



**LEGISLATIVE ASSEMBLY**  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY  
Mr Peter Cain MLA (Chair), Dr Marisa Paterson (Deputy Chair),  
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## Submission Cover Sheet

### Inquiry into the Freedom of Information Amendment Bills 2022

**Submission Number: 002**

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## **FREEDOM OF INFORMATION INQUIRY**

This submission responds to the Committee's 4 October call for public comment on the *Freedom of Information Amendment Bill 2022 (ACT)* and *Freedom of Information Amendment Bill (No. 2) 2022 (ACT)*.

In summary Bill No. 2 is a commendable step forward in achieving the Objects (s 6) and 'pro-disclosure' principle (s 9) of the *Freedom of Information Act 2016 (ACT)*. It is salient given governance failures and the Territory's unicameral legislature.

A somewhat more cautious approach might be taken regarding Bill No. 1, which potentially embodies formal rather than substantive improvements to the Territory's current Freedom of Information (FOI) regime. Giving effect to ss 6 and 9 of the Act would be more strongly achieved by the Territory government investing greater resources in the handling of private/public interest information requests rather than merely adjusting the time frames for processing.

### **Basis**

The following paragraphs reflect teaching information and integrity law at the University of Canberra over the past 14 years, including national and ACT freedom of information, archives, confidentiality and protected disclosure law. The submission reflects invited contributions to national and state inquiries into information access and integrity frameworks, alongside publication regarding confidentiality, privacy and 'open government' initiatives in Australian and global contexts. It also reflects service as a decision-maker under the *Freedom of Information Act 1982 (Cth)* and advice to members of the ACT community regarding their access requests under the Territory FOI enactment.

The submission does not represent what would be reasonably construed as a conflict of interest.

### **Context**

Regrettably, Freedom of Information statutes in Australia have often been regarded as an inappropriate administrative burden, 'very pernicious' (to use the characterisation of an Australian Public Service Commissioner who appears not to have read the Act he was deriding) or contrary to good governance. In practice they have often been implemented in ways that are contrary to a pro-disclosure principle articulated in, for example, the Objects provisions in a specific FOI statute. It is common for Commonwealth and state/territory entities to resist accountability by rejecting legitimate public interest FOI applications on the basis of administrative inconvenience, a rejection that has included the Office of the Australian Information Commissioner.

The *Freedom of Information Act 2016 (ACT)* expressly recognises the importance of accountability for public administration in the Australian Capital Territory. It is axiomatic that sunlight is the best disinfectant for fears – misplaced or otherwise – regarding corruption within government. It is also axiomatic that transparency provides a basis for ongoing process

improvement, consistent with sporadic statements within the Territory government about best practice administration and being a ‘learning organisation’.

An effective FOI regime builds trust in environments where disinformation is increasingly common and where a succession of authoritative studies have highlighted community disengagement and distrust.

The 2019 ANU Election Study for example reported satisfaction with democracy is at its lowest level since the 1970s constitutional crisis, with trust in Australian government having reached its lowest level on record. The ANU data indicated that fewer than 26% of Australians believe people in government can be trusted, with 56% believing government is run for ‘a few big interests’ and only 12% believing government is run for ‘all the people’. That disquiet is increasing, with for example a 27% decline since 2007 in stated satisfaction with how Australia’s democracy is working.

Overall trust in government has declined by nearly 20% since 2007; three quarters believe that people in government are looking after themselves. That belief may be misplaced but – given reports of administrative incompetence or corruption, influence buying by property developers and colourful resource magnates, ministerial obfuscation and egregious misogyny, political figures with bagmen or bikie friends, and ministerial frolics with rent boys in the national legislature’s prayer room – it is unsurprising.

Community disquiet is not restricted to government outside the ACT. Locally for example there is concern about the perceived multi-million dollar governance failure at Canberra Institute of Technology, about public sector property dealings, about ongoing problems at Canberra Hospital and about departmental inefficiencies.

A strengthened, fit-for-purpose FOI regime in a progressive jurisdiction is a matter of –

- updating the 2016 enactment
- revisiting implementation of the Ombudsman’s administrative protocols that apply the enactment and the *Territory Records Act 2002 (ACT)* regarding broader record management, so that decision-makers for example give effect to the ‘pro-disclosure’ principle and data is both recorded and readily retrievable
- investing resources in the administration of the Act at the agency level and in proactive publication that means some FOI applications are not necessary.

### **Bill No. 2**

Bill Number 2 – reflecting practice in New Zealand – offers greater transparency about the Territory executive. As indicated above that transparency is salient given that the Territory has a unicameral legislature (ie no chamber of review) and that the Government has been in power since 2001, a period of incumbency that might foster the ‘Civic Square Bubble’.

The Bill represents an appropriate and feasible advance. Reference to New Zealand is pertinent, demonstrating that – in contrast to proposals for a three or four day work week or rights for nature – the reform is achievable. Existing exclusions in the Act provide scope for restriction of matters that for example, absent an integrity inquiry, should not be in the public domain prior to coverage under the *Territory Records Act 2002 (ACT)*.

### **Bill No. 1**

The *Freedom of Information Amendment Bill 2022 (ACT)* – Bill No. 1 – is commendable and consistent with the Ombudsman’s report on operation of the current legislation. There is value however in looking beyond formal change to the Act and ensuring that the government invests

resources at the workplace level to ensure that the Objects of the Act are met rather than being eroded through under-resourcing.

A pro-disclosure culture across the Territory administration, in line with section 9 of the Act, involves commitment by Ministers and executives alongside acknowledgement that FOI – just like legislative committees, administrative tribunals, courts and other accountability mechanisms – is a legitimate cost rather than an inappropriate burden or something that minimises ‘fearless independent advice’ and ministerial consideration.

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