



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY
Mr Peter Cain MLA (Chair), Dr Marisa Paterson (Deputy Chair),
Mr Andrew Braddock MLA

Submission Cover Sheet

Inquiry into the Freedom of Information Amendment Bills 2022

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Liberal Member for Kurrajong

Leader of the Opposition

Shadow Treasurer

Shadow Minister for Housing Choice and Affordability

Shadow Minister for Climate Action, Energy and Emissions Reduction

Shadow Minister for Economic Development, Tourism and Major Projects

Mr Peter Cain MLA
Chair
Standing Committee on Justice and Community Safety
ACT Legislative Assembly
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Dear Mr Cain,

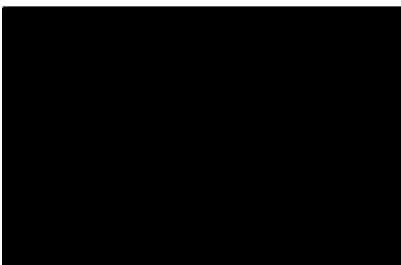
FREEDOM OF INFORMATION AMENDMENT BILL 2022 [NO. 2]

Thank you for the invitation to make a submission to the Standing Committee on Justice and Community Safety Committee's inquiry into the *Freedom of Information Amendment Bill 2022 [No 2]*.

The Bill was presented by the Canberra Liberals in the Assembly on 21 September 2022.

Please find attached comments in support of the *Freedom of Information Amendment Bill 2022 [No 2]*.

Yours faithfully,



Member for Kurrajong

26 October 2022

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

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FREEDOM OF INFORMATION AMENDMENT BILL 2022 [NO. 2]

The Freedom of Information Amendment Bill 2022 [No. 2] (the Bill), was presented in the Assembly by the Canberra Liberals on 21 September 2022.

The Bill seeks to amend the *Freedom of Information Act* (FOI Act) to create a proactive disclosure provision for the government to make public Cabinet records within 30 business days after Cabinet consideration.

Cabinet records are defined as:

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

As a unicameral parliament, the ACT does not benefit from the usual checks and balances that an upper house provides. Therefore, it is incumbent on the ACT Government to allow greater transparency and openness of decisions made by Cabinet and this Bill seeks to do this.

Other unicameral parliaments, such as New Zealand, have been operating under this model.

The Queensland Government recently agreed to all recommendations contained in the report: *Review of culture and accountability in the Queensland public sector* by Professor Peter Coaldrake AO.

Professor Coaldrake cites the absence of an upper house in Queensland as “*helped having cultivated a raw, unrestrained ‘winner takes all’ style of politics in the northern state.*”¹

In his review, Professor Coaldrake said the proactive release of cabinet documents would be an important signal, from the very top, of an open and pro-disclosure culture.

*“It is a common sense proposition that citizens are likely to have more trust in their governments if they know that decisions that use taxpayers’ funds, and that may affect their lives quite directly, are made in the open, and are subject to scrutiny.”*²

Professor Coaldrake goes on to say:

*“The need for cabinet to maintain confidentiality around its deliberations, particularly in their developmental stage, is well understood and respected. However, it can mitigate against the openness that the Government espouses, and which is so necessary to maintaining public trust in the quality and impartiality of decision-making.”*³

Importantly, the Bill strikes the right balance between genuine cabinet confidentiality and the need for increased transparency and openness of decisions by allowing for the continued protection of documents that are clearly not in the public interest to be protected.

¹ Professor Peter Coaldrake AO, “Let the sunshine in: Review of culture and accountability in the Queensland public sector, Final Report, 28 June 2022” page 12

² Professor Peter Coaldrake AO, “Let the sunshine in: Review of culture and accountability in the Queensland public sector, Final Report, 28 June 2022” page 60

³ Professor Peter Coaldrake AO, “Let the sunshine in: Review of culture and accountability in the Queensland public sector, Final Report, 28 June 2022” page 60

The Bill clearly sets out exemptions where the public release of information would reasonably be expected to endanger a person's life or physical safety, limit a person's rights, prejudice an ongoing criminal investigation or discloses information contrary to the public interest, as outlined in schedules 1 and 2, part 2.2 of the FOI Act.

In addition, the Bill also allows for an exemption to cabinet records where government intends to make the decision and related materials public within 50 business days of making the decision, or it if relates to a bill to be presented to the Legislative Assembly.

The Bill details the action to be undertaken by a Minister if a record is subject to an exemption. A Minister must publish a record for a prescribed reason, and if they do not, they would be required to provide an explanation for the decision not to publish and give consideration to releasing any relevant factual material.

When asked in the media if he believed other jurisdictions within Australia should start to release cabinet documents proactively, Professor Coaldrake stated:

"We can tell by all the barometers of the esteem that our institutions, not just politics and government, but churches and other institutions, the declining esteem does represent a call for governments to be open and to be frank with their communities.

*"One would hope that the trend to more open government, is a trend that will progress."*⁴

The ACT community deserves greater scrutiny and more transparency from this Government and this Bill will deliver it.

The Canberra Liberals fully support the passage of this Bill.

⁴ Queensland to release cabinet papers within days, not years, Australian Financial Review, 1 July 2022