purpose of the legislation.

Agreed

²⁸ Part IV, Division 2

²⁹ Part IV, Division 3

³⁰ ACT Government submission to the Standing Committee inquiry into the *Freedom of Information Act 1989*, p.11

The Government will consider an improved objects clause in its redrafting of the Act, reflecting its commitment to openness and transparency. Further details about the presumption in favour of release, and the Government's view that information is a public resource, are provided above in the Government's responses to recommendations 1 and 3.

RECOMMENDATION 6

4.21 The Committee recommends that, in framing the new legislation, the ACT Government re-words references to 'public interest' in the Act so that such clauses consistently provide for release unless there is a public interest in keeping information in-confidence.

Agreed

This recommendation is implied by recommendation 1, and the Government's response is clear in supporting the release of information. This would be accomplished by having a single set of public interest considerations applicable to a defined set of exemptions, as in the Commonwealth FOI Act, and which the Government agreed to support in recommendation 4 above. Considerations of "public interest" in relation to exemptions will refer to that single set of factors, which will be non-exhaustive. Section 11B of the Commonwealth *Freedom of Information Act 1982* will serve as a guide.

The presumption in favour of releasing information has already been embraced by this Government. The Chief Minister's statement on Open Government of 23 June 2011 made clear that the presumption in favour of release applies across the range of Government information, not only information requested under the Freedom of Information Act.

The Open Government statement came with a commitment to upload FOI materials on to the web, and to regularly release summaries of Cabinet considerations to the public. These are both concrete measures that reflect the Government's policy of presuming that information should be released.

RECOMMENDATION 7

4.22 The Committee recommends that, in framing the new legislation, the ACT Government provides an account of relevant and irrelevant factors in determining public interest, to be placed within the legislation.

Agreed

As noted above in response to recommendation 4, the public interest clause can be expanded without destroying its flexibility. This approach, taken in the Commonwealth Act³¹, will be developed in the form of Government proposals to amend the ACT's legislation.

RECOMMENDATION 8

4.27 The Committee recommends that, in line with practice in the Commonwealth and that of selected other state and territory jurisdictions, and as would be consistent with the implications of the new legislation, government departments use EDRMS and web technologies to publish the information for which they are responsible as a matter of routine, freely and at no-cost.

Agreed

The Government has committed to the use of the internet to broadly distribute information, and has already placed Cabinet information online in addition to holding an open forum community Cabinet. These achievements and the further commitment to upload FOI materials on the web are consistent with the recommendations of the Governing the City State report, and the Chief Minister's statement of policy on Open Government.

Electronic data management systems and record keeping are issues more appropriately considered in the context of the *Territory Records Act 2002*. The Territory Records Office is assisting agencies in improving electronic data management in keeping with the recommendations of the *Review of the Territory Records Act 2002*, tabled by the Chief Minister on 1 July 2010.

RECOMMENDATION 9

4.28 The Committee recommends that the ACT Government, in framing the new legislation, require the publication of online manifests—that is: structured lists, of information held by government agencies—to facilitate public access.

Agreed

The Government is committed to ensuring that distribution of information benefits as many members of the community as possible. Enhanced online distribution of information was a key component of the Chief Minister's statement on Open Government, and the Government has already begun to distribute information about Cabinet decisions and to hold online sessions where Government ministers interact with the community.

³¹ *Freedom of Information Act 1982* (Cwlth), s11B

Some lists of information held are already published in Agencies' annual reports pursuant to section 7 of the *Freedom of Information Act 1989*. Annual reports are already available online. Facilitating access to information and structured lists of records will be a priority of the Government Information Office (discussed above).

RECOMMENDATION 10

4.29 The Committee recommends that, in framing the new legislation, the ACT Government require its agencies to provide online disclosure registers with respect to requests for documents. Under this arrangement, documents released under FOI would be published online within a set period of original disclosure. Where documents are withheld, those decisions and their basis should be detailed on the disclosure register, including decisions made under the Territory Records Act 2002.

Agreed

The Government has already adopted a policy of placing FOI materials on the web. The Open Government website will include schedules of documents released, and the reasons for release or withholding in relation to each FOI request. The policy will include a timeframe for when documents must be uploaded, and details about the formats and information about each FOI request that will be required. As noted in response to recommendation 3, this policy will be included in statute under the Government's FOI reform proposals.

The Government's web publication scheme for FOI materials will be implemented by the end of September 2011. Decisions about FOI requests, and schedules of documents released (even if those documents are not released on the web) will be included in the new online publication program.

This recommendation is consistent with the Government's adoption of the Governing the City State recommendations. The Government notes that the November 2010 Commonwealth reforms introduced a requirement to publish information within 10 working days of release under an FOI request. That requirement has only recently become effective, as of 1 May 2011. The Government's policy will be mindful of resource implications, and will presumptively give a period of 30 days after each FOI request to upload the material to the web.

RECOMMENDATION 11

4.30 The Committee recommends that the ACT Legislative Assembly creates new privacy legislation for the ACT, in place of the Commonwealth Privacy Act 1988 currently in force. This ACT Privacy Act should create a new position of ACT Privacy Commissioner, situated in the ACT, to administer the Act.

Noted

Consideration of a Privacy Act for the ACT is currently underway. The Government expects further consultation and consideration of this issue late this year. Privacy related matters will be considered in detail apart from the FOI reform. A full examination of privacy legislation and administration is a necessary component of deciding on the value of a privacy commissioner for the ACT. The Committee's recommendation cannot be agreed to only on the basis that funding might be taken from the current Privacy MOU and contributed towards an information commission.

An ACT privacy commissioner could be established in multiple ways, and each of these options must be considered in relation to the benefits of the current system. For example, the ACT could develop its own legislation and, if it remains similar to the Commonwealth Act, purchase services from the Privacy Commission. Alternatively, the ACT could establish its own Privacy Commission and have it consider complaints under an ACT Act, or even under the Commonwealth legislation if the ACT were to maintain its current practice of adopting the Commonwealth *Privacy Act 1988*.

It is important to note that privacy is another area where alignment with the Commonwealth has served the ACT well in the past. Currently, the Commonwealth *Privacy Act 1988* applies in the ACT, and services to administer the Act are purchased from the Commonwealth Privacy Commissioner through a memorandum of understanding (MOU). The Government receives valuable services under its MOU with the Privacy Commissioner, and it is not apparent that these services could be replicated with equivalent funds in an ACT Privacy Commission.

RECOMMENDATION 12

4.34 The Committee recommends that, in framing the new legislation, the ACT Government provides that requests for information by private persons regarding information about their own affairs be managed under Privacy legislation, by the ACT Privacy Commissioner; and that necessary changes are made to Privacy mechanisms in the ACT to allow this to occur.

Noted

As discussed in the response to recommendation 11, this is a matter that should be considered in evaluating the ACT's privacy legislation. The Government also notes that the existing relationship with the Commonwealth Privacy Commissioner serves the community well. It is unlikely that the function could be duplicated with the amount payable (currently \$107,000) under the existing memorandum of understanding.

RECOMMENDATION 13

4.44 The Committee recommends that the ACT Government introduce into the Legislative Assembly amendments to the Freedom of Information Act 1989 and the Territory Records Act 2002 such that the amended Acts rely on ‘purposive’ rather than ‘categorical’ criteria, and provide a clear basis, upon which cabinet documents may be released or made exempt from release under the provisions of the Acts.

Not agreed

The Government notes that the ACT’s existing regime for Cabinet documents under the *Freedom of Information Act 1989* and the *Territory Records Act 2002* leads other jurisdictions that have undergone FOI reform, including the Commonwealth. The exemption under the ACT FOI Act provides the same scope and requirements as the exemption under the Commonwealth FOI Act, and will be maintained on that basis.

In addition, the Territory’s legislation provides for general access to Cabinet documents 10 years sooner than the Commonwealth. The *Territory Records Act 2002* makes Cabinet documents available within 10 years of their creation, as opposed to the 20 year timeframe currently being adopted in the Commonwealth.

Section 35 of the *Freedom of Information Act 1989* governs the exemption of Executive documents in the Territory. This section already refers to the purpose for which a document was created, in that documents created for some purpose other than consideration by Cabinet generally cannot be withheld.³² The drafting and content of section 35 is functionally identical to, and just as clear as, section 34 of the Commonwealth *Freedom of Information Act 1982*, which governs the exemption of Cabinet material in that jurisdiction.

This recommendation raises many of the same issues discussed in response to recommendation 1, which supported introducing adopting the New Zealand legislative model for dealing with Cabinet documents.

As discussed above in the response to recommendation 1, Cabinet confidentiality is central to the operation of this form of Government, and some form of exemption for Cabinet material is recognised in the FOI legislation of all Australian jurisdictions and even New Zealand, where there is a presumption against releasing Cabinet material.³³ The Government’s current legislation provides a level of protection for Cabinet documents that is no greater than that available under the Commonwealth FOI Act, while recognising a right of access to Cabinet materials after only 10 years. In addition, Government’s new policy of publishing details about Cabinet considerations on the web brings the ACT into line with the Queensland practice in this area.

³² *Freedom of Information Act 1989*, s.35(a) is written to apply to documents “brought into existence for the purpose of submission to or consideration by the Executive”, and s.35(2) excludes purely factual material.

³³ *Official Information Act 1982 (NZ)*, section 9(2)(f)

The current statutory provisions, and the current web publication policy, combine to make the ACT a leader among Australian jurisdictions when it comes to transparency of Government decision-making. The ACT's reform proposals will maintain its current status as a leader in respect of Cabinet material.

RECOMMENDATION 14

4.45 The Committee recommends that in framing the new Freedom of Information legislation all other exemptions be re-cast so that they are subject to a single consistent public interest test that is subject to merits review.

Not agreed

The Government's approach to this issue will be to follow the Commonwealth model by clearly defining which exemptions are subject to a public interest test, and which are not. This recommendation seems to contradict the Committee's recommendation 1, which supports maintaining alignment with the Commonwealth Act. To the degree that this recommendation implies rejecting the Commonwealth method of creating "exempt" and "conditionally exempt" categories, the Government does not agree.

Changes to exemption categories – Commonwealth and ACT

Prior to the November 2010 Commonwealth amendments, there was a high degree of symmetry between ACT exemptions and Commonwealth exemptions. The Commonwealth reforms have primarily renamed and re-organised the categories, but some important substantive features of the new exemption categories must be considered.

The Government notes that the Commonwealth reforms expanded the number of items to which public interest tests apply ("public interest conditional exemptions"), to include research conducted by an the ANU or the CSIRO³⁴, personal information³⁵, and business affairs documents.³⁶

The ACT FOI Act does not currently have a specific exemption for research, and the Government does not contemplate including one, as the Commonwealth exemption applies only to the ANU and CSIRO. The exemption is not relevant in the ACT. The ACT FOI Act does exempt personal information³⁷ and business affairs documents³⁸, but these exemptions are not subject to public interest considerations. The Government will reclassify business affairs information as "conditionally exempt", so that these documents will be released unless

³⁴ S.47H

³⁵ S.47F

³⁶ S.47G

³⁷ Freedom of Information Act 1989 (ACT) s.41

³⁸ Ibid s.43

it is against the public interest to release them. Following this model in respect of personal information implicates human rights in the Territory, and may require a more detailed set of factors to consider as a result.³⁹ The Commonwealth included guidance as to what constitutes “unreasonable disclosure” of private information in section 47F. The Government favours adopting this approach with a set of guiding factors that take account of the *Human Rights Act 2004*.

Exemptions not subject to public interest tests – Commonwealth & ACT

There are some exemptions that exist to protect public safety and other important interests in addition to the Cabinet exemption considered in recommendation 1. For example, the Commonwealth amendments of November 2010 left in place exemptions for law enforcement and national security matters. As the Committee notes, many of these exemptions protect important public interests. Essentially, including a type of document in the list of “exempt” documents represents a judgement by the Assembly that it is not in the public interest to release those kinds of documents. Releasing conditionally exempt documents, in contrast, will only occasionally be against the public interest.

The Government will clearly delineate between those limited exemptions that are subject to a public interest test, and those that are not in its reforms. The Government supports the Commonwealth approach which maintained protections for law enforcement, national security, and to a lesser degree protections for personal information and commercially sensitive information or copyright material.

RECOMMENDATION 15

4.46 The Committee recommends in framing the new legislation, the ACT Government remove all provisions for conclusive certificates, and creates a legislative mechanism such that conclusive certificates issued in the past be removed as documents, to which they have been applied, are requested under the new process.

Agreed in part

There are two questions posed by this recommendation: first, whether the existing power to issue a conclusive certificate under section 37A of the Freedom of Information Act should be repealed, and second, whether to remove conclusive certificates issued prior to the 2009 abolition of most powers to issue a certificate. The Government does not agree with the first question, and will maintain conclusive certificates for national security purposes. The Government agrees, however, that a legislative solution should be adopted to remove old conclusive certificates.

³⁹ *Human Rights Act 2004*, s.12(a) gives a right of “everyone not to have his or her privacy, family, home, or correspondence interfered with unlawfully or arbitrarily...”

In a demonstration of its commitment to transparency, the Government supported a bill in 2009⁴⁰ to repeal provisions of the *Freedom of Information Act 1989* that allowed for most conclusive certificates. The 2009 amendments to the Act preserved the ability to issue conclusive certificates only for national security, defence, and international relations. All jurisdictions with FOI regimes recognise the importance of absolute confidentiality in these contexts. In the Commonwealth, special procedures apply to Administrative Appeals Tribunal reviews of FOI requests that implicate these matters. The ACT recognises the special importance of national security, defence, and international relations by preserving a limited form of conclusive certificate. Because of the location of the Commonwealth Government in the Territory, it is entirely conceivable that Territory entities could come to possess documents that, if released, would affect the nation's security. The extremely limited scope for conclusive certificates appropriately remains in place to account for that possibility.

Conclusive certificates were not common in the past. In the Commonwealth legislation that abolished conclusive certificates, a transitional provision was included to state that all certificates issued prior to the passage of the legislation were abolished. Such a provision was not included in the bill that repealed most conclusive certificates in the ACT.⁴¹

The Government will include such a provision in its legislation to cover any certificates that were issued under the provisions repealed by the *Freedom of Information Amendment Act 2009*. This does not mean that the information subject to past certificates will necessarily be released; rather, a new application for that information will be evaluated on its merits under the Freedom of Information Act. Any other certificates issued would relate to national security, defence, or international relations and should remain in force.

RECOMMENDATION 16

4.47 The Committee recommends that, in framing the new legislation, the ACT Government create a charges regime which reinforces a citizen's right to information rather than discouraging requests.

Agreed in principle

The Government agrees to this recommendation only to reaffirm its support for the principle of access to information, and to note that its current fee regime requires no substantial changes to promote access.

Amended by the Government in 2010, the ACT's fees and charges regime is more generous than the Commonwealth scheme. (The table on the page below compares fees and charges for processing requests.)

⁴⁰Enacted as the *Freedom of Information Amendment Act 2009* (ACT)

⁴¹ Ibid

It is important to note, when considering the table, that although the per hour charge under the ACT determination is higher for search and retrieval of documents⁴², and for reviewing documents, the ACT provides 10 hours of processing time free, and the first 200 pages of copying for free. This compares to only five hours of free time for decision making from the Commonwealth, and no free copying. Also, in the ACT, a charge can only be applied for

Activity	Commonwealth fees (from 1 November 2010)	Current ACT fees
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either search and retrieval, or decision making, but not both.

The ACT also creates several fee exemptions designed to facilitate important community activities. The Commonwealth recently adopted the ACT's long standing practice of charging no fees for access to personal information. The ACT creates a specific exemption for Aboriginal and Torres Strait Islander members of the community to obtain family history information free of charges, something that although other jurisdictions have discretion to offer on a case-by-case basis, is not included in their standard fees. The Committee's recommendation should not be read to imply that the Government's fees are in any way deficient in respect of promoting open access on a reasonable, fair basis.

Freedom of information is not, however, without significant costs to the community. It is not unreasonable to expect individuals who request information to share in the cost of producing that information. The Government's fees and charges for FOI matters target large requests that will take significant amounts of time and resources to complete, while enhancing the rights of people to obtain personal and other vital information. The Government will maintain its policy of charging all applicable fees on that basis.

⁴² See table below

Application fee	No application fees as of November 2010	No fees - Application fees were removed in 2001
Application for internal review	No fees	No fees - fees for internal review were removed in 2001
Access to personal information	No fees	No fees
Search and retrieval	\$15 per hour	\$23.00 per hour
Decision making	First five hours free, after that, \$20 per hour	First 10 hours free, after that \$30.75 per hour
Inspection of documents	\$6.25 per half hour	\$19.20 per hour
Copies of documents	10 cents per page	200 pages free, after that, 30 cents per page

COMPARISON OF ACT AND COMMONWEALTH FOI FEES & CHARGES

RECOMMENDATION 17

4.49 The Committee recommends the ACT Government, in framing the new legislation, in particular ensure that exemptions on grounds that release may reveal the decision-making processes of government agencies no longer apply in the ACT.

Not agreed

The existing level of information about Government decisions will be greatly advanced by the Government's commitment to place FOI materials and summaries of Cabinet considerations on the web. These measures provide the community with unprecedented access to information about the workings of their Government.

In some limited cases, however, it will still be necessary for Ministers to receive full and frank advice on controversial subjects. For this reason, the Government supports the latest Commonwealth approach to the issue, which renames the "internal working documents" exemption as the "deliberative process" exemption. Documents which relate to the deliberate process of government are conditionally exempt, which means that they may only be withheld where it would be against the public interest to release them. The improved and clarified public interest test in the Commonwealth Act applies to any decisions about whether to release deliberative process documents.

The ACT Government supports adopting the term "deliberative process" to replace "internal working document", as this will align its legislation with the Commonwealth Act, and also allow for decision makers to be guided by Commonwealth jurisprudence using the new term. The core exemption, however, will remain subject to a public interest test as is currently the case under ACT legislation.

Internal working documents - comparison of New Zealand, Queensland, and the Commonwealth

It is important to emphasise that all jurisdictions retain this feature of FOI legislation. New Zealand, the Commonwealth, and Queensland, all jurisdictions cited as exemplars by the Committee, all recognise the importance of some confidentiality in Government. Without the ability to consider options confidentially, without the fear that exposure of ideas that are not subsequently pursued or even seriously considered will lead to adverse consequences, Ministers are at risk of receiving lower quality advice.

In New Zealand under the *Official Information Act 1982*, "maintaining the effective conduct of public affairs"⁴³ is one of the factors that may justify withholding information. This factor, as the Standing Committee notes, is commonly taken to mean that Government can withhold

⁴³ *Official Information Act 1982* (NZ), s. 9(2)(g)

internal communications which, if released, would cause Ministers and their agencies not to have frank and fearless discussions. Provisions of the Commonwealth FOI Act, section 47C⁴⁴ and the Queensland Schedule 4⁴⁵, section 20 of the *Right to Information Act 2009* are very similar to section 36 of the current ACT Act, and protect the same kind of information.

While this exemption applies to a limited class of documents, it protects an important public function. The risk that Ministerial briefings will be watered down if certain internal briefings are disclosed is noted in the Queensland *Right to Information* report (cited above). The importance of confidentiality to promote good advice is also recognised in the Commonwealth reforms, which included an exemption (subject to public interest considerations) for documents that reveal the deliberative processes of agencies or Ministers.⁴⁶ Alongside the public interest in access to information, it is also important to recognise the public interest in effective governance, supported by a limited ability of Ministers to receive confidential advice.

RECOMMENDATION 18

4.50 The Committee recommends, in framing the new legislation, the ACT Government add the Office of the Auditor-General to the list of exempt agencies (that is, 'prescribed authorities').

Agreed

Where an agency's work is entirely or largely concerning matters that are exempt from the FOI Act, it is reasonable to exempt it in relation to that work. This applies only where a large proportion of the documents handled by an entity are exempt under the FOI Act, and that is the only reason the Government agrees that the Auditor-General should have a limited exemption under the Act. This has been done with the Government Solicitor's office in relation to client material. The Government will consider the scope of any exemption that should apply to other authorities and entities as well.

RECOMMENDATION 19

4.61 The Committee recommends that an office be created in the ACT, integrating the functions of Ombudsman, Privacy Commissioner and FOI Commissioner, thus replacing services provided by the Commonwealth and creating a new leadership role for FOI in the ACT.

Noted

⁴⁴ This section protects documents that relate to the "deliberative process" of Government.

⁴⁵ This section states that it is a factor weighing against release that a document would "prejudice a deliberative process of government."

⁴⁶ *Freedom of Information Act 1982* (Cwlth), section 47C

There are many functions and policy issues that must be considered in deciding whether to adopt an Information Commission that, as in the Commonwealth model, does more than oversee FOI matters. Privacy law, and the Ombudsman's functions, are well beyond the scope of the Committee's inquiry and are not considered in detail in its report. These functions must be considered in detail alongside the FOI reforms discussed here.

While a review of the ACT's privacy legislation is underway, the Government has taken action that will offer improved administration and access to information. The centralisation of the ACT Public Service, combined with the Government's new initiatives on web publication and the creation of a Government Information Office, will effectively promote openness across all areas of the public service and throughout Government. These changes reflect a commitment to information sharing in Government.

The Committee's brief assertions in Recommendations 11 and 12 that the ACT should have its own privacy legislation and privacy commission are relevant to this point, but a range of factors, including the benefits of the current purchase arrangements for privacy and ombudsman services, need to be analysed before a decision can be made.

One serious concern with the Committee's recommendation is that the Ombudsman and Privacy Commission functions are of a fundamentally different character from those involved in FOI matters, as neither involves a focus on publicising Government information. It is particularly the broader role of the ombudsman, including investigating ACT policing complaints, that does not accord with the focus of an information commission. At a minimum, the ACT Policing complaints handling function could not be cut for the purposes of funding an information commission because it is funded separately, and it relates the operations of the Australian Federal Police. This separate payment represents approximately \$487,000. The Commonwealth agencies from which the ACT receives privacy and Ombudsman services have considerable expertise in these subjects, and are able to draw on larger infrastructure devoted to similar functions at the Commonwealth level.

The costs that would be involved in replicating these functions should weigh heavily on any decision. The agreements that provide Ombudsman and Privacy Commission services to the ACT function well, and provide good value at approximately \$937,000 for the Ombudsman function (of which approximately \$487,000 is for ACT Policing functions) and \$107,000 for the Privacy function for the last financial year. It is not realistic for the ACT to recreate those services in an independent commission for the same amount of money, as substantial infrastructure and knowledge would have to be duplicated in the ACT, in addition to developing the new information commission function. The current arrangements allow for the ACT to benefit directly from Commonwealth jurisprudence and experience in administering the legislation.

The overall costs of an information commission in other jurisdictions have proved to be considerably higher than the level of funding that the Committee's report envisions making available in the ACT. In New South Wales, Queensland, and the Commonwealth,

costs for an independent information commission range between \$3 and \$4 million per year.⁴⁷ In these models, the ombudsman function remains independent, so the cost of providing that function is not included.

The Commonwealth Information Commission

The Office of the Australian Information Commission combines an FOI Commissioner, a Privacy Commissioner, and the Australian Information Commissioner who oversees both. The Commonwealth model does not include Ombudsman functions, as the Ombudsman's role is only tangentially concerned with information sharing. The Ombudsman's primary concern is to see that complaints about Government process are handled adequately.

The Ombudsman's work in the ACT is similar in nature. For this reason, a large proportion of the ACT Ombudsman's work is concerned with ACT Policing and ACT Corrections matters. It is a fundamentally different role, and the Committee's report offers no compelling argument as to why or how it would fit within an Information Commission.

Cost remains a significant concern to the ACT. Simply cutting the Privacy MOU and the Ombudsman agreement will not fund an information commission. In addition to the funding from those agreements, it will be necessary to develop expertise in the ACT in handling privacy and other kinds of complaints. A careful decision has to be made about resources given to this function given other compelling public needs.

V. SUMMARY & CONCLUSION

The ACT Government supports openness and transparency, and has demonstrated its commitment in action. The ACT already leads the nation in openness of Cabinet material, and in March 2012 will become the first jurisdiction in Australia to release Cabinet documents in relation to a sitting Government under the *Territory Records Act 2002*.

The ACT Government commits in this response to supporting amendments that will adopt the latest Commonwealth reforms, preserve the ACT's leading position on Cabinet material, improve administration of FOI requests, and make FOI materials available online to the whole community. These measures are part of a consistent record of supporting transparency, and will enhance the community's ability to learn about Government and participate in decision-making even further.

⁴⁷ Office of the Information Commissioner (QLD), Annual Report 2009-10; Information and Privacy Commission Publication Guide (NSW), http://www.ipc.nsw.gov.au/lawlink/privacynsw/ll_pnsw.nsf/pages/ipc_publicationguide; Budget Paper No. 2, Part 2, (Cwlth), 2009-10