

**NORTHERN TERRITORY OF AUSTRALIA**

**PUBLIC INFORMATION ACT 2010**

As in force at 10 April 2019

**Table of provisions**

<b>Part 1</b>	<b>Preliminary matters</b>	
1	Short title .....	1
2	Commencement .....	1
3	Definitions .....	1
4	Public information .....	1
5	Public authority .....	2
<b>Part 2</b>	<b>Auditor-General's functions</b>	
6	Review of public information .....	4
7	Report of review .....	6
8	Auditor-General's preliminary decision .....	7
<b>Part 3</b>	<b>Other matters</b>	
10	Regulations .....	7
<b>Part 4</b>	<b>Transitional matters for Public Information Act 2010</b>	
11	Application .....	7
<b>ENDNOTES</b>		



# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 10 April 2019

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## PUBLIC INFORMATION ACT 2010

An Act to provide for the review of public information

### Part 1 Preliminary matters

#### 1 Short title

This Act may be cited as the *Public Information Act 2010*.

#### 2 Commencement

This Act commences on the date fixed by the Administrator by *Gazette* notice.

#### 3 Definitions

In this Act:

***Assembly member*** means a member of the Legislative Assembly.

***public authority***, see section 5.

***public information***, see section 4.

***working day*** means a day other than a Saturday, Sunday or public holiday under the *Public Holidays Act 1981*.

#### 4 Public information

- (1) ***Public information*** is information given by a public authority to the public by using money or other property of the Territory, other than:
- (a) information given to members of the electorate of an Assembly member if the preparation and giving of the information is funded by an allowance payable to the member for the electorate under a law of the Territory; and
  - (b) a media release of an Assembly member (whether or not in his or her capacity as an Assembly member); and

- (c) information prescribed by regulation.
- (2) For subsection (1), a public authority gives information to the public when it makes the information available to the public generally (rather than any particular members of the public) through any medium.

*Examples for subsection (2)*

- 1 *Advertisements in newspapers, on the radio or billboards or in cinemas.*
- 2 *Group emails, recorded telephone messages and text messages.*

## 5 **Public authority**

- (1) An Assembly member in his or her capacity as any of the following is a **public authority**:
  - (a) an Assembly member;
  - (b) the holder or occupier of any of the following offices:
    - (i) a Minister;
    - (ii) the Speaker;
    - (iii) the Leader of the Opposition;
    - (iv) any other office of the Legislative Assembly.
- (2) In addition, each of the following is a **public authority**:
  - (a) the holder or occupier of an office established by or under a law of the Territory;
  - (b) a person appointed or engaged to perform work for a public authority;
  - (c) an Agency;
  - (d) a body (whether incorporated or not) established by or under a law of the Territory;
  - (e) a body corporate to which one or both of the following apply:
    - (i) the capital of the body corporate is owned by one or more public authorities;
    - (ii) one or more public authorities have a total of more than one-half of the voting power in the management of the body corporate;

- (f) a body corporate that is a subsidiary of a public authority (whether or not through any interposed entity).
- (3) However, each of the following is not a public authority:
- (a) the holder or occupier of:
    - (i) a judicial office; or
    - (ii) an office as a member of a tribunal under a law of the Territory; or
    - (iii) the office of Auditor-General;
  - (b) a local government council;
  - (c) Jacana Energy;
  - (d) the Power and Water Corporation;
  - (da) Territory Generation;
  - (e) a person or body prescribed by regulation.

- (4) In this section:

**Jacana Energy** means the Power Retail Corporation established by section 5 of the *Power Retail Corporation Act 2014*.

**judicial office** means:

- (a) the office of Supreme Court Judge or Local Court Judge; or
- (b) another office or position under a law of the Territory that carries with it the power to act judicially.

*Example for definition **judicial office**, paragraph (b)*

*Office of coroner under the Coroners Act 1993.*

**Territory Generation** means the Power Generation Corporation established by section 5 of the *Power Generation Corporation Act 2014*.

## **Part 2 Auditor-General's functions**

### **6 Review of public information**

- (1) The Auditor-General:
  - (a) must, on the written request of an Assembly member, conduct a review of particular public information to determine whether this Act is contravened in relation to the information; and
  - (b) may, on the initiative of the Auditor-General, conduct such a review.
- (2) The Auditor-General may determine this Act is contravened in relation to particular public information if the Auditor-General is satisfied one or more of the following applies to the information:
  - (a) the information promotes particular party political interests;
  - (b) the information includes statements that are misleading;
  - (c) the information is an advertisement that includes an image of a minister or a minister's message;
  - (d) for public information that is not an advertisement – the information includes an image of a minister or a minister's message other than:
    - (i) the Chief Minister; or
    - (ii) the relevant minister;
  - (e) the information includes facts (including comparisons), statistics or data that are not presented accurately;
  - (f) the information fails to specify the source, or a means for identifying a source, of any facts (including comparisons), statistics or data.

*Note for subsection (2)(f)*

*Means for identifying the source may include providing a contact person or a website that can provide references for the source of any fact, statistic or data included in the public information.*

- (2A) The Auditor-General may also determine this Act is contravened in relation to particular public information if the Auditor-General is satisfied the content of the information is not for the purpose of the public interest.

- (3) The Auditor-General:
- (a) may conduct the review in any way the Auditor-General considers appropriate; but
  - (b) must have regard to any requirements or prohibitions prescribed by regulation for the giving of public information.
- (4) Without limiting subsection (2)(a), the content of the public information promotes particular party political interests if the information includes an image or message that may reasonably be regarded as promoting (whether expressly or implicitly) a particular political party or any of its members.

*Example for subsection (4)*

*The information includes the logo or slogans of a particular political party.*

- (5) Despite subsection (2)(c) and (d), the Auditor-General may determine this Act is not contravened by the use of an image of a minister, or a minister's message, in the giving of public information if:
- (a) the primary audience for the giving of public information resides outside of the Territory; and
  - (b) the Auditor-General is satisfied that the use was intended to increase the effectiveness of the communication.
- (6) Despite subsection (2)(c) and (d), the Auditor-General may also determine this Act is not contravened by the use of an image of a minister, or a minister's message, in the giving of public information if:
- (a) the information is given to the public in a time of emergency; and
  - (b) the Auditor-General is satisfied that members of the public would be likely to expect demonstrated leadership from government ministers at such a time.
- (7) In this section:

**advertisement** means an advertisement published by the purchase of media placement under a commercial arrangement, including the purchase of media placement:

- (a) in traditional forms of paid advertising; or
- (b) on social media platforms; or

- (c) in other digital communication channels; or
- (d) on signage associated with Government funded construction projects.

*Example for definition **advertisement**, paragraph (a)*

*Advertising through television, cinema, radio, newspaper, journal or other publications.*

**relevant minister** means the minister to whom responsibility for the area of government related to the public information is allotted under the Administrative Arrangement Order.

## 7 Report of review

- (1) Subject to section 8(2) and (3), the Auditor-General must prepare a report about a review of particular public information as soon as practicable after completing the review.
- (2) The report:
  - (a) must specify:
    - (i) whether the Auditor-General determines this Act is contravened in relation to the public information; and
    - (ii) if the Auditor-General makes the determination – the Auditor-General's reasons for the determination; and
  - (b) may specify any recommendations as the Auditor-General considers appropriate.
- (3) The Auditor-General must:
  - (a) give the report to the Speaker; and
  - (aa) if the review was conducted on the request of an Assembly member – give a copy of the report to the member; and
  - (b) include a copy of the report in a report prepared under section 24(1) of the *Audit Act 1995* for the year in which the review is conducted.
- (5) The Speaker must table a copy of the report mentioned in subsection (3)(a) in the Legislative Assembly within 6 sitting days after receiving it.

**8 Auditor-General's preliminary decision**

- (1) This section applies if, in conducting a review of particular public information, the Auditor-General believes this Act is contravened in relation to the information.
- (2) The Auditor-General must, before finalising the report about the review, give written notice to the public authority that gave the public information to the public:
  - (a) specifying the Auditor-General's reasons for the belief; and
  - (b) specifying the public authority may give comments to the Auditor-General in relation to those reasons within 10 working days after receiving the notice.
- (3) The Auditor-General may, in the notice, recommend the public authority to do any of the following before the review is completed:
  - (a) to withdraw the public information;
  - (b) to make specified changes to the content of the public information.
- (4) The public authority:
  - (a) must consider the recommendation; and
  - (b) may implement the recommendation if the public authority considers it appropriate to do so.
- (5) The Auditor-General must consider any comments given to the Auditor-General under subsection (2)(b) when preparing the report about the review.

**Part 3 Other matters****10 Regulations**

The Administrator may make regulations under this Act.

**Part 4 Transitional matters for Public Information Act 2010****11 Application**

This Act applies to public information given to the public on or after the commencement of the *Public Information Act 2010*.

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**ENDNOTES**
**1 KEY**

Key to abbreviations

<b>amd = amended</b>	<b>od = order</b>
<b>app = appendix</b>	<b>om = omitted</b>
<b>bl = by-law</b>	<b>pt = Part</b>
<b>ch = Chapter</b>	<b>r = regulation/rule</b>
<b>cl = clause</b>	<b>rem = remainder</b>
<b>div = Division</b>	<b>renum = renumbered</b>
<b>exp = expires/expired</b>	<b>rep = repealed</b>
<b>f = forms</b>	<b>s = section</b>
<b>Gaz = Gazette</b>	<b>sch = Schedule</b>
<b>hdg = heading</b>	<b>sdiv = Subdivision</b>
<b>ins = inserted</b>	<b>SL = Subordinate Legislation</b>
<b>lt = long title</b>	<b>sub = substituted</b>
<b>nc = not commenced</b>	

**2 LIST OF LEGISLATION*****Public Information Act 2010 (Act No. 11, 2010)***

Assent date	20 May 2010
Commenced	1 August 2010 ( <i>Gaz</i> G29, 21 July 2010, p 8)

***Local Government Amendment Act 2014 (Act No. 19, 2014)***

Assent date	2 June 2014
Commenced	s 16: 1 July 2014; s 18: 1 December 2014; rem: 2 June 2014 (s 2)

***Territory Insurance Office (Sale) Act 2014 (Act No. 41, 2014)***

Assent date	28 November 2014
Commenced	pt 6, divs 1 and 2: nc (exp without commencing); pt 6, div 3: 00:01hrs 1 January 2015 ( <i>Gaz</i> S131, 19 December 2014, p 8); rem: 28 November 2014 (s 2)

***Local Court (Related Amendments) Act 2016 (Act No. 8, 2016)***

Assent date	6 April 2016
Commenced	1 May 2016 (s 2, s 2 <i>Local Court (Repeals and Related Amendments) Act 2016</i> (Act No. 9, 2016) and <i>Gaz</i> S34, 29 April 2016)

***Public Information Act 2016 (Act No. 34, 2016)***

Assent date	20 December 2016
Commenced	14 February 2017 ( <i>Gaz</i> S2, 14 February 2017, p 2)

***Public Information Legislation Amendment Act 2019 (Act No.14, 2019)***

Assent date	9 April 2019
Commenced	10 April 2019

**3 GENERAL AMENDMENTS**

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22 of 2018) to: ss 1, 3, 5 and 7.

**4 LIST OF AMENDMENTS**

s 5	amd No. 19, 2014, s 26; No. 41, 2014, s 53; No. 8, 2016, s 45; No. 34, 2016, s 5
s 6	amd No. 34, 2016, s 6; No. 14, 2019, s 4
s 7	amd No. 34, 2016, s 7
s 9	rep No. 34, 2016, s 8
pt 5 hdg	exp No. 11, 2010, s 14
ss 12 – 14	exp No. 11, 2010, s 14