



# **Australian Capital Territory Government Service (Consequential Provisions) Act 1994**

**Act No. 92 of 1994 as amended**

This compilation was prepared on 1 January 2011  
taking into account amendments up to Act No. 139 of 2010

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

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## Contents

<b>Part 1—Preliminary</b>	1
1 Short title [see Note 1].....	1
2 Commencement [see Note 1].....	1
3 Definitions.....	1
<b>Part 2—Provisions related to the establishment of the     Australian Capital Territory Government Service</b>	2
4 Effect of earlier staffing action.....	2
5 Certain persons cease to be members of the Australian Public Service.....	2
8 Transfer of personnel files.....	3
9 Operation of Part IV of the Public Service Act in relation to certain staff.....	4
10 Arrangements relating to staffing.....	5
<b>Part 4—Provisions affecting the A.C.T. Self-Government     (Consequential Provisions) Act 1988</b>	6
12 Principal Act.....	6
13 Staff from Australian Public Service.....	6
14 Repeal of Schedule 1.....	6
15 Repeal of certain modifications of the <i>Public Service Act</i> 1922.....	6
16 Amendments of Schedule 5: Industrial Relations Act.....	6
17 Amendments of Schedule 5: Maternity Leave (Commonwealth Employees) Act.....	7
18 Amendments of Schedule 5: <i>Merit Protection (Australian</i> <i>Government Employees) Act</i> .....	7
19 Amendments of Schedule 5: Occupational Health and Safety (Commonwealth Employment) Act.....	8
20 Amendments of Schedule 5: Remuneration Tribunal Act and Safety, Rehabilitation and Compensation Act.....	8
21 Commencement of amended Schedule 5.....	8
<b>Part 5—Miscellaneous</b>	9
22 Further amendments.....	9
23 Modifications of the <i>Privacy Act 1988</i> .....	9
25 Leave entitlements.....	9
26 Transitional provision: Leave payments.....	10
27 Regulations.....	11
<b>Schedule 1—New items for Schedule 5 to the A.C.T.     Self-Government (Consequential Provisions) Act 1988</b>	12

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Part 1	12
Part 2	13
Part 3	14
Part 4	15
<i>Occupational Health and Safety (Commonwealth Employment) Act 1991</i>	15
Part 5	16
<i>Remuneration Tribunal Act 1973</i>	16
<i>Safety, Rehabilitation and Compensation Act 1988</i>	17
<b>Schedule 2—Further amendments</b>	21
<i>Australian Capital Territory (Self-Government) Act 1988</i>	21
<i>Privacy Act 1988</i>	21
<i>Public Service Act 1922</i>	23
<i>Superannuation Act 1976</i>	25
<b>Schedule 3—Modifications of the Privacy Act 1988</b>	26
<b>Notes</b>	33

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# An Act to make provision consequential on the establishment of the Australian Capital Territory Government Service, and for related purposes

## Part 1—Preliminary

### 1 Short title [see Note 1]

This Act may be cited as the *Australian Capital Territory Government Service (Consequential Provisions) Act 1994*.

### 2 Commencement [see Note 1]

- (1) This Act commences on a day to be fixed by Proclamation.
- (2) If this Act does not commence under subsection (1) within 18 months after the day on which it receives the Royal Assent, this Act is repealed on the first day after the end of that period.

### 3 Definitions

- (1) In this Act, unless the contrary intention appears:

**ACT Branch** means the branch of the Australian Public Service referred to in subsection 21(2) of the *A.C.T. Self-Government (Consequential Provisions) Act 1988*.

**ACT officer** means a person who is an officer within the meaning of the *Public Sector Management Act 1994* of the Australian Capital Territory.

**Public Service Act** means the *Public Service Act 1922*.

**transfer day** means the day on which this Act commences.

- (2) An expression used in the Public Service Act, when used in this Act, has the same meaning as in the Public Service Act.

Section 4

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## **Part 2—Provisions related to the establishment of the Australian Capital Territory Government Service**

### **4 Effect of earlier staffing action**

- (1) In this section, *1989 direction* means the direction given by the Public Service Commissioner on 9 June 1989 under subsection 33C(2) of the Public Service Act and relating to the inclusion of certain unattached officers in the ACT Branch.
- (2) The 1989 direction is to be taken to have had the effect of including in the ACT Branch the unattached officers to whom the direction was expressed to apply and to have so included those officers on 9 June 1989.
- (3) A person to whom this subsection applies is to be taken to have been, on 9 June 1989, included in the ACT Branch.
- (4) Subsection (3) applies to a person if:
  - (a) the person was, on 9 June 1989, an unattached officer; and
  - (b) the last office held by the person before that date was an office the duties of which related, wholly or substantially, to matters that, as at 9 June 1989, were dealt with by the ACT Branch.

### **5 Certain persons cease to be members of the Australian Public Service**

- (1) On the transfer day, an officer of the Australian Public Service to whom this subsection applies ceases, by force of this section, to be an officer of the Australian Public Service.
- (2) Subsection (1) applies to the following officers:
  - (a) an officer who holds an office included in the ACT Branch, whether or not the officer was performing the duties of that office immediately before the transfer day;
  - (b) an officer to whom Division 2 of Part IV of the Public Service Act applies and who is included in the ACT Branch;

- (c) an officer to whom the repealed *Officers' Rights Declaration Act 1928* applies by virtue of section 87TA of the Public Service Act and who is included in the ACT Branch;
  - (d) an unattached officer, other than an officer referred to in paragraph (b) or (c), who is included in the ACT Branch.
- (3) On the transfer day:
- (a) a person employed under Division 10 of Part III of the Public Service Act to perform duties in the ACT Branch ceases, by force of this subsection, to be so employed; and
  - (b) a person otherwise employed by the Commonwealth to perform duties in the ACT Branch ceases, by force of this subsection, to be so employed.
- (4) Subsection (3) applies to a person whether or not the person was actually performing duties in the ACT Branch immediately before the transfer day.

## **8 Transfer of personnel files**

- (1) This section applies where before the commencement of the *Public Service Act 1999*:
- (a) a person ceases to be an officer of the Australian Public Service and becomes an ACT officer; or
  - (b) a person ceases to be an ACT officer and becomes an officer of the Australian Public Service.
- (2) In a case referred to in paragraph (1)(a), the relevant Secretary or Agency Head (within the meaning of the *Public Service Act 1999*) may deliver to the appropriate authority of the Australian Capital Territory all records kept by the Secretary or Agency Head in relation to the person and reasonably necessary to be so delivered in connection with the employment of the person as an ACT officer.
- (3) In a case referred to in paragraph (1)(b), records kept, in relation to the person, for the purposes of the Australian Capital Territory Government Service may be delivered to the relevant Secretary or Agency Head (within the meaning of the *Public Service Act 1999*) if it is reasonably necessary for the records to be so delivered in connection with the employment of the person as an officer of the Australian Public Service.

Section 9

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- (4) Personal information contained in records delivered to an authority under subsection (2) may be used as if the information had been collected by the authority for the purposes of the Australian Capital Territory Government Service.
- (5) Personal information contained in records delivered to a Secretary or Agency Head under subsection (3) may be used as if the information had been collected by the Secretary for the purposes of the Australian Public Service.

**9 Operation of Part IV of the Public Service Act in relation to certain staff**

- (1) If, but for this subsection, an officer to whom subsection 5(1) applies would have been, on the transfer day, an officer to whom a provision of Part IV of the Public Service Act applied:
  - (a) Part IV of that Act ceases, on the transfer day, to have any application to the officer; and
  - (b) in the case of an officer to whom a provision of Division 4 of Part IV of that Act would have applied, the repealed *Officers' Rights Declaration Act 1928* ceases, on the transfer day, to have any application to the officer.
- (2) If:
  - (a) but for this subsection, Division 3 of Part IV of the Public Service Act would have applied to a person on the transfer day; and
  - (b) the Department in which the person last held an office before that day was the ACT Branch;the person ceases, on the transfer day, to be a person to whom Division 3 of Part IV of the Public Service Act applies.
- (3) If:
  - (a) but for this subsection, Division 3 of Part IV of the Public Service Act would have applied to a person on the transfer day; and



- (b) the last office held by that person before that day was an office the duties of which related, wholly or substantially, to matters that, as at the transfer day, were dealt with by the ACT Branch;
- the person ceases, on the transfer day, to be a person to whom Division 3 of Part IV of the Public Service Act applies.
- (4) To the extent that they prescribe Calvary Hospital A.C.T. Incorporated for the purposes of paragraph (d) of the definition of **public authority** in subsection 87(1) of the Public Service Act, regulations under that Act cease to have effect on the transfer day.

### **10 Arrangements relating to staffing**

An Agency Head (within the meaning of the *Public Service Act 1999*) may arrange with an appropriate authority of the Australian Capital Territory:

- (a) for the services of officers or employees in the Agency (within the meaning of that Act) to be made available to the authority; or
- (b) for the services of officers or employees of the Australian Capital Territory Government Service to be made available to the Agency Head.

## **Part 4—Provisions affecting the A.C.T. Self-Government (Consequential Provisions) Act 1988**

### **12 Principal Act**

In this Part, *Principal Act* means the *A.C.T. Self-Government (Consequential Provisions) Act 1988*.

### **13 Staff from Australian Public Service**

Section 21 of the Principal Act is amended by omitting subsection (5).

### **14 Repeal of Schedule 1**

Schedule 1 to the Principal Act is repealed.

### **15 Repeal of certain modifications of the *Public Service Act 1922***

- (1) Regulations in force under section 31 of the Principal Act immediately before the transfer day, to the extent that they have the effect of:
  - (a) modifying section 7, 22B, 22C, 87 or 87J of the *Public Service Act 1922*; or
  - (b) modifying the *Public Service Act 1922* by inserting Part IVA; cease to have effect on the transfer day.
- (2) Section 8 of the *Acts Interpretation Act 1901*, in its application by virtue of section 46 of that Act, has effect in relation to regulations to which subsection (1) applies as if, to the extent that they cease to have effect on the transfer day, the regulations had been repealed on that day by regulations.

### **16 Amendments of Schedule 5: Industrial Relations Act**

Schedule 5 to the Principal Act is amended:

- (a) by omitting the items relating to subsection 4(1) of the *Industrial Relations Act 1988* and substituting the items set out in Part 1 of Schedule 1;
- (b) by adding at the end of the items relating to the *Industrial Relations Act 1988* the items set out in Part 2 of Schedule 1.

### **17 Amendments of Schedule 5: Maternity Leave (Commonwealth Employees) Act**

- (1) In this section, *Maternity Leave Act* means the *Maternity Leave (Commonwealth Employees) Act 1973*.
- (2) Schedule 5 to the Principal Act is amended:
  - (a) by inserting “of” in the item relating to paragraph 5(1)(b) of the *Maternity Leave Act* after “law”;
  - (b) by inserting “of” in the item relating to paragraph 5(2)(b) of the *Maternity Leave Act* after “law”;
  - (c) by omitting the item inserting paragraph 5(3)(aa) in the *Maternity Leave Act* and substituting the following item:

After paragraph 5(3)(a):  
Insert the following paragraph:  
“(aa) a person who holds an office defined by section 73 of the *Australian Capital Territory (Self-Government) Act 1988* or an office established by or under an enactment as defined by section 3 of that Act;”.

### **18 Amendments of Schedule 5: Merit Protection (Australian Government Employees) Act**

- Schedule 5 to the Principal Act is amended:
- (a) by omitting the item that inserts definitions of *ACT enactment*, *Self-Government Act* and *Territory authority* in subsection 3(1) of the *Merit Protection (Australian Government Employees) Act 1984* and substituting the item set out in Part 3 of Schedule 1;
  - (b) by omitting the item that inserts section 6A in the *Merit Protection (Australian Government Employees) Act 1984*.

Section 19

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**19 Amendments of Schedule 5: Occupational Health and Safety  
(Commonwealth Employment) Act**

Schedule 5 to the Principal Act is amended by inserting after the items relating to the *Merit Protection (Australian Government Employees) Act 1984* the heading and items set out in Part 4 of Schedule 1.

**20 Amendments of Schedule 5: Remuneration Tribunal Act and  
Safety, Rehabilitation and Compensation Act**

- (1) Schedule 5 to the Principal Act is amended by omitting the items relating to subsection 4(1), subparagraph 5(2)(c)(ii) and subsection 5(8) of the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* and the heading immediately before those items referring to that Act.
- (2) Schedule 5 to the Principal Act is amended by omitting the heading "Remuneration Tribunals Act 1973" and the item relating to subsection 3(3) of that Act and substituting the headings and items set out in Part 5 of Schedule 1.

**21 Commencement of amended Schedule 5**

- (1) Items in Schedule 5 to the Principal Act, as amended by this Act, that have not commenced under section 2 of the Principal Act commence immediately after the commencement of this Act.
- (2) This section has effect in spite of subsection 2(3) of the Principal Act.

## **Part 5—Miscellaneous**

### **22 Further amendments**

The Acts specified in Schedule 2 are amended as set out in that Schedule.

### **23 Modifications of the *Privacy Act 1988***

- (1) Until a day fixed by or under an ACT enactment for the purposes of this subsection, the *Privacy Act 1988*, as amended by this Act, has effect as if it had been further amended as set out in Schedule 3.
- (1A) Until the day fixed for the purposes of subsection (1), the definition of **enactment** in subsection 6(1) of the *Privacy Act 1988* does not imply that a reference in that Act to an enactment does not include a reference to an ACT enactment.
- (2) On and after the day fixed for the purposes of subsection (1), section 8 of the *Acts Interpretation Act 1901* has effect as if subsection (1) and Schedule 3 had been repealed on that day by an Act.
- (3) In this section, **ACT enactment** has the same meaning as **enactment** has in the *Australian Capital Territory (Self-Government) Act 1988*.

### **25 Leave entitlements**

- (1) This section applies to a person who is engaged under section 22 of the *Public Service Act 1999*.
- (3) If, immediately before a person to whom this section applies ceases to be an ACT officer, the person has an entitlement, as such an officer, to leave of absence for recreation, the person retains that entitlement, on engagement as an APS employee, as if the entitlement had accrued under the *Public Service Act 1999*.
- (4) The *Public Service Act 1999* has effect, in relation to the accrual, on and after the engagement of a person as an APS employee, of

Section 26

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the person's entitlement to leave of absence for recreation in relation to a period since the person last gained an entitlement, as an ACT officer, to leave of absence for recreation as if service by the person as an ACT officer during that period had been service as an APS employee.

- (5) If, immediately before the engagement of a person as an APS employee, the person has an entitlement, as an ACT officer, to be paid a recreation leave loading, the person retains the entitlement as if the entitlement had accrued under the APS Award 1998, but the entitlement is subject to the provisions of that award as if it had arisen under that award.
- (6) The reference in subsection (5) to a recreation leave loading is a reference to a payment that corresponds, or substantially corresponds, to a payment under the APS Award 1998.

## 26 Transitional provision: Leave payments

- (1) If, but for this section:
  - (a) an amount would become due to a person:
    - (i) under the Public Service Act, or under regulations or a determination made under that Act, in lieu of leave of absence for recreation or in any other way in relation to any entitlement of the person to such leave of absence; or
    - (ii) under the *Long Service Leave (Commonwealth Employees) Act 1976*; and
  - (b) the amount would become due solely because of the operation of section 5 of this Act in relation to the person; the amount does not become due.
- (2) If, but for this section:
  - (a) an amount would become due to a person:
    - (i) under the *Public Service Act 1999*, or under regulations or a determination made under that Act, in lieu of leave of absence for recreation or in any other way in relation to any entitlement of the person to such leave of absence; or
    - (ii) under the *Long Service Leave (Commonwealth Employees) Act 1976*; and

- (b) the amount would become due solely because of the resignation of the person from the Australian Public Service for the purpose of his or her being appointed to the Australian Capital Territory Government Service; the amount does not become due on the person's resignation from the Australian Public Service.
- (3) This section has effect in spite of any provision of:
- (a) the *Long Service Leave (Commonwealth Employees) Act 1976*; or
  - (b) the *Public Service Act 1922* or the *Public Service Act 1999*; or
  - (c) any regulations or determination made under either of those Acts.

## **27 Regulations**

- (1) The Governor-General may make regulations providing for modifications of an Act in its application in relation to:
- (a) any matter arising from, connected with, or consequential on the establishment of the Australian Capital Territory Government Service; or
  - (b) any matter arising from, connected with, or consequential on the amendments of the Public Service Act made by this Act.
- (2) Regulations may not be made under subsection (1) after the end of a period of 2 years beginning on the transfer day.
- (3) The Governor-General may make regulations providing for modifications of this Act or any other Act in its application in relation to any matter arising from or connected with, or consequential on, an ACT officer becoming an employee by or under a law of the Territory of a body corporate controlled by the Territory before, on or after the commencement of this subsection.
- (4) Regulations may not be made under subsection (3) after 30 June 1998.
- (5) In this section:

***Territory*** means the Australian Capital Territory.

**Part 1**

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**Schedule 1—New items for Schedule 5 to the  
A.C.T. Self-Government  
(Consequential Provisions) Act 1988**

Sections 16, 18, 19 and 20

**Part 1**

**Subsection 4(1) (definition of *public sector employment*):**

After paragraph (b) insert the following paragraphs:

“(ba) under a law of the Australian Capital Territory relating to employment by that Territory, including a law relating to the Australian Capital Territory Government Service;

(bb) by or in the service of:

(i) an enactment authority as defined by section 3 of the A.C.T. Consequential Provisions Act; or

(ii) a body corporate incorporated under a law of the Australian Capital Territory and in which the Australian Capital Territory has a controlling interest;

other than a prescribed authority or body;”

**Subsection 4(1):**

Insert the following definitions:

***A.C.T. Consequential Provisions Act*** means the *A.C.T. Self-Government (Consequential Provisions) Act 1988*.

***Australian Capital Territory Government Service*** means the service established by the *Public Sector Management Act 1994* of the Australian Capital Territory.



## **Part 2**

### **Subsection 121(2) (definition of *relevant law*):**

Omit “*Commonwealth Employees’ Rehabilitation and Compensation Act 1988*”, substitute “*Safety, Rehabilitation and Compensation Act 1988*”.

### **After subsection 149(1):**

Insert the following subsection:

“(1A) For the purposes of subsection (1), the Australian Capital Territory Government Service is taken to be the successor to the business of the Australian Capital Territory in relation to the transitional staff within the meaning of the *A.C.T. Self-Government (Consequential Provisions) Act 1988*.”.

**Part 3**

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**Part 3**

**Section 6:**

- (a) Omit from paragraph (e) “and” (last occurring).
  - (b) Add at the end the following paragraphs and subsection:
    - “(g) to provide to Secretaries of Departments services in connection with the establishment, constitution and operation of Joint Selection Committees under section 50DA or 50DB of the *Public Service Act 1922*; and
    - (h) with the consent of the Minister, to enter into an arrangement with the Australian Capital Territory or an authority of the Territory under which the Agency will perform, for the Territory or the authority, as the case may be, functions conferred by an enactment and similar, or substantially similar, to functions performed by the Agency under this Act.
- “(2) An arrangement referred to in paragraph (1)(h) may include provisions for payment by the other party to the arrangement for the performance of functions by the Agency in accordance with the arrangement.”.

**Part 4**

***Occupational Health and Safety (Commonwealth  
Employment) Act 1991***

**Subsection 5(1) (definition of *Commonwealth authority*):**

Omit from paragraph (a) “other than”, substitute “other than the Australian Capital Territory,”.

**Subparagraph 9(2)(c)(ii):**

Omit “other than”, substitute “other than the Australian Capital Territory,”.

## **Part 5**

### ***Remuneration Tribunal Act 1973***

#### **Subsection 3(1):**

Insert the following definition:

“**ACT office** means:

- (a) an office or appointment specified in any of paragraphs (fc) to (fh) of subsection 3(4), as modified by regulations in force under the *A.C.T. Self-Government (Consequential Provisions) Act 1988*; or
- (b) an office or appointment specified in subsection 73(1) of the *Australian Capital Territory (Self-Government) Act 1988*.”.

#### **Subsection 3(3):**

Omit the subsection, substitute:

“(3) A reference in this Part to an office includes a reference to an office that, within the meaning of the *Australian Capital Territory (Self-Government) Act 1988*, is an office of member of the Assembly or Minister and any office in or in connection with that Assembly that can be held only by a member of that Assembly.”.

#### **Subsection 7(6):**

Omit the subsection, substitute:

“(6) The Tribunal must give the Minister a copy of every determination made by the Tribunal, other than a determination that relates to an ACT office.

(6A) The Tribunal must give the Chief Minister of the Australian Capital Territory a copy of every determination made by the Tribunal in relation to an ACT office.”.

#### **Subsection 7(7):**

After “determination” (first occurring), insert “, other than a determination that relates to an ACT office,”.

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**After subsection 7(8):**

Insert:

“(8A) If the Legislative Assembly of the Australian Capital Territory, within 30 sitting days of the Assembly after a copy of a determination that relates to an ACT office is given to the Chief Minister, passes a resolution disapproving of the determination, then:

- (a) if the determination has not come into operation—the determination does not come into operation; or
- (b) if the determination has come into operation—the determination does not have any force or effect after the day on which the resolution is passed.”.

***Safety, Rehabilitation and Compensation Act 1988***

Subsection 4(1) (paragraph (b) of the definition of *Commonwealth authority*):

After “other than” insert “an ACT enactment or a law of”.

**Subsection 4(1) (subparagraph (c)(ii) of the definition of *Commonwealth authority*):**

After “other than” insert “the Australian Capital Territory or”.

**Subsection 4(1) (definition of *Commonwealth authority*):**

Add at the end the following word and paragraph:

“or (e) if a declaration is in force under section 4A, the Australian Capital Territory;”.

**Subsection 4(1):**

Insert the following definitions:

*ACT enactment* means an enactment as defined by section 3 of the ACT Self-Government Act.

*ACT Self-Government Act* means the *Australian Capital Territory (Self-Government) Act 1988*.

**Section 4:**

Add at the end the following subsection:

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“(14) In spite of the definition of principal officer in subsection (1), if the Australian Capital Territory is a Commonwealth authority for the purposes of this Act, the following rules have effect:

- (a) if there is in force a written declaration by the Minister, made at the written request of the Chief Minister for the Territory, that a specified person is to be taken to be the principal officer of the Territory, this Act has effect accordingly;
- (b) if there is no such declaration in force, the Chief Minister of the Territory is to be taken to be the principal officer of the Territory.”.

**After section 4:**

Insert the following section:

**4A Declaration that ACT a Commonwealth authority**

- (1) If the Chief Minister for the Australian Capital Territory so requests in writing, the Minister may, in writing, declare the Australian Capital Territory to be a Commonwealth authority for the purposes of this Act.
- (2) The Minister may revoke a declaration under subsection (1).
- (3) The Minister may only revoke a declaration if either:
  - (a) the Minister has given the Chief Minister at least 12 months’ notice in writing of his or her intention to revoke the declaration; or
  - (b) the Chief Minister has given the Minister a written request that the declaration be revoked and:
    - (i) a period of at least 12 months; or
    - (ii) such shorter period as is agreed on by the Minister and the Chief Minister;has elapsed since the request was given to the Minister.”.

**Subsection 5(1):**

Insert the following definition:

“*Chief Minister* means the Chief Minister for the Australian Capital Territory.”.

**Subparagraph 5(2)(c)(ii):**

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After “other than” insert “an ACT enactment or a law of”.

**Section 5:**

Add at the end the following subsections:

- “(11) For the purposes of this Act, the following are taken to be employed by the Australian Capital Territory:
- (a) a person who is an officer or employee of an authority or body established by an ACT enactment, other than an authority or body in respect of which a declaration is in force under subsection (12);
  - (b) a person who is an officer or employee of a body corporate incorporated under a law of the Commonwealth or a law in force in a State or Territory, being a body:
    - (i) in which the Australian Capital Territory or an authority or body established by an ACT enactment has a controlling interest; and
    - (ii) in respect of which a declaration under subsection (13) is in force;
  - (c) a person who is an officer or employee of a body corporate incorporated under a law of the Commonwealth or a law in force in a State or Territory, being a body:
    - (i) in which a body corporate referred to in paragraph (b) has a controlling interest; and
    - (ii) in respect of which a declaration under subsection (13) is in force;
  - (d) a person who is employed under the Legislative Assembly (Members’ Staff) Act 1989 of the Australian Capital Territory;
  - (e) the Commissioner, Deputy Commissioner and members of the Australian Capital Territory Fire Brigade under the Fire Brigade (Administration) Act 1974 of the Australian Capital Territory;
  - (f) a person who holds, or is acting in, an office established by an ACT enactment, other than an office in respect of which a declaration is in force under subsection (12).
- (12) If the Chief Minister so requests in writing, the Minister may make a written declaration that:

- (a) an authority or body is not an authority or body to which subsection (11) applies; or
  - (b) an office is not an office to which subsection (11) applies.
- (13) If the Chief Minister so requests in writing, the Minister may make a written declaration that a body corporate is a body to which subsection (11) applies.
- (14) Subsection (11) does not apply to the following offices established by the *Australian Capital Territory (Self-Government) Act 1988*:
- (a) Chief Minister for the Australian Capital Territory;
  - (b) Deputy Chief Minister for the Australian Capital Territory;
  - (c) Minister;
  - (d) Presiding Officer of the Legislative Assembly for the Australian Capital Territory;
  - (e) deputy to the Presiding Officer of the Legislative Assembly for the Australian Capital Territory;
  - (f) member of the Legislative Assembly for the Australian Capital Territory.
- (15) If the Chief Minister so requests in writing, the Minister may make a written declaration that persons specified in the declaration, when engaging in activities:
- (a) at the request or direction, or for the benefit, of the Australian Capital Territory; or
  - (b) in accordance with a requirement made by or under an ACT enactment; or
  - (c) at the request or direction, or for the benefit, of an authority or body established by an ACT enactment;
- are to be taken to be employees of the Australian Capital Territory.”.
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## **Schedule 2—Further amendments**

Section 22

### ***Australian Capital Territory (Self-Government) Act 1988***

#### **Section 3:**

Omit the definitions of *Associate Head of Administration*, *Head of Administration*, *public servant* and *public service*.

#### **Part VI:**

Repeal the Part.

#### **Section 71:**

Repeal the section.

#### **Paragraphs 73(1)(g) and (h):**

Omit the paragraphs, substitute:

“(g) an office declared by an enactment to be an office to which this section applies.”.

### ***Privacy Act 1988***

#### **Subsection 4(1):**

After “States”, insert “of the Australian Capital Territory,”.

#### **Subsection 4(2):**

After “State, insert of the Australian Capital Territory,.

#### **Subsection 4(3):**

After “State,” insert “of the Australian Capital Territory,”.

#### **Subsection 6(1) (definition of *agency*):**

- (a) Add at the end of subparagraph (c)(i) “or”.
- (b) Omit from subparagraph (c)(ii) “or” (last occurring).
- (c) Omit subparagraph (c)(iii).
- (d) Omit from paragraph (g) “and a court of the Australian Capital Territory”.

**Subsection 6(1) (definition of *Commonwealth enactment*):**

After subparagraph (a)(ii) insert the following word and subparagraph:

“or (iii) the *Australian Capital Territory (Self-Government) Act 1988*”.

**Subsection 6 (1) (definition of *Commonwealth officer*):**

After “temporarily employed in” insert “the Australian Capital Territory Government Service or in”.

**Subsection 6 (1) (definition of *State*):**

After “includes” insert “the Australian Capital Territory and”.

**Subsection 6(1):**

Insert the following definition:

“*ACT enactment* has the same meaning as *enactment* has in the *Australian Capital Territory (Self-Government) Act 1988*.”

**After subsection 6(1):**

Insert the following subsection:

“(1A) In order to avoid doubt, it is declared that an ACT enactment is not a Commonwealth enactment for the purposes of this Act.”.

**Subparagraph 7(1)(a)(ii):**

Omit “or a court of the Australian Capital Territory”.

**Paragraph 7(1)(b):**

Omit “, a court of the Australian Capital Territory or”, substitute “or by”.

**After paragraph 33(2)(d):**

Insert the following paragraph:

“(da) the disclosure of the deliberations or decisions of the Australian Capital Territory Executive or of a committee of that Executive;”.

**Section 37:**

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Omit from Column 1 of Item 4 in the table “or a court of the Australian Capital Territory”.

***Public Service Act 1922***

**Subsection 7(1) (definition of *Commonwealth authority*):**

- “(a) Omit from paragraph (a) “an enactment within the meaning of the *Australian Capital Territory (Self-Government) Act 1988* or a law of the”, substitute “a law of the Australian Capital Territory or the”.
- (b) In paragraph (b), after “other than” insert “the Australian Capital Territory or”.

**Paragraph 22B(14)(b):**

Omit the paragraph.

**Paragraph 22C(13)(b):**

Omit the paragraph.

**Subsection 87(1) (definition of *Commonwealth authority*):**

In paragraph (a), after “not being” insert “the Australian Capital Territory or”.

**Subsection 87(1) (definition of *Commonwealth office*):**

In paragraph (a), after “other than” insert “the Australian Capital Territory or”.

**Subsection 87(1) (definition of *public authority*):**

In paragraph (c), after “a State,” insert “of the Australian Capital Territory,”.

**Subsection 87 (1) (definition of *public office*):**

- (a) After subparagraph (b)(i) insert the following subparagraph:
  - “(ia) by the Australian Capital Territory Executive or by the Chief Minister or a Minister for the Australian Capital Territory; or”.
- (b) After “in the public service of a State” insert “,of the Australian Capital Territory”.

**Paragraph 87(2)(a):**

After “other than” insert “the Australian Capital Territory or”.

**Paragraph 87(2)(c):**

Omit the paragraph.

**Paragraph 87(2)(j):**

After other than insert the Australian Capital Territory or.

**Paragraph 87(2)(jb):**

Add at the end or.

**Paragraph 87(2)(k):**

Omit the paragraph.

**Paragraph 87(3)(aa):**

Omit the paragraph.

**Paragraph 87(3)(b):**

After “office or appointment in” insert “the Australian Capital Territory Government Service or”.

**After subparagraph 87(3)(b)(i):**

Insert the following subparagraph:

“(ia) by the Australian Capital Territory Executive or by the Chief Minister or a Minister for the Australian Capital Territory; or”.

**Subsection 87J(1) (definition of Territory):**

After “include” insert “the Australian Capital Territory or”.

**Paragraph 87J(2)(a):**

Omit the paragraph.

**Paragraph 87J(2A)(a):**

After “including” insert “the Australian Capital Territory and”.

**Paragraph 87J(2A)(b):**

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After “including” insert “the Australian Capital Territory Executive and”.

**Paragraph 87J(2A)(c):**

After “including” insert “a Minister for the Australian Capital Territory and”.

**Paragraph 87J(2A)(d):**

After “including” insert “the Chief Minister for the Australian Capital Territory and”.

**Subparagraph 87ZE(4)(a)(i):**

After “State” insert “or of the Legislative Assembly for the Australian Capital Territory”.

**Subparagraph 87ZE(5)(a)(i):**

After “State” insert “or of the Legislative Assembly for the Australian Capital Territory”.

***Superannuation Act 1976***

**After subsection 58(3A):**

Insert the following subsection:

“(3B) The termination, under the Public Sector Management Act 1994 of the Australian Capital Territory, of an appointment made under that Act is not to be taken to be the termination of the appointment for the purposes of paragraph (3)(b) of this section if:

- (a) the appointment was made on probation; and
- (b) the appointment had not been confirmed when the termination was effected.”.

## Schedule 3—Modifications of the Privacy Act 1988

Section 23

### Subsection 6(1) (definition of *agency*):

(a) after paragraph (b) insert the following paragraph:

“(ba) an ACT agency; or”.

(b) Omit paragraph (g) and substitute the following paragraph:

“(g) a federal court and a court of the Australian Capital Territory; or”.

### Subsection 6(1):

Insert the following definitions:

“*ACT agency* has the same meaning as *agency* has in the *Freedom of Information Act 1989* of the Australian Capital Territory, except that it does not include:

- (a) the Clerk of the Legislative Assembly or persons employed or appointed to assist the Clerk; or
- (b) a body corporate constituted under subsection 4(1) of the *Legal Practitioners Act 1970* of the Australian Capital Territory;

“*ACT Minister* means a Minister within the meaning of the *Australian Capital Territory (Self-Government) Act 1988*”.

### After subsection 6(1A):

Insert the following subsection:

“(1B) The definition of *ACT agency* in subsection (1) has the same effect as if the *Freedom of Information Act 1989* of the Australian Capital Territory made the same provision in relation to an agency as subsection 4(2) of that Act makes in relation to a prescribed authority.

### Subparagraph 7(1)(a)(ii):

Omit the subparagraph, substitute:

“(ii) a federal court or a court of the Australian Capital Territory;”.

**After subparagraph 7(1)(a)(iii):**

Insert the following subparagraph:

“(iia) an ACT agency;”.

**Paragraph 7(1)(b):**

Omit “federal court or by”, substitute “federal court, a court of the Australian Capital Territory or”.

**After paragraph 7(1)(c):**

Insert the following paragraph:

“(ca) an act done, or a practice engaged in, as the case may be, by an ACT agency, other than an act done, or a practice engaged in, in relation to:

- (i) a section 5 document; or
- (ii) a document in relation to which, by virtue of section 6 of the *Freedom of Information Act 1989* of the Australian Capital Territory, the agency is exempt from the operation of that Act;”.

**Section 7:**

Add at the end the following subsection:

“(5) A document is a section 5 document for the purposes of paragraph (1)(ca) if:

- (a) it is a document of a tribunal, authority or body identified in regulations made for the purposes of section 5 of the *Freedom of Information Act 1989* of the Australian Capital Territory; and
- (b) the document does not relate to matters of an administrative nature.”.

**After section 15:**

Insert the following section:

**15A. Special provision relating to the application of the Information Privacy Principles in relation to the ACT**

- (1) In relation to a record-keeper that is an ACT agency or a court of the Australian Capital Territory, a reference in Information Privacy

Principle 5 or 6 to any law of the Commonwealth that provides for access by persons to documents is to be read as a reference to any law of the Australian Capital Territory that provides for access by persons to documents.

- (2) In relation to a record-keeper that is an ACT agency or a court of the Australian Capital Territory, the reference in Information Privacy Principle 7 to a law of the Commonwealth that provides a right to require the correction or amendment of documents is to be read as a reference to a law of the Australian Capital Territory that provides such a right.
- (3) For the purposes of the application of Information Privacy Principle 7 in relation to a record-keeper that is an ACT agency or a court of the Australian Capital Territory, the reference in that Principle to the applicable provisions of a law of the Commonwealth is to be read as a reference to the applicable provisions of a law of the Australian Capital Territory.”.

**Paragraph 27(1)(b):**

After “Minister” insert “or an ACT Minister”.

**Paragraph 27(1)(f):**

After “Minister” insert “, to an ACT Minister”.

**Paragraph 27(1)(k):**

After “Minister” insert “or an ACT Minister”.

**Paragraph 30(3)(d):**

Omit “the Minister (if any)”, substitute “any Minister or ACT Minister”.

**Subsection 30(4):**

Omit “the Minister (if any)”, substitute any Minister or ACT Minister”.

**After section 33:**

Insert the following section in Division 3 of Part IV:

**33A Copies of certain reports to be given to ACT Attorney-General**

- (1) If:
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- (a) the Commissioner gives a report to the Minister under section 30, 31 or 32; and
  - (b) the report relates to an ACT matter;
- the Commissioner must, at the same time, give a copy of the report to the Attorney-General of the Australian Capital Territory.
- (2) A report relates to an ACT matter if:
    - (a) in the case of a report under section 30, the report relates to an act or practice of an ACT agency or of a court of the Australian Capital Territory; or
    - (b) in the case of a report under section 31, the report relates to a proposed ACT enactment; or
    - (c) in the case of a report under section 32, the report relates to an activity or audit of an ACT agency or of a court of the Australian Capital Territory.”.

**Subsection 34(2):**

After “Minister” (wherever occurring) insert “or an ACT Minister”.

**After section 35:**

Insert the following section in Division 4 of Part IV:

**35A Special provision relating to the application of sections 34 and 35 in relation to the ACT**

- (1) In this section, *ACT Freedom of Information Act* means the *Freedom of Information Act 1989* of the Australian Capital Territory.
- (2) For the purposes of the application of sections 34 and 35 in relation to an ACT agency, a court of the Australian Capital Territory or a document of such an agency or court:
  - (a) a reference in either of those sections to the *Freedom of Information Act 1982* is to be read as a reference to the ACT Freedom of Information Act; and
  - (b) a reference in either of those sections to a provision of the *Freedom of Information Act 1982* is to be read as a reference to the corresponding provision of the ACT Freedom of Information Act; and

- (c) a reference in either of those sections to an authority or body is to be read as a reference to the authority or body having similar functions under the corresponding provision of the ACT Freedom of Information Act..

**Section 37:**

- (a) Insert after “federal” court in Column 1 of Item 4 in the table “or a court of the Australian Capital Territory”.

- (b) Add at the end the following subsection:

“(2) For the purposes of this Part, the principal executive of an ACT agency that is an unincorporated body is the chief executive officer (however described) of the agency.”.

**Paragraph 41(1)(e):**

After “Commonwealth enactment” insert “or an ACT enactment”.

**Paragraph 41(1)(f):**

After “Commonwealth enactment” insert “or an ACT enactment”.

**Section 41:**

Add at the end the following subsection:

“(5) If:

- (a) the Commissioner decides not to investigate, or not to investigate further, an act or practice on the ground set out in paragraph (1)(e) or (f); and

- (b) the ground relates to an ACT enactment;

the following provisions apply:

- (c) the Commissioner must transfer any complaint about the act or practice to the person or body authorised to deal with the complaint under that enactment;

- (d) the Commissioner must give notice in writing to the complainant stating that the complaint has been so transferred;

- (e) the Commissioner must give to the person or body referred to in paragraph (c) any information or documents that relate to the complaint and are in the possession, or under the control, of the Commissioner;

(f) a complaint transferred under paragraph (c) is to be taken to be an application under the ACT enactment concerned.

**Subsection 43(7):**

Omit “the responsible Minister” (if any), substitute “any responsible Minister or ACT Minister”.

**Subsection 43(8):**

After “Minister” insert “or ACT Minister”.

**Subsection 43(9):**

After “Minister” insert “or ACT Minister”.

**Section 51:**

Add at the end the following subsection:

“(2) A reference in subsection (1) to the Auditor-General is a reference to:

- (a) the Auditor-General of the Commonwealth; or
- (b) the Auditor-General within the meaning of the *Audit Act 1989* of the Australian Capital Territory.”.

**After subsection 60(2):**

Insert the following subsection:

“(2A) If a determination relates to an ACT agency or a court of the Australian Capital Territory, the reference in subsection (2) to the Commonwealth is to be read as a reference to the Australian Capital Territory.”.

**Subsection 68(1):**

Omit “the Attorney-General has furnished a certificate under subsection 70(1) or (2)”, substitute “a certificate has been furnished under subsection 70(1), (2) or (3)”.

**Section 70:**

Add at the end the following subsection:

“(3) If the Attorney-General of the Australian Capital Territory furnishes to the Commissioner a certificate certifying that the

giving to the Commissioner of information concerning a specified matter (including the giving of information in answer to a question), or the production to the Commissioner of a specified document or other record, would be contrary to the public interest because it would:

- (a) involve the disclosure of communications between an ACT Minister and a Minister of the Commonwealth or of a State, being a disclosure that would prejudice relations between the Government of the Australian Capital Territory and the Government of the Commonwealth or of a State; or
- (b) involve the disclosure of deliberations or decisions of the Cabinet of the Australian Capital Territory or of a committee of the Cabinet; or
- (c) involve the disclosure of deliberations or decisions of the Australian Capital Territory Executive or of a committee of that Executive; or
- (d) prejudice the conduct of an investigation or inquiry into crime or criminal activity that is currently being pursued, or prejudice the fair trial of any person; or
- (e) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information in relation to the enforcement of the criminal law; or
- (f) prejudice the effectiveness of the operational methods or investigative practices or techniques of agencies responsible for the enforcement of the criminal law; or
- (g) endanger the life or physical safety of any person;

the Commissioner is not entitled to require a person to give any information concerning the matter or to produce the document or other record.”.

**Section 74:**

Add at the end the following subsection:

- “(3) For the purposes of its application in relation to an ACT agency or a court of the Australian Capital Territory, subsection (2) has effect as if the reference in that subsection to Part IV of the *Freedom of Information Act 1982* were a reference to Part IV of the *Freedom of Information Act 1989* of the Australian Capital Territory.”.

**Table of Acts**

**Notes to the *Australian Capital Territory Government Service (Consequential Provisions) Act 1994***

**Note 1**

The *Australian Capital Territory Government Service (Consequential Provisions) Act 1994* as shown in this compilation comprises Act No. 92, 1994 amended as indicated in the Tables below.

The *Australian Capital Territory Government Service (Consequential Provisions) Act 1994* was amended by the *Public Employment (Consequential and Transitional) Regulations 1999* (Statutory Rules 1999 No. 301 as amended by Statutory Rules 2000 No. 332). The amendments are incorporated in this compilation.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Australian Capital Territory Government Service (Consequential Provisions) Act 1994</i>	92, 1994	29 June 1994	1 July 1994 (see <i>Gazette</i> 1994 No. S256)	
<i>Employment Services (Consequential Amendments) Act 1994</i>	177, 1994	19 Dec 1994	Ss. 1, 2(1), (3) and Part 2 (ss. 3–8): 19 Dec 1994 (see s. 2(1)) Ss. 2(2) and 32–39: Royal Assent Remainder: 1 Jan 1995 (see s. 2(3) and <i>Gazette</i> 1994, No. S472)	—
<i>Australian Capital Territory Government Service (Consequential Provisions) Amendment Act 1996</i>	46, 1996	25 Oct 1996	25 Oct 1996	—
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 117–140): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (a)	—
<i>Territories Law Reform Act 2010</i>	139, 2010	10 Dec 2010	Schedule 1 (item 243): 1 Jan 2011	—

### **Act Notes**

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- (a) The *Australian Capital Territory Government Service (Consequential Provisions) Act 1994* was amended by Schedule 1 (items 117-140) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
  - (2) Subject to this section, this Act commences at the commencing time.

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**Table of Amendments**

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

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Provision affected	How affected
<b>Part 1</b>	
S. 3.....	am. No. 146, 1999
<b>Part 2</b>	
Ss. 6, 7.....	rep. No. 146, 1999
S. 8.....	am. No. 146, 1999
S. 10.....	am. No. 146, 1999
Part 3.....	rep. No. 146, 1999
S. 11.....	rep. No. 146, 1999
<b>Part 5</b>	
S. 23.....	am. No. 139, 2010
S. 24.....	rep. No. 146, 1999
Heading to s. 25.....	rs. No. 146, 1999
S. 25.....	am. No. 146, 1999; Statutory Rules 1999 No. 301 (as am. by Statutory Rules 2000 No. 332)
S. 26.....	am. No. 146, 1999
S. 27.....	am. No. 46, 1996
<b>Schedule 3</b>	
Schedule 3.....	am. No. 177, 1994