



Australian Capital Territory

Statute Law Amendment Act 2005

A2005-20

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Australian Capital Territory

Statute Law Amendment Act 2005

A2005-20

An Act to amend certain legislation for the purpose of statute law revision

The Legislative Assembly for the Australian Capital Territory enacts as follows:

2004 074B

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 Name of Act

This Act is the *Statute Law Amendment Act 2005*.

2 Commencement

- (1) This Act commences 21 days after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

- (2) However, a date or time provided by a special commencement provision for an amendment made by this Act has effect, or is taken to have had effect, as the commencement date or time of the amendment.

- (3) In this section:

special commencement provision, for an amendment made by this Act, is a provision, in brackets beginning with the text ‘commencement:’, at the end of the amendment.

Example

An amendment followed by ‘(commencement: 8 March 2005)’ means that the amendment is taken to have commenced on 8 March 2005.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

3 Purpose

The purpose of this Act is to improve the quality of the statute law of the Territory by amending Acts and regulations for the purpose of statute law revision.

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

5 Legislation amended—schs 1–3

This Act amends the legislation mentioned in schedules 1 to 3.

Schedule 1 Minor amendments

(see s 5)

Part 1.1 Dangerous Substances Act 2004

[1.1] Section 86 (1), note 1

substitute

Note 1 An inspector may issue a prohibition notice in relation to the site of a dangerous occurrence (see s 109 (2) (b) (ii)).

Explanatory note

This amendment is consequential on the remaking of section 109 by another amendment.

[1.2] Section 108, definition of *basis*

substitute

basis, for giving a prohibition notice, means—

- (a) the contravention of this Act in relation to which the prohibition notice was given and the risk to be prevented or minimised under the notice (see section 109 (1)); or
- (b) the contravention of the improvement notice in relation to which the prohibition notice was given (see section 109 (2) (a)); or
- (c) the inspection, testing or monitoring to be allowed under the notice (see section 109 (2) (b) (i)); or
- (d) the accident or other incident to be investigated under the notice (see section 109 (2) (b) (ii)).

Explanatory note

This amendment is consequential on the remaking of section 109 by another amendment.

[1.3] Section 109

substitute

109 Giving prohibition notices

- (1) An inspector may give a notice (a *prohibition notice*) to a responsible person for a dangerous substance at premises if the inspector believes, on reasonable grounds, that—
 - (a) someone at the premises has contravened, is contravening, or is likely to contravene, this Act in relation to the substance; and
 - (b) giving the notice is necessary to prevent or minimise risk of serious harm to the health or safety of people, or substantial damage to property or the environment, from a hazard at the premises associated with the substance.
- (2) An inspector may also give a notice (also a *prohibition notice*) to a responsible person for a dangerous substance at premises if the inspector believes, on reasonable grounds, that—
 - (a) someone at the premises has contravened, is contravening, or is likely to contravene, an improvement notice; or
 - (b) giving the notice is necessary to allow—
 - (i) the inspection, testing or monitoring of anything at the premises used in relation to the handling of the substance; or
 - (ii) the investigation of an accident or other incident (including a dangerous occurrence) at the premises in relation to the substance.

Example for par (2) (b) (i)

to allow for routine compliance testing of plant and systems if the responsible person has not voluntarily agreed to the plant or system being shut down for the test

Note 1 For how documents may be served, see the Legislation Act, pt 19.5.

Note 2 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

Note 3 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Explanatory note

Existing section 109 (a) provides for a prohibition notice to be issued if an inspector believes, on reasonable grounds, that a person at premises has contravened, is contravening, or is likely to contravene, the Act. That provision is too general and unnecessarily applies to minor contraventions. Existing section 109 (b) (i) provides for a notice to be issued if an inspector believes, on reasonable grounds, that it is necessary to prevent or minimise risk of serious harm to the health or safety of people, or substantial damage to property or the environment, from a hazard at premises associated with a dangerous substance. The issue of a notice in those circumstances is not appropriate if there is not a contravention of the Act. This amendment (see new section 109 (1)) combines those requirements so that both requirements must be satisfied before a prohibition notice can be issued.

Existing section 109 (b) (ii) and (iii) (which are about notices given to allow inspection, testing, monitoring and investigation) are retained as independent grounds for the issue of a prohibition notice (see new section 109 (2) (b)).

The amendment also adds new section 109 (2) (a). That paragraph provides for a prohibition notice to be issued for a contravention or likely contravention of an improvement notice. This new ground recognises that a prohibition notice may need to be issued in relation to a dangerous substance even though the risk is less than that of the serious harm required for the issue of a prohibition notice under new section 109 (1). However, new section 109 (2) (a) has a considerably narrower scope than existing section 109 (a) (see above) and it is balanced by the requirement that an improvement notice must have been issued.

[1.4] Section 110 (2) (b)

omit

section 109 (a) or (b) (i) (which are about notices given in relation to contravention of this Act or to prevent or minimise risk of serious harm or substantial damage)

substitute

section 109 (1) or (2) (a) (which are about notices given to prevent or minimise risk of serious harm etc from contravention of this Act or the contravention of an improvement notice)

Explanatory note

This amendment is consequential on the remaking of section 109 by another amendment.

[1.5] Section 110 (2) (c)

omit

section 109 (b) (ii) or (iii) (which are about

substitute

section 109 (2) (b) (which is about

Explanatory note

This amendment is consequential on the remaking of section 109 by another amendment.

[1.6] Section 111 (1)

omit

section 109 (b) (ii) or (iii)

substitute

section 109 (2) (b)

Explanatory note

This amendment is consequential on the remaking of section 109 by another amendment.

[1.7] Section 115 (1)

substitute

- (1) This section applies to a prohibition notice if the notice was given under section 109 (1) or (2) (a) (which are about notices given to prevent or minimise risk of serious harm etc from contravention of this Act or the contravention of an improvement notice).

Explanatory note

This amendment is consequential on the remaking of section 109 by another amendment.

[1.8] Section 116 (1)

omit

section 109 (a) or (b) (i)

substitute

section 109 (1) or (2) (a)

Explanatory note

This amendment is consequential on the remaking of section 109 by another amendment.

[1.9] Section 118 (1)

omit

section 109 (b) (ii) or (iii) (which are about

substitute

section 109 (2) (b) (which is about

Explanatory note

This amendment is consequential on the remaking of section 109 by another amendment.

Part 1.2 Domestic Animals Act 2000

[1.10] Section 81 (1)

before

during stated times

insert

at all times or

Explanatory note

This amendment makes it clear that a cat curfew can operate on a 24-hour basis.

Part 1.3 Occupational Health and Safety Act 1989

[1.11] Section 154, definition of *basis*

substitute

basis, for giving a prohibition notice, means—

- (a) the contravention of this Act in relation to which the prohibition notice was given and the risk to be prevented or minimised under the notice (see section 155 (1)); or
- (b) the inspection, testing or monitoring to be allowed under the notice (see section 155 (2) (a)); or
- (c) the accident or other incident to be investigated under the notice (see section 155 (2) (b)).

Explanatory note

This amendment is consequential on the remaking of section 155 by another amendment.

[1.12] Section 155

substitute

155 Giving prohibition notices

- (1) An inspector may give a notice (a ***prohibition notice***) to a responsible person for a workplace if the inspector believes, on reasonable grounds, that—
 - (a) someone at the workplace has contravened, is contravening, or is likely to contravene, this Act; and
 - (b) giving the notice is necessary to prevent or minimise risk of serious harm to the health or safety of people from a hazard at the workplace.
- (2) An inspector may also give a notice (also a ***prohibition notice***) to a responsible person for a workplace if the inspector believes, on reasonable grounds, that giving the notice is necessary to allow—
 - (a) the inspection, testing or monitoring of anything at the workplace; or
 - (b) the investigation of an accident or other incident (including a dangerous occurrence) at the workplace.

Example for par (2) (a)

to allow for routine compliance testing of plant and systems if the responsible person has not voluntarily agreed to the plant or system being shut down for the test

Note 1 For how documents may be served, see the Legislation Act, pt 19.5.

Note 2 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

Note 3 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Explanatory note

Existing section 155 (a) provides for a prohibition notice to be issued if an inspector believes, on reasonable grounds, that a person at premises has contravened, is contravening, or is likely to contravene, the Act. That provision is too general and unnecessarily applies to minor contraventions. Existing section 155 (b) (i) provides for a notice to be issued if an inspector believes, on reasonable grounds, that it is necessary to prevent or minimise risk of serious harm to the health or safety of people from a hazard at a workplace. The issue of a notice in those circumstances is not appropriate if there is not a contravention of the Act. This amendment (see new section 155 (1)) combines those requirements so that both requirements must be satisfied before a prohibition notice can be issued.

Existing section 155 (b) (ii) and (iii) (which are about notices given to allow inspection, testing, monitoring and investigation) are retained as independent grounds for the issue of a prohibition notice (see new section 155 (2)).

[1.13] Section 156 (2) (b)

omit

section 155 (a) or (b) (i) (which are about notices given in relation to contravention of this Act or to prevent or minimise risk of serious harm)

substitute

section 155 (1) (which is about a notice given to prevent or minimise risk of serious harm from contravention of this Act)

Explanatory note

This amendment is consequential on the remaking of section 155 by another amendment.

[1.14] Section 156 (2) (c)

omit

section 155 (b) (ii) or (iii) (which are about

substitute

section 155 (2) (which is about

Explanatory note

This amendment is consequential on the remaking of section 155 by another amendment.

[1.15] Section 158 (1)

omit

section 155 (b) (ii) or (iii)

substitute

section 155 (2)

Explanatory note

This amendment is consequential on the remaking of section 155 by another amendment.

[1.16] Section 161 (1)

substitute

- (1) This section applies to a prohibition notice if the notice was given under section 155 (1) (which is about a notice given to prevent or minimise risk of serious harm from contravention of this Act).

Explanatory note

This amendment is consequential on the remaking of section 155 by another amendment.

[1.17] Section 162 (1)

omit

section 155 (a) or (b) (i)

substitute

section 155 (1)

Explanatory note

This amendment is consequential on the remaking of section 155 by another amendment.

[1.18] Section 164 (1)

omit

section 155 (b) (ii) or (iii) (which are about

substitute

section 155 (2) (which is about

Explanatory note

This amendment is consequential on the remaking of section 155 by another amendment.

Part 1.4 Road Transport (General) Act 1999

[1.19] New section 24 (1A)

insert

- (1A) To remove any doubt, an authorised person may not serve an infringement notice on a person under this section for an offence after the end of the time within which a prosecution may be brought for the offence.

Note For the time within which a prosecution must be begun, see the Legislation Act, s 192.

Explanatory note

Section 24 deals with the service of infringement notices for offences against the road transport legislation generally. The amendment makes it clear that an infringement notice cannot be served under the section for an offence that cannot be prosecuted. This is implicit in the nature of an infringement notice scheme and in the provisions of the *Road Transport (General) Act 1999*, part 3. For example, section 22 (1) provides ‘the purpose of this part is to create a system of infringement notices ... *as an alternative to prosecution*’ (emphasis added). However, the point is not expressly dealt with in the part. The amendment will put the matter beyond doubt by expressly providing that infringement notices may not be served for ‘stale’ offences.

This amendment brings section 24 into line with the comparable provision of the infringement notice scheme under the *Magistrates Court Act 1930* (see section 120 (2)).

[1.20] Section 24

renumber subsections when Act next republished under Legislation Act

Explanatory note

This amendment is consequential on the insertion of new section 24 (1A) by another amendment.

[1.21] New section 36 (7A)

insert

- (7A) To remove any doubt, an authorised person may not serve an infringement notice on a person under this section for an offence after—
- (a) if a regulation under subsection (7) prescribes a period for the offence—the end of the prescribed period; or
 - (b) in any other case—the end of the time within which a prosecution may be brought against the person for the offence.

Explanatory note

Section 36 deals with the service of infringement notices for offences against the road transport legislation involving a vehicle on the responsible person for the vehicle. The amendment makes it clear that an infringement notice cannot be served under the section for an offence that cannot be prosecuted.

Under section 36 (7) the regulations may provide that an infringement notice for an offence may only be served under section 36 within the prescribed period after the day the offence was committed. For example, the *Road Transport (Offences) Regulation 2001*, section 15 provides that infringement notices for camera-detected offences may only be served within 28 days after the day the offence was committed. The effect of section 36 (7) (and the regulation provision made for it) is reflected in the subsection inserted by the amendment.

This amendment brings section 36 into line with the comparable provision of the infringement notice scheme under the *Magistrates Court Act 1930* (see section 131B (8)).

[1.22] Section 36

renumber subsections when Act next republished under Legislation Act

Explanatory note

This amendment is consequential on the insertion of new section 36 (7A) by another amendment.

[1.23] New section 53 (6)

insert

- (6) To remove any doubt, subsection (2) does not permit the administering authority to lay an information against a person for an offence after the end of the time within which, apart from this section, a prosecution may be brought against the person for the offence.

Note For the time within which a prosecution must be begun, see the Legislation Act, s 192.

Explanatory note

This amendment makes it clear that this section does not provide for an extended period within which a prosecution for an offence may be brought. The Legislation Act, section 192 limits the time for bringing prosecutions for minor summary offences to 1 year after the day of the commission of the offence unless a territory law provides for another period.

The *Road Transport (General) Act 1999*, section 53 (2) provides that an administering authority ‘may’ lay an information against a person for an offence for which an infringement notice has been served within 60 days after being given a notice disputing liability is received.

The better view is that the word ‘may’ in this context indicates that the laying of an information is discretionary rather than mandatory (see Legislation Act, section 146 (1)) and does not empower the laying of an information within the 60-day period after the 1-year period for bringing a prosecution has ended. This view is supported by section 53 (5) which has the effect that a prosecution for an offence must be begun within 60 days after the receipt of a notice disputing liability for the offence.

The amendment will put the matter beyond doubt by expressly providing that the section does not permit the laying of an information after the end of the 1-year period.

This amendment brings section 53 into line with the comparable provision of the infringement notice scheme under the *Magistrates Court Act 1930* (see section 134 (6)).

Schedule 2 Structural amendments

(see s 5)

Part 2.1 Legislation Act 2001

[2.1] Section 7, note 2

substitute

Note 2 Section 100 (1) deals with references to particular Acts.

Explanatory note

This amendment replaces a note to section 7 consequential on the remaking of chapter 10 (Referring to laws) by another amendment.

[2.2] Section 19 (5), example 3

omit

Explanatory note

This amendment omits an example that is no longer appropriate. The Australian Road Rules currently in force were notified as a notifiable instrument on 16 July 2004.

[2.3] Section 22A, definition of *legislative material*, example 1

substitute

- 1 Additional material entered in the register under section 19 (3) (Contents of register) that is not an Act or statutory instrument, for example, appointments of Ministers. Ministers are appointed by the Chief Minister under the Self-Government Act, section 41. An instrument notifying an appointment may be entered in the register even though the instrument is not a statutory instrument.

Explanatory note

This amendment omits part of an example that is no longer appropriate. The Australian Road Rules currently in force were notified as a notifiable instrument on 16 July 2004.

[2.4] Section 26 (1) (h)

substitute

(h) amendments or other changes made under chapter 11 (Republication of Acts and statutory instruments); or

Explanatory note

This amendment adds a reference to amendments made under chapter 11 to more accurately reflect the wording used in chapter 11.

[2.5] Section 33 (1)

omit

, in writing,

Explanatory note

This amendment is consequential on the insertion of new section 42 (2) by another amendment.

[2.6] Section 33 (2)

omit

issued under this section

Explanatory note

This amendment omits words that are unnecessary in the context of the section.

[2.7] Section 34 (2)

omit

, in writing,

Explanatory note

This amendment is consequential on the insertion of new section 42 (2) by another amendment.

[2.8] Section 34 (4)

omit

in whole or in part

Explanatory note

This amendment removes unnecessary words.

[2.9] Section 34 (5)

omit

after the disallowance of the RIS exemption

substitute

after the day the RIS exemption is disallowed

Explanatory note

This amendment expressly provides that, in working out the period within which a regulatory impact statement must be presented to the Legislative Assembly after a RIS exemption is disallowed, the day on which the RIS exemption is disallowed is not counted. The amendment is in accordance with current drafting practice and reflects the present position under the Legislation Act, section 151 (2) and (3) (b).

[2.10] Section 36 (1) (d)

substitute

(d) the commencement of an Act or statutory instrument;

Note A reference to an Act or statutory instrument includes a reference to a provision of the Act or instrument (see s 7 and s 13).

Explanatory note

This amendment revises the paragraph to omit unnecessary words. Under the definitions of *Act* and *statutory instrument* in sections 7 and 13, a reference to an Act or statutory instrument includes a reference to a provision of the Act or instrument. The amendment also inserts a note to this effect.

[2.11] Section 37 (1)

omit

in whole or part

Explanatory note

This amendment removes unnecessary words.

[2.12] New section 42 (2)

insert

- (2) If an Act or statutory instrument gives power to make an instrument that would be a registrable instrument, the power can only be exercised by making an instrument.

Examples

See examples to section 56 (3) and section 255 (3).

Explanatory note

This amendment provides that power to make an instrument that would be a registrable instrument (eg a disallowable instrument) can only be exercised by making an instrument. The amendment removes any possibility that the safeguards attaching to these instruments (notification and, for disallowable instruments, presentation in the Legislative Assembly and possible disallowance or amendment) could be avoided by exercising the power orally rather than in writing. The amendment will remove the need to state in provisions giving power to make a registrable instrument that the power must be exercised in writing. For example, see the amendments of section 33 (1) and section 34 (2).

[2.13] Section 42 (2) and (3)

renumber as section 42 (3) and (4)

Explanatory note

This amendment is consequential on the insertion of new section 42 (2) by another amendment.

[2.14] Section 44 (1) and (2) (a)

omit

(or for the purposes of)

Explanatory note

This amendment omits words that are no longer necessary. *For*, in relation to an Act or statutory instrument, is defined in the dictionary, part 1 to include for the purposes of the Act or statutory instrument.

[2.15] Section 45 (4), definition of *disallowable instrument*

substitute

disallowable instrument, for a Commonwealth Act, means an instrument that can be disallowed under the *Legislative Instruments Act 2003* (Cwlth), part 5 (Parliamentary scrutiny of legislative instruments), including that part, or provisions of that part, applied by another Commonwealth law.

Explanatory note

This amendment updates the definition to take account of the enactment of the *Legislative Instruments Act 2003* (Cwlth).

[2.16] Section 45 (4), definition of *law*

substitute

law means—

- (a) an Act, subordinate law or disallowable instrument; or

Note A reference to an Act, subordinate law or disallowable instrument includes a reference to a provision of the Act, law or instrument (see s 7, s 8 and s 9).

- (b) a Commonwealth Act or a disallowable instrument under a Commonwealth Act (or a provision of such an Act or instrument).

Explanatory note

This amendment is consequential on the revised definition of *disallowable instrument* substituted by another amendment. The amendment also revises the definition to omit unnecessary words. Under the definitions of *Act*, *subordinate law* and *disallowable instrument* in sections 7 to 9, a reference to an Act, subordinate law or disallowable instrument includes a reference to a provision of the Act, law or instrument. The amendment also inserts a note to this effect.

[2.17] Section 47 (10), definition of ACT law

substitute

ACT law means an Act, subordinate law or disallowable instrument.

Note A reference to an Act, subordinate law or disallowable instrument includes a reference to a provision of the Act, law or instrument (see s 7, s 8 and s 9).

Explanatory note

The amendment revises the definition to omit unnecessary words. Under the definitions of *Act*, *subordinate law* and *disallowable instrument* in sections 7 to 9, a reference to an Act, subordinate law or disallowable instrument includes a reference to a provision of the Act, law or instrument. The amendment also inserts a note to this effect.

[2.18] Section 47 (10), definition of disallowable instrument

substitute

disallowable instrument, for a Commonwealth Act, means an instrument that can be disallowed under the *Legislative Instruments Act 2003* (Cwlth), part 5 (Parliamentary scrutiny of legislative instruments), including that part, or provisions of that part, applied by another Commonwealth law.

Explanatory note

This amendment updates the definition to take account of the enactment of the *Legislative Instruments Act 2003* (Cwlth).

**[2.19] Section 47 (10), definition of *law of another jurisdiction*,
paragraph (a)**

substitute

- (a) a Commonwealth Act or a disallowable instrument under a Commonwealth Act; or

Explanatory note

This amendment is consequential on the revised definition of *disallowable instrument* substituted by another amendment.

[2.20] Section 51 (2)

after

available for inspection

insert

(on the internet or otherwise)

Explanatory note

This amendment makes it clear that it is sufficient for this section if the map, plan or register is available for inspection on the internet and does not need to be physically available for inspection.

[2.21] Section 56 (1)

substitute

- (1) This section applies if an Act (the *authorising law*) authorises fees to be determined for an Act or statutory instrument (the *relevant law*).

Explanatory note

This amendment makes it clear that an Act can authorise fees to be determined for a number of laws (see also Legislation Act, section 49 (Single instrument may exercise several powers or satisfy several requirements) and section 145 (Gender and number)).

[2.22] Section 56 (3), example

substitute

Example

The X Act, section 15 provides for a person to apply for an approval but makes no mention of a fee for the approval. However, the Act, section 79 (1) provides:

(1) The Minister may determine fees for this Act.

Because section 79 (1) permits a fee to be determined ‘for this Act’, this Act, section 56 applies in relation to section 15 and the Minister may, in writing, determine an application fee for the approval.

Note 1 The determination must be in writing (see s 42 (2)).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see s 126 and s 132).

Explanatory note

This amendment is consequential on the insertion of a new section 42 (2) by another amendment.

[2.23] Section 56 (4) (a)

omit

specifying

substitute

stating

Explanatory note

This amendment updates language.

[2.24] Section 56 (4) (c)

omit

specified

substitute

stated

Explanatory note

This amendment updates language.

[2.25] Section 56 (4), example

omit

specifying

substitute

stating

Explanatory note

This amendment updates language.

[2.26] Section 56 (5) (g)

omit

(in whole or part)

substitute

(completely or partly)

Explanatory note

This amendment updates language.

[2.27] Section 56 (5), examples for par (e), example 1

substitute

- 1 a provision that a levy is payable within 30 days after the day goods are sold

Explanatory note

This amendment brings the language of the example into line with current drafting practice.

[2.28] Section 58 (2) (b)

omit

(in whole or part)

substitute

(completely or partly)

Explanatory note

This amendment updates language.

[2.29] Section 59 (2), example 2

omit

could

substitute

may

Explanatory note

This amendment makes the language of the example consistent with example 1.

[2.30] Section 61 (1)

omit

the maker of, or the appropriate person for,

substitute

an authorised person for making a notification request for

Explanatory note

This amendment simplifies the subsections by substituting a single self-explanatory concept for the people who can request notification of the making of a registrable instrument. The amendment also recognises that, under the replacement of section 61 (12) by another amendment, usually a notification request can be made by 1 of a number of people.

[2.31] Section 61 (2)

omit

the maker of, or appropriate person for,

substitute

an authorised person for making a notification request for

Explanatory note

This amendment is consequential on the amendment of section 61 (1).

[2.32] Section 61 (10)

substitute

- (10) The notification of a registrable instrument is valid even if—
- (a) a prescribed requirement was not complied with; or
 - (b) the notification was made on the request of a person who was not, or was no longer, a delegate of an authorised person for making a notification request for the instrument.

Explanatory note

This amendment ensures the legal effectiveness of the notification of a registrable instrument made on the request of a person who was not, or was no longer, a delegate of an authorised

person for making a notification request for the instrument. Once a registrable instrument is notified it will not matter that there may have been, for example, a defect in a delegation relied on to make the notification request. The amendment will remove any need for people seeking to rely on a notified registrable instrument to check the validity of a delegation used in making the notification request. The amendment complements the judicial notice provision about notification made by the Legislation Act, section 26 (1) (b) and section 242 (Delegation not affected by defect etc).

[2.33] Section 61 (12)

substitute

(12) In this section:

authorised person, for making a notification request for a registrable instrument, means—

- (a) the maker of the instrument; or
- (b) for a registrable instrument made by the Executive—a Minister or chief executive; or
- (c) for a registrable instrument made by a Minister—a chief executive; or
- (d) for a registrable instrument made by the rule-making committee—
 - (i) the secretary of the committee; or
 - (ii) the registrar of a court or tribunal in relation to which the instrument applies; or
- (e) for any other registrable instrument made by a court or tribunal, or by a member (however described) of a court or tribunal—the registrar of the court or tribunal; or
- (f) for any other registrable instrument (other than an instrument prescribed by regulation for this paragraph)—a chief executive; or

- (g) for a registrable instrument prescribed by regulation for this paragraph—a person prescribed by regulation as an authorised person for making a notification request for the instrument.

rule-making committee means the rule-making committee established under the *Court Procedures Act 2004*.

Explanatory note

This amendment simplifies existing section 61 by including the maker of a registrable instrument within the definition of **authorised person** for making a notification request for the instrument. It also broadens, in a number of respects, the people who (apart from the maker) can request the notification of registrable instruments.

First, the definition of **authorised person**, paragraph (b) will allow any Minister or chief executive to request the notification of a registrable instrument made by the Executive. Under the existing definition of **appropriate person** a notification request for an Executive instrument can only be made by a Minister. However, in practice registrable instruments made by the Executive are notified under a delegation made by a Minister (usually the Chief Minister) to a chief executive (usually the Chief Executive, Chief Minister's Department) and a subdelegation made by the chief executive to the public servants who in fact make the notification requests. Paragraph (b) will allow this process to be simplified.

Second, the definition of **authorised person**, paragraph (c) will allow any chief executive to request the notification of a registrable instrument made by a Minister. Under the *Legislation Regulation 2003*, section 11 a notification request for a Ministerial instrument can only be made by the chief executive of the administrative unit responsible for the provision under which the instrument is made. In practice this has been unnecessarily restrictive. For example, it can be more convenient for concurrent notification requests to be made for a Ministerial instrument (eg a disallowable instrument or commencement notice) that is made as part of a package with an Executive instrument (eg a regulation). At present this can only be achieved through delegations between administrative units.

Third, the definition of **authorised person**, paragraph (d) will allow notification requests for registrable instruments made by the rule-making committee under the *Court Procedures Act 2004* to be made by the secretary of the committee or the registrar of a court or tribunal in relation to which the instrument applies. This will remove the need for the Chief Justice to appoint people for making notification requests. The amendment inserts a definition of **rule-making committee** for the paragraph.

Fourth, the definition of **authorised person**, paragraph (e) will allow notification requests for any other registrable instruments made by a court or tribunal (or a member of the court or tribunal) to be made by the registrar of the court or tribunal.

Fifth, the definition of *authorised person*, paragraphs (f) and (g) will allow a notification request for any other registrable instrument to be made by any chief executive or someone prescribed by regulation. Under the *Legislation Regulation 2003*, section 11 such a notification request can only be made by the chief executive of the administrative unit responsible for the provision under which the instrument is made. In practice this has been unnecessarily restrictive.

Although the amendment broadens the people who can request the notification of registrable instruments, it does not affect the power to make registrable instruments (nor the people who can make registrable instruments).

[2.34] Section 64 (2)

omit

under

substitute

in accordance with

Explanatory note

This amendment tightens language.

[2.35] Section 65 (2) (a)

substitute

(a) on the day after the day the disallowance is notified; or

Explanatory note

This amendment brings the default repeal commencement provision for disallowances of subordinate laws or disallowable instruments arising from Legislative Assembly resolutions into line with the default commencement provision for Acts and registrable instruments under the Legislation Act, section 73.

[2.36] Section 67 (2)

omit

after the disallowance

substitute

after the day of the disallowance

Explanatory note

This amendment expressly provides that, in working out the period within which a law the same in substance as a disallowed law must not be made, the day of the disallowance is not counted. The amendment is in accordance with current drafting practice and reflects the present position under the Legislation Act, section 151 (2) and (3) (b).

[2.37] Section 68 (3) (a)

substitute

(a) on the day after the day the amendment is notified; or

Explanatory note

This amendment brings the default commencement provision for amendments of subordinate laws or disallowable instruments arising from Legislative Assembly resolutions into line with the default commencement provision for Acts and registrable instruments under the Legislation Act, section 73.

[2.38] Section 70 (2)

omit

after the making of the amendment

substitute

after the day the amendment is made

Explanatory note

This amendment expressly provides that, in working out the period within which a law the same in substance as a subordinate law or disallowable instrument amended by resolution of the Legislative Assembly must not be made, the day the amendment is made is not counted. The amendment is in accordance with current drafting practice and reflects the present position under the Legislation Act, section 151 (2) and (3) (b).

[2.39] Section 71 (1) (a)

omit

after the instrument

substitute

after the day the instrument

Explanatory note

This amendment clarifies how to work out a period required for the application of this section. The amendment is in accordance with current drafting practice and reflects the present position under the Legislation Act, section 151 (2) and (3) (b).

[2.40] Section 71 (1) (b)

omit

after the notice

substitute

after the day the notice

Explanatory note

This amendment clarifies how to work out a period required for the application of this section. The amendment is in accordance with current drafting practice and reflects the present position under the Legislation Act, section 151 (2) and (3) (b).

[2.41] Section 72, definition of *law*

substitute

law means an Act or statutory instrument.

Note A reference to an Act or statutory instrument includes a reference to a provision of the Act or instrument (see s 7 and s 13).

Explanatory note

This amendment revises the definition to omit unnecessary words. Under the definitions of ***Act*** and ***statutory instrument*** in sections 7 and 13, a reference to an Act or statutory instrument includes a reference to a provision of the Act or instrument. The amendment also inserts a note to this effect.

[2.42] Section 73 (2), examples for par (b), example 2

substitute

2 A disallowable instrument may provide that it commences on the commencement of a stated law or a stated provision of a stated law.

Explanatory note

This amendment amends the example to reflect current drafting practice and brings the example into line with the Legislation Act, section 79A (3).

[2.43] Section 76 (2)

omit

may not

substitute

cannot

Explanatory note

This amendment tightens language.

[2.44] Section 79 (4), definition of *law*

substitute

law means an Act, subordinate law, disallowable instrument or notifiable instrument.

Note A reference to an Act, subordinate law, disallowable instrument or notifiable instrument includes a reference to a provision of the Act, law or instrument (see s 7, s 8, s 9 and s 10).

Explanatory note

This amendment revises the definition to omit unnecessary words. Under the definitions of ***Act***, ***subordinate law***, ***disallowable instrument*** and ***notifiable instrument*** in sections 7 to 10, a reference to an Act, subordinate law, disallowable instrument or notifiable instrument includes a reference to a provision of the Act, law or instrument. The amendment also inserts a note to this effect.

[2.45] Section 79 (4), definition of *postponed law*

omit

the notification day

substitute

its notification day

Explanatory note

This amendment tightens language.

[2.46] Section 81 (1), new examples

insert

Examples of powers to which section applies

- 1 power to delegate a function
- 2 power to give or issue an approval, consent, licence, permit or other authority (however described)
- 3 power to make an acting appointment
- 4 power to issue guidelines

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Explanatory note

This amendment includes examples of powers to which section 81 applies. The examples are largely drawn from section 94 (Continuance of appointments etc made under amended provisions).

[2.47] Section 82, definition of *law*

substitute

law means an Act or statutory instrument.

Note A reference to an Act or statutory instrument includes a reference to a provision of the Act or instrument (see s 7 and s 13).

Explanatory note

This amendment revises the definition to omit unnecessary words. Under the definitions of *Act* and *statutory instrument* in sections 7 and 13, a reference to an Act or statutory instrument includes a reference to a provision of the Act or instrument. The amendment also inserts a note to this effect.

[2.48] Section 84 (2)

omit

begun

substitute

started

Explanatory note

This amendment updates language.

[2.49] Section 84A (4), definition of *law*

substitute

law means an Act or subordinate law.

Note A reference to an Act or statutory instrument includes a reference to a provision of the Act or instrument (see s 7 and s 8).

Explanatory note

This amendment revises the definition to omit unnecessary words. Under the definitions of *Act* and *subordinate law* in sections 7 and 8, a reference to an Act or subordinate law includes a reference to a provision of the Act or law. The amendment also inserts a note to this effect.

[2.50] Section 88 (1) (b)

omit

otherwise

Explanatory note

This amendment omits an unnecessary word.

[2.51] New section 88 (1A)

insert

- (1A) Subsection (1) does not apply to a declaration or validation that is made by a law modifying another law.

Explanatory note

This amendment makes it clear that the effect of a modification ends when the modification ends and is not saved by section 88 (1).

[2.52] Section 88

renumber subsections when Act next republished under Legislation Act

Explanatory note

This amendment is consequential on the insertion of new section 88 (1A) by another amendment.

[2.53] Section 89 (12), definition of *amending law*, paragraph (b)

substitute

- (b) a preamble or recital (however described);

Explanatory note

This amendment expands the paragraph to include recitals (which are sometimes used in statutory instruments) in the definition of *amending law*.

[2.54] Section 89 (12), definition of *amending law*, paragraph (f), new note

insert

Note A note itself is not part of an Act or statutory instrument (see s 127).

Explanatory note

This amendment includes a note drawing attention to the legal status of notes.

[2.55] Section 89, example 1

after

12 April 2002.

insert

The Act is automatically repealed under section 89 on the day after all of its provisions have commenced, 13 April 2002.

Explanatory note

This amendment adds material to the example to explain when the Act given in the example is automatically repealed.

[2.56] Section 89, example 2

after

subsection (1).

insert

It is, therefore, not automatically repealed under section 89.

Explanatory note

This amendment adds material to the example to state expressly that the Act given in the example is not automatically repealed under section 89.

[2.57] Section 91 (8)

substitute

- (8) In applying this section to a law that is divided otherwise than into sections, a reference to a section or subsection is a reference to a corresponding provision of the law.

Explanatory note

This amendment remakes subsection (8) so that it is expressed to apply to a law that is divided otherwise than into sections. Existing subsection (8) is expressed to apply to a statutory instrument or a provision of a schedule to an Act. However, to simplify the naming of provisions of statutory instruments and schedules to Acts current drafting practice is to use 'section' instead of 'regulation' or 'clause' and 'subsection' instead of 'subregulation' or 'subclause'. Because of the definition of *law* in section 82 (and the definitions of *Act* and *statutory instrument* in sections 7 and 13), the remade subsection will also apply to provisions of an Act or statutory instrument (eg a schedule that sets out a list of items).

[2.58] Section 92 (1), example

omit

and twice in section 20 (3)

substitute

, twice in section 20 (3), once in an example to section 20 (4) and twice in a note to section 20 (5)

Explanatory note

This amendment amends an example to expressly cover notes and examples.

[2.59] Section 93 (10)

substitute

- (10) In applying this section to a law that is divided otherwise than into sections, a reference to a section or subsection is a reference to a corresponding provision of the law.

Explanatory note

This amendment remakes subsection (10) so that it is expressed to apply to a law that is divided otherwise than into sections. Existing subsection (10) is expressed to apply to a statutory instrument or a provision of a schedule to an Act. However, to simplify the naming of provisions of statutory instruments and schedules to Acts current drafting practice is to use ‘section’ instead of ‘regulation’ or ‘clause’ and ‘subsection’ instead of ‘subregulation’ or ‘subclause’. Because of the definition of *law* in section 82 (and the definitions of *Act* and *statutory instrument* in sections 7 and 13), the remade subsection will also apply to provisions of an Act or statutory instrument (eg a schedule that sets out a list of items).

[2.60] Section 96 (4)

after

made to

insert

, or in relation to,

Explanatory note

This amendment recognises that the operation of a relocated provision may be affected by changes made to other provisions of the law to which the provision is relocated and by existing provisions of that law.

[2.61] Chapter 10

substitute

Chapter 10 Referring to laws

97 Definitions for ch 10

- (1) In this chapter:

ACT law means an Act or statutory instrument.

Note A reference to an Act or statutory instrument includes a reference to a provision of the Act or instrument (see s 7 and s 13).

law means an ACT law or a law of another jurisdiction.

law of another jurisdiction means an Act or statutory instrument of another jurisdiction, and includes a provision of an Act or statutory instrument of another jurisdiction.

Note *Another jurisdiction* means the Commonwealth, a State, another Territory, the United Kingdom or New Zealand (see dict, pt 2).

- (2) In this section:

Act, in relation to another Territory, includes ordinance.

statutory instrument, of another jurisdiction, means an instrument (whether or not legislative in nature) made under—

- (a) an Act of the other jurisdiction; or
- (b) another statutory instrument of the other jurisdiction; or
- (c) power given by an Act or statutory instrument of the other jurisdiction and also power given otherwise by law.

98 References to ACT law include law containing reference

In an ACT law, a reference in general terms to an ACT law of the same kind includes a reference to the law itself.

Example

The *ABC Act 2001*, section 27 gives a power to confiscate property under certain circumstances. Section 93 of the same Act provides ‘If an Act authorises the confiscation of property, the owner of the property has a right of appeal to the Magistrates Court.’ The right of appeal under section 93 also applies to the power given by section 27 because the reference to ‘an Act’ in section 93 includes a reference to the *ABC Act 2001*.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see s 126 and s 132).

99 References in ACT statutory instruments to *the Act*

In a statutory instrument, a reference to *Act* or *the Act*, without mentioning a particular Act, is a reference to the Act under which the instrument is made or in force.

100 Referring to particular ACT laws

- (1) An Act may be referred to by—
 - (a) the name the Act gives to itself; or
 - (b) the year it was passed and its number, together with a reference (if necessary) to indicate that it is an Act.

Example of reference to indicate Act

An Act may be referred to using the word Act or the letter ‘A’ (eg ‘A1993-1’ is a reference to Act No 1 of 1993).

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see s 126 and s 132).

- (2) A statutory instrument may be referred to by—
 - (a) any name the instrument gives to itself; or

- (b) if the instrument was notified in the register or gazette and was numbered under this Act or another territory law—the year it was notified and its number, together with a reference (if necessary) to the kind of instrument; or
- (c) if the instrument was not notified but was numbered under a territory law—the year it was made and its number, together with a reference (if necessary) to the kind of instrument; or
- (d) if the instrument was notified in the gazette before the commencement of this Act—the number, date and page of the gazette where it was notified; or
- (e) the date it was made, together with a reference to the Act or statutory instrument under which it was made.

Examples of references to kind of instrument for par (b)

- 1 A subordinate law may be referred to using the letters ‘SL’ (eg ‘SL2000-11’ is a reference to subordinate law No 11 of 2000).
- 2 A disallowable instrument may be referred to using the letters ‘DI’ (eg ‘DI1997-101’ is a reference to disallowable instrument No 101 of 1997).
- 3 A notifiable instrument that is not an approved form may be referred to using the letters ‘NI’ (eg ‘NI2002-226’ is a reference to notifiable instrument No 226 of 2002).
- 4 An approved form may be referred to using the letters ‘AF’ (eg ‘AF2003-1’ is a reference to approved form No 1 of 2003).
- 5 A commencement notice may be referred to using the letters ‘CN’ (eg ‘CN2002-3’ is a reference to commencement notice No 3 of 2002).

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see s 126 and s 132).

101 Referring to particular laws of other jurisdictions etc

- (1) In an ACT law, a law of another jurisdiction (the *relevant law*) may be referred to—
 - (a) by the name the relevant law gives to itself; or

- (b) in any other way sufficient in a law of the other jurisdiction for referring to the relevant law; or
- (c) in any way that, under current legislative drafting practice, would be sufficient for referring to the relevant law if it were an ACT law;

together with a reference to the jurisdiction (or an abbreviation of the jurisdiction).

- (2) In an ACT law, a provision of a law of another jurisdiction may be referred to—
 - (a) in a way sufficient in a law of the other jurisdiction for referring to the provision; or
 - (b) in any way that, under current legislative drafting practice, would be sufficient for referring to the provision if it were a provision of an ACT law.
- (3) Subsection (2) does not limit any other provision of this chapter.

102 References to laws include references to laws as in force from time to time

- (1) In an ACT law, a reference to a law includes a reference to the following:
 - (a) the law as originally made, and as amended from time to time since it was originally made;
 - (b) if the law has been repealed and remade (with or without changes) since the reference was made—the law as remade (or last remade), and as amended from time to time since it was remade (or last remade);
 - (c) if a relevant provision of the law has been omitted and remade (with or without changes) in another law since the reference was made—the law in which the provision was remade (or last remade), as in force when the provision was remade (or last

remade), and as amended from time to time since the provision was remade (or last remade).

- (2) In an ACT law, a reference to a provision of a law includes a reference to the following:
 - (a) the provision as originally made, and as amended from time to time since it was originally made;
 - (b) if the provision has been omitted and remade (with or without changes and whether in the law or another law) since the reference was made—the provision as remade (or last remade), and as amended from time to time since it was remade (or last remade).
- (3) To remove any doubt, if the name of a law is amended, a reference in an ACT law to the law by its name before the amendment includes a reference to the law by its name as amended.
- (4) This section is subject to section 47 (Statutory instrument may make provision by applying law or instrument).
- (5) In this section:
made includes enacted.

103 **References to repealed laws**

In an ACT law, a reference to a law as repealed is a reference to the law as in force immediately before it was repealed.

Example

A reference to the ‘*XYZ Act 2000* (repealed)’ is a reference to the *XYZ Act 2000* immediately before it was repealed.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see s 126 and s 132).

104 References to laws include references to instruments under laws

- (1) In an ACT law, a reference (either generally or specifically) to a law includes a reference to the statutory instruments made or in force under the law.
- (2) In subsection (1), a reference to the statutory instruments made or in force under the law includes a reference to any law or instrument applied, adopted or incorporated (with or without change) under the law.
- (3) This chapter applies to an instrument applied, adopted or incorporated under a law as if—
 - (a) the instrument were a law; and
 - (b) any other necessary changes were made.
- (4) In this section:
statutory instrument, of another jurisdiction—see section 97 (2).

105 Referring to provisions of laws

In an ACT law, a provision of a law may be referred to by reference to the provision of the law in which it is contained.

Example

Paragraph (b) of subsection (2) of section 10 of an Act may be referred to by reference to the section, subsection and paragraph, that is, as section 10 (2) (b).

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see s 126 and s 132).

106 References to provisions of laws are inclusive

In an ACT law, a reference to any part of a law is a reference to the following:

- (a) the provision of the law that begins the part;

- (b) the provision of the law that ends the part;
- (c) any provision of the law between the beginning and end of the part.

Examples

- 1 A reference to ‘sections 5 to 9’ includes both section 5 and section 9.
- 2 A reference to ‘sections 260 to 264’ includes a provision such as a part heading between section 260 and section 261.
- 3 A reference to ‘*from child to adult*’ includes both the word ‘child’ and the word ‘adult’.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see s 126 and s 132).

106A References to paragraphs etc of laws

- (1) In an ACT law, a reference to a paragraph of a provision of a law includes any words in the provision before or after the paragraph that are necessary or desirable to make the reference meaningful.

Example

A subsection may be divided into paragraphs as follows:

- ‘(2) An application must be—
- (a) in writing; and
 - (b) accompanied by a copy of the advertisement of the applicant’s intention to apply.’

Paragraphs form part of the sentence in which they are contained. A reference to paragraph (a) in this example that did not include the preceding words ‘An application must be’ would be meaningless. Section 106A therefore allows the paragraph to be read with those words so that it makes sense.

Note 1 Although this section contains a reference to an ACT law and a reference to a law, s 98 makes it clear that the references can be to the same law.

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see s 126 and s 132).

(2) In this section:

paragraph includes a subparagraph and a sub-subparagraph.

Explanatory note

This amendment remakes chapter 10 (Referring to laws) to simplify its provisions and reorganise them into a more logical arrangement. The simplification is achieved largely by the insertion of new definitions of *ACT law*, *law* and *law of another jurisdiction* for the chapter in new section 97.

The definition of *ACT law* includes all statutory instruments. At present a number of provisions of the chapter distinguish between subordinate laws and disallowable instruments and other statutory instruments (see eg existing section 97). There is no reason in principle why this distinction needs to be maintained as a general rule. There is in fact considerable advantage to users of ACT legislation in having the provisions of the chapter apply as consistently as possible to all statutory instruments.

The definitions of *law* and *law of another jurisdiction* are inserted to enable the provisions of the chapter to be simplified. The definition of *law of another jurisdiction* provides a definition for certain other jurisdictions equivalent to the definition of *ACT law*. The definition of *statutory instrument* in new section 97(2) mirrors the existing definition of *statutory instrument* in the Legislation Act, section 13. *Another jurisdiction* is defined (in a definition being inserted in the dictionary, part 2 by another amendment) to include the Commonwealth, a State, another Territory, the United Kingdom and New Zealand. The application of the definition has the effect of extending the operation of the chapter to references to United Kingdom and New Zealand laws. Most, but not all, of the provisions of the chapter already operate in relation to references to laws of the Commonwealth, a State or a Territory. Presently only existing section 99 (Referring to particular Acts) and existing section 100 (Referring to statutory instruments) apply to United Kingdom laws. None of the provisions of the chapter presently apply to New Zealand laws even though New Zealand laws are occasionally referred to in ACT laws.

The new definitions are inserted at the beginning of the chapter as new section 97. The subsequent sections of new chapter 10 are organised as follows:

- new sections 98 to 100 deal with references to ACT laws only
- new section 101 deals with references to laws of other jurisdictions only
- new sections 102 to 104 deal with references to laws generally (ie ACT laws and laws of other jurisdictions)
- new sections 105 to 106A also apply to references to laws generally but focus on references to provisions of those laws.

The following table lists the provisions of existing chapter 10 and the corresponding provision of the new chapter.

Provision of existing ch 10	Corresponding provision of new ch 10
section 97 (References to law or instrument include law or instrument containing reference)	section 98 (References to ACT law include law containing reference)
section 98 (Referring to laws in general terms)	[covered by general provisions]
section 99 (Referring to particular Acts)	s 100 (1) (Referring to particular ACT laws) s 101 (Referring to particular laws of other jurisdictions etc)
section 100 (Referring to statutory instruments)	section 100 (2) (Referring to particular ACT laws) section 101 (Referring to particular laws of other jurisdictions etc)
section 101 (Referring to provisions of laws or instruments)	section 105 (Referring to provisions of laws)
section 101A (Reference to provisions of law or instrument is inclusive)	section 106 (References to provisions of laws are inclusive)
section 101B (References to paragraphs etc)	section 106A (References to paragraphs etc of laws)
section 102 (Meaning of references to a law or instrument generally)	section 102 (References to laws include references to laws as in force from time to time)
section 103 (References to laws and instruments with amended names)	section 102 (3)
section 104 (References to laws include references to instruments under laws)	section 104 (References to laws include references to instruments under laws)
section 105 (References in statutory instruments to <i>the Act</i>)	section 99 (References in ACT statutory instruments to <i>the Act</i>)
section 106 (References to repealed laws)	section 103 (References to repealed laws)

Most provisions of existing chapter 10 have been consequentially amended and substantially simplified (eg by removing section definitions and redundant words) because of the new definitions.

In addition, the headings of a number of sections have been changed to more accurately indicate their scope and content. For example, the heading to existing sections 97, 99 and 105 have been changed to make it clear to the reader that the sections are only about ACT laws.

Additional changes made to particular sections are noted below.

New section 100 has been revised to bring the section more closely into line with the provisions of the Legislation Act about the numbering of Acts and registrable instruments (see section 27 and section 59). In particular, new section 100 (2) now deals separately with instruments that have been notified and numbered under a territory law and instruments that have not been notified but have been numbered under a territory law. For an instrument that is notified, the year of notification rather than the year of making is used in referring to the instrument (see Legislation Act, section 59 (1) and section 60 (1) (a)). The existing provision has been simplified by omitting subsection (1) (c) (iii). That provision is no longer necessary as all instruments notified in the register are numbered and so are covered by new section 100 (2) (b).

New section 101 is about referring to laws, and provisions of laws, of other jurisdictions. The section replaces in a simplified form the existing provisions of section 99 (2) to (4) and section 100 (2) to (4). Subsection (1) recognises that current ACT legislative drafting practice is used in referring to all laws (including laws of other jurisdictions). For example, ACT legislative styles in the use of italics in legislation names are used rather than any different style of another jurisdiction. Subsection (2) recognises that current ACT legislative drafting practice is used in referring to the provisions of all laws (including laws of other jurisdictions). For example, Commonwealth provisions are referred to using ACT legislative reference styles rather than Commonwealth styles eg ‘section 20 (1)’ rather than ‘subsection 20 (1)’.

Existing section 99 (2) to (4) covers references to Acts and ordinances of the Commonwealth, a State, another Territory and the United Kingdom. Existing section 100 (2) to (4) covers references to instruments of the Commonwealth, a State, another Territory and the United Kingdom. The amendment broadens the existing provisions to include references to laws of New Zealand.

New subsection (3) makes it clear that other provisions of the chapter apply to references to provisions of laws of other jurisdictions eg new section 102 (References to laws include references to laws as in force from time to time), new section 105 (Referring to provisions of laws), new section 106 (References to provisions of laws are inclusive) and new section 106A (References to paragraphs etc of laws).

New section 102 (1) and (2) has been revised to clarify its operation to laws and provisions that have been remade more than once. In this case, a reference to the law or provision includes a reference to the law or provision as last remade, and as amended from time to time since then.

New section 102 (3)—under existing section 103, if the name of a law is amended, a reference to the name includes a reference to the name as amended. It is likely that this is already covered under the terms of existing (and proposed replacement) section 102 (1) (a). However, to remove any doubt the provision is included expressly as new section 102 (3).

New section 104 (3) has been included to apply the provisions of the chapter to instruments applied, adopted or incorporated under laws. The subsection will, for example, ensure that new section 106 (References to provisions of laws are inclusive) applies to a reference to a part of an applied instrument. This result is achieved in existing chapter 10 by the definitions of *instrument* contained in most of the sections of the chapter (see eg section 101A (2)).

New section 106A extends the operation of existing section 101B to references to a paragraph of a law of another jurisdiction. The amendment brings the section into line with other provisions of the chapter that already apply to references to provisions of laws of other jurisdictions eg existing section 101 (Referring to provisions of laws or instruments) and existing section 101A (Reference to provisions of law or instrument is inclusive).

Existing section 98 is not reproduced in new chapter 10. This is because the existing section does not add anything that is not already covered in the Act as amended so separate provision for it is not necessary. For example, existing section 98 (1) states that an Act may be referred to by the word ‘Act’ alone. However, the combined effect of the definition of the term *Act* in section 7 and the provisions of new sections 98 and 100 (1) now cover this point. Similarly, the combined effect of the definition of *statutory instrument* in section 13 and the provisions of new sections 98 and 100 (2) cover what existing section 98 (2) provides. In addition, under the Legislation Act, section 122 (1) (b) a reference to anything by name or description is a reference to the thing of that name or description in or for the Territory (unless the provision is displaced). A reference to an ‘Act’ or ‘statutory instrument’ without more is, therefore, a reference to an ‘ACT Act’ or ‘ACT statutory instrument’.

[2.62] Section 107, definition of *law*, new note

insert

Note A reference to an Act or statutory instrument includes a reference to a provision of the Act or instrument (see s 7 and s 13).

Explanatory note

This amendment inserts a new note for consistency with other amendments.

[2.63] Section 111 (3)

omit

Explanatory note

This amendment is consequential on the amendments of section 116.

[2.64] Section 111 (4)

renumber as section 111 (3)

Explanatory note

This amendment is consequential on the omission of section 111 (3) by another amendment.

[2.65] New section 116 (1) (o)

insert

- (o) is consequential on any amendment made to the law by another law; or

Explanatory note

The effect of this amendment is to relocate the power to make editorial amendments consequential on substantive amendments made by laws from part 11.2 (Substantive amendments made by laws) to part 11.3 (Editorial changes). This power is more appropriately located in part 11.3. In part 11.3 the following provisions will apply to consequential amendments made under the relocated power:

- section 115 (Amendments not to change effect)
- section 117 (Legal effect of editorial changes)
- section 118 (Reference to editorial amendments).

Examples of the kinds of amendments that could be made under the power are inserted by another amendment of section 116.

[2.66] Section 116 (1) (o)

renumber as section 116 (1) (p)

Explanatory note

This amendment is consequential on the insertion of new section 116 (1) (o) by another amendment.

[2.67] Section 116 (1), new examples

insert

Examples of consequential amendments for par (o)

- 1 If an amendment adds 1 or more subsections to a section that is not already divided into subsections, the subsection number (1) may be inserted.
- 2 If an amendment omits subsection (1) from a section with 2 subsections, the subsection number (2) may be omitted.
- 3 If an amendment omits subsection (2) from a series of 4 subsections (subsections (1) to (4)), subsections (3) and (4) may be renumbered as subsections (2) and (3).
- 4 If an amendment adds a new subsection (3A) to a series of 5 subsections (subsections (1) to (5)), the new subsection and subsections (4) and (5) may be renumbered as subsections (4), (5), and (6).
- 5 If an amendment omits paragraph (b) from a series of 4 paragraphs (paragraphs (a) to (d)), paragraphs (c) and (d) may be renumbered as paragraphs (b) and (c).
- 6 If an amendment adds a new paragraph (aa) to a series of 3 paragraphs (paragraphs (a) to (c)), the paragraphs may be renumbered as paragraphs (a), (b), (c) and (d).
- 7 If an amendment makes a change mentioned in any of examples 1 to 6, a cross-reference in any law to any of the provisions that have been renumbered may be correspondingly renumbered.
- 8 If an amendment adds a paragraph as the last paragraph in a series of paragraphs that end in a full stop, the full stop may be changed to a semicolon and, if the series of paragraphs is joined by a conjunction (eg 'and'), the conjunction may be added after the semicolon.
- 9 If an amendment omits a section example from a section that has 2 section examples, the number of the remaining example may be omitted.
- 10 If an amendment adds a subsection note to a subsection that already has a subsection note, the notes may be numbered.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Explanatory note

This amendment includes examples of some of the more common consequential editorial amendments that are authorised by new section 116 (1) (o), which is inserted by another amendment.

[2.68] Section 116 (2)

substitute

(2) In this section:

law includes a law of another jurisdiction.

law of another jurisdiction—see section 97 (1).

Explanatory note

This amendment remakes the existing definition of *law* using the term ‘another jurisdiction’. A definition of that term is inserted in the dictionary, part 2 by another amendment. The amendment also inserts a definition of *law of another jurisdiction* to clarify the meaning of that term.

[2.69] Section 125, definition of law

substitute

law means an Act, subordinate law or disallowable instrument.

Note A reference to an Act, subordinate law or disallowable instrument includes a reference to a provision of the Act, law or instrument (see s 7, s 8 and s 9).

Explanatory note

This amendment revises the definition to omit unnecessary words. Under the definitions of *Act*, *subordinate law* and *disallowable instrument* in sections 7 to 9, a reference to an Act, subordinate law or disallowable instrument includes a reference to a provision of the Act, law or instrument. The amendment also inserts a note to this effect.

[2.70] Section 126 (8)

substitute

(8) In applying this section to an Act or statutory instrument that is divided otherwise than into sections, a reference to a section or subsection is a reference to a corresponding provision of the Act or instrument.

Note A reference to an Act or statutory instrument includes a reference to a provision of the Act or instrument (see s 7 and s 13).

Explanatory note

This amendment remakes subsection (8) so that it is expressed to apply to an Act or statutory instrument that is divided otherwise than into sections. Existing subsection (8) is expressed to apply to a statutory instrument or a provision of a schedule to an Act. However, to simplify the naming of provisions of statutory instruments and schedules to Acts current drafting practice is to use ‘section’ instead of ‘regulation’ or ‘clause’ and ‘subsection’ instead of ‘subregulation’ or ‘subclause’. Because of the definition of *Act* and *statutory instrument* in sections 7 and 13, the remade subsection will also apply to provisions of an Act or statutory instrument (eg a schedule that sets out a list of items).

[2.71] Section 127 (6)

substitute

- (6) In applying this section to an Act or statutory instrument that is divided otherwise than into sections, a reference to a section or subsection is a reference to a corresponding provision of the Act or instrument.

Note A reference to an Act or statutory instrument includes a reference to a provision of the Act or instrument (see s 7 and s 13).

Explanatory note

This amendment remakes subsection (6) so that it is expressed to apply to an Act or statutory instrument that is divided otherwise than into sections. Existing subsection (6) is expressed to apply to a statutory instrument or a provision of a schedule to an Act. However, to simplify the naming of provisions of statutory instruments and schedules to Acts current drafting practice is to use ‘section’ instead of ‘regulation’ or ‘clause’ and ‘subsection’ instead of ‘subregulation’ or ‘subclause’. Because of the definition of *Act* and *statutory instrument* in sections 7 and 13, the remade subsection will also apply to provisions of an Act or statutory instrument (eg a schedule that sets out a list of items).

[2.72] Section 134 (7)

omit

Explanatory note

This amendment omits an unnecessary provision as the provisions to which this section would apply are now all called sections or subsections.

[2.73] Section 134 (8)

renumber as section 134 (7)

Explanatory note

This amendment is consequential on the omission of section 134 (7) by another amendment.

[2.74] Section 135 (6)

omit

Explanatory note

This amendment omits an unnecessary provision as the provisions to which this section would apply are now all called sections or subsections.

[2.75] Section 135 (7)

renumber as section 135 (6)

Explanatory note

This amendment is consequential on the omission of section 135 (6) by another amendment.

[2.76] Table 142, item 2

omit

body

substitute

entity

Explanatory note

This amendment updates language. *Entity* is defined in the Legislation Act, dictionary, part 1.

[2.77] Section 146 (4), definitions of *applicable law* and *applicable provision*

substitute

applicable law means an Act enacted, or statutory instrument made, after the application date.

applicable provision means a provision inserted after the application date into an Act or statutory instrument that is not an applicable law.

application date means—

- (a) for an Act, subordinate law or disallowable instrument—
1 January 2000; and
- (b) for any other statutory instrument—1 January 2006.

Explanatory note

This amendment has the effect of extending the operation of section 146 (3), from 1 January 2006, to statutory instruments that are not subordinate laws or disallowable instruments. Section 146 (3) has applied to Acts, subordinate laws and disallowable instruments since 1 January 2000.

As a result of section 146 (3), section 146 (which deals with the meaning of *may* and *must*) is a determinative provision in relation to laws and provisions to which section 146 (3) applies (but not other laws or provisions). Determinative provisions may only be displaced expressly or by a manifest contrary intention (see Legislation Act, section 6).

[2.78] Section 156 (1), new example 3

insert

- 3 In part 6 of an Act (which is headed ‘Part 6 Complaints’), the word *a* is defined in section 50. The section is not divided into subsections but contains a number of definitions. Section 50 begins with the words ‘In this part:’. However, the dictionary to the Act contains the following definition:

a—see section 50.

The definition of *a* applies to the entire Act (compare s (2) eg 2).

Explanatory note

This amendment inserts a new example to clarify the application of definitions in dictionaries. The example is consistent with current drafting practice.

[2.79] Section 156 (2), example 2

substitute

2 In part 6 of an Act (which is headed ‘Part 6 Complaints’), the word *a* is defined in section 50. The section is not divided into subsections but contains a number of definitions. Section 50 begins with the words ‘In this part:’. However, the dictionary to the Act contains the following definition:

a, for part 6 (Complaints)—see section 50.

The definition of *a* applies to all of part 6, but not to provisions of the Act outside part 6 (compare s (1) eg 3).

Explanatory note

This amendment revises an example to clarify the application of definitions that are not in dictionaries. The revised example complements section 156 (1), new example 3 and is consistent with current drafting practice.

[2.80] Section 156 (4)

substitute

(4) In applying this section to an Act or statutory instrument that is divided otherwise than into sections, a reference to a section is a reference to a corresponding provision of the Act or instrument.

Note A reference to an Act or statutory instrument includes a reference to a provision of the Act or instrument (see s 7 and s 13).

Explanatory note

This amendment remakes subsection (4) so that it is expressed to apply to an Act or statutory instrument that is divided otherwise than into sections. Existing subsection (4) is expressed to apply to a statutory instrument or a provision of a schedule to an Act. However, to simplify the naming of provisions of statutory instruments and schedules to Acts current drafting practice is to use ‘section’ instead of ‘regulation’ or ‘clause’ and ‘subsection’ instead of ‘subregulation’ or ‘subclause’. Because of the definition of *Act* and *statutory instrument* in sections 7 and 13, the remade subsection will also apply to provisions of an Act or statutory instrument (eg a schedule that sets out a list of items).

[2.81] Section 175, definition of *law*

substitute

law means an Act, subordinate law or disallowable instrument.

Note A reference to an Act, subordinate law or disallowable instrument includes a reference to a provision of the Act, law or instrument (see s 7, s 8 and s 9).

Explanatory note

This amendment revises the definition to omit unnecessary words. Under the definitions of ***Act***, ***subordinate law*** and ***disallowable instrument*** in sections 7 to 9, a reference to an Act, subordinate law or disallowable instrument includes a reference to a provision of the Act, law or instrument. The amendment also inserts a note to this effect.

[2.82] Section 182, definition of *law*

substitute

law means an Act or statutory instrument.

Note A reference to an Act or statutory instrument includes a reference to a provision of the Act or instrument (see s 7 and s 13).

Explanatory note

This amendment revises the definition to omit unnecessary words. Under the definitions of ***Act*** and ***statutory instrument*** in sections 7 and 13, a reference to an Act or statutory instrument includes a reference to a provision of the Act or instrument. The amendment also inserts a note to this effect.

[2.83] Section 183

substitute

183 Change of name of entity

- (1) If a law changes the name of an entity established under a law, the entity continues in existence under the new name and its identity is not affected by the change.
- (2) If the name of an entity is changed, a reference in a law to the entity by its previous name is taken, after the change, to be a reference to the entity by its new name.

- (3) To remove any doubt, subsection (2) applies to all entities, whether or not in or for the Territory, including entities established under a law of another jurisdiction.

Note **Another jurisdiction** means the Commonwealth, a State, another Territory, the United Kingdom or New Zealand (see dict, pt 2).

Explanatory note

Existing section 183 deals with the effect of a change of the name on the status of an entity established under an ACT law. The section also deals with the operation of references in ACT laws to the entity by its previous name. The amendment remakes the section to deal with the operation of references in ACT laws to an entity that is not established under ACT law. The remade section will, for example, deal with references in ACT laws to an entity established under a Commonwealth law by a previous name.

[2.84] New section 184A

insert

184A References to entity

- (1) In a law, a reference to an entity includes a reference to a person exercising a function of the entity, whether under a delegation, subdelegation or otherwise.
- (2) To remove any doubt, this section applies to all entities, whether or not in or for the Territory, including entities established under a law of another jurisdiction.

Explanatory note

This amendment inserts a new section to make it clear that a reference in an ACT law to an entity established otherwise than under ACT law includes a reference to a person exercising a function of the entity, whether under a delegation, subdelegation or otherwise. The Legislation Act, section 239 (2) already deals with delegates and subdelegates of entities established under ACT law. The amendment complements the amendments of section 185.

[2.85] Section 185

omit

In

substitute

- (1) In

Explanatory note

This amendment is consequential on the insertion of new section 185 (2) by another amendment.

[2.86] New section 185 (2)

insert

- (2) To remove any doubt, this section applies to all positions, whether or not in or for the Territory, including positions established under a law of another jurisdiction.

Explanatory note

This amendment makes it clear that section 185 (which is about the meaning of references to the occupant of a position) applies to all positions and not just positions established under ACT law. Although section 185 is presently expressed in sufficiently general terms to cover all positions, it is arguable that, because of the Legislation Act, section 122 (1) (b), the section only applies to positions in or for the Territory. On this basis, the section may not, for example, presently apply to references in ACT law to positions established under Commonwealth law eg the commissioner of police or chief police officer. The amendment will remove any doubt that the section applies to all references in ACT law to the occupants of positions, whether or not the positions are established under ACT law.

[2.87] Section 186

substitute

186 Change of name of position

- (1) If a law changes the name of a position established under a law, the position continues in existence under the new name and its identity is not affected by the change.

- (2) If the name of a position is changed, a reference in a law to the position by its previous name is taken, after the change, to be a reference to the position by its new name.
- (3) To remove any doubt, subsection (2) applies to all positions, whether or not in or for the Territory, including positions established under a law of another jurisdiction.

Explanatory note

Existing section 186 deals with the effect of a change of the name on the status of a position established under an ACT law. The section also deals with the operation of references in ACT laws to the position by its previous name. The amendment remakes the section to deal with the operation of references in ACT laws to a position that is not established under ACT law. The remade section will, for example, deal with references in ACT laws to a position established under a Commonwealth law by a previous name.

[2.88] Section 187

substitute

187 Chair and deputy chair etc

- (1) If a law establishes a position of chair or chairperson of an entity, the chair or chairperson may be referred to as chairman, chairwoman, chairperson or chair.
- (2) If a law establishes a position of deputy chair or deputy chairperson of an entity, the deputy chair or deputy chairperson may be referred to as deputy chairman, deputy chairwoman, deputy chairperson or deputy chair.

Explanatory note

This amendment updates the provision to allow for laws that establish a position of ‘chair’ or ‘deputy chair’.

[2.89] Section 188

substitute

188 Meaning of *ACT law* in ch 18

In this chapter:

ACT law means an Act or subordinate law.

Note A reference to an Act or subordinate law includes a reference to a provision of the Act or law (see s 7 and s 8).

Explanatory note

This amendment changes the defined term from *territory law* to *ACT law* for consistency with the equivalent defined term proposed for chapter 10 by another amendment. The replacement definition has been simplified by omitting unnecessary words.

[2.90] Section 189

omit

a territory law

substitute

an ACT law

Explanatory note

This amendment is consequential on the use of the defined term *ACT law* rather than the defined term *territory law*.

[2.91] Section 189

omit

the territory law

substitute

the ACT law

Explanatory note

This amendment is consequential on the use of the defined term *ACT law* rather than the defined term *territory law*.

[2.92] Section 190 (1) (b)

omit

a law

substitute

an ACT law

Explanatory note

This amendment ensures that the definition of *ACT law* proposed for section 188 applies to the paragraph.

[2.93] Section 191 (1)

omit

territory laws

substitute

ACT laws

Explanatory note

This amendment is consequential on the use of the defined term *ACT law* rather than the defined term *territory law*.

[2.94] Section 191 (2) (a)

omit

a territory law

substitute

an ACT law

Explanatory note

This amendment is consequential on the use of the defined term *ACT law* rather than the defined term *territory law*.

[2.95] Section 191 (2)

omit

the territory law

substitute

the ACT law

Explanatory note

This amendment is consequential on the use of the defined term *ACT law* rather than the defined term *territory law*.

[2.96] Section 191 (3)

omit

Explanatory note

This amendment omits a subsection that contains a definition made redundant by the definition of *another jurisdiction* inserted into the dictionary, part 2 by another amendment.

[2.97] Section 192

omit

a territory law

substitute

an ACT law

Explanatory note

This amendment is consequential on the use of the defined term *ACT law* rather than the defined term *territory law*.

[2.98] Section 193 (1) (a)

omit

a law

insert

an ACT law

Explanatory note

This amendment ensures that the definition of *ACT law* proposed for section 188 applies to the paragraph.

[2.99] Section 195, definition of law

substitute

law means an Act, subordinate law or disallowable instrument.

Note A reference to an Act, subordinate law or disallowable instrument includes a reference to a provision of the Act, law or instrument (see s 7, s 8 and s 9).

Explanatory note

This amendment revises the definition to omit unnecessary words. Under the definitions of *Act*, *subordinate law* and *disallowable instrument* in sections 7 to 9, a reference to an Act, subordinate law or disallowable instrument includes a reference to a provision of the Act, law or instrument. The amendment also inserts a note to this effect.

[2.100] Section 197, note

omit

42 (2)

substitute

42 (3)

Explanatory note

This amendment is consequential on the renumbering of section 42 (2) and (3) by another amendment.

[2.101] Section 208 (2)

substitute

- (2) The power to suspend the appointee, end the appointment or reappoint the appointee is exercisable in the same way, and subject to the same conditions, as the power to make the appointment.

Example

If the appointment power is exercisable only on the recommendation of a body, the power to suspend, end the appointment or reappoint is exercisable only on the recommendation of the body.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see s 126 and s 132).

Explanatory note

Section 208 provides that the power to appoint a person includes the power to suspend the person, end the person's appointment or reappoint the person. It also provides that the power to suspend or end the appointment is exercisable in the same way and subject to the same conditions as the power to make the appointment. This amendment will extend the section so that the power to reappoint a person will also be exercisable in the same way and subject to the same conditions as the power to make the appointment. The example is consequentially updated.

[2.102] Section 225B heading

substitute

225B Person acting under standing acting arrangement may exercise functions etc

Explanatory note

This amendment revises the section heading to more clearly reflect the scope of the section.

[2.103] Section 230 (1)

omit

(1)

Explanatory note

This amendment is consequential on the omission of section 230 (2) by another amendment.

[2.104] Section 230 (2)

omit

Explanatory note

This amendment omits a subsection that is no longer necessary because of the express way in which delegations (and subdelegations) are created in ACT law. The omission of the subsection will remove any argument that the subsection itself creates a delegation power.

[2.105] Section 237 (1)

omit

in whole or part

substitute

completely or partly

Explanatory note

This amendment updates language.

[2.106] Section 250 heading

substitute

250 When document taken to be served

Explanatory note

This amendment updates language.

[2.107] Section 255 (1)

substitute

- (1) This section applies if an Act, subordinate law or disallowable instrument (the *authorising law*) authorises or requires a form to be approved or prescribed under an Act or statutory instrument (the *relevant law*).

Note See also s 46 (3), which deals with the repeal and replacement of forms that are registrable instruments and prevents their amendment.

Explanatory note

This amendment extends the operation of the section to cases where a subordinate law or disallowable instrument authorises or requires a form to be approved or prescribed.

[2.108] Section 255 (3), example

substitute

Example

The X Act, section 23 provides for a person to apply for registration but makes no mention of a form for the application. However, the Act, section 80 (1) provides:

- (1) The Minister may approve forms for this Act.

Because section 80 (1) permits a form to be approved ‘for this Act’, this Act, section 255 applies in relation to section 23 and the Minister may, in writing, approve a form for the application.

Note 1 The approval must be in writing (see s 42 (2)).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see s 126 and s 132).

Explanatory note

This amendment is consequential on the insertion of a new section 42 (2) by another amendment.

[2.109] Section 256 (1) (b)

omit

a law requires the person

substitute

the person is required under a law

Explanatory note

This amendment widens the language of the provision so that it applies to a requirement made under a law as well as a requirement made by the law (see Legislation Act, dictionary, part 1, definition of *under*).

[2.110] Dictionary, part 1, definition of Act, note

substitute

Note See also s 102 (References to laws include references to laws as in force from time to time) and s 104 (References to laws include references to instruments under laws).

Explanatory note

This amendment is consequential on the amendment of the section heading to section 102 by another amendment.

[2.111] Dictionary, part 1, definition of amend, paragraph (d)

omit

alter; and

substitute

alter.

Explanatory note

This amendment is consequential on the next amendment.

[2.112] Dictionary, part 1, definition of *amend*, paragraph (e)

omit

Explanatory note

This amendment omits a paragraph of the definition of *amend* that only applies within the Legislation Act. The paragraph is remade as a definition in the dictionary, part 2 by another amendment. The dictionary, part 2 defines terms that apply only to the Legislation Act.

[2.113] Dictionary, part 1, definition of *auditor-general*

substitute

auditor-general means the Auditor-General for the Territory under the *Auditor-General Act 1996*.

Explanatory note

This amendment remakes the definition in accordance with current drafting practice.

[2.114] Dictionary, part 1, new definition of *Australian statistician*

insert

Australian statistician means the Australian Statistician under the Australian Bureau of Statistics Act 1975 (Cwlth).

Explanatory note

This amendment inserts a new definition that will apply across the ACT statute book.

[2.115] Dictionary, part 1, new definition of *by*

insert

by regulation includes under a regulation.

Explanatory note

This amendment defines *by* in relation to a regulation to include under a regulation. Current drafting practice is to use the expression ‘prescribed by regulation’ instead of ‘prescribed under the regulations’. The amendment ensures that the expression keeps the wider meaning provided by the definition of *under* in the dictionary, part 1.

[2.116] Dictionary, part 1, definition of *by-laws*

substitute

by-law, in relation to an Act, means a by-law made or in force under the Act.

Explanatory note

This amendment changes the defined term to the singular consistent with the amendment of the definition of the term *regulations* by another amendment.

[2.117] Dictionary, part 1, definition of *chief planning executive*

substitute

chief planning executive means the Chief Planning Executive under the *Planning and Land Act 2002*.

Explanatory note

This amendment remakes the definition in accordance with current drafting practice.

[2.118] Dictionary, part 1, definition of *city area*, note

substitute

Note See s 103 for the meaning of references to repealed laws.

Explanatory note

This amendment is consequential on the remaking of chapter 10 (Referring to laws) by another amendment.

[2.119] Dictionary, part 1, definition of *commissioner for fair trading*

substitute

commissioner for fair trading means the Commissioner for Fair Trading of the Australian Capital Territory under the *Fair Trading (Consumer Affairs) Act 1973*.

Explanatory note

This amendment remakes the definition in accordance with current drafting practice.

[2.120] Dictionary, part 1, new definition of *Commonwealth DPP*

insert

Commonwealth DPP means the Director of Public Prosecutions under the *Director of Public Prosecutions Act 1983* (Cwlth).

Explanatory note

This amendment inserts a new definition that will apply across the ACT statute book.

[2.121] Dictionary, part 1, definition of *construction occupations registrar*

substitute

construction occupations registrar means the Australian Capital Territory Construction Occupations Registrar under the *Construction Occupations (Licensing) Act 2004*.

Explanatory note

This amendment remakes the definition in accordance with current drafting practice.

[2.122] Dictionary, part 1, definition of *credit tribunal*

substitute

credit tribunal means the Australian Capital Territory Credit Tribunal established under the *Consumer Credit (Administration) Act 1996*.

Explanatory note

This amendment remakes the definition in accordance with current drafting practice.

[2.123] Dictionary, part 1, new definition of *Deputy Speaker*

insert

Deputy Speaker means the Deputy Presiding Officer of the Legislative Assembly.

Note The Deputy Presiding Officer is elected under the Self-Government Act, s 21 (2).

Explanatory note

This amendment inserts a new definition that will apply across the ACT statute book.

[2.124] Dictionary, part 1, definition of *insolvent under administration*

omit

Explanatory note

This amendment omits a redundant definition.

[2.125] Dictionary, part 1, definition of *land development agency*

substitute

land development agency means the Land Development Agency established under the *Planning and Land Act 2002*.

Explanatory note

This amendment remakes the definition in accordance with current drafting practice.

[2.126] Dictionary, part 1, definition of *occupy*

substitute

occupy a position includes hold the position, act in the position or exercise functions of the position (including under a delegation or subdelegation).

Explanatory note

This amendment remakes the definition to make it clear that occupying a position includes acting in the position under an acting appointment or standing acting arrangement and exercising functions of the position under a delegation or subdelegation. The amendment makes explicit the position that is currently implicit in a number of provisions of the Legislation Act (see section 220 (b), section 225B (2) and section 239 (2)).

[2.127] Dictionary, part 1, definition of *office of fair trading*

substitute

office of fair trading means the Office of Fair Trading of the Australian Capital Territory established under the *Fair Trading (Consumer Affairs) Act 1973*.

Explanatory note

This amendment remakes the definition in accordance with current drafting practice.

[2.128] Dictionary, part 1, definition of *planning and land authority*

substitute

planning and land authority means the Planning and Land Authority established under the *Planning and Land Act 2002*.

Explanatory note

This amendment remakes the definition in accordance with current drafting practice.

[2.129] Dictionary, part 1, definition of *planning and land council*

substitute

planning and land council means the Planning and Land Council established under the *Planning and Land Act 2002*.

Explanatory note

This amendment remakes the definition in accordance with current drafting practice.

[2.130] Dictionary, part 1, definition of *prescribed*

omit

under regulations

substitute

by regulation

Explanatory note

This amendment is consequential on the change mentioned under the definition of *regulations* and brings the definition into line with current drafting practice.

[2.131] Dictionary, part 1, definition of *public health officer*

substitute

public health officer means a public health officer under the *Public Health Act 1997*.

Explanatory note

This amendment remakes the definition in accordance with current drafting practice.

[2.132] Dictionary, part 1, definition of *regulations*

substitute

regulation, in relation to an Act, means a regulation made or in force under the Act.

Explanatory note

This amendment changes the defined term to the singular to reflect the recent name change of ACT regulations to the singular ‘Regulation’ rather than the plural ‘Regulations’.

[2.133] Dictionary, part 1, definition of *repeal*, paragraph (f)

omit

cancel it; and

substitute

cancel it.

Explanatory note

This amendment is consequential on the next amendment.

[2.134] Dictionary, part 1, definition of *repeal*, paragraph (g)

omit

Explanatory note

This amendment omits a paragraph of the definition of *repeal* that only applies within the Legislation Act. The paragraph is remade as a definition in the dictionary, part 2 by another amendment. The dictionary, part 2 defines terms that apply only to the Legislation Act.

[2.135] Dictionary, part 1, definition of *rules*, paragraph (a)

omit

person or body

substitute

entity

Explanatory note

This amendment updates language. *Entity* is defined in the dictionary, part 1.

[2.136] Dictionary, part 1, definition of *transitional*

substitute

transitional includes application and saving.

Explanatory note

This amendment remakes the definition to expressly include ‘application’. Transitional provisions frequently deal with the application of new laws and provisions as well as the saving of old laws and provisions.

[2.137] Dictionary, part 1, definition of *under*

omit

or a provision of an Act or statutory instrument

Explanatory note

This amendment omits unnecessary words. Under the definitions of *Act* and *statutory instrument* in sections 7 and 13, a reference to an Act or statutory instrument includes a reference to a provision of the Act or instrument.

[2.138] Dictionary, part 1, definition of *under*, new note

insert

Note A reference to an Act or statutory instrument includes a reference to a provision of the Act or instrument (see s 7 and s 13).

Explanatory note

This amendment includes a note consequential on the amendment of the definition of *under* by another amendment.

[2.139] Dictionary, part 2, new definition of *ACT law*

insert

ACT law—

- (a) for chapter 10 (Referring to laws)—see section 97 (1); and
- (b) for chapter 18 (Offences)—see section 188.

Explanatory note

This amendment inserts new signpost definitions in accordance with current drafting practice.

[2.140] Dictionary, part 2, new definition of *amend*

insert

amend, for chapter 9 (Repeal and amendment of laws)—see section 82.

Explanatory note

This amendment inserts a definition of *amend* for chapter 9. The material covered by the definition is currently in a definition in the dictionary, part 1 and is omitted from that definition by another amendment.

[2.141] Dictionary, part 2, new definition of *another jurisdiction*

insert

another jurisdiction means the Commonwealth, a State, another Territory, the United Kingdom or New Zealand.

Explanatory note

This amendment inserts a new definition to enable the provisions of the Act to be simplified.

[2.142] Dictionary, part 2, definition of *law*, new paragraph (ca)

insert

(ca) for chapter 10 (Referring to laws)—see section 97 (1); and

Explanatory note

This amendment is consequential on the insertion of a new definition of *law* for chapter 10 by another amendment.

[2.143] Dictionary, part 2, definition of *law*, paragraph (g)

omit

section 185

substitute

section 182

Explanatory note

This amendment corrects a cross-reference.

[2.144] Dictionary, part 2, definition of *law*

renumber paragraphs when Act next republished under Legislation Act

Explanatory note

This amendment is consequential on the insertion of new paragraph (ca) by another amendment.

[2.145] Dictionary, part 2, new definition of *law of another jurisdiction*

insert

law of another jurisdiction, for chapter 10 (Referring to laws)—see section 97 (1).

Explanatory note

This amendment is consequential on the insertion of a new definition of *law of another jurisdiction* for chapter 10 by another amendment.

[2.146] Dictionary, part 2, definition of *referential term*

relocate to section 116 (2)

Explanatory note

This amendment relocates the definition to section 116 (2) because the term is used only in that section.

[2.147] Dictionary, part 2, new definition of *repeal*

insert

repeal, for chapter 9 (Repeal and amendment of laws)—see section 82.

Explanatory note

This amendment inserts a definition of *repeal* for chapter 9. The material covered by the definition is currently in a definition in the dictionary, part 1 and is omitted from that definition by another amendment.

[2.148] Dictionary, part 2, definition of *retrospectively*

relocate to dictionary, part 1

Explanatory note

This amendment relocates the definition to the dictionary, part 1 as it is appropriate to apply this definition across the ACT statute book.

Part 2.2 Legislation Regulation 2003

[2.149] Section 8 (3) (d)

substitute

- (d) whether the person is making the request as an authorised person for making the request or a delegate.

Explanatory note

This amendment is consequential on amendments of the Legislation Act, section 61.

[2.150] Section 9 (3) (d)

substitute

- (d) whether the person is making the request as an authorised person for making the request or a delegate.

Explanatory note

This amendment is consequential on amendments of the Legislation Act, section 61.

[2.151] Section 10 (3) (d)

substitute

- (d) whether the person is making the request as an authorised person for making the request or a delegate.

Explanatory note

This amendment is consequential on amendments of the Legislation Act, section 61.

[2.152] Section 11

omit

Explanatory note

This amendment omits a section made redundant by the remaking of the Legislation Act, section 61 (12).

[2.153] Dictionary, definition of *appropriate person*

substitute

authorised person, for making a notification request—see the Act, section 61 (12).

Explanatory note

This amendment is consequential on amendments of the Legislation Act, section 61.

Schedule 3 Technical amendments

(see s 5)

Part 3.1 Agents Act 2003

[3.1] Section 72 (6)

substitute

- (6) Subsections (4) and (5) apply whether or not anyone has been convicted of an offence against subsection (1).

Explanatory note

This amendment corrects a cross-reference and is made to confirm an editorial correction made under the Legislation Act, section 114.

[3.2] Section 81, examples for paragraph (c)

substitute

Examples of people who may receive a benefit for par (c)

- 1 finance broker
- 2 financial adviser
- 3 financier
- 4 property valuer
- 5 lawyer
- 6 real estate agent

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Explanatory note

This amendment removes ‘seller’ as an example for section 81 (c). The seller is expressly excluded from the paragraph.

[3.3] Section 115 (1)

omit

the agent's audit period

substitute

an audit period of the agent

Explanatory note

Section 113 (1) provides that the commissioner for fair trading may fix a period as an agent's audit period. Section 113 (2) provides that, if no period is fixed, the audit period is each financial year. This amendment makes it clear that the audit requirements under section 115 apply whether or not an audit period is fixed under section 113 (1).

[3.4] Section 124 (2)

omit everything before

, by written notice

substitute

(2) The commissioner for fair trading may

Explanatory note

This amendment corrects a typographical error and is made to confirm an editorial correction made under the Legislation Act, section 114.

[3.5] Section 126 (2)

omit

trustee)—

substitute

trustee), the commissioner must

Explanatory note

This amendment corrects a typographical error.

[3.6] Section 126 (3)

omit

—decide that the applicant is not entitled to any amount.

substitute

, the commissioner must reject the application.

Explanatory note

This amendment corrects a minor drafting error.

[3.7] Section 151 (4)

omit

Explanatory note

This amendment omits an unnecessary definition of *claim period*. The period for making a claim is set out in section 151 (3).

**[3.8] Section 169 (1), definition of *relevant matter*,
paragraph (b)**

substitute

(b) the making of an objection to the issue of a licence or the granting of registration;

Explanatory note

This amendment brings the reference in the paragraph to registration into line with similar references to registration elsewhere in the Act.

Part 3.2 Agents Regulation 2003

[3.9] New section 8A (4)

insert

- (4) Subsection (3) and this subsection expire on 1 November 2007.

Explanatory note

This amendment expires section 8A (3). The sections to which section 8A (3) apply all expire by 1 November 2007.

[3.10] Section 8.1, definition of *property manager*

substitute

property manager means—

- (a) for part 8.2 (General rules applying to all licensees and registered salespeople)—a person employed by an agent in relation to the management of property to which division 8.3.3 or division 8.4.2 applies; and
- (b) for division 8.3.3 (Property management—real estate agents)—a person employed by an agent in relation to the management of property to which the division applies; and
- (c) for division 8.4.2 (Property management—stock and station agents)—a person employed by an agent in relation to the management of property to which the division applies.

Explanatory note

This amendment corrects the references to ‘this part’ in paragraphs (b) and (c) of the definition to ‘this division’.

[3.11] Division 8.3.3 heading

substitute

Division 8.3.3 Property management—real estate agents

Explanatory note

This amendment revises the heading to more accurately reflect the division's application.

[3.12] Division 8.4.2 heading

substitute

Division 8.4.2 Property management—stock and station agents

Explanatory note

This amendment revises the heading to more accurately reflect the division's application.

Part 3.3 Associations Incorporation Act 1991

[3.13] New section 141

insert

141 Expiry of pt 11 etc

- (1) Section 129 to section 140 are laws to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (2) This part expires on the day this section commences.

Explanatory note

This amendment expires a transitional part. The amendment makes it clear that the effect of the provisions is saved under the Legislation Act, section 88.

Part 3.4 **Bail Act 1992**

[3.14] Section 13 (1) (b)

omit

the *Magistrates Court Act 1930*, section 42 (1)

substitute

the *Magistrates Court Act 1930*, section 42 (2) (Issue of warrant and summons)

Explanatory note

This amendment is consequential on the amendment of the *Magistrates Court Act 1930*, section 42 by another amendment.

Part 3.5 **Births, Deaths and Marriages Registration Act 1997**

[3.15] Section 1

substitute

1 Name of Act

This Act is the *Births, Deaths and Marriages Registration Act 1997*.

Explanatory note

This amendment brings the naming section into line with current drafting practice.

[3.16] Section 4

substitute

2 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition ‘*sexual reassignment surgery*—see section 23.’ means that the term ‘sexual reassignment surgery’ is defined in that section.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

3 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

4 Meaning of *adult* and *child*

In this Act:

adult means a person who—

- (a) is at least 18 years old; or
- (b) is under 18 years old, but is or has been married.

child means a person other than an adult, and includes a stillborn child.

Explanatory note

This amendment adds standard dictionary and notes provisions. The definitions in existing section 4 that are still needed (other than the definitions of *adult* and *child*) are included in the

new dictionary which is inserted by another amendment. The definitions of *adult* and *child* are defined in a separate section because they are important terms for the Act.

[3.17] Section 7 (2)

substitute

- (2) The birth of a child may be registered under this Act if the child—
- (a) is born outside Australia; and
 - (b) is to become a resident of the ACT.

Explanatory note

This amendment brings the structure of the subsection into line with current drafting practice.

[3.18] Section 9 (2)

substitute

- (2) However, the registrar-general may accept a birth registration statement—
- (a) that is signed by only 1 of the parents, if satisfied that it is not practicable to obtain the signature of the other parent; or
 - (b) that does not set out particulars required under subsection (1), if satisfied that it is not practicable to obtain the missing particulars.
- (2A) If the registrar-general accepts a birth registration statement for a child under subsection (2), a person's obligation to have the child's birth registered under this Act is taken to be discharged.

Explanatory note

This amendment brings the language and structure of the subsection into line with current drafting practice.

[3.19] Section 9

renumber subsections when Act next republished under Legislation Act

Explanatory note

This amendment is consequential on the insertion of new section 9 (2A) by another amendment.

[3.20] Section 11 (1)

omit
subsection (2) and

Explanatory note

This amendment updates the subsection consequentially on the remaking of section 11 (2) by the next amendment.

[3.21] Section 11 (2)

substitute

- (2) However, if not all the prescribed particulars are available to the registrar-general, the registrar-general may register a birth by including in the entry the prescribed particulars that are available to the registrar-general.

Explanatory note

This amendment brings the language of the subsection into line with current drafting practice.

[3.22] Section 16 (2)

substitute

- (2) An application to the registrar-general for the addition of registrable information in the register must—
- (a) be made in writing; and
 - (b) include the information required by the registrar-general; and
 - (c) if the registrar-general requires verification of the information in the application—be accompanied by a statutory declaration

verifying the information and any other evidence that the registrar-general requires.

Note The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.

Explanatory note

This amendment brings the structure of the subsection into line with current drafting practice.

[3.23] Section 18

substitute

18 Application to register change of adult's name

A person who is an adult may apply to the registrar-general for registration of a change of the person's name if—

- (a) the person is domiciled or resident in the ACT; or
- (b) the person's birth is registered in the ACT.

Note 1 If a form is approved under s 69 for an application, the form must be used.

Note 2 A fee may be determined under s 67 for this section.

Explanatory note

This amendment brings the structure of the subsection into line with current drafting practice.

[3.24] Section 19 (1)

substitute

(1) The parents of a child may apply to the registrar-general for registration of a change of the child's name if—

- (a) the child is domiciled or resident in the ACT; or
- (b) the child's birth is registered in the ACT.

Note 1 If a form is approved under s 69 for an application, the form must be used.

Note 2 A fee may be determined under s 67 for this section.

Explanatory note

This amendment brings the structure of the subsection into line with current drafting practice.

[3.25] Section 20 (1)

substitute

- (1) The registrar-general must register a change of name.

Explanatory note

This amendment (and the amendments of section 20 (2) and (3)) brings the language and structure of the section into line with current drafting practice.

[3.26] Section 20 (2)

omit everything before paragraph (a), substitute

- (2) However, the registrar-general must not registrar a change of name unless satisfied—

Explanatory note

This amendment (and the amendments of section 20 (1) and (3)) brings the language and structure of the section into line with current drafting practice.

[3.27] Section 20 (3)

omit

The

substitute

Also, the

Explanatory note

This amendment (and the amendments of section 20 (1) and (2)) brings the language and structure of the section into line with current drafting practice.

[3.28] Section 23, definition of *birth certificate*

omit

Explanatory note

This amendment omits a definition that is included in the new dictionary inserted by another amendment. The definition is needed outside part 4 (see eg section 21 (2))

[3.29] Section 24

substitute

24 Application to alter register to record change of sex

- (1) A person may apply to the registrar-general for alteration of the record of the person's sex in the registration of the person's birth if—
- (a) the person is at least 18 years old; and
 - (b) the person's birth is registered in the ACT; and
 - (c) the person has undergone sexual reassignment surgery; and
 - (d) the person is not married.

Note 1 If a form is approved under s 69 for this provision, the form must be used.

Note 2 A fee may be determined under s 67 for this provision.

- (2) The parents or guardian of a child may apply to the registrar-general for alteration of the record of the child's sex in the registration of the child's birth if—
- (a) the child's birth is registered in the ACT; and
 - (b) the child has undergone sexual reassignment surgery.
- (3) However, an application under subsection (2) may be made by 1 parent if—
- (a) the applicant is the only parent named in the register; or
 - (b) there is no other surviving parent of the child.

- (4) An application under this section must set out, or be accompanied by, the particulars prescribed by regulation.

Explanatory note

This amendment brings the language and structure of the section into line with current drafting practice.

[3.30] Section 27 (1)

omit

Subject to subsection (2), a

substitute

A

Explanatory note

This amendment brings the language of the section into line with current drafting practice.

[3.31] Section 29 heading

substitute

29 Effect of certificates issued in relation to transsexual people

Explanatory note

This amendment brings the heading into line with current drafting practice.

[3.32] Section 34

substitute

34 Circumstances in which deaths are not to be registered

- (1) The registrar-general must not register a death unless the registrar-general has been given—
- (a) a notice under section 35; or
 - (b) a notice under the *Coroners Act 1997*, section 56; or

- (c) a document issued, made or given under the law of a State, the Commonwealth, another Territory or any other place that the registrar-general is satisfied is equivalent to a document mentioned in paragraph (a) or (b).
- (2) However, the registrar-general must register a death if satisfied—
- (a) that a court of the Territory, a State, the Commonwealth or another Territory has found that a person whose death is not registered in the register died in the ACT; or
 - (b) that, having regard to the circumstances of the case, it is proper that the death be registered.

Explanatory note

This amendment brings the language of the section into line with current drafting practice.

[3.33] Section 35 (3)

omit

Explanatory note

This amendment omits a transitional provision that is no longer needed. Unlike for section 36 (see the next amendment), the operation of this provision does not need to be expressly saved under the Legislation Act, section 88.

[3.34] New section 36 (3) and (4)

insert

- (3) Subsection (2) is a law to which the Legislation Act, section 88 (repeal does not end effect of transitional laws etc) applies.
- (4) Subsections (2) and (3) and this subsection expire on the day this subsection commences.

Explanatory note

This amendment expires a transitional provision. The amendment makes it clear that the effect of the provision is saved under the Legislation Act, section 88.

[3.35] Section 37 (4)

insert

disposal, in relation to human remains, means—

- (a) cremation; or
- (b) burial, including burial at sea; or
- (c) placing the remains in a mausoleum or other permanent resting place; or
- (d) placing the remains in the custody of an educational or scientific institution for the purpose of medical education or research; or
- (e) removal from the ACT, unless the remains have been cremated.

funeral director means a person who carries on the business of arranging for the disposal of human remains.

Explanatory note

This amendment adds the definitions ***disposal*** and ***funeral director*** to the subsection. These definitions have been moved from the interpretation section of the Act (existing section 4) to this subsection because the definitions are only needed for section 37. The interpretation section is being omitted by another amendment.

[3.36] Section 38

substitute

38 How deaths are registered

- (1) The registrar-general must register a death by making in the register an entry about the death that includes the particulars prescribed by regulation.
- (2) However, if not all the prescribed particulars are available for the registrar-general, the registrar-general may register the death by

including in the entry the prescribed particulars that are available to the registrar-general.

Explanatory note

This amendment brings the language of the section into line with current drafting practice.

[3.37] New section 39 (6) and (7)

insert

- (6) Subsection (5) is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (7) Subsections (5) and (6) and this subsection expire on the day this subsection commences.

Explanatory note

This amendment expires a transitional provision. The amendment makes it clear that the effect of the provision is saved under the Legislation Act, section 88.

[3.38] Sections 42 and 43

substitute

42 Access to register

- (1) A person may apply to the registrar-general for—
 - (a) access to the register; or
 - (b) the provision from the register of the information stated in the application.

Note A fee may be determined under s 67 for this section.

- (2) The registrar-general may give the applicant access to the register, or give the applicant any of the stated information that is available, if satisfied that—
 - (a) the applicant has an adequate reason for wanting the access or the information; and

- (b) the giving of the access or information is in accordance with the statement of policies under section 46.
- (3) The access or information—
 - (a) must be given subject to the conditions stated in the statement of policies under section 46; and
 - (b) may be given subject to any other conditions that are reasonable and necessary to protect the privacy of anyone to whom an entry in the register relates.
- (4) In deciding, for subsection (2) (a), whether an applicant has an adequate reason, the registrar-general must have regard to—
 - (a) the nature of the applicant's interest; and
 - (b) the sensitivity of the information to be accessed or provided; and
 - (c) the use to be made of the information.
- (5) The registrar-general may also have regard to any other relevant consideration.
- (6) In this section:
information does not include information that may be applied for under section 43.

43 Search of register

- (1) A person may apply to the registrar-general for a search of the register for an entry about a particular registrable event.
Note A fee may be determined under s 67 for this section.
- (2) The registrar-general may search the register for the entry if satisfied that—
 - (a) the applicant has an adequate reason for wanting the information; and

- (b) the giving of the information is in accordance with the statement of policies under section 46.
- (3) In deciding whether an applicant has an adequate reason, the registrar-general must have regard to—
 - (a) the matters mentioned in section 42 (4); and
 - (b) the relationship (if any) between the applicant and the person to whom the information relates; and
 - (c) the age of the entry; and
 - (d) the contents of the entry.
- (4) The registrar-general may also have regard to any other relevant consideration.

Explanatory note

This amendment brings the language and structure of the sections into line with current drafting practice.

[3.39] Section 45 (2)

substitute

- (2) For subsection (1) (a), if an entry in the register includes the word ‘illegitimate’, or any other term indicating that a child was born outside marriage, the entry is taken not to include the word or term.

Explanatory note

This amendment brings the structure of the subsection into line with current drafting practice.

[3.40] Section 48 (1), new note

insert

Note A provision of a law that gives an entity (including a person) a function also gives the entity the powers necessary and convenient to exercise the function (see Legislation Act, s 196 (1) and dict, pt 1, def *entity*).

Explanatory note

This amendment inserts a standard note about the power to exercise functions.

[3.41] Section 51 heading

substitute

51 Confiscation of forged etc instruments

Explanatory note

This amendment revises the heading consequential on other amendments of the section.

[3.42] Section 51 (1) (a) and (b)

substitute

- (a) an instrument that purports to have been made for this Act or the repealed Act if the registrar-general believes, on reasonable grounds, that the instrument has a forged impression of the registrar-general's signature or seal or is forged or falsified; or

Explanatory note

This amendment brings the language of the paragraphs into line with current drafting practice. *Instrument* is defined in the Legislation Act, section 14.

[3.43] Section 51 (1)

renumber paragraphs when Act next republished under Legislation Act

Explanatory note

This amendment is consequential on the omission of paragraph (b) by another amendment.

[3.44] Section 51 (2)

omit

document

substitute

instrument

Explanatory note

This amendment is consequential on the amendment of section 51 (1) (a) and (b).

[3.45] Section 52 heading

substitute

52 Confiscation of erroneous or false instruments

Explanatory note

This amendment is consequential on amendments of section 51.

[3.46] Section 52 (1) and (2)

omit

or other document

substitute

or other instrument

Explanatory note

This amendment is consequential on amendments of section 51.

[3.47] Section 52 (2) (a)

omit

document

substitute

instrument

Explanatory note

This amendment is consequential on amendments of section 51.

[3.48] Section 52 (2) (b)

omit

of document

substitute

or instrument

Explanatory note

This amendment is consequential on amendments of section 51 and corrects a typographical error.

[3.49] New division 9.6

insert

Division 9.6 Expiry of part

64A Expiry etc

- (1) Divisions 9.1 to 9.5 are laws to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (2) This part expires on the day this division commences.

Explanatory note

This amendment expires a transitional part. The amendment makes it clear that the effect of the provisions is saved under the Legislation Act, section 88.

[3.50] Section 65

substitute

65 Certificate evidence

- (1) A certificate or other instrument that purports to state information obtained by the registrar-general under this Act or the repealed Act is evidence of the matters stated in it if it purports—
 - (a) to be signed and sealed by the registrar-general; or

- (b) to have attached to it, or be otherwise authenticated by, a facsimile of the registrar-general's signature and seal produced by a stamp, machine imprint or any other method authorised by regulation.
- (2) This section is subject to section 29 (Effect of certificates issued in relation to transsexual people).

Explanatory note

This amendment brings the language and structure of the section into line with current drafting practice.

[3.51] Section 66 (1) and (2)

omit

powers and

Explanatory note

This amendment omits unnecessary words. The Legislation Act, dictionary, pt 1 defines *function* to include power.

[3.52] Section 66, new note

insert

Note A provision of a law that gives an entity (including a person) a function also gives the entity the powers necessary and convenient to exercise the function (see Legislation Act, s 196 (1) and dict, pt 1, def *entity*).

Explanatory note

This amendment inserts a standard note about the power to exercise functions.

[3.53] Section 69 (2), new note

insert

Note For other provisions about forms, see the Legislation Act, s 255.

Explanatory note

This amendment inserts a standard note about approved forms.

[3.54] New dictionary

insert

Dictionary

(see s 2)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACT
- change
- Commonwealth
- doctor
- exercise
- fail
- function
- instrument (see s 14)
- penalty unit (see s 133)
- registrar-general
- under.

adult—see section 4.

birth includes a stillbirth.

birth certificate means a certificate issued under section 27 (2) or section 45 certifying particulars contained in an entry in the register of a person's birth.

birth registration statement, for division 2.2 (Registration of births)—see section 6.

child—see section 4.

corresponding law means a law of a State or another Territory that provides for the registration of births, deaths and marriages.

death does not include a stillbirth.

doctor, for part 4 (Change of sex)—see section 23.

parents, of a child, means the parents jointly.

prohibited name means a name that—

- (a) is obscene or offensive; or
- (b) could not practically be established by repute or usage—
 - (i) because it is too long; or
 - (ii) because it consists of or includes symbols without phonetic significance in the English language; or
 - (iii) for any other reason; or
- (c) includes or resembles an official title or rank; or
- (d) is misleading because of similarity with the name of a body or organisation; or
- (e) is, in the registrar-general's opinion, undesirable; or
- (f) is prohibited by regulation.

register means a register maintained under section 39.

registering authority means an authority responsible under a corresponding law for the registration of births, deaths and marriages.

registrable event means a birth, death, marriage, change of name or change of sex.

registrable information means information that is to be or may be included in the register.

repealed Act means the *Registration of Births, Deaths and Marriages Act 1963*.

sexual reassignment surgery, for part 4 (Change of sex)—see section 23.

stillbirth means the birth of a stillborn child.

stillborn child means—

- (a) a child of at least 20 weeks gestation; or
- (b) if it cannot be established reliably whether the period of gestation is more or less than 20 weeks—a child with a body mass of at least 400g at birth, who shows no sign of respiration or heart beat, or other sign of life, immediately after birth.

transsexual person, for part 4 (Change of sex)—see section 23.

Explanatory note

This amendment inserts a dictionary consequential on the omission of the interpretation section (existing section 4) by another amendment. The language and structure of the definitions is updated to bring them into line with current drafting practice. In particular:

- the definition of *change* and *registrar-general* have been omitted because the terms are defined in the Legislation Act, dictionary, part 1
- the definition of *authorised celebrant* has been omitted because the term is not used in the Act
- the definition of *commencement of this Act* has been omitted because the definition is no longer needed (see Legislation Act, section 80)
- the definitions of *disposal* and *funeral director* have been relocated to section 37 as the definitions are (with the exception of a transitional provision that is being omitted) only used in that section
- the definition of *birth certificate* in existing section 23 has been relocated to the dictionary because the definition is used outside the part for which it is presently defined
- the definition of *parents* (see existing section 4 (2)) has been updated in accordance with current drafting practice and added to the dictionary.

In accordance with current drafting practice, signpost definitions have been included in the dictionary for defined terms that are used outside the section where they are defined (see eg the definition of *transsexual person*).

Part 3.6 Board of Senior Secondary Studies Act 1997

[3.55] Section 1

substitute

1 Name of Act

This Act is the *Board of Senior Secondary Studies Act 1997*.

Explanatory note

This amendment brings the naming section into line with current drafting practice.

[3.56] Section 2

substitute

2 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition '*senior secondary education*—see section 3A' means that the term 'senior secondary education' is defined in that section.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

3 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

Explanatory note

This amendment adds standard dictionary and notes provisions. The definitions in existing section 2 that are still needed are included in the dictionary which is inserted by another amendment.

[3.57] Section 3

substitute

Part 2 Key concepts

3A What is *senior secondary education*?

Education is *senior secondary education* if it is normally provided to students in the final 2 years of full-time secondary schooling.

3B What is a *recognised educational institution*?

An educational institution is a *recognised educational institution* if it—

- (a) is established or registered under a law of the Commonwealth, a State or another Territory; and
- (b) provides, or offers to provide, courses suitable for senior secondary education.

3C What is a *national agreement*?

- (1) This section applies to an agreement if it—
 - (a) is entered into by the Territory, the Commonwealth, a State or the Northern Territory; and
 - (b) deals with the provision of vocational education.
- (2) The Minister may, in writing, declare the agreement is a *national agreement*.

- (3) A declaration under subsection (2) is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

Explanatory note

This amendment creates a new part 2 dealing with important concepts for the Act which are presently defined in existing section 2. New section 3C (2) also incorporates existing section 3.

[3.58] Part 2

renumber as part 3 when Act next republished under Legislation Act

Explanatory note

This amendment is consequential on the insertion of new part 2 by another amendment.

[3.59] Section 4

substitute

4 Establishment of board

- (1) The Board of Senior Secondary Studies is established.

Note The Legislation Act, dict, pt 1, defines *establish* as including continue in existence.

- (2) The board—
- (a) is a corporation; and
 - (b) may sue and be sued in its corporate name; and
 - (c) may have a seal.
- (3) The board represents the Territory when exercising its functions, unless this Act or another territory law otherwise provides.

Explanatory note

This amendment adds subsection (3) and brings the language of the section into line with current drafting practice.

[3.60] Section 5

substitute

5 Functions of board

The main functions of the board are as follows:

- (a) to accredit or register courses taught by recognised educational institutions;
- (b) to approve, consistent with national agreements, recognised educational institutions for teaching vocational education courses;
- (c) to establish guidelines for the development of courses by the board or by a recognised educational institution;
- (d) to establish principles and procedures for the assessment of attainments of students and the moderation of the assessments;
- (e) to provide to people who have undertaken courses, or units of courses, certificates and transcripts of their attainments;
- (f) to provide information on—
 - (i) the performance of students and former students; and
 - (ii) the policies and procedures of the board;
- (g) to review its own operations and the operation of this Act;
- (h) to advise the Minister on any matter mentioned in this section (including something mentioned in section 5A to section 5D).

Note A provision of a law that gives an entity a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

5A Additional functions about accreditation of courses

For section 5 (a), the board has the following additional functions:

- (a) to establish guidelines (*accreditation guidelines*) for the accreditation of courses, including vocational education courses;
- (b) to ensure national agreements about the accreditation of vocational education and training courses are applied, if appropriate;
- (c) to identify the minimum resources necessary for the satisfactory provision of the courses that the board decides.

5B Additional functions about assessment of students

For section 5 (d), the board has the following additional functions:

- (a) to prepare guidelines and requirements for the assessment of students' attainments;
- (b) to make arrangements for the administration by recognised educational institutions of the test known as the Australian Scaling Test, or any other test instead of the Australian Scaling Test that is approved by the board;
- (c) to develop and implement procedures for the moderation of students' assessments;
- (d) to develop procedures for—
 - (i) recognised educational institutions to review the assessments of their students; and
 - (ii) the board to review the procedures used by recognised educational institutions to assess their students or review their student assessments; and
 - (iii) recognised educational institutions, or the board, to review disciplinary action taken by recognised

educational institutions in relation to their student assessments.

5C Additional functions about certificates of attainment

For section 5 (e), the board has the following additional functions:

- (a) to prepare guidelines for the issue of certificates of attainment;
- (b) to make the arrangements that the board considers appropriate to ensure to the greatest extent possible that certificates issued by the board are recognised by employers and providers of further training or higher education;
- (c) to consult with institutions that provide tertiary education or vocational education or training for the purpose of reviewing from time to time the effect of their requirements and procedures for the admission of students and to provide appropriate guidance to the institutions;
- (d) to issue, consistent with national agreements, certificates or other evidence of the achievements of vocational education or training qualifications.

5D Additional functions about performance and policies

For section 5 (f), the board has the following additional functions:

- (a) to collect and record information about the performances of students;
- (b) to provide, to institutions that provide tertiary education or vocational education or training, information on applicants for admission to the institutions;
- (c) to publicise the guidelines, requirements, procedures and standards for assessments, certification and accreditation used by the board;

- (d) to make available, as decided by the board, statistical information about—
 - (i) senior secondary education in the ACT; and
 - (ii) the functions of the board;
- (e) if appropriate, to recognise secondary educational attainments obtained outside the ACT and provide statements of equivalence if asked.

Explanatory note

This amendment brings the language and structure of section 5 into line with current drafting practice. It revises existing section 5 (2)-(5) as new sections 5A-5D.

[3.61] Section 6

substitute

6 Other functions of board

The board may—

- (a) appoint the committees and advisory panels that it considers appropriate; and
- (b) issue certificates of attainment to people who have undertaken courses or units of courses.

Note A provision of a law that gives an entity a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

Explanatory note

This amendment omits existing section 6 (1) which is no longer necessary because of the Legislation Act, section 196 and replaces it with a standard note about the power to exercise functions.

[3.62] Section 7 (1)

omit

directions to the board in relation to

substitute

a direction to the board about

Explanatory note

This amendment updates language.

[3.63] Sections 7 (3) and 8 (1)

omit

shall

substitute

must

Explanatory note

This amendment updates language.

[3.64] Section 8 (1) (a)

omit

chairperson

substitute

chair

Explanatory note

This amendment updates language.

[3.65] Section 8 (2) and (3)

substitute

- (2) The Minister must appoint the board members (other than the chief executive).

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

Note 3 Certain Ministerial appointments require consultation with a Legislative Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

- (3) The Minister may appoint a person to be a board member only if satisfied that the person has qualifications and expertise relevant to the functions of the board.

Explanatory note

This amendment brings the language of the subsections into line with current drafting practice and adds standard appointment notes.

[3.66] Section 9

omit

Explanatory note

This amendment omits a redundant section. Vacancies are dealt with under the Legislation Act, section 199 (5) (Functions of bodies).

[3.67] Section 10

substitute

10 Term of appointment of board members

An appointment of a board member must be for a term of not longer than 3 years.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

Explanatory note

This amendment brings the language of the section into line with current drafting practice and replaces unnecessary words with a standard note about reappointment.

[3.68] Sections 11 to 17

substitute

11 Disclosure of interests by board members

- (1) A board member who has a material interest in an issue being considered, or about to be considered, by the board must, as soon as practicable after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a board meeting.
- (2) The disclosure must be recorded in the board's minutes and, unless the board otherwise decides, the board member must not—
 - (a) be present when the board considers the issue; or
 - (b) take part in a decision of the board on the issue.

Example

Albert, Boris and Chloe are members of the board. They have an interest in an issue being considered at a board meeting and they disclose the interest as soon as they become aware of it. Albert's and Boris' interests are minor but Chloe has a direct financial interest in the issue.

The board considers the disclosures and decides that because of the nature of the interests:

- Albert may be present when the board considers the issue but not take part in the decision
- Boris may be present for the consideration and take part in the decision.

The board does not make a decision allowing Chloe to be present or take part in the board's decision. Accordingly, Chloe cannot be present for the consideration of the issue or take part in the decision.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) Any other board member who also has a material interest in the issue must not be present when the board is considering its decision under subsection (2).
- (4) In this section:

associate, of a person, means—

- (a) the person's business partner; or
- (b) a close friend of the person; or
- (c) a family member of the person.

executive officer, of a corporation, means a person, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

indirect interest—without limiting the kinds of indirect interests a person may have, a person has an *indirect interest* in an issue if any of the following has an interest in the issue:

- (a) an associate of the person;
- (b) a corporation with not more than 100 members that the person, or an associate of the person, is a member of;
- (c) a subsidiary of a corporation mentioned in paragraph (b);

- (d) a corporation that the person, or an associate of the person, is an executive officer of;
- (e) the trustee of a trust that the person, or an associate of the person, is a beneficiary of;
- (f) a member of a firm or partnership that the person, or an associate of the person, is a member of;
- (g) someone else carrying on a business if the person, or an associate of the person, has a direct or indirect right to participate in the profits of the business.

material interest—a board member has a **material interest** in an issue if the member has—

- (a) a direct or indirect financial interest in the issue; or
- (b) a direct or indirect interest of any other kind if the interest could conflict with the proper exercise of the member's functions in relation to the board's consideration of the issue.

12 Ending board member appointments

- (1) This section applies to a board member other than the chief executive.
- (2) The Minister must end the board member's appointment—
 - (a) if the member is convicted, in the ACT, of an offence punishable by imprisonment for at least 1 year; or
 - (b) if the member is convicted outside the ACT, in Australia or elsewhere, of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year; or
 - (c) if the member contravenes section 11 (Disclosure of interests by board members); or

- (d) if the member is absent, other than on leave approved by the chair, from 3 consecutive meetings of the board.

Note A person's appointment also ends if the person resigns (see Legislation Act, s 210).

13 Time and place of board meetings

Meetings of the board are to be held at the times and places the chair decides.

14 Presiding member at board meetings

- (1) The chair presides at all board meetings at which the chair is present.
- (2) However, if the chair is absent, the board member chosen by the board members present presides.

15 Quorum at board meetings

Business may be carried on at a board meeting only if at least 8 board members (other than the chief executive) are present.

16 Voting at meetings

- (1) At a board meeting, each board member has a vote on each question to be decided.
- (2) A question is to be decided by a majority of the votes of the board members present and voting but, if the votes are equal, the member presiding has a deciding vote.

17 Conduct of meetings etc

- (1) The board may conduct its proceedings (including its meetings) as it considers appropriate.
- (2) A meeting may be held using a method of communication, or a combination of methods of communication, that allows a board

member taking part to hear what each other member taking part says without the members being in each other's presence.

- (3) A board member who takes part in a meeting conducted under subsection (2) is taken, for all purposes, to be present at the meeting.
- (4) The board must keep minutes of its meetings.

18 Delegation by board

The board may delegate the board's functions under this Act or another territory law to a board member or a board staff member mentioned in section 19.

Note For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

Explanatory note

This amendment brings the provisions about the board's operations into line with current drafting practice. In particular:

- existing sections 11 and 12 are omitted because of the Legislation Act, sections 209 and 216 and replaced with standard appointment notes (including in relation to acting appointments) which are inserted after new section 8 (2) by another amendment
- existing section 12A is omitted because delegation of powers by a chief executive is dealt with by the *Public Sector Management Act 1994*, section 36
- existing section 14 is omitted because of the Legislation Act, section 210 and replaced with a standard note about resignation which is inserted after new section 12 (2).

[3.69] Section 19 (1)

omit

public servants

insert

a public servant (a ***board staff member***)

Explanatory note

This amendment brings the language of the subsection into line with current drafting practice.

[3.70] Section 19 (2)

omit

public servants who are the subject of an arrangement under this section

insert

a board staff member

Explanatory note

This amendment brings language into line with current drafting practice.

[3.71] Section 20

substitute

20 Protection of board members from liability

- (1) A board member does not incur civil liability for an act or omission done honestly and without recklessness for this Act.
- (2) Any civil liability that would, apart from this section, attach to a person, attaches instead to the Territory

Explanatory note

This amendment brings the language of the section into line with current drafting practice.

[3.72] Part 3 heading

substitute

Part 4 Accredited and registered courses

Explanatory note

This amendment revises the heading to more accurately reflect the part's application.

[3.73] Division 3.1 heading

substitute

Division 4.1 Accreditation of courses

Explanatory note

This amendment is consequential on the insertion of another division in this part.

[3.74] Sections 21 to 23

substitute

21 Board may initiate accreditation of course

- (1) The board may, on its own initiative, accredit a course.
- (2) In deciding whether to initiate accreditation of a course, the board must consider the accreditation guidelines.
- (3) An accreditation under subsection (1) may be conditional.

22 Application for accreditation of course

- (1) A recognised educational institution may apply to the board for the accreditation of a course to be taught at the institution.
- (2) The board must either—
 - (a) accredit the course; or
 - (b) refuse to accredit the course.
- (3) An accreditation is in force for the period that the board decides.
- (4) An accreditation may be conditional.
- (5) The board must tell the applicant, in writing, of its decision.

23 Review of conditional accreditation or refusal

- (1) This section applies if the board, under section 22—
 - (a) accredits a course conditionally; or

- (b) refuses to accredit a course.
- (2) The applicant for accreditation may, within 1 month after the day the board tells the applicant about the board's decision under section 22, ask the board, in writing, to review the decision.
- (3) Within 1 month after the day the board receives the request, the chair of the board must set up a committee to advise the board about the request.
- (4) As soon as practicable after the board receives advice from the committee, the board must review its decision and either—
 - (a) confirm the original decision; or
 - (b) replace the original decision with a decision that the board may make under section 22.
- (5) The board must tell the applicant, in writing, of the board's decision.

Explanatory note

This amendment brings the language and structure of the sections into line with current drafting practice.

[3.75] Section 24

omit

section 21, 22 or 23, the board shall have regard to

substitute

this division, the board must consider

Explanatory note

This amendment updates language and cross-references.

[3.76] Section 25

substitute

Division 4.2 Registration of courses

25 Application for registration of course

- (1) A recognised educational institution may apply to the board for the registration of a course to be taught at the institution.
- (2) The board must—
 - (a) if the application is accompanied by documents and information that satisfies the board that the course complies with the relevant guidelines of the board—register the course; or
 - (b) in any other case—refuse to register the course.
- (3) A registration is in force for the period that the board decides.
- (4) A registration may be conditional.
- (5) The board must tell the applicant, in writing, of its decision.

Explanatory note

This amendment brings the language and structure of the section into line with current drafting practice.

[3.77] Division 3.2 heading

substitute

Division 4.3 Certificates of attainment

Explanatory note

This amendment is consequential on the insertion of another division in this part.

[3.78] Sections 26 and 27

substitute

26 Issue of certificates of attainment

- (1) If a person has satisfactorily completed an accredited course or registered course, or a unit of an accredited course or registered course, at a recognised educational institution, the board must give the person a certificate showing the person's attainment (a *certificate of attainment*).
- (2) However, the board may give a certificate of attainment only if the board is satisfied that—
 - (a) the course has been taught in accordance with—
 - (i) the relevant accreditation guidelines; and
 - (ii) if the accreditation is conditional—the conditions of the accreditation; and
 - (iii) any guidelines and requirements of the board about the teaching of the course; and
 - (b) the person has been assessed in accordance with any guidelines and requirements of the board about the assessment of students' attainments (see section 5B (a)).
- (3) In making a decision under subsection (2), the board may rely on information in a certificate from a recognised educational institution.
- (4) A certificate of attainment may state any information that is available from the records of the board and appears to the board to be connected with the person's studies.

26A Application for review if board refuses to issue certificate

- (1) This section applies to a certificate of any kind ordinarily issued by the board to a person who has completed the studies to which the certificate relates, including a certificate of attainment.
- (2) A person dissatisfied by a refusal of the board to issue a certificate may apply, in writing, to the board for a review of the refusal.
- (3) The application must—
 - (a) state the grounds on which the review is sought; and
 - (b) be given to the board within 1 month after the day the board states is the day when the certificate would have been issued.

27 Review of refusal to issue certificate

- (1) Within 1 month after the day the board receives an application under section 26A, the chair of the board must set up a committee to advise the board about the application.
- (2) As soon as practicable after the board receives advice from the committee, the board must review its decision and either—
 - (a) confirm the refusal; or
 - (b) issue the certificate.
- (3) The board must tell the applicant, in writing, of its decision.

Explanatory note

This amendment brings the language and structure of the sections into line with current drafting practice.

[3.79] Division 3.3 heading

substitute

Division 4.4 Specialist education providers

Explanatory note

This amendment is consequential on the insertion of another division in this part.

[3.80] Part 4

renumber as part 5 when Act next republished under Legislation Act

Explanatory note

This amendment is consequential on the insertion of new part 2 by another amendment.

[3.81] Section 28

substitute

28 Information about academic performance

- (1) A person who has completed the person's senior secondary education may apply in writing to the board for a copy of the information held by the board about the person's academic performance.
- (2) The board must give a copy of the information to the applicant or to someone else nominated in writing by the applicant.

Explanatory note

This amendment makes the section heading more descriptive, omits redundant words and brings the language of the section into line with current drafting practice.

[3.82] Section 29

substitute

29 Register of courses

- (1) The board must keep a register of courses (the *register*).
- (2) The board must enter in the register details of the following:
 - (a) courses that the board has accredited;
 - (b) courses that the board has registered;
 - (c) anything else decided by the board.
- (3) The register must be kept in the form the board decides.
- (4) The register must be available for inspection by the public during ordinary office hours at a place decided by the chair of the board.

Explanatory note

This amendment brings the language of the section into line with current drafting practice and omits subsection (5) which is a redundant transitional provision.

[3.83] Section 30 (2), new note

insert

Note For other provisions about forms, see the Legislation Act, s 255.

Explanatory note

This amendment adds a standard note about approved forms.

[3.84] Section 31

omit

Explanatory note

This amendment omits a redundant transitional provision.

[3.85] New dictionary

insert

Dictionary

(see s 2)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- appoint
- establish
- exercise
- function
- month.

accreditation guidelines—see section 5A (a) (Additional functions about accreditation of courses).

accredited course means a course accredited under section 21 (Board may initiate accreditation of course) or section 22 (Application for accreditation of course).

board means the Board of Senior Secondary Studies.

board member means a member of the board, and includes the chair.

certificate of attainment—see section 26 (1).

course means a course of study for senior secondary students.

national agreement—see section 3C.

recognised educational institution—see section 3B.

registered course means a course registered under section 25.

senior secondary education—see section 3A.

Explanatory note

This amendment inserts a dictionary consequential on the omission of the definitions section (existing section 3) by another amendment. The language and structure of the definitions is updated to bring them into line with current drafting practice. In particular:

- new definitions of *accreditation guidelines* and *certificate of attainment* are added to assist in improving the Act's language
- the definitions of *alternate* and *appointed member* are omitted because they are made redundant by other amendments
- the definition of *member* is replaced by the new definition of *board member* and references to members consequentially amended by other amendments.

Part 3.7 Building Act 2004

[3.86] Section 42 (1) (d)

substitute

- (d) building work must be carried out in accordance with approved plans;

Explanatory note

This amendment omits unnecessary words.

Part 3.8 Business Names Regulation 1966

[3.87] Section 2, definition of *agent*

substitute

agent—see the *Corporations Regulations 2001* (Cwlth), regulation 1.0.02 (1).

Explanatory note

This amendment updates the reference to the *Corporations Regulations 2001* (Cwlth).

[3.88] Section 6 (2)

substitute

- (2) An annexure to a form must be marked with an identifying letter and endorsed with the words:

This is the annexure of (*number*) pages marked with the letter (*appropriate letter ie 'A' for the 1st annexure, 'B' for the 2nd annexure etc*) mentioned in the (*description of document*) signed by *[me/us] and dated (*date*).

Signature/s

- (2A) The annexure must be signed by each person who signs the form to which the annexure is annexed.

Explanatory note

This amendment makes the form of annexure clearer.

[3.89] Section 6

renumber subsections when regulation next republished under Legislation Act

Explanatory note

This amendment is consequential on the insertion of new section 6 (2A) by another amendment.

[3.90] Section 7

substitute

7 Signature of documents

- (1) A document relating to a corporation that is lodged for a corporation must be signed by—
- (a) if the corporation is a foreign company—
- (i) a director or secretary of the company; or

- (ii) the agent of the company; or
- (b) in any other case—a director or secretary of the corporation.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (2) However, if a foreign company's agent is a company, the document must be signed by a director or secretary of the agent.
- (3) This section is subject to the Act, section 15 (Signing of statements).
- (4) In this section:
foreign company—see the Corporations Act 2001 (Cwlth), section 9.

Explanatory note

This amendment brings the language of the section into line with the *Corporations Act 2001* (Cwlth) and its structure into line with current drafting practice.

Part 3.9 Construction Occupations (Licensing) Act 2004

[3.91] Section 78 (1)

substitute

- (1) The registrar must give a compliance auditor an identity card stating the person's name and that the person is a compliance auditor.
- (1A) The identity card must show—
 - (a) a recent photograph of the person; and
 - (b) the card's date of issue and expiry; and
 - (c) anything else prescribed by regulation.

Explanatory note

This amendment brings the structure of the subsection into line with current drafting practice.

[3.92] Section 78

renumber subsections when next republished under the Legislation Act

Explanatory note

This amendment is consequential on the insertion of new section 78 (1A) by another amendment.

Part 3.10 Coroners Act 1997

[3.93] Section 3 (1), definition of *custodial officer*, paragraph (g)

substitute

- (g) a carer within the meaning of the *Intoxicated People (Care and Protection) Act 1994*; or

Explanatory note

This amendment is consequential on the changing of the name of the *Intoxicated Persons (Care and Protection) Act 1994* by another amendment.

[3.94] Section 3 (2) (b) (v)

substitute

- (v) at a licensed place under the *Intoxicated People (Care and Protection) Act 1994*; or

Explanatory note

This amendment is consequential on the changing of the name of the *Intoxicated Persons (Care and Protection) Act 1994* by another amendment.

[3.95] Section 49 (1), definition of *relevant provisions*

omit

- section 314 (Registrar to give directions for preparation of transcripts)

substitute

- section 314 (Registrar to give directions for preparation of transcript)

Explanatory note

This amendment corrects a reference to the *Magistrates Court Act 1930*, section 314 heading.

Part 3.11 Court Procedures Act 2004

[3.96] Section 7 (3)

substitute

- (3) This section does not limit any inherent or other power of a court, judge, magistrate or prescribed tribunal to control proceedings.

Explanatory note

Section 7 (Rule-making power) provides that the rule-making committee may make rules in relation to (among other things) the practice and procedure of prescribed tribunals. This amendment adds a reference to a prescribed tribunal in subsection (3).

[3.97] Section 21 (1)

omit

this Act

substitute

this part

Explanatory note

Section 21 was relocated from the *Crown Proceedings Act 1992* to the *Court Procedures Act 2004*, part 4 by the *Court Procedures (Consequential Amendments) Act 2004*. The reference to ‘this Act’ in section 21 should, therefore, be a reference to ‘this part’.

[3.98] Section 21 (3), definition of *proceeding*

omit

due

substitute

owing

Explanatory note

This amendment updates language.

[3.99] Section 26 (2)

substitute

- (2) The Attorney-General of a State or another Territory may, on behalf of the State or other Territory, represent the Crown in right of the State or other Territory in any action, proceeding or matter (whether civil or criminal) in which the Crown in right of the State or other Territory is a party.

Explanatory note

This amendment adds ‘(whether civil or criminal)’ to subsection (2) to mirror subsection (1) and make it clear that the provision applies to civil and criminal actions, proceedings and matters.

[3.100] Section 27 (1) and (2)

substitute

- (1) This section applies if any of the following are in issue in a proceeding:
- (a) the interpretation or validity of a law of the Territory or Commonwealth;
 - (b) legislative or executive powers of the Territory or Commonwealth, or an instrumentality or agency of the Territory or Commonwealth;

- (c) judicial powers of a court or tribunal established under the law of the Territory or Commonwealth.
- (2) The Attorney-General may intervene in the proceeding, on behalf of the Crown, to submit argument on the issue.
- (2A) If the Attorney-General intervenes in a proceeding under this section, the Attorney-General has the same right of appeal in the proceeding as a party to the proceeding.

Explanatory note

This amendment brings the structure of the subsections into line with current drafting practice.

[3.101] Section 27

renumber subsections when Act next republished under Legislation Act

Explanatory note

This amendment is consequential on the insertion of new section 27 (2A) by another amendment.

[3.102] Section 40, definition of *court*, paragraph (l)

omit

Explanatory note

This amendment omits a redundant paragraph.

[3.103] Section 40, definition of *court*, paragraphs (m) to (q)

renumber as paragraphs (l) to (p)

Explanatory note

This amendment is consequential on omission of paragraph (l) by another amendment.

[3.104] New section 53A

insert

53A Delegation by secretary of rule-making committee

The secretary of the rule-making committee may delegate a function under the Legislation Act, section 61 (Notification of registrable instruments) to a public servant.

Note For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

Explanatory note

This amendment allows the secretary of the rule-making committee to delegate the function of requesting the notification of registrable instruments made by the rule-making committee.

Part 3.12 Crimes Act 1900

[3.105] Section 441 (9)

substitute

- (9) If an information is laid before a magistrate under subsection (8), the magistrate must issue a warrant for the person's arrest under the *Magistrates Court Act 1930*, section 42 (2) (Issue of warrant and summons).

Explanatory note

This amendment is consequential on the amendment of the *Magistrates Court Act 1930*, section 42 by another amendment.

Part 3.13 Crimes (Forensic Procedures) Act 2000

[3.106] Dictionary, definition of *warrant*

omit

division 3.3.4 (Warrants of arrest)

substitute

division 3.3.4 (Warrants)

Explanatory note

This amendment is consequential on the amendment of the *Magistrates Court Act 1930*, division 3.3.4 heading by another amendment.

Part 3.14 Cultural Facilities Corporation Act 1997

[3.107] Section 3

substitute

2 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*designated location*—see section 3A’ means that the term ‘designated location’ is defined in that section.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

3 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

Explanatory note

This amendment adds standard dictionary and notes provisions. The definitions in existing section 3 that are still needed are included in the new dictionary which is inserted by another amendment.

[3.108] Section 3A

substitute

3A What is a *designated location*?

- (1) A location is a *designated location* if it is—
 - (a) a location mentioned in schedule 1; or
 - (b) a location declared by the Minister under subsection (2) to be a designated location.
- (2) The Minister may, in writing, declare a location to be a designated location.
- (3) A declaration under subsection (2) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

Explanatory note

This amendment brings the language of the section into line with current drafting practice.

[3.109] Part 2 heading

substitute

Part 2 Cultural Facilities Corporation

Explanatory note

This amendment brings the heading into line with current drafting practice.

[3.110] Division 2.1 heading

substitute

Division 2.1 Establishment and functions of corporation

Explanatory note

This amendment brings the heading into line with current drafting practice.

[3.111] Section 4

substitute

4 Establishment of corporation

- (1) The Cultural Facilities Corporation is established.

Note The Legislation Act, dict, pt 1, defines *establish* as including continue in existence.

- (2) The corporation—
 - (a) is a corporation; and
 - (b) may sue and be sued in its corporate name; and
 - (c) may have a seal.
- (3) The corporation represents the Territory when exercising its functions, unless this Act or another territory law otherwise provides.

Explanatory note

This amendment adds subsection (3) and brings the language of the section into line with current drafting practice.

[3.112] Section 5 heading

substitute

5 Functions of corporation

Explanatory note

This amendment brings the heading into line with current drafting practice.

[3.113] Section 5 (e) and (f)

substitute

- (e) to undertake activities, in cooperation with other people if appropriate, to exercise its other functions; and
- (f) to exercise other functions given to the corporation under this Act or another territory law.

Explanatory note

This amendment brings the language of the paragraphs into line with current drafting practice.

[3.114] Section 5, new note

insert

Note A provision of a law that gives a function to an entity also gives the entity the powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

Explanatory note

This amendment is consequential on the omission of section 6 (1) by another amendment.

[3.115] Section 6

substitute

6 Powers of corporation generally

The corporation has all the powers of an individual.

Examples

- 1 to enter into a contract
- 2 to own, deal with and dispose of property
- 3 to act as a trustee

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Explanatory note

This amendment omits existing section 6 (1) which is no longer necessary because of the Legislation Act, section 196 and replaces it with a standard note about the power to exercise functions.

[3.116] Section 7

substitute

7 Considerations for corporation exercising functions

In exercising its functions, the corporation must consider—

- (a) any cultural policies or priorities of the Executive known to the corporation; and
- (b) other cultural activities in the ACT.

Note **Function** includes power and duty (see Legislation Act, dict, pt 1).

Explanatory note

This amendment brings the language of the section into line with current drafting practice.

[3.117] Section 8

substitute

8 Advisory committees

- (1) To assist the corporation in the exercise of its functions, the corporation—
 - (a) must set up advisory committees for—
 - (i) museum collections; and
 - (ii) historic places; and
 - (iii) the performing arts; and
 - (b) may set up other advisory committees that the corporation considers necessary.
- (2) An advisory committee may decide how to exercise its functions.
- (3) However, an advisory committee is subject to the direction of the corporation in the exercise of its functions.

Explanatory note

This amendment brings the language of the section into line with current drafting practice.

[3.118] Section 10 (1)

omit

- (1) The corporation

substitute

The corporation

Explanatory note

This amendment is consequential on the omission of section 10 (2) by another amendment.

[3.119] Section 10 (2)

omit

Explanatory note

This amendment omits a redundant subsection. Vacancies are dealt with under the Legislation Act, section 199 (5) (Functions of bodies).

[3.120] Section 19

omit

Public Sector Management Act

substitute

Public Sector Management Act 1994

Explanatory note

This amendment allows for the definition of *Public Sector Management Act* to be omitted by another amendment.

[3.121] Section 28

substitute

28 Ministerial directions

- (1) The Minister may direct the corporation, in writing, about the exercise of its functions, either generally or for a particular matter.
- (2) The corporation must give effect to the direction.
- (3) The Minister must present a copy of a direction to the Legislative Assembly within 5 sitting days after the day it is given to the corporation.
- (4) The Territory must pay to the corporation the reasonable costs of complying with a direction.
- (5) The amount payable under subsection (4) is—
 - (a) the amount agreed by the corporation and the Treasurer; or

- (b) if the corporation and the Treasurer cannot agree—the amount decided by the Chief Minister.

Explanatory note

This amendment brings the language of the section into line with current drafting practice.

This amendment also expressly provides that, in working out the period within which a direction must be presented to the Legislative Assembly, the day on which the direction is received is not counted. The amendment is in accordance with current drafting practice and reflects the present position under the Legislation Act, section 151 (2) and (3) (b).

[3.122] Section 29

substitute

29 Quarterly reports

- (1) As soon as practicable after the end of each quarter, the corporation must give the Minister a report on the operation during the quarter of—
- (a) this Act; and
 - (b) the corporation.
- (2) The Minister must present the report to the Legislative Assembly within 6 sitting days after the day the report is received.

Explanatory note

This amendment brings the language of the section into line with current drafting practice and omits the definition of *quarter* because it is defined in the Legislation Act, dict, pt 1.

This amendment also expressly provides that, in working out the period within which a report must be presented to the Legislative Assembly, the day on which the report is received is not counted. The amendment is in accordance with current drafting practice and reflects the present position under the Legislation Act, section 151 (2) and (3) (b).

[3.123] Section 31

omit

of

Explanatory note

This amendment omits a redundant word.

[3.124] New section 33

insert

33 Repeal of designated location declaration

- (1) The *Cultural Facilities Corporation (Designated Location) Declaration 2004 (No 1)* DI2004-182 is repealed.
- (2) This section expires on the day this section commences.

Explanatory note

This amendment repeals the declaration of Mugga Mugga as a designated location consequent on its inclusion in new schedule 1 by another amendment. The status of Mugga Mugga under the Act is not affected by this and the related amendment.

[3.125] Schedule 1

substitute

Schedule 1 Designated locations

(see s 3A)

column 1 item	column 2 designated locations
1	Canberra Theatre Centre
2	Canberra Museum and Gallery
3	Lanyon Historic Property
4	Calthorpes' House

column 1 item	column 2 designated locations
5	Nolan Gallery
6	Mugga Mugga (block 6, section 103, Symonston)

Explanatory note

This amendment updates the list of designated locations to which the Act applies. It corrects minor typographical errors in existing item 2 (Canberra Museum & Gallery) and existing item 4 (Calthorpe's House). Also, new item 6 (Mugga Mugga) is added to the list. Mugga Mugga is declared by disallowable instrument DI2004-182 to be a designated location. This amendment, in conjunction with the repeal of the instrument by another amendment, consolidates the list of designated locations without affecting Mugga Mugga's status under the Act.

[3.126] New dictionary

insert

Dictionary

(see s 2)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1 defines the following terms:

- ACT
- public servant
- quarter
- sitting day
- under.

Civic Square precinct means the land making up blocks 18, 20 and 22, section 19, division of City, Canberra Central district.

corporation means the Cultural Facilities Corporation.

cultural activities includes artistic, historical or other cultural entertainments, displays and exhibitions.

designated location—see section 3A.

member means a member of the corporation.

Explanatory note

This amendment inserts a dictionary consequential on the omission of the definitions section (existing section 3) by another amendment. The language of the definitions is updated to bring them into line with current drafting practice. In particular:

- the definition of *plan* (ie the Territory plan) has been omitted because the term (other than in the context of a business plan) is not used in the Act
- the definition of *Public Sector Management Act* has been omitted because the amendment of section 19 makes the definition redundant.

Part 3.15 Dangerous Substances Act 2004

[3.127] Section 97 (2) (a)

omit

measures; and

substitute

measures; or

Explanatory note

Section 97 (2) requires the notification and display of compliance agreements. Similar provisions of the Act are section 103 (2) for improvement notices and section 112 (2) for prohibition notices. In section 97 (2) and section 103 (2) the conjunction used for linking the requirements is ‘and’ and in section 112 (2) ‘or’ is used. The intention is that a person who fails to notify or display the notice in accordance with paragraph (a) or paragraph (b) contravenes the section. This amendment changes ‘and’ to ‘or’ to make the separate obligations clearer, to bring the subsection into line with current drafting practice and to make it consistent with section 112 (2).

[3.128] Section 103 (2) (a)

omit

under it; and

substitute

under it; or

Explanatory note

Section 103 (2) requires the notification and display of improvement notices. Similar provisions of the Act are section 97 (2) for compliance agreements and section 112 (2) for prohibition notices. In section 97 (2) and section 103 (2) the conjunction used for linking the requirements is 'and' and in section 112 (2) 'or' is used. The intention is that a person who fails to notify or display the notice in accordance with paragraph (a) or paragraph (b) contravenes the section. This amendment changes 'and' to 'or' to make the separate obligations clearer, to bring the subsection into line with current drafting practice and to make it consistent with section 112 (2).

[3.129] Section 108, definitions of *dangerous substance* and *premises*

omit

Explanatory note

This amendment omits the definitions of *dangerous substance* and *premises* for part 6.4. The terms are defined for the Act generally (see section 10 for *dangerous substance* and the dictionary for *premises*). With 1 exception, defining these terms for part 6.4 adds nothing to the definitions for the Act. This amendment also brings this aspect of the Act into line with the *Occupational Health and Safety Act 1989* which does not have similar definitions for its prohibition notice provisions.

The exception is the definition of *relevant responsible person* which is amended by another amendment.

[3.130] Section 108, definition of *relevant responsible person*

substitute

relevant responsible person, for a prohibition notice, means the responsible person for the dangerous substance stated in the notice to whom the notice is given.

Explanatory note

This amendment is consequential on the omission of the definition of *dangerous substance* in section 108 by another amendment.

[3.131] Section 119 (1)

omit

A relevant responsible person

substitute

The relevant responsible person

Explanatory note

This amendment makes a minor change to bring the subsection into line with section 107 (1) in relation to improvement notices and the comparable provisions in the *Occupational Health and Safety Act 1989* about improvement and prohibition notices.

[3.132] Section 119 (1)

omit

a dangerous substance to which a prohibition notice relates

substitute

a prohibition notice

Explanatory note

This amendment omits words that are unnecessary because a prohibition notice must relate to a dangerous substance (see section 110 (2) (a) (ii)). It also brings the subsection into line with section 107 (1) in relation to improvement notices and the comparable provisions in the *Occupational Health and Safety Act 1989* about improvement and prohibition notices.

[3.133] Section 169 (1) (c) (i)

omit

infringement notice

substitute

information

Explanatory note

This amendment corrects a typographical error.

[3.134] Section 200 (4), definition of *authorised person*

substitute

authorised person, for an infringement notice offence, means an authorised person for the infringement notice offence under the *Magistrates Court Act 1930*, section 134A.

Explanatory note

This amendment specifies the relevant provision of the *Magistrates Court Act 1930*.

[3.135] Dictionary, definitions of *dangerous substance* and *premises*

substitute

dangerous substance—see section 10.

premises includes land or a structure or vehicle and any part of an area of land or a structure or vehicle.

Explanatory note

This amendment is consequential on the omission of the definitions of ***dangerous substance*** and ***premises*** in section 108 by another amendment.

Part 3.16 Domestic Animals Act 2000

[3.136] Part 4

omit

(commencement: on a day fixed by the Minister by written notice)

Explanatory note

This amendment omits the part that deals with infringement notices. The *Magistrates Court Act 1930*, part 3.8 (Infringement notices for certain offences) provides a system of infringement notices for offences against various Acts. Regulations are made under the *Magistrates Court Act 1930* that contain the detail for the infringement notice scheme for a particular Act.

The commencement of this amendment is delayed to allow a new *Magistrates Court (Domestic Animals Infringement Notices) Regulation 2005* to be prepared.

[3.137] Dictionary, definitions of *administering authority, authorised person, date of service, infringement notice and infringement notice offence*

omit

(commencement: on a day fixed by the Minister by written notice)

Explanatory note

This amendment is consequential on the omission of part 4 by another amendment. The commencement of this amendment is delayed because the omission of part 4 is delayed.

[3.138] Dictionary, definition of *infringement notice penalty*

substitute

infringement notice penalty, for an infringement notice offence under the *Magistrates Court (Domestic Animals Infringement Notices) Regulation 2005*—see the *Magistrates Court Act 1930*, section 117.

(commencement: on a day fixed by the Minister by written notice)

Explanatory note

This amendment is consequential on the omission of part 4 by another amendment. The commencement of this amendment is delayed because the omission of part 4 is delayed. The term infringement notice penalty is used in section 62 (3), section 63 (3) and section 64 (3).

[3.139] Dictionary, definition of *reminder notice*

omit

(commencement: on a day fixed by the Minister by written notice)

Explanatory note

This amendment is consequential on the omission of part 4 by another amendment. The commencement of this amendment is delayed because the omission of part 4 is delayed.

Part 3.17 Domestic Animals Regulation 2001

[3.140] Sections 6 to 13

omit

(commencement: on a day fixed by the Minister by written notice)

Explanatory note

This amendment is consequential on the omission of the *Domestic Animals Act 2000*, part 4 (Infringement notices for certain offences) by another amendment. The commencement of this amendment is delayed because the omission of part 4 is delayed.

[3.141] Schedule 1

omit

(commencement: on a day fixed by the Minister by written notice)

Explanatory note

This amendment is consequential on the omission of the *Domestic Animals Act 2000*, part 4 (Infringement notices for certain offences) by another amendment. The commencement of this amendment is delayed because the omission of part 4 is delayed.

Part 3.18 Duties Act 1999

[3.142] Section 65

substitute

65 Transfer of land under Workplace Relations Act

Duty of \$20 is chargeable on a transfer of land made in accordance with the *Workplace Relations Act 1996* (Cwlth), schedule 1B, section 82.

Explanatory note

This amendment updates the reference to the relevant Commonwealth legislation.

[3.143] Section 70 (e)

omit

Industrial Relations Act 1988 (Cwlth), section 253ZA

substitute

Workplace Relations Act 1996 (Cwlth), schedule 1B, section 84

Explanatory note

This amendment updates the reference to the relevant Commonwealth legislation.

[3.144] Section 211 (b)

substitute

(b) both the following paragraphs apply—

- (i) a doctor has certified that the applicant is permanently unable to use public transport because of the loss of, or loss of use of, a leg or both legs;
- (ii) the vehicle is for use by the person in travelling to and from gainful employment.

Explanatory note

This amendment omits a reference to the abolished Commonwealth Department of Social Security and updates the language and structure of the paragraph to bring it into line with current drafting practice. In particular, it provides for a doctor rather than a Commonwealth official to provide the required assessment and makes it clear that the doctor does not certify that the vehicle is for use by the person for travel to or from employment.

[3.145] Section 215

substitute

215 Organisations registered under Workplace Relations Act

Duty under this chapter is not chargeable on an application to register a motor vehicle made by an organisation registered under the *Workplace Relations Act 1996* (Cwlth) if the registration is to happen in accordance with that Act, schedule 1B, section 85.

Explanatory note

This amendment updates the reference to the relevant Commonwealth legislation.

[3.146] Section 221 (1) (a)

omit

the *Motor Traffic Act 1936*

substitute

any other territory law

Explanatory note

This amendment replaces a reference to a repealed Act with a reference to any other territory law.

Part 3.19 Environment Protection Act 1997

[3.147] Section 10 (2) (b)

substitute

- (b) an offence against a regulation that is prescribed for this section.

(commencement: on a day fixed by the Minister by written notice)

Explanatory note

This amendment is consequential on the omission of division 13.1 (On-the-spot fines) by another amendment. Existing paragraph (b) refers to minor environmental offences within the meaning of division 13.1 that are prescribed for that division (see section 114). The commencement of this amendment is delayed because the omission of division 13.1 is delayed.

[3.148] Division 13.1

omit

(commencement: on a day fixed by the Minister by written notice)

Explanatory note

This amendment omits the division that deals with infringement notices. The *Magistrates Court Act 1930*, part 3.8 (Infringement notices for certain offences) provides a system of infringement notices for offences against various Acts. Regulations are made under the *Magistrates Court Act 1930* that contain the detail for the infringement notice scheme for a particular Act.

The commencement of this amendment is delayed to allow a new *Magistrates Court (Environment Protection Infringement Notices) Regulation 2005* to be prepared.

[3.149] Sections 153 (1), 154 (1) and 155

omit

a minor environmental offence within the meaning of division 13.1

substitute

an offence against a regulation that is prescribed for this section

(commencement: on a day fixed by the Minister by written notice)

Explanatory note

This amendment is consequential on the omission of division 13.1 (On-the-spot fines) by another amendment. Sections 153 and 154 provide for defences to certain offences, including minor environmental offences that are prescribed for division 13.1 (see section 114). The commencement of this amendment is delayed because the omission of division 13.1 is delayed.

[3.150] Section 165 (1) (c) and (d)

substitute

(c) the annual percentage rate at which interest accruing under section 91 (a) is to be calculated.

(commencement: on a day fixed by the Minister by written notice)

Explanatory note

This amendment is consequential on the omission of division 13.1 (On-the-spot fines) by another amendment. It relates to the determination of the administrative charge for the service of a final notice under that division. The commencement of this amendment is delayed because the omission of division 13.1 is delayed.

Part 3.20 Environment Protection Regulation 1997

[3.151] Section 23G, definition of *units plan*

substitute

units plan means a units plan under the *Unit Titles Act 2001*, section 7.

Explanatory note

This amendment is consequential on the amendment of the definition of *units plan* in the *Unit Titles Act 2001* by another amendment.

Part 3.21 Fair Trading Act 1992

[3.152] Section 51 (1) (e)

omit

sell or refund other property

substitute

sell or return other property

Explanatory note

This amendment replaces the word ‘refund’ with the more appropriate word ‘return’ and brings the paragraph into line with section 50 (7) (d).

Part 3.22 Financial Management Act 1996

[3.153] Section 18 (4)

substitute

- (4) The financial management guidelines may prescribe when there is an *urgent need for expenditure* for subsection (2) (a) (i).

Explanatory note

This amendment makes it clear that the guidelines mentioned in the subsection are the financial management guidelines made under the Act and makes the reference to the guidelines consistent with other references in the Act.

[3.154] Section 31 (2) (c)

substitute

- (c) that the officers and employees of the department comply with this Act (including the financial management guidelines); and

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any guideline (see Legislation Act, s 104).

Explanatory note

This amendment brings the paragraph into line with current drafting practice. In particular, it changes the reference to 'this Act and the financial management guidelines' to reflect the Legislation Act, section 104 and a standard note about that section is inserted.

[3.155] Section 54 (3) (d)

substitute

- (d) that the officers and staff of the authority comply with this Act (including the financial management guidelines); and

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any guideline (see Legislation Act, s 104).

Explanatory note

This amendment brings the paragraph into line with current drafting practice. In particular, it changes the reference to ‘this Act and the financial management guidelines’ to reflect the Legislation Act, section 104 and a standard note about that section is inserted.

Part 3.23 Food Act 2001

[3.156] Section 57 (1) (c)

substitute

- (c) an infringement notice for an offence relating to the thing is served on its owner within 6 months after the day of the seizure, liability for the offence is disputed in accordance with the *Magistrates Court Act 1930*, section 132 (Disputing liability for infringement notice offence) and either—
 - (i) an information is not laid in the Magistrates Court against the person for the offence within 60 days after the day the person gives notice under section 132 that liability is disputed; or
 - (ii) the Magistrates Court does not find the offence proved; or

(commencement: on a day fixed by the Minister by written notice)

Explanatory note

This amendment is consequential on the omission of part 9 by another amendment. The commencement of this amendment is delayed because the omission of part 9 is delayed.

[3.157] Part 9

omit

(commencement: on a day fixed by the Minister by written notice)

Explanatory note

This amendment omits the part that deals with infringement notices. The *Magistrates Court Act 1930*, part 3.8 (Infringement notices for certain offences) provides a system of infringement notices for offences against various Acts. Regulations are made under the *Magistrates Court Act 1930* that contain the detail for the infringement notice scheme for a particular Act.

The commencement of this amendment is delayed to allow a new *Magistrates Court (Food Infringement Notices) Regulation 2005* to be prepared.

[3.158] Dictionary, definitions of *date of service, infringement notice, infringement notice offence, infringement notice penalty and reminder notice*

omit

(commencement: on a day fixed by the Minister by written notice)

Explanatory note

This amendment is consequential on the omission of part 9 by another amendment. The commencement of this amendment is delayed because the omission of part 9 is delayed.

[3.159] Dictionary, definitions of *unsafe and unsuitable*

substitute

unsafe, in relation to food—see section 12.

unsuitable, in relation to food—see section 13.

(commencement: on a day fixed by the Minister by written notice)

Explanatory note

This amendment brings the definitions into line with current drafting practice by including the qualification ‘in relation to food’ in each definition. The delayed commencement removes the need for the Act to be republished only for this amendment before the omission of part 9.

Part 3.24 Food Regulation 2002

[3.160] Part 3

omit

(commencement: on a day fixed by the Minister by written notice)

Explanatory note

This amendment is consequential on the omission of the *Food Act 2001*, part 9 (Infringement notices for certain offences) by another amendment. The commencement of this amendment is delayed because the omission of part 9 is delayed.

[3.161] Schedule 1

omit

(commencement: on a day fixed by the Minister by written notice)

Explanatory note

This amendment is consequential on the omission of the *Food Act 2001*, part 9 (Infringement notices for certain offences) by another amendment. The commencement of this amendment is delayed because the omission of part 9 is delayed.

Part 3.25 Gene Technology Regulation 2004

[3.162] New section 3A (4)

before note 1, insert

- (4) Also, a provision of this regulation may be referred to in the way in which a corresponding provision may be referred to in Commonwealth regulations.

Explanatory note

This amendment makes it clear that provisions of the regulation may be referred to using the provision names used in Commonwealth regulations. For example, a section of this regulation may be referred to as a regulation. The amendment is intended to facilitate the integrated administration of the scheme established by the *Gene Technology Act 2003* and corresponding laws of the Commonwealth and the States.

Part 3.26 **Gungahlin Drive Extension Authorisation Act 2004**

[3.163] Section 6A (6), example heading

substitute

Examples for par (d)

Explanatory note

This amendment corrects a typographical error.

Part 3.27 **Heritage Act 2004**

[3.164] Section 94 (1) (c)

omit

information

substitute

infringement notice

Explanatory note

This amendment corrects a typographical error.

[3.165] Section 94 (1) (c) (i)

omit

infringement notice

substitute

information

Explanatory note

This amendment corrects a typographical error.

[3.166] Section 94 (2) (a)

substitute

(a) is forfeited to the Territory; and

Explanatory note

This amendment corrects a typographical error.

Part 3.28 Hotel School Act 1996

[3.167] Section 14 (3)

substitute

(3) An arrangement or direction under subsection (2) must not be inconsistent with the *Financial Management Act 1996*.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any guideline (see Legislation Act, s 104).

Explanatory note

This amendment brings the subsection into line with current drafting practice. In particular, it changes the reference to ‘or the financial management guidelines under that Act’ to reflect the Legislation Act, section 104 and a standard note about that section is inserted.

Part 3.29 Intoxicated Persons (Care and Protection) Act 1994

[3.168] Sections 1 and 3

substitute

1 Name of Act

This Act is the *Intoxicated People (Care and Protection) Act 1994*.

2 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act or in other legislation.

For example, the signpost definition '*prohibited substance*—see the *Drugs of Dependence Act 1989*, section 3.' means that the term 'prohibited substance' is defined in that section and the definition applies to this Act.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and 156 (1)).

3 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

Explanatory note

This amendment brings the naming section into line with current drafting practice and inserts standard dictionary and notes provisions. The definitions in existing section 3 are included in the new dictionary which is inserted by another amendment.

This amendment also changes the name of the Act by changing 'Persons' to 'People' in accordance with current drafting practice.

[3.169] Section 6 (2) (a)

substitute

(a) the full name of the intoxicated person (if known);

Explanatory note

This amendment is consequential on the omission of the definition of *name and address* in existing section 3 (2) by another amendment.

[3.170] Section 6 (3)

omit

An officer referred to in subsection (1)

substitute

The police officer

Explanatory note

This amendment brings the language of the subsection into line with current drafting practice.

[3.171] Section 15 (2) (c) (iii)

substitute

- (iii) if the applicant is an incorporated association or any other kind of entity—a written statement signed on behalf of the association or entity by an office-holder stating that the association or entity can meet its debts.

Explanatory note

This amendment brings the language of the paragraph into line with current drafting practice.

[3.172] New section 15 (3)

insert

- (3) In this section:

name and address, of an applicant, means—

- (a) if the applicant is an individual—the individual’s full name and business address; or
- (b) in any other case—the full name and residential address of each office-holder of the applicant.

office-holder means—

- (a) for a corporation—an executive officer; or

- (b) for an incorporated association—the president, secretary or public officer of the association; or
- (c) for any other entity—anyone with overall responsibility for the conduct of the entity.

Explanatory note

This amendment is consequential on the omission of the definition of *name and address* in existing section 3 (2) by another amendment. The definition of *office-holder* in existing section 3 (1) is included in this section in accordance with current drafting practice because it is the only provision in the Act in which it is used.

[3.173] New section 16 (2) (a)

substitute

- (a) the full name and address of the person to whom it is granted; and

Explanatory note

This amendment is consequential on the omission of the definition of *name and address* in existing section 3 (2) by another amendment.

[3.174] Section 20 (3) (b)

substitute

- (b) whether, in the opinion of the licensee, the licensee has complied with the Act (including any standards);

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

Explanatory note

This amendment brings the paragraph into line with current drafting practice. In particular, it changes the reference to ‘the Act and standards’ to reflect the Legislation Act, section 104 and a standard note about that section is inserted.

[3.175] Section 23 (1) (e)

substitute

- (e) the licensee has contravened this Act (including any standards);

Explanatory note

This amendment brings the paragraph into line with current drafting practice. In particular, it changes the reference to ‘the Act and standards’ to reflect the Legislation Act, section 104 and a standard note about that section is inserted.

[3.176] Section 27

substitute

27 Inspectors

- (1) The chief executive may appoint a public servant as an inspector for this Act.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

- (2) If—
- (a) immediately before the commencement of this section, the duties of an office in the public service included exercising the functions of an inspector; and
 - (b) the chief executive has not made an appointment under subsection (1); and
 - (c) the duties of the office have not ceased to include exercising the functions of an inspector;

the public servant for the time being occupying the office is an inspector.

Note **Occupying** a position is defined in the Legislation Act, dict, pt 1 (see also def **office**).

- (3) Subsection (2) is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (4) Subsections (2) and (3) and this subsection expire 1 year after the day this section commences.

Explanatory note

This amendment brings the language of the section into line with current drafting practice and adds standard appointment notes.

The amendment includes transitional arrangements that operate until new appointments are made.

[3.177] Section 28 (1)

substitute

- (1) The Minister must issue to an inspector an identity card that specifies the inspector's full name and office, and on which appears a recent photograph of the inspector.

Explanatory note

This amendment is consequential on the omission of the definition of **name and address** in existing section 3 (2) by another amendment.

[3.178] New dictionary

insert

Dictionary

(see s 2)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1 defines the following terms:

- administrative appeals tribunal
- adult
- police officer
- under.

carer means a person who works with intoxicated people at a licensed place.

caring service means a service that provides immediate, short-term care for intoxicated people, but does not include a service provided at a hospital or other medical facility.

inspector means an inspector under section 27.

intoxicated means apparently under the influence of alcohol, another drug or substance, or a combination of alcohol, drugs or substances.

Examples of substances

- 1 glue
- 2 petrol
- 3 another solvent

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

licensed place means a place where a licensee is licensed to provide a caring service.

licensee means a person who holds a licence under section 16.

manager, for a licensed place, means the person in charge of the place.

prescribed includes prescribed by the standards.

prohibited substance—see the *Drugs of Dependence Act 1989*, section 3.

public place means a place to which the public, or a section of the public, has access, whether by payment or not, and includes a school and any land or premises that belong to or are occupied or used in relation to a school.

responsible person, in relation to an intoxicated person, includes—

- (a) a relative, guardian or friend of the intoxicated person who is an adult; or
- (b) a lawyer acting on behalf of the intoxicated person.

school means a government school (including a pre-school) or non-government school under the *Education Act 2004*.

standard means a standard made under section 31.

Explanatory note

This amendment inserts a dictionary consequential on the omission of the definitions section (existing section 3) by another amendment. The language and structure of the definitions is updated to bring them more closely into line with current drafting practice. In particular:

- the definition of **admission statement** is omitted because the term is used only in section 6 and a definition is unnecessary
- the definition of **caring service** is amended consequential on another amendment
- the definition of **health practitioner** is omitted as the term is no longer used in the Act
- the definition of **office-holder** has been moved to section 15 (3) by another amendment
- the definition of **public place** is simplified and includes school-related areas previously covered by the definition of **school**
- the definition of **responsible person** is updated by changing the reference to ‘solicitor’ to ‘lawyer’.

exercising the function. The existing definition in the *Judicial Commissions Act 1994* does not include a registrar.

Part 3.31 **Land (Planning and Environment) Act 1991**

[3.181] Section 172A (5), definition of *units plan*

substitute

units plan means a units plan under the *Unit Titles Act 2001*, section 7.

Explanatory note

This amendment is consequential on the amendment of the definition of *units plan* in the *Unit Titles Act 2001* by another amendment.

[3.182] Section 264 (1)

substitute

- (1) The planning and land authority must give an inspector an identity card stating the person's name and that the person is a compliance auditor.
- (1A) The identity card must show—
 - (a) a recent photograph of the person; and
 - (b) the card's date of issue and expiry; and
 - (c) anything else prescribed by regulation.

Explanatory note

This amendment brings the language and structure of the subsection into line with current drafting practice.

[3.183] Section 264

renumber subsections when next republished under the Legislation Act

Explanatory note

This amendment is consequential on the insertion of new section 264 (1A) by another amendment.

[3.184] Section 283

substitute

283 Delegation by Executive

- (1) The Executive may delegate to a person a function under part 2 (Planning) or part 5 (Land administration), other than a function under the following provisions:
- section 163 (4) (Leases to community organisations)
 - section 164 (3) (Special leases)
 - section 167 (1) (Eligibility for certain classes of leases).

Note For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

- (2) If, immediately before the commencement of this section, a person was authorised to act on the Executive's behalf in the exercise of a function mentioned in subsection (1), then, on the commencement of this section, the Executive is taken to have delegated the function to the person.
- (3) Subsection (2) is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (4) Subsections (2) and (3) and this subsection expire 1 year after the day this section commences.

Explanatory note

This amendment changes the power of authorisation under the section to a power of delegation and inserts a standard note about delegations in line with current drafting practice. The reference to section 178 (3) is omitted because the relevant power is exercisable by the planning and land authority.

Part 3.32 Land Tax Act 2004

[3.185] Section 27 (6), definition of *units plan*

substitute

units plan means a units plan under the *Unit Titles Act 2001*, section 7.

Explanatory note

This amendment is consequential on the amendment of the definition of *units plan* in the *Unit Titles Act 2001* by another amendment.

Part 3.33 Leases (Commercial and Retail) Act 2001

[3.186] Dictionary, new definition of *continuous occupation lease*

insert

continuous occupation lease—see section 10.

Explanatory note

This amendment adds a new signpost definition for *continuous occupation lease*.

[3.187] Dictionary, definition of *enter into*

substitute

entered into, for a lease—see section 5.

Explanatory note

This amendment brings the definition into line with current drafting practice by including the qualification ‘for a lease’.

[3.188] Dictionary, new definition of *retail premises*

insert

retail premises—see section 7 (2).

Explanatory note

This amendment adds a new signpost definition for *retail premises*.

Part 3.34 Long Service Leave (Building and Construction Industry) Act 1981

[3.189] Section 37 (3)

substitute

- (3) For subsection (1) (b), the *prescribed amount* for a 2-month period is—
- (a) 1.5% of the total of the amounts of ordinary remuneration paid or payable by the employer to his or her employees (other than apprentices) during that period; or
 - (b) if the Minister determines another percentage of that total—the other percentage.

Note A determination under par (b) must be made on the advice of the board and is a notifiable instrument (see s (9A) and s (9B)).

Explanatory note

This amendment omits an outdated reference to the gazette and brings the subsection into line with current drafting practice. The requirement to notify the other percentage in the gazette is replaced, by another amendment, with a requirement that the determination be a notifiable instrument under the Legislation Act. This amendment reflects the current position applying under transitional provisions of the Legislation Act.

[3.190] New section 37 (9A) and (9B)

insert

- (9A) The Minister may, on the advice of the board, determine, in writing, a percentage for subsection (3) (b).
- (9B) A determination under subsection (3) (b) is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

Explanatory note

This amendment is consequential on the amendment of section 37 (3) by another amendment.

[3.191] Section 37

renumber subsections when Act next republished under Legislation Act

Explanatory note

This amendment is consequential on the insertion of new section 37 (9A) and (9B) by another amendment.

[3.192] Section 38 (3) and (4)

substitute

- (3) For subsection (1) (b), the *defined amount* for a 2-month period is—
- (a) 2.5% of the total of the amounts of ordinary remuneration paid or payable to the registered contractor during that period for the performance by the contractor of building and construction work; or
- (b) if the Minister determines another percentage of that total—the other percentage.
- (4) The Minister may, on the advice of the board, determine, in writing, a percentage for subsection (3) (b).
- (5) A determination under subsection (3) (b) is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

Explanatory note

This amendment brings the subsections into line with section 37 as amended by other amendments.

Part 3.35 Magistrates Court Act 1930

[3.193] Section 2, note 1

substitute

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*vehicle*, for part 3.8 (Infringement notices for certain offences)—see the *Road Transport (Vehicle Registration) Act 1999*, dictionary.’ means that the term ‘vehicle’ is defined in that dictionary and the definition applies to part 3.8.

Explanatory note

This amendment replaces the reference to the signpost definition *registered operator*. The definition of *registered operator* in the dictionary is omitted by another amendment.

[3.194] Section 4 (3)

substitute

- (3) If 2 or more special magistrates are divided in opinion on a case, the case must be—
- (a) if there is a majority—decided according to the decision of the majority; or
 - (b) if the court is equally divided in opinion—adjourned for hearing and decision by a magistrate (other than a special magistrate).

Explanatory note

This amendment brings the language and structure of the subsection into line with current drafting practice.

[3.195] New section 5

in pt 2.1, insert

5 Arrangement of court business

- (1) The Chief Magistrate is responsible for ensuring the orderly and prompt discharge of the Magistrates Court's business.
- (2) The Chief Magistrate may, subject to consultation with the magistrates that is appropriate and practicable, make arrangements about a magistrate who is to constitute the court in particular matters or classes of matters.
- (3) In this section:
magistrate includes special magistrate.

Explanatory note

This amendment remakes existing section 10G as new section 5 and brings the structure of the section into line with current drafting practice. The section deals with arrangements about the Magistrates Court's business and is more appropriately placed in part 2.1.

The definition of *magistrate* in subsection (3) has been included to ensure that the definition of *magistrate* in the dictionary does not apply to the section despite its relocation.

[3.196] Division 2.2.1

substitute

Division 2.2.1 Magistrates other than special magistrates

6 Meaning of *magistrate* in div 2.2.1

In this division:

magistrate means—

- (a) the Chief Magistrate; or
- (b) a person who is appointed under section 7 as a magistrate.

7 Appointment of Chief Magistrate and other magistrates

- (1) There is to be a Chief Magistrate and other magistrates.
- (2) The Chief Magistrate and other magistrates are appointed by the Executive.

Note For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

- (3) If a magistrate is appointed as the Chief Magistrate, the person stops holding the position of magistrate.

7A Eligibility for appointment as magistrate

A person is not eligible for appointment as a magistrate unless the person is a lawyer and has been a lawyer for at least 5 years.

7B Seniority of magistrates

Magistrates other than the Chief Magistrate have seniority according to—

- (a) the dates their appointments took effect; or
- (b) if the appointments of 2 or more of them took effect on the same date—the precedence given to them by the instruments of their appointment.

7C Conditions of appointment of magistrates

A magistrate holds the position on the conditions (if any) about matters not provided for under this Act or another territory law that are decided by the Executive.

7D Term of appointment of magistrates

- (1) A magistrate is appointed for the term ending when the magistrate turns 65 years old.

Note 1 The *Judicial Commissions Act 1994*, s 4 provides that a magistrate may only be removed from office in accordance with that Act.

Note 2 A magistrate's appointment also ends if the magistrate resigns (see *Legislation Act*, s 210).

- (2) A person who is at least 65 years old must not be appointed as a magistrate.

7E Acting Chief Magistrate

- (1) The Executive may appoint a magistrate to act as Chief Magistrate.

Note See the *Legislation Act*, s 209, div 19.3.2 and div 19.3.2A about acting appointments.

- (2) If no appointment is made under subsection (1), the senior magistrate who is in the ACT and is able and willing to act must act as Chief Magistrate.

7F Retirement

- (1) This section applies if a magistrate is—

- (a) an eligible employee for the *Superannuation Act 1976* (Cwlth);
or
(b) a member of the superannuation scheme for the *Superannuation Act 1990* (Cwlth).

- (2) The Executive may retire the magistrate on the ground of invalidity with the magistrate's consent.

7G Magistrates not to do other work

- (1) A magistrate must not practise as a lawyer.

- (2) A magistrate must not, without the Attorney-General's written consent—
 - (a) engage in remunerative employment otherwise than in connection with duties as a magistrate; or
 - (b) accept appointment to another position under a law of the Territory, the Commonwealth, a State or another Territory.
- (3) The Attorney-General must consult with the Chief Magistrate before giving consent.

7H Rights of public servants

- (1) A magistrate who was a public servant or APS employee immediately before his or her appointment keeps his or her existing and accruing rights.
- (2) In this section:

APS employee—see the *Public Service Act 1999* (Cwlth), section 7.

Explanatory note

This amendment brings the language and structure of the sections into line with current drafting practice and renumbers the sections.

The amendment of existing section 6A (new section 6) brings the definition into line with current drafting practice.

The amendment of existing section 7 (new section 7) replaces the term 'office' with 'position'. *Position* is defined in the Legislation Act, dictionary, part 1 to include office. A standard note about appointments is also inserted.

The amendment of existing section 8 (new section 7A) replaces the term 'legal practitioner' with 'lawyer'. *Lawyer* is defined in the Legislation Act, dictionary, part 1.

The amendment of existing section 10 (new section 7C) recognises that other territory laws, for example, the *Remuneration Tribunal Act 1995*, make provision about conditions of appointment of magistrates.

The amendment of existing section 10A (new section 7D) inserts notes about the *Judicial Commissions Act 1994* and resignation.

Existing section 10B is no longer necessary because of the Legislation Act, section 210 which deals with resignation. A standard note about resignation is inserted in section 7D.

Most of existing section 10C (1) (new section 7E) is no longer necessary because of the Legislation Act, section 209 which deals with acting appointments. A standard note about acting appointments is inserted.

The amendment of existing section 10C (2) replaces the term ‘Territory’ with ‘ACT’. When ‘the Territory’ is used in the geographical sense, current drafting practice is to use ‘ACT’ instead. *ACT* is defined in the Legislation Act, dictionary, part 1.

Existing section 10C (3) is no longer necessary because the bar on acting for longer than 1 year is contained in the Legislation Act, section 221 (1).

Existing section 10C (4) is no longer necessary because of the Legislation Act, section 220 which provides that while the appointee is acting in the position—

- (a) the appointee has, subject to the instrument making or evidencing the appointment, all the functions of the occupant of the position; and
- (b) all territory laws apply in relation to the appointee as if the appointee were the occupant of the position.

Existing section 10C (5) is no longer necessary because of the Legislation Act, section 219 (1) which provides that the appointer may decide the terms of the acting appointment and end the appointment at any time.

Existing section 10C (6) is no longer necessary because of the Legislation Act, section 221 (2) which provides that, if the appointee is acting in a position that becomes vacant while the appointee is acting, the appointee may continue to act until the first of the following happens:

- (a) the appointer ends the appointment;
- (b) the vacancy is filled;
- (c) 1 year after the position became vacant.

Existing section 10C (7) is no longer necessary because of the Legislation Act, section 222 which provides that an acting appointment ends if the appointee resigns.

Existing section 10C (8) is no longer necessary because of the Legislation Act, section 225 which provides that an acting appointment, or anything done under an acting appointment, is not invalid only because of a defect or irregularity in or in relation to the appointment. It also provides that anything done by or in relation to the appointee while the appointee purports to act in the position is not invalid only because—

- (a) the occasion for the appointment had not arisen or had ended; or

- (b) the appointment had ended; or
- (c) the occasion for the appointee to act had not arisen or had ended.

The amendment of existing section 10E (1) (new section 7G) replaces the term ‘legal practitioner’. *Lawyer* is defined in the Legislation Act, dictionary, part 1.

The amendment of existing section 10E (2) and (3) replaces the term ‘duties’ with ‘functions’ and ‘office’ with ‘position’. *Function* is defined in the Legislation Act, dictionary, part 1 to include authority, duty and power and *position* is defined in the Legislation Act, dictionary, part 1 to include office.

The amendment of existing section 10F (new section 7H) removes a reference to a repealed Commonwealth Act and updates terms. ‘Public servant’ is the term used instead of ‘officer of the public service’, and is defined in the Legislation Act, dictionary, part 1. ‘APS employee’ is the term used instead of ‘officer of the Australian Public Service’, and is defined in the Commonwealth *Public Service Act 1999*.

Existing section 10G has been moved to part 2.1 as new section 5. The section deals with arrangements about the Magistrates Court’s business and is more appropriately placed in part 2.1.

[3.197] Division 2.2.2

substitute

Division 2.2.2 Special magistrates

8 Appointment of special magistrates

The Executive may appoint special magistrates.

Note For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

8A Term of appointment of special magistrates

- (1) A special magistrate is appointed—
 - (a) for the term mentioned in the instrument of appointment; or

(b) if a term is not mentioned—for the term ending when the special magistrate turns 70 years old.

Note 1 The *Judicial Commissions Act 1994*, s 4 provides that a magistrate may only be removed from office in accordance with that Act.

Note 2 A special magistrate's appointment also ends if the special magistrate resigns (see *Legislation Act*, s 210).

- (2) A person who is at least 70 years old must not be appointed as a special magistrate.
- (3) A person must not be appointed as a special magistrate for a term that extends beyond the person's 70th birthday.

8B Conditions of appointment of special magistrates

A special magistrate holds the position on the conditions (if any) about matters not provided for under this Act or another territory law that are decided by the Executive.

Explanatory note

This amendment brings the language and structure of the sections into line with current drafting practice and renumbers the sections. In particular:

- a standard note about appointments is inserted in new section 8
- existing section 10K is omitted because of the *Legislation Act*, section 210 and replaced with a standard note about resignation which is inserted in section 8A
- the amendment of existing section 10L (new section 8B) recognises that other territory laws make provision about conditions of appointment of special magistrates.

[3.198] Division 2.2.3

substitute

Division 2.2.3 Registrar and other court officers

9 Appointment of registrar etc

- (1) The Minister may appoint a registrar of the Magistrates Court.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

- (2) The registrar may appoint the deputy registrars of the court, bailiffs and other officers that are required.

- (3) In subsection (2):

registrar does not include a deputy registrar.

9A Staff assisting registrar

The staff assisting the registrar are to be employed under the *Public Sector Management Act 1994*.

9B Registrar's functions

The registrar must exercise the functions that are given to the registrar under this Act or another territory law or that the Chief Magistrate directs.

Explanatory note

This amendment brings the language and structure of the sections into line with current drafting practice and renumbers the sections.

Standard notes about appointments are inserted in new section 9.

The amendment of existing section 10MA (new section 9A) removes an unnecessary provision (existing section 10MA (2)). It is not necessary to state that the *Public Sector Management Act 1994* applies in relation to the management of the staff because the fact that the staff are

employed under the Act (stated in existing section 10MA (1), remade as new section 9A) means that the Act applies in relation to their management.

The amendment of existing section 10N (new section 9B) replaces the term ‘perform’ with ‘exercise’. The Legislation Act, dictionary, part 1 defines *exercise* a function to include perform the function. Also, the term ‘duties’ is replaced with ‘function’. The Legislation Act, dictionary, part 1 defines *function* to include duty.

New section 9B recognises that the registrar is given functions by territory laws apart from this Act.

[3.199] Section 10P

substitute

10P Oath etc of office

- (1) A person appointed as the Chief Magistrate, a magistrate or special magistrate must not exercise the functions given to a magistrate under any territory law unless the person has sworn an oath or made an affirmation in accordance with the form in schedule 1.
- (2) The oath must be sworn or affirmation made before the Chief Justice.

Explanatory note

This amendment brings the language of the section into line with current drafting practice and renumbers the section. The Legislation Act, dictionary, part 1 defines *function* to include duty and power, and is the drafting term used now. *Chief Justice* is defined in the Legislation Act, dictionary, part 1 as the Chief Justice of the Supreme Court.

[3.200] Section 10Q

omit

by virtue

substitute

because

Explanatory note

This amendment updates language.

[3.201] Section 10Q

renumber as section 11

Explanatory note

This amendment is consequentially on the renumbering of sections by other amendments.

[3.202] Section 11

relocate to Magistrates Court Rules 1932, part 19 as section 99

Explanatory note

This amendment relocates a section about procedural matters (authentication of court processes) to the rules.

[3.203] Sections 12 and 13

substitute

12 Acts by magistrate out of court etc

- (1) Any magistrate out of court or the registrar may do all or any of the following:
 - (a) receive an information;
 - (b) issue a summons or warrant on an information;
 - (c) issue a summons or warrant to compel the attendance of a witness;
 - (d) do anything else that is necessary and preliminary to a hearing.
- (2) Without limiting subsection (1), if a law in force in the ACT provides that an information or complaint may be laid or made before, or a summons or warrant issued by, a court or justice of the peace, the information or complaint may be laid or made, and the summons or warrant may be issued, by a magistrate or the registrar.

13 Issue of warrant of commitment etc after case decided

After a case has been heard and decided, any magistrate or the registrar may issue a warrant of commitment or writ of execution for the purposes of the case.

Explanatory note

The amendment of section 12 brings the language of the section into line with current drafting practice. The amendment also removes redundant references to a clerk or registrar ‘of petty sessions’.

The amendment of section 13 updates language. In particular, the amendment removes the archaic word ‘thereon’.

[3.204] Section 15

substitute

15 Process not invalid only because of death of magistrate etc

A summons, warrant or writ issued by a magistrate or registrar is not invalid only because of the magistrate or registrar dying or otherwise ceasing to hold the position.

Explanatory note

This amendment updates language.

[3.205] Section 17 heading

substitute

17 Magistrates may exercise functions of justices of peace

Explanatory note

This amendment updates language and substitutes a heading that more accurately reflects the contents of the section. The Legislation Act, dictionary, part 1 defines *function* to include power, and is the drafting term used now.

[3.206] Section 17A (1)

omit

or plaint

Explanatory note

This amendment omits a reference to redundant Supreme Court procedure.

[3.207] Section 17A (4)

omit

some person at his or her last-known or usual place of abode or business

substitute

someone at the person's last-known or usual home or business address

Explanatory note

This amendment updates language.

[3.208] Section 17D

substitute

17D No action for acts done under Supreme Court order

An action is not maintainable against a magistrate for doing an act if the magistrate does the act in accordance with a Supreme Court order.

Explanatory note

This amendment updates language. In particular, a redundant reference to 'an order of the judge' has been removed. It is a hangover from when there was only 1 judge of the Supreme Court, and when there was a distinction between court and chambers in the Supreme Court.

[3.209] Section 17F

omit

judge

substitute

Supreme Court

Explanatory note

This amendment updates a reference. Referring to ‘the judge’ rather than ‘the Supreme Court’ is a hangover from when there was only 1 judge of the Supreme Court, and when there was a distinction between court and chambers in the Supreme Court.

[3.210] Section 17G

substitute

17G Payment into court

- (1) After an action under this part has been started but before the case has been heard, a defendant may pay into court the amount the defendant considers appropriate.
- (2) Judgment must be given for the defendant if the Supreme Court at the trial considers that the plaintiff is not entitled to damages beyond the amount paid into court, and the amount paid into court, or the part of it that is enough to meet the defendant’s costs, must be paid out of court to the defendant, and the rest (if any) must be paid to the plaintiff.
- (3) If the plaintiff accepts the amount paid into court in satisfaction of the plaintiff’s damages in the action, the plaintiff may apply to the Supreme Court for an order for the payment of the amount out of court to the plaintiff, with or without costs.
- (4) If the Supreme Court makes the order, the action is decided and the order is a bar to any other action for the same cause.

Explanatory note

This amendment brings the language of the section into line with current drafting practice.

[3.211] Section 17I

omit

or plaint

Explanatory note

This amendment omits a reference to redundant Supreme Court procedure.

[3.212] Section 19

omit

, and the jurisdiction is taken to be given to and may be exercised by the court

Explanatory note

This amendment omits words that are redundant because of the Legislation Act, section 176. Under that section, if a law authorises a proceeding to be brought in a particular court or tribunal in relation to a matter, the law vests the court or tribunal with jurisdiction in the matter.

[3.213] Section 23B (1)

substitute

(1) In this section:

penalty includes—

- (a) the cancellation, forfeiture, suspension or other loss of a licence or privilege; and
- (b) the disqualification from obtaining or holding a licence or exercising a privilege.

the court, in relation to a proceeding, means the magistrate who convicted the defendant or made the order against the defendant.

Explanatory note

This amendment brings the language and structure of the definitions into line with current drafting practice.

The amendment also omits the definition of *business day*, because that term is defined in the Legislation Act, dictionary, part 1.

[3.214] Section 23B (6)

substitute

- (6) If, under subsection (2), the court reopens a proceeding and, in the absence of a party to the proceeding, amends a conviction or order, the registrar must serve written notice of the amended conviction or order on the absent party as soon as practicable.

Explanatory note

This amendment updates language.

[3.215] Section 25

substitute

25 Informations

A proceeding may be started in the court by information laid by the informant or by a lawyer or anyone else representing the informant.

Explanatory note

This amendment replaces the term ‘legal practitioner’ with ‘lawyer’ in accordance with current drafting practice and updates language. *Lawyer* is defined in the Legislation Act, dictionary, part 1.

[3.216] Section 30

substitute

30 Form of information

- (1) If a warrant is intended to be issued in the first instance against the person charged, the information must be in writing and on oath.
- (2) The oath may be made by the informant or someone else.
- (3) If a summons instead of a warrant is intended to be issued in the first instance against the person charged, the information may be made orally and without oath.

- (4) Subsection (3) applies whether or not the law under which the information is laid requires it to be in writing.

Explanatory note

This amendment brings the language and structure of the section into line with current drafting practice.

[3.217] Section 41 (1) (b)

substitute

- (b) by leaving a copy of the summons at the last-known or usual home or business address of the person with someone who appears to be at least 16 years old and to live or be employed at the address.

Explanatory note

This amendment updates language.

[3.218] Division 3.3.4 heading

substitute

Division 3.3.4 Warrants

Explanatory note

This amendment revises the heading to more accurately reflect the division's application.

[3.219] Section 42

substitute

42 Issue of warrant and summons

- (1) This section applies if—
- (a) an information is laid before a magistrate under division 3.3.2 against a person for an offence; and
 - (b) the information is substantiated by the oath of the informant or a witness; and

- (c) the person is not in custody.
- (2) The magistrate may issue a warrant for the person's arrest, and for bringing the person before the court to answer to the information and to be further dealt with according to law.
- (3) However, the magistrate may issue a summons instead of the warrant if the magistrate considers it appropriate.
- (4) The issue of the summons does not prevent a magistrate from issuing a warrant at any time before or after the time mentioned in the summons for the person's appearance.
- (5) However, subsection (4) does not authorise the issue of a warrant to bring the person before the court to answer to the information if a summons has been served on the person for the offence in accordance with section 116B (Service of summons for prescribed offence).

Explanatory note

This amendment brings the language and structure of the section into line with current drafting practice.

[3.220] Section 47

substitute

47 Form of arrest warrant

A warrant issued on an information must—

- (a) briefly state the offence or matter of the information; and
- (b) name or otherwise describe the person against whom it is issued; and
- (c) order the police officers to whom it is directed to—
 - (i) arrest the person; and
 - (ii) bring the person before the court to answer the information and to be further dealt with according to law.

Explanatory note

This amendment brings the language of the section into line with current drafting practice. It ensures that the language of this section and section 42 (Issue of warrant and summons) is consistent.

[3.221] Section 49

omit

grant or

Explanatory note

This amendment omits words made redundant by other amendments.

[3.222] Sections 53 and 54

substitute

53 Conduct of case generally

- (1) The informant may—
 - (a) conduct his or her case personally or by a lawyer; and
 - (b) examine and cross-examine the witnesses giving evidence for or against the informant; and
 - (c) if the defendant gives any evidence or examines any witness about anything other than general character—call and examine witnesses in reply.
- (2) The defendant may—
 - (a) fully answer and defend personally or by a lawyer; and
 - (b) give evidence; and
 - (c) examine and cross-examine the witnesses giving evidence for or against the defendant.

54 If both parties present in court to hear case

The court must hear and decide an information if both parties to the information appear personally or by lawyers or anyone else appearing for them.

Explanatory note

This amendment brings the language of the sections into line with current drafting practice. In particular, the term ‘legal practitioner’ is replaced with ‘lawyer’. *Lawyer* is defined in the Legislation Act, dictionary, part 1.

[3.223] Division 3.4.2 heading

substitute

Division 3.4.2 Warrants for witnesses

Explanatory note

This amendment is consequential on the omission of section 55.

[3.224] Section 55

omit

Explanatory note

This amendment omits a section that deals with matters now covered by other laws and that is, in a number of respects, inconsistent with the *Evidence Act 1995* (Cwlth). That Act, section 21 deals with when sworn evidence of witnesses in the Magistrates Court must be on oath or affirmation. The *Oaths and Affirmations Act 1984*, section 11 and the Legislation Act, section 178 provide authority for the administration of oaths and affirmations by the Magistrate’s Court.

[3.225] Section 78

omit

division 3.3.4 (Warrants of arrest)

substitute

division 3.3.4 (Warrants)

Explanatory note

This amendment is consequential on the amendment of division 3.3.4 heading by another amendment.

[3.226] Section 79

substitute

79 Recognisances taken out of court

- (1) A recognisance under this Act need not be entered into before the court, but may be entered into by the parties before—
 - (a) a magistrate; or
 - (b) the registrar; or
 - (c) a police officer in charge of a police station; or
 - (d) if a party is in a prison or remand centre—the officer in charge of the prison or the administrator of the remand centre.
- (2) The provisions of this Act in relation to recognisances taken before the court apply in relation to the recognisance as if it had been entered into before the court.

Explanatory note

This amendment brings the language of the section into line with current drafting practice.

[3.227] Section 84 (1)

omit

legal practitioners

substitute

lawyers

Explanatory note

This amendment updates the term in accordance with current drafting practice. *Lawyer* is defined in the Legislation Act, dictionary, part 1.

[3.228] Sections 85 to 87

substitute

85 Proceeding if either party not present at adjourned hearing

- (1) This section applies if either or both of the parties do not appear personally or by lawyers or anyone else appearing for them at the time and place to which the hearing or further hearing is adjourned.
- (2) The court may—
 - (a) go ahead with the hearing or further hearing as if the party or parties were present; or
 - (b) if the informant does not appear—dismiss the information, with or without costs as the court considers just.

86 Proceeding if both parties present at adjourned hearing

- (1) This section applies if the parties appear personally or by lawyers or anyone else appearing for them at the time and place to which the hearing or further hearing is adjourned.
- (2) The court may go ahead with the hearing or further hearing.

87 Witness to attend adjourned etc hearing

- (1) This section applies to a person who is required by summons to attend a hearing to give evidence or produce a document if the hearing is adjourned or postponed.
- (2) The person must attend at the time and place to which the hearing is adjourned or postponed without the issue or service of a further summons.
- (3) However, the person is entitled to additional expenses for attending.

Explanatory note

This amendment brings the language of the sections into line with current drafting practice. In particular, the amendment of sections 85 and 86 replaces the term ‘legal practitioners’ with ‘lawyers’. *Lawyer* is defined in the Legislation Act, dictionary, part 1.

[3.229] Section 89

substitute

89 Disobedience of summons

- (1) This section applies if—
 - (a) a person is alleged by an information to have committed an indictable offence; and
 - (b) a summons is issued against the person; and
 - (c) the person does not appear before the court at the time and place mentioned in the summons; and
 - (d) the court is satisfied, on oath, that the summons was properly served on the person a reasonable time before the time mentioned in the summons for the appearance; and
 - (e) the information is substantiated by the oath of the informant or a witness.
- (2) The court may issue a warrant for the person’s arrest and for bringing the person before the court to answer to the information and to be further dealt with according to law.
- (3) This section does not apply if an order has been made under section 89A (1) excusing the person from attending before the court.

Explanatory note

This amendment brings the language of the section into line with current drafting practice.

[3.230] Section 89A (3)

omit

legal practitioner

substitute

lawyer

Explanatory note

This amendment updates the term in accordance with current drafting practice. *Lawyer* is defined in the Legislation Act, dictionary, part 1.

[3.231] Section 89A (6)

substitute

- (6) A notice under subsection (4) or (5) may be given to a person by—
- (a) giving a copy of the notice to the person; or
 - (b) leaving a copy of the notice at the last-known or usual home or business address of the person with someone who appears to be at least 16 years old and to live or be employed at the address.

Explanatory note

This amendment brings the language of the subsection into line with current drafting practice.

[3.232] Section 90 (7)

omit

legal practitioner

substitute

lawyer

Explanatory note

This amendment updates the term in accordance with current drafting practice. *Lawyer* is defined in the Legislation Act, dictionary, part 1.

[3.233] Section 90AA (1)

substitute

- (1) If the informant has given notice to the accused person in accordance with section 90, the court at the preliminary examination may admit a written statement (a copy of which accompanied the notice) as evidence of the matters in the statement.
- (1A) The statement is the deposition of the person who made it if admitted into evidence.

Explanatory note

This amendment brings the language of the subsection into line with current drafting practice.

[3.234] Section 90AA (9)

omit

legal practitioner

substitute

lawyer

Explanatory note

This amendment updates the term in accordance with current drafting practice. *Lawyer* is defined in the Legislation Act, dictionary, part 1.

[3.235] Section 90AA

renumber subsections when Act next republished under Legislation Act

Explanatory note

This amendment is consequential on the insertion of new section 90AA (1A) by another amendment.

[3.236] Section 90AB

substitute

90AB Preliminary examination if written statements not tendered

- (1) This section applies if—
 - (a) a person is alleged to have committed an indictable offence; and
 - (b) a notice has not been given to the person in accordance with section 90.
- (2) The court must take the preliminary examination or statement on oath of anyone (a *sworn person*) who knows the facts and circumstances of the case.
- (3) The examination or statement must be taken in the presence or hearing of—
 - (a) the person; and
 - (b) if the person asks—a lawyer representing the person.
- (4) The person or the person's lawyer may cross-examine a sworn person.

Explanatory note

This amendment brings the language of the section into line with current drafting practice. In particular, it replaces the term 'legal practitioner' with 'lawyer'. *Lawyer* is defined in the Legislation Act, dictionary, part 1.

[3.237] Section 90ABA heading

substitute

90ABA Attendance not required under s 90AA or s 90AB if order made under s 89A

Explanatory note

This amendment updates a cross-reference.

[3.238] Section 90A (6) and (7)

substitute

- (6) If—
- (a) the court accepts the plea; and
 - (b) any of the following subparagraphs applies to the offence:
 - (i) the offence is under a law in force in the ACT punishable either on indictment or summary conviction;
 - (ii) the offence may be dealt with summarily without the accused person's consent;
 - (iii) the offence may be dealt with summarily if the accused person consents and the accused person consents to it being dealt with summarily;
 - (iv) the offence may be dealt with summarily if the prosecutor requests and the prosecutor requests that it be dealt with summarily; and
 - (c) it appears to the court that it is proper to deal with the case summarily;
- the court may, without hearing further evidence, sentence or otherwise deal with the accused person and finally dispose of the charge and all incidental matters.
- (7) If—

-
- (a) the court accepts the plea; and
 - (b) any of the following subparagraphs applies to the offence:
 - (i) it does not appear to the court that it is proper to deal with the case summarily;
 - (ii) the offence is punishable only on indictment;
 - (iii) the offence may be dealt with summarily if the accused person consents, but the accused person does not consent to it being dealt with summarily;
 - (iv) the offence may be dealt with summarily if the prosecutor requests, but the prosecutor does not request that it be dealt with summarily;
 - (v) this subsection applies to the accused person under the Crimes Act, section 375;

the Magistrates Court must commit the accused person to the sittings of the Supreme Court that the Supreme Court directs and the Supreme Court must deal with the accused person in accordance with subsections (8) to (12).

Explanatory note

This amendment brings the language and structure of the subsections into line with current drafting practice.

[3.239] Section 90A (9)

substitute

- (9) The Supreme Court may order that the proceeding before the Magistrates Court where the accused person pleaded guilty be continued at a time and place stated in the order.
- (9A) The Supreme Court must make an order under subsection (9) if—
 - (a) it appears to the Supreme Court from the information or evidence given to or before it that the facts in relation to which the accused person was charged before the Magistrates Court

do not support the charge to which the accused person pleaded guilty; or

- (b) the accused person or a lawyer representing the accused person or informant asks that the order be made.

Explanatory note

This amendment brings the language and structure of the subsection into line with current drafting practice.

[3.240] Section 90A (12)

omit

specified

substitute

stated

Explanatory note

This amendment is consequential on the remaking of section 90A (9).

[3.241] Section 90A

renumber subsections when Act next republished under Legislation Act

Explanatory note

This amendment is consequential on the insertion of new section 90A (9A) by another amendment.

[3.242] Section 91

substitute

91 Court may discharge accused

When all the evidence offered by the prosecution in relation to the indictable offence with which the accused person is charged has been taken, the court must—

- (a) if the court is of the opinion, having regard to all the evidence before it, that the evidence is capable of satisfying a jury beyond reasonable doubt that the person has committed an indictable offence—proceed in accordance with section 92; or
- (b) if the court is not of the opinion mentioned in paragraph (a) and the person is in custody in relation to the offence—immediately order that the person be released from custody in relation to the offence.

Explanatory note

This amendment brings the language of the section into line with current drafting practice.

[3.243] Section 93

omit

, which by law would be

substitute

if it is

Explanatory note

This amendment updates language.

[3.244] Section 94

substitute

94 Discharge or committal for trial

When all the evidence for the prosecution and the defence have been taken in relation to the indictable offence with which the accused person is charged, the court must—

- (a) if the court is of the opinion, having regard to all the evidence before it, that a jury would not convict the person of an indictable offence and the person is in custody in relation to the offence—immediately order that the person be released from custody in relation to the offence; or

- (b) if the court is not of the opinion mentioned in paragraph (a)—it must commit the person for trial for the offence before the Supreme Court and, by warrant, commit the person in custody until the trial or until the defendant is released on bail.

Explanatory note

This amendment brings the language of the section into line with current drafting practice.

[3.245] Section 95 (c)

omit

legal practitioner

substitute

lawyer

Explanatory note

This amendment updates the term in accordance with current drafting practice. *Lawyer* is defined in the Legislation Act, dictionary, part 1.

[3.246] Section 105

substitute

105 Court may commit noncompliant witness

- (1) If a witness does not enter into a recognisance required by the court, the court may, by warrant, commit the witness to a prison or remand centre until after the defendant's trial, unless the witness enters into the recognisance before a magistrate.
- (2) If the witness is committed to a prison or remand centre, a magistrate may, by order, direct the person in charge of the prison or the superintendent of the remand centre to release the witness from custody on the warrant if—
- (a) the defendant is not committed for trial for the offence with which the defendant is charged; or

- (b) the relevant officer declines to file an information against the defendant for the offence; or
- (c) the witness enters into the recognisance before a magistrate.

Explanatory note

This amendment brings the language and structure of the section into line with current drafting practice.

[3.247] Section 105A

substitute

105A Meaning of *certified copy* of depositions in div 3.5.6

In this division:

certified copy, of depositions, means—

- (a) if a record of the deposition was made in accordance with section 316 (2)—a transcript of the record certified in accordance with section 314 (2); or
- (b) if the depositions were taken down in writing and signed in accordance with section 316 (3)—the depositions as taken down and signed.

Explanatory note

This amendment brings the language and structure of the definition into line with current drafting practice.

[3.248] Section 106 (2)

substitute

- (2) In this section:

depositions means a certified copy of depositions.

statement includes a certified copy of the statement (if any) made by a defendant in reply to the question mentioned in section 92 (1).

Explanatory note

This amendment brings the structure of the definitions into line with current drafting practice and updates language.

[3.249] Section 107 (2)

omit

or cause to be given

Explanatory note

This amendment omits unnecessary words.

[3.250] Section 108

substitute

108 Accused person may obtain copies of depositions etc

- (1) This section applies if—
 - (a) a person is charged with an indictable offence; and
 - (b) the Magistrates Court commits the person for trial before the Supreme Court.
- (2) At any time before the person's trial before the Supreme Court starts, the person may apply to the registrar—
 - (a) for certified copies of depositions in the case; and
 - (b) for the evidence given on the cross-examination or the examination of any witnesses in the case.
- (3) The registrar must give the person the certified copies of depositions and the evidence applied for under subsection (2).
- (4) If the person is in custody, the person having the custody of the person must give any application under subsection (2) to the registrar.

Explanatory note

This amendment omits unnecessary words from the heading and brings the language of the section into line with current drafting practice .

[3.251] Section 109 (1) (b)

omit

legal practitioner

substitute

lawyer

Explanatory note

This amendment updates the term in accordance with current drafting practice. *Lawyer* is defined in the Legislation Act, dictionary, part 1.

[3.252] Section 110 heading

substitute

110 Hearing in absence of defendant

Explanatory note

This amendment omits unnecessary words.

[3.253] Section 110 (1) (a)

omit

ex parte

Explanatory note

This amendment omits unnecessary words.

[3.254] Section 110 (1) (b)

omit 2nd mention of

its

substitute

a

Explanatory note

This amendment updates language.

[3.255] Section 110 (4) (a)

substitute

(a) a lawyer; or

Explanatory note

This amendment replaces the term ‘legal practitioner’ with ‘lawyer’ in accordance with current drafting practice. *Lawyer* is defined in the Legislation Act, dictionary, part 1.

[3.256] Section 110 (4) (d)

substitute

(d) a person prescribed by regulation or rule.

Explanatory note

This amendment makes it clear that a person can be prescribed for the paragraph by regulation or rule of court.

[3.257] Section 111

substitute

111 Adjournment if defendant does not appear

(1) This section applies if—

(a) the defendant does not appear before the court for the hearing of the information; and

- (b) the court has issued a warrant for the defendant's arrest.
- (2) The court must adjourn the hearing until the defendant is arrested.
- (3) If the defendant is arrested under the warrant, the defendant must be detained in safe custody, until the defendant can be brought before the court at a time and place fixed by the court.
- (4) The court must give the informant notice of the time and place fixed.

Explanatory note

This amendment brings the structure of the section into line with current drafting practice. The amendment also revises the heading to accurately reflect the section's application.

[3.258] Section 112

omit

Explanatory note

This amendment omits an unnecessary provision (see *Magistrates Court Act 1930*, section 54).

[3.259] Sections 114 to 116

substitute

114 If defendant does not admit the case

- (1) This section applies if the defendant does not admit the truth of the information.
- (2) The court must hear—
 - (a) the informant and the informant's witnesses (if any); and
 - (b) if the defendant wants to give evidence—the defendant; and
 - (c) the defendant's witnesses (if any); and
 - (d) if the defendant has given evidence other than about the defendant's general character—the informant's witnesses in reply (if any).

- (3) Having heard each party and the evidence, the court must decide the information and do 1 of the following as justice requires:
 - (a) convict the defendant;
 - (b) make an order on the defendant;
 - (c) dismiss the information.

115 Conduct of summary proceeding

- (1) The defendant or a lawyer representing the defendant may address the court after all the evidence for the informant and the evidence (if any) for the defendant and for the informant in reply has been given.
- (2) The informant or a lawyer representing the informant may make a closing address.

Explanatory note

This amendment brings the language and structure of the sections into line with current drafting practice. In particular, the amendment replaces the term 'legal practitioner' with 'lawyer'. *Lawyer* is defined in the Legislation Act, dictionary, part 1.

The amendment also omits existing section 115 as it is unnecessary (see section 85).

[3.260] Section 116A

substitute

116A Definitions for pt 3.7

- (1) In this part:

defendant means a person who has been properly served with a summons in accordance with section 116B.

law in force in the ACT includes a statute of the Australian National University about parking or traffic.
- (2) For this part (other than section 116B (2)), a *notice to defendant form*, *notice of intention to defend form* and *plea of guilty form*

includes a copy of the form printed on the back of a copy of a summons.

Explanatory note

This amendment brings the language of the definitions into line with current drafting practice.

[3.261] Section 116AA (2) (g) and (h)

substitute

(g) any other Act or any regulation prescribed by regulation.

Note 1 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

Note 2 A reference to an Act includes a reference to a provision of an Act, and a reference to a subordinate law includes a reference to a provision of a subordinate law (see Legislation Act, s 7 and s 8).

Explanatory note

This amendment amends paragraph (g) by omitting the reference to ‘a provision of an Act or regulation’. This is no longer necessary because of the Legislation Act, section 7 and section 8. The amendment also omits paragraph (h) which is no longer necessary because of the Legislation Act, section 104. Standard notes about those sections are inserted.

The amendment also inserts notes to assist in the interpretation of the subsection.

[3.262] Section 116B (1)

substitute

- (1) A summons for a person in relation to a prescribed offence may be served on the person—
- (a) by giving 2 copies of the summons to the person; or
 - (b) by sending 2 copies of the summons by prepaid post, addressed to the person, at the person’s last-known home or business address; or
 - (c) by leaving 2 copies of the summons at the person’s last-known home or business address with someone who appears to be at least 16 years old and to live or be employed at the address.

Explanatory note

This amendment brings the language of the subsection into line with current drafting practice.

[3.263] Section 116B (3)

substitute

- (3) Service of a summons on a person in relation to a prescribed offence in a way mentioned in subsection (1) (a) or (c) must be made not less than 14 days before the day the person is required by the summons to appear before the court.

Explanatory note

This amendment brings the language of the subsection into line with current drafting practice.

[3.264] Section 116BA

substitute

116BA Giving of notice by registrar

If the registrar is required to give notice to a person under this part, the notice may be given by sending the notice by prepaid post, addressed to the person, at the person's last-known home or business address.

Explanatory note

This amendment brings the language of the section into line with current drafting practice.

[3.265] Section 116C (3) (b)

substitute

- (b) a lawyer;

Explanatory note

This amendment replaces the term 'legal practitioner' with 'lawyer' in accordance with current drafting practice. *Lawyer* is defined in the Legislation Act, dictionary, part 1.

[3.266] Section 116C (3) (d)

substitute

- (d) a person prescribed by regulation or rule.

Explanatory note

This amendment makes it clear that a person can be prescribed for the paragraph by regulation or rule of court.

[3.267] Section 116H (1) (b)

omit

legal practitioner

substitute

lawyer

Explanatory note

This amendment updates the term in accordance with current drafting practice. *Lawyer* is defined in the Legislation Act, dictionary, part 1.

[3.268] Section 116H (2)

substitute

- (2) If—
- (a) the court convicts a defendant of an offence against a law mentioned in a paragraph of section 116AA (1); and
 - (b) the law provides in effect that a penalty other than a fine may be imposed on the defendant; and
 - (c) when the defendant is sentenced, the defendant is not before the court or is not represented before the court by a lawyer; and
 - (d) the court considers that a penalty other than a fine may be appropriate;

the court must adjourn the hearing and fix a time and place for sentence.

- (2A) The registrar must give the defendant notice of the time and place fixed.

Explanatory note

This amendment brings the language of the subsection into line with current drafting practice.

[3.269] Section 116H

renumber subsections when Act next republished under Legislation Act

Explanatory note

This amendment is consequential on the insertion of new section 116H (2A).

[3.270] Section 116I heading

substitute

116I Consequences of conviction in absence of defendant

Explanatory note

This amendment replaces the term ‘ex parte’ in the heading.

[3.271] Section 117, definitions of *registered operator* and *trader’s plate*

omit

Explanatory note

This amendment omits definitions that are not used.

[3.272] Section 142 (1)

substitute

- (1) The conviction or order must, if required, be drawn up by the court in proper form and be filed by the registrar in the court’s records.

Explanatory note

This amendment brings the language of the subsection into line with current drafting practice.

[3.273] Section 143

substitute

143 Consequences if information dismissed

- (1) The court must make an order of dismissal if the court dismisses an information.
- (2) The court must give the defendant a certificate of dismissal signed by the adjudicating magistrate or the registrar if the defendant applies for it.
- (3) If a certificate of dismissal is produced to a court—
 - (a) the court must accept it as proof of the matters stated in it if there is no evidence to the contrary; and
 - (b) it is a bar to any other information or proceeding in any court (other than an appeal) for the same matter against the same party.

Explanatory note

This amendment brings the language of the section into line with current drafting practice.

[3.274] Section 146, definition of *fine*, paragraph (a)

omit

pecuniary

substitute

financial

Explanatory note

This amendment updates language.

**[3.275] Section 146, definition of *government agency*,
paragraph (c)**

substitute

- (c) a territory entity prescribed by regulation.

Explanatory note

This amendment brings the language of the paragraph into line with current drafting practice.

[3.276] Section 146, definition of *outstanding fine*

substitute

outstanding fine, in relation to a person, means the total of—

- (a) the whole or any part of a fine that the person is liable to pay;
and
(b) the whole or any part of an administrative fee that the person is
liable to pay in relation to the fine.

Explanatory note

This amendment brings the structure of the definition into line with current drafting practice.

[3.277] Section 148 (1)

substitute

- (1) If the court imposes a fine on a person for an offence, the court—
- (a) must allow time for payment, if the summons for the offence
was served in accordance with section 116B; or
(b) may allow time for payment, in any other case.

Explanatory note

This amendment brings the structure of the subsection into line with current drafting practice.

[3.278] Sections 155 and 156

substitute

155 Fine amounts to be paid to registrar

- (1) This section applies if—
 - (a) a person must pay an amount because of a conviction or court order; and
 - (b) the person pays the amount to a police officer or someone else.
- (2) The police officer or other person must immediately pay the amount to the registrar.

156 Execution to stop on payment

- (1) This section applies if—
 - (a) a warrant is issued under section 154D (Committal to prison—fine defaulters) for a fine defaulter; and
 - (b) the fine defaulter pays the police officer executing the warrant the amounts mentioned in it.
- (2) The police officer must stop executing the warrant.

Explanatory note

This amendment brings the language and structure of the section into line with current drafting practice.

[3.279] Section 166A, definition of *fine*, paragraph (a)

omit

pecuniary

substitute

financial

Explanatory note

This amendment updates language.

[3.280] Section 166A, definition of *reciprocating court*

substitute

reciprocating court means a court declared under section 166B to be a reciprocating court.

Explanatory note

This amendment revises the definition to remove references to classes of courts that are unnecessary because of the Legislation Act, section 48.

[3.281] Section 166B (1)

substitute

- (1) If a State has laws providing for the enforcement in the State of a territory fine against a body corporate, the Attorney-General may, in writing, declare a court of summary jurisdiction in the State to be a reciprocating court.

Explanatory note

This amendment revises the subsection to remove references to classes of courts that are unnecessary because of the Legislation Act, section 48.

[3.282] Section 166C (1)

substitute

- (1) If—
 - (a) a fine is payable by a body corporate under a conviction of a reciprocating court; and
 - (b) the registrar receives a written request from the relevant officer of the reciprocating court for the enforcement of the conviction accompanied by—
 - (i) a copy, certified by the relevant officer to be correct, of the conviction; and
 - (ii) a certificate signed by the relevant officer stating the amount of the fine that remains unpaid;

the registrar must register the conviction by filing in the court the certified copy of the conviction and noting the date of the registration on the copy.

Explanatory note

This amendment brings the language and structure of the subsection into line with current drafting practice.

[3.283] Section 166C (2) (a)

omit

specified

substitute

stated

Explanatory note

This amendment is consequential on the remaking of section 166C (1).

[3.284] Section 166C (4)

substitute

- (4) If—
- (a) a writ is issued under subsection (2) in relation to a fine; and
 - (b) before execution, the registrar receives a notification mentioned in subsection (3) in relation to the fine;
- the registrar must arrange for the return of the writ.
- (4A) On the return of the writ, the registrar must—
- (a) if the amount of the fine has been paid in full—withdraw the writ; or
 - (b) if part of the amount of the fine remains unpaid—amend the writ to show the amount still unpaid.

Explanatory note

This amendment brings the structure of the subsection into line with current drafting practice.

[3.285] Section 166C

renumber subsections when Act next republished under Legislation Act

Explanatory note

This amendment is consequential on the insertion of new section 166C (4A).

[3.286] Section 185 (1) (b)

omit

neglects or refuses

substitute

fails

Explanatory note

This amendment updates language.

[3.287] Section 185 (1)

omit

in that behalf

Explanatory note

This amendment omits unnecessary words.

[3.288] Section 185 (2)

substitute

(2) In subsection (1) (b):

order does not include an order under the Crimes Act, section 350.

Explanatory note

This amendment brings the definition into line with current drafting practice.

[3.289] Section 187 (1)

omit

forthwith

substitute

immediately

Explanatory note

This amendment updates language.

[3.290] Section 193

omit

pecuniary

substitute

financial

Explanatory note

This amendment updates language.

[3.291] Section 195

substitute

195 Convictions etc to be given to Supreme Court registrar

- (1) This section applies if a person is convicted of an indictable offence by the court or an information in relation to an indictable offence is dismissed by the court.
- (2) The court must immediately give the registrar of the Supreme Court a copy of the conviction and recognisances or a copy of the certificate of dismissal (if any).
- (3) The court must keep a conviction and dismissal book and record each conviction or dismissal in it.

Explanatory note

This amendment brings the language and structure of the section into line with current drafting practice.

[3.292] Section 214 (3) (a) (i)

substitute

- (i) order the production of a document or anything else that was an exhibit in, or was otherwise connected with, the proceeding out of which the appeal arose and that appears to it to be necessary to produce for deciding the appeal; and

Explanatory note

This amendment brings the language of the subparagraph into line with current drafting practice.

[3.293] Section 219B (2)

substitute

- (2) In subsection (1) (f):

sentence or penalty includes a decision or order made under the Crimes Act, section 402 (1) or (3), section 403 (1), section 404 (4) or (7) or section 405 (1) or (3), whether or not the person is convicted of the offence.

Explanatory note

This amendment brings the structure of the definition into line with current drafting practice.

[3.294] Section 219C (1)

omit

If

substitute

This section applies if—

Explanatory note

This amendment, and the other amendments of section 219C (1), bring the structure of the subsection into line with current drafting practice.

[3.295] Section 219C (1) (c)

omit

Magistrates Court;

substitute

Magistrates Court.

Explanatory note

This amendment, and the other amendments of section 219C (1), bring the structure of the subsection into line with current drafting practice.

[3.296] Section 219C (1)

omit

the Supreme Court may

substitute

(1A) The Supreme Court may

Explanatory note

This amendment, and the other amendments of section 219C (1), bring the structure of the subsection into line with current drafting practice.

[3.297] Section 219C

*renumber subsections and paragraphs when Act next republished
under Legislation Act*

Explanatory note

This amendment is consequential on the insertion of new section 219C (1A).

[3.298] Section 222

omit

or the judge

Explanatory note

This amendment omits an outdated and unnecessary reference to ‘the judge’ of the Supreme Court. Referring to ‘the judge’ rather than just ‘the Supreme Court’ is a hangover from when there was only 1 judge of the Supreme Court, and when there was a distinction between court and chambers in the Supreme Court.

[3.299] Section 222 (2)

omit

or cause to be given

Explanatory note

This amendment omits unnecessary words.

[3.300] Section 222 (2)

omit

or claim (if any)

Explanatory note

This amendment omits an outdated and unnecessary reference to a ‘claim’.

[3.301] Section 223

substitute

223 Amendment of documents

- (1) This section applies if—
 - (a) a document mentioned in section 222 (2) is given to the Supreme Court; and
 - (b) the offence charged or intended to be charged by the document appears to have been established; and

- (c) the Magistrates Court's judgment appears to be in substance justified; and
 - (d) the defects or errors appear to be defects of form only or mistakes not affecting the substance of the proceeding before the Magistrates Court.
- (2) The Supreme Court must allow the warrant of commitment, and may allow the conviction, judgment or order also, to be immediately amended as necessary in accordance with the facts.
 - (3) The person committed must then be remanded to the person's former custody.

Explanatory note

This amendment brings the language and structure of the section into line with current drafting practice.

[3.302] Sections 224, 225 (2), 226 and 227 (2)

omit

or the judge

Explanatory note

This amendment omits outdated and unnecessary references to 'the judge' of the Supreme Court. Referring to 'the judge' rather than just 'the Supreme Court' is a hangover from when there was only 1 judge of the Supreme Court, and when there was a distinction between court and chambers in the Supreme Court.

[3.303] Section 228

substitute

228 No summons or information

- (1) This section applies to a conviction or order in a case if—
 - (a) a relevant person is present at the hearing of the case; and
 - (b) there is no summons or information (or an amendment of a summons or information) in relation to the person; and

- (c) the person does not object at the hearing about the matter mentioned in paragraph (b).
- (2) The conviction or order stands.
- (3) In this section:
relevant person means—
 - (a) a convicted person; or
 - (b) a person against whom an order has been made; or
 - (c) a person whose goods have been condemned or ordered to be sold as forfeited.

Explanatory note

This amendment brings the language and structure of the section into line with current drafting practice.

[3.304] Section 249 (2)

substitute

- (2) Record of the security having been made may be provided by entry of it in the court's records.

Explanatory note

This amendment simplifies the subsection by removing unnecessary detail.

[3.305] Section 311 (4) and (5)

substitute

- (4) In this Act:
appearance, in relation to a proceeding and whether by a party or anyone else, includes appearance in accordance with this section if this section applies.
- (5) In this section:
proceeding does not include a proceeding about bail.

Explanatory note

This amendment brings the language and structure of the definitions into line with current drafting practice.

[3.306] Section 316 (5)

omit

cause to be erased

substitute

erase

Explanatory note

This amendment updates language.

[3.307] Schedule 1

omit

(see s 10P)

substitute

(see s 10)

Explanatory note

This amendment is consequential on the remaking of section 10P as section 10.

[3.308] Dictionary, definition of *magistrate*, paragraph (b)

substitute

(b) for division 2.2.1 (Magistrates other than special magistrates)—
see section 6.

Explanatory note

This amendment is consequential on the remaking of division 2.2.1 (including section 6A) by another amendment.

[3.309] Dictionary, new definitions

insert

notice to defendant form, for part 3.7 (Service and pleading by post for certain offences) (other than section 116B (2))—see section 116A (2).

notice of intention to defend form, for part 3.7 (Service and pleading by post for certain offences) (other than section 116B (2))—see section 116A (2).

plea of guilty form, for part 3.7 (Service and pleading by post for certain offences) (other than section 116B (2))—see section 116A (2).

Explanatory note

This amendment inserts signpost definitions in line with current drafting practice.

[3.310] Dictionary, definitions of *registered operator* and *trader's plate*

omit

Explanatory note

This amendment omits signpost definitions of definitions that are being omitted from section 117 by another amendment.

[3.311] Dictionary, new definition of *vehicle-related offence*

insert

vehicle-related offence, for part 3.8 (Infringement notices for certain offences)—see section 117.

Explanatory note

This amendment inserts a signpost definition in accordance with current drafting practice.

Part 3.36 **Magistrates Court (Land Planning and Environment Infringement Notices) Regulation 2003**

[3.312] Sections 10 and 11

substitute

10 Contents of infringement notices—identifying authorised person

An infringement notice served on a person by an authorised person for an infringement notice offence against the Land Act must identify the authorised person by—

- (a) the authorised person’s full name, or surname and initials; or
- (b) any unique number given, for this regulation, to the authorised person by the administering authority.

11 Contents of reminder notices—identifying authorised person

A reminder notice served on a person by an authorised person for an infringement notice offence against the Land Act must identify the authorised person by—

- (a) the authorised person’s full name, or surname and initials; or
- (b) any unique number given, for this regulation, to the authorised person by the administering authority.

Explanatory note

This amendment brings the sections into line with current drafting practice. The existing sections require an authorised person to be identified on an infringement or reminder notice by name and the issue and expiry dates of the authorised person’s identity card. The intention of

the infringement notice scheme under the *Magistrates Court Act 1930* is that an authorised person must be identified by name or, if the authorised person is given a unique identifying number by the administering authority for the infringement notice scheme, by name or identifying number. An identifying number may be appropriate for particular situations. The issue and expiry dates of an authorised person's identify card are not relevant to the issue of an infringement or reminder notice.

Part 3.37 **Magistrates Court (Sale of Residential Property Infringement Notices) Regulation 2004**

[3.313] Sections 9 and 10

omit

surname and initials; and

substitute

surname and initials; or

Explanatory note

This amendment brings the sections into line with current drafting practice. The existing sections require an authorised person to be identified on an infringement or reminder notice by name *and* any unique identifying number given to the authorised person by the administering authority for the infringement notice scheme. The intention of the infringement notice scheme under the *Magistrates Court Act 1930* is that an authorised person must be identified by name or, if the authorised person is given a unique identifying number, by the authorised person's name *or* identifying number. An identifying number may be appropriate for particular situations.

Part 3.38 Magistrates Court (Security Industry Infringement Notices) Regulation 2003

[3.314] Sections 10 and 11

substitute

10 Contents of infringement notices—identifying authorised person

An infringement notice served on a person by an authorised person for an infringement notice offence against the Security Act must identify the authorised person by—

- (a) the authorised person's full name, or surname and initials; or
- (b) any unique number given, for this regulation, to the authorised person by the administering authority.

11 Contents of reminder notices—identifying authorised person

A reminder notice served on a person by an authorised person for an infringement notice offence against the Security Act must identify the authorised person by—

- (a) the authorised person's full name, or surname and initials; or
- (b) any unique number given, for this regulation, to the authorised person by the administering authority.

Explanatory note

This amendment brings the sections into line with current drafting practice. The existing sections require an authorised person to be identified on an infringement or reminder notice by name and the issue and expiry dates of the authorised person's identity card. The intention of the infringement notice scheme under the *Magistrates Court Act 1930* is that an authorised person must be identified by name or, if the authorised person is given a unique identifying

number by the administering authority for the infringement notice scheme, by name or identifying number. An identifying number may be appropriate for particular situations. The issue and expiry dates of an authorised person's identify card are not relevant to the issue of an infringement or reminder notice.

Part 3.39

Magistrates Court (Trade Measurement Infringement Notices) Regulation 2002

[3.315] Sections 10 and 11

substitute

10 Contents of infringement notices—identifying authorised person

An infringement notice served on a person by an authorised person for an infringement notice offence against the trade measurement legislation must identify the authorised person by—

- (a) the authorised person's full name, or surname and initials; or
- (b) any unique number given, for this regulation, to the authorised person by the administering authority.

11 Contents of reminder notices—identifying authorised person

A reminder notice served on a person by an authorised person for an infringement notice offence against the trade measurement legislation must identify the authorised person by—

- (a) the authorised person's full name, or surname and initials; or
- (b) any unique number given, for this regulation, to the authorised person by the administering authority.

Explanatory note

This amendment brings the sections into line with current drafting practice. The existing sections require an authorised person to be identified on an infringement or reminder notice by name and the issue and expiry dates of the authorised person's identity card. The intention of the infringement notice scheme under the *Magistrates Court Act 1930* is that an authorised person must be identified by name or, if the authorised person is given a unique identifying number by the administering authority for the infringement notice scheme, by name or identifying number. An identifying number may be appropriate for particular situations. The issue and expiry dates of an authorised person's identify card are not relevant to the issue of an infringement or reminder notice.

Part 3.40 Magistrates Court (Utilities Infringement Notices) Regulation 2002

[3.316] Sections 11 and 12

omit

surname and initials; and

substitute

surname and initials; or

Explanatory note

This amendment brings the sections into line with current drafting practice. The existing sections require an authorised person to be identified on an infringement or reminder notice by name *and* any unique identifying number given to the authorised person by the administering authority for the infringement notice scheme. The intention of the infringement notice scheme under the *Magistrates Court Act 1930* is that an authorised person must be identified by name or, if the authorised person is given a unique identifying number, by the authorised person's name *or* identifying number. An identifying number may be appropriate for particular situations.

Part 3.41 National Environment Protection Council Act 1994

[3.317] Section 13 (2) (a) and (b)

substitute

- (a) be developed and agreed in conjunction with the National Transport Commission; and
- (b) be determined in accordance with the *National Transport Commission Act 2003* (Cwlth) and, if appropriate, the *Motor Vehicle Standards Act 1989* (Cwlth).

Explanatory note

This amendment reflects Commonwealth legislative changes following the repeal of the *National Road Transport Commission Act 1991* (Cwlth) and the establishment of the National Transport Commission under the *National Transport Commission Act 2003* (Cwlth). This amendment brings the paragraphs into line with the equivalent provision of the corresponding Commonwealth Act (see *National Environment Protection Council Act 1994* (Cwlth) section 14 2)).

Part 3.42 Nature Conservation Act 1980

[3.318] Part 13

omit

(commencement: on a day fixed by the Minister by written notice)

Explanatory note

This amendment omits the part that deals with infringement notices. The *Magistrates Court Act 1930*, part 3.8 (Infringement notices for certain offences) provides a system of infringement notices for offences against various Acts. Regulations are made under the *Magistrates Court Act 1930* that contain the detail for the infringement notice scheme for a particular Act.

The commencement of this amendment is delayed to allow a new *Magistrates Court (Nature Conservation Infringement Notices) Regulation 2005* to be prepared.

[3.319] Section 137 (2), new note

insert

Note For other provisions about forms, see the Legislation Act, s 255.

(commencement: on a day fixed by the Minister by written notice)

Explanatory note

This amendment inserts a standard note about approved forms. The delayed commencement removes the need for the Act to be republished only for this amendment before the omission of part 13.

[3.320] Dictionary, definitions of *final infringement notice*, *infringement notice*, *on-the-spot fine*, *relevant amount*, *relevant period for payment* and *schedule 1 offence*

omit

(commencement: on a day fixed by the Minister by written notice)

Explanatory note

This amendment is consequential on the omission of part 13 by another amendment. The commencement of this amendment is delayed because the omission of part 13 is delayed.

[3.321] Schedule 1

omit

(commencement: on a day fixed by the Minister by written notice)

Explanatory note

This amendment is consequential on the omission of part 13 by another amendment. The commencement of this amendment is delayed because the omission of part 13 is delayed.

Part 3.43 Occupational Health and Safety Act 1989

[3.322] Section 117 (1) (c) (i)

omit

infringement notice

substitute

information

Explanatory note

This amendment corrects a typographical error.

[3.323] Section 143 (2) (a)

omit

measures; and

substitute

measures; or

Explanatory note

Section 143 (2) requires the notification and display of compliance agreements. Similar provisions of the Act are section 150 (2) for improvement notices and section 159 (2) for prohibition notices. In section 143 (2) and section 150 (2) the conjunction used for linking the requirements is 'and' and in section 159 (2) 'or' is used. The intention is that a person who fails to notify or display the notice in accordance with paragraph (a) or paragraph (b) contravenes the section. This amendment changes 'and' to 'or' to make the separate obligations clearer, to bring the subsection into line with current drafting practice and to make it consistent with section 159 (2).

[3.324] Section 150 (2) (a)

omit

under it; and

substitute

under it; or

Explanatory note

Section 150 (2) requires the notification and display of improvement notices. Similar provisions of the Act are section 143 (2) for compliance agreements and section 159 (2) for prohibition notices. In section 143 (2) and section 150 (2) the conjunction used for linking the requirements is ‘and’ and in section 159 (2) ‘or’ is used. The intention is that a person who fails to notify or display the notice in accordance with paragraph (a) or paragraph (b) contravenes the section. This amendment changes ‘and’ to ‘or’ to make the separate obligations clearer, to bring the subsection into line with current drafting practice and to make it consistent with section 159 (2).

Part 3.44 Pharmacy Act 1931

[3.325] Section 46 (a)

substitute

- (a) ensure the prescriber’s full name is printed on the prescription;
and

Explanatory note

This amendment clarifies the requirement for a prescriber to issue prescriptions only if the prescriber’s name is printed on the prescription.

Part 3.45 Planning and Land Act 2002

[3.326] Section 37 (1)

omit

after the disclosure of an interest

insert

after the day an interest is disclosed

Explanatory note

This amendment expressly provides that, in working out the period within which the Minister must be told about the disclosure of an interest, the day when the interest is disclosed is not counted. The amendment is in accordance with current drafting practice and reflects the present position under the Legislation Act, section 151 (2) and (3) (b).

Part 3.46 Public Health Regulation 2000

[3.327] Dictionary, definition of *drug*

omit

and toilet articles not listed here

substitute

and other toilet articles

Explanatory note

This amendment brings the language of the definition into line with current drafting practice.

Part 3.47 Public Sector Management Act 1994

[3.328] Section 3, definitions of *industrial award* and *relevant staff organisation*, paragraph (a)

omit

Industrial Relations Act 1988

substitute

Workplace Relations Act 1996

Explanatory note

This amendment updates references to a Commonwealth Act.

[3.329] Section 39, definition of *designated group*, paragraph (d)

substitute

(d) people who have a disability.

Explanatory note

This amendment replaces the term ‘impairment’ with ‘disability’. This is the term now used in the *Discrimination Act 1991*.

[3.330] Section 39, new definition of *disability*

insert

disability—see the *Discrimination Act 1991*, section 5AA.

Explanatory note

This amendment inserts a new signpost definition of *disability* to direct users to the specific provision of the *Discrimination Act 1991* that defines the term. This is in line with current drafting practice.

**[3.331] Section 156 (1), definition of *executive office-holder*,
paragraph (a)**

omit

Industrial Relations Act 1988

substitute

Workplace Relations Act 1996

Explanatory note

This amendment updates a reference to a Commonwealth Act.

[3.332] Section 186 (2) (a)

omit

Industrial Relations Act 1988

substitute

Workplace Relations Act 1996

Explanatory note

This amendment updates a reference to a Commonwealth Act.

[3.333] Section 268 (1)

omit

(1) The

substitute

The

Explanatory note

This amendment is consequential on the omission of section 268 (2) by another amendment.

[3.334] Section 268 (2)

omit

Explanatory note

This amendment omits a redundant provision. Section 268 (2) refers to the *Public Sector Management Act 1994*, schedule 4 which does not exist.

[3.335] Schedule 2, clause 2.4, definition of *relevant staff organisation*, paragraph (a)

omit

Industrial Relations Act 1988

substitute

Workplace Relations Act 1996

Explanatory note

This amendment updates a reference to a Commonwealth Act.

Part 3.48 Rates Act 2004

[3.336] Section 8 (2)

substitute

(2) In this section:

school means a non-government school under the *Education Act 2004*, and includes a playground belonging to, or used in relation to, the school.

Explanatory note

This amendment simplifies the definition of *school* and corrects a minor typographical error.

[3.337] Dictionary, definition of *units plan*

substitute

units plan means a units plan under the *Unit Titles Act 2001*, section 7.

Explanatory note

This amendment is consequential on the amendment of the definition of *units plan* in the *Unit Titles Act 2001* by another amendment.

Part 3.49 Rehabilitation of Offenders (Interim) Act 2001

[3.338] Section 68 (5)

substitute

- (5) The *Magistrates Court Act 1930*, section 7G (Magistrates not to do other work) does not apply to the appointment of a magistrate as a judicial member.

Explanatory note

This amendment is consequential on the remaking of the *Magistrates Court Act 1930*, existing section 10E as new section 7G by another amendment.

Part 3.50 Remand Centres Act 1976

[3.339] Section 15 (1) (b)

omit

- section 105 (Court may commit refractory witness)

substitute

- section 105 (Court may commit noncompliant witness)

Explanatory note

This amendment is consequential on the amendment of the *Magistrates Court Act 1930*, section 105 by an earlier amendment.

Part 3.51 **Residential Tenancies Amendment Act 2004**

[3.340] Section 39 heading

substitute

39 Appeal from decisions of tribunal Section 125 (2)

(commencement: 8 March 2005)

Explanatory note

This amendment is consequential on an amendment of the *Residential Tenancies Act 1997* made by the *Court Procedures (Consequential Amendments) Act 2004* (see sch 1, amdt 1.626). The amendment omitted the *Residential Tenancies Act 1997*, section 125 and remade section 126 (which deals with appeals to the Supreme Court from decisions of the Residential Tenancies Tribunal) as section 125. The *Residential Tenancies Amendment Act 2004* (which was passed about the same time as the *Court Procedures (Consequential Amendments) Act 2004*) included an amendment of the *Residential Tenancies Act 1997*, section 126. This amendment ensures that the amendment made to section 126 by the *Residential Tenancies Amendment Act 2004* is effective and confirms an editorial amendment made under the Legislation Act, section 144.

The amendment is backdated to 8 March 2005, which is the day the relevant provision of the *Residential Tenancies Amendment Act 2004* commenced.

Part 3.52 **Roads and Public Places Act 1937**

[3.341] Section 12E (2) and (3)

substitute

- (2) The vehicle may be removed by, or under the direction of, a roads and public places officer and placed in a retention area.
- (3) However, if the vehicle is a vehicle for which there is a registered operator, the vehicle may be removed and placed in a retention area only if—

- (a) a roads and public places officer has given the operator a written notice under subsection (4); and
- (b) the vehicle has not been removed within 2 days after the day the operator was given the notice.

Explanatory note

The amendment of subsection (2) makes it clear that a vehicle may be removed only by, or under the direction of, a roads and public places officer. The amendment of subsection (3) brings the structure of the subsection into line with current drafting practice and makes it clear that the notice must be given to the registered operator.

[3.342] Section 12E (4)

omit

The notice must require the person—

substitute

The notice must include a statement requiring the person—

Explanatory note

This amendment brings the language of the subsection into line with current drafting practice.

Part 3.53 Road Transport (Alcohol and Drugs) Act 1977

[3.343] Part 1 heading, note

omit

Explanatory note

This amendment is consequential on new notes being inserted in section 1 by another amendment.

[3.344] Section 1, new notes

insert

Note 1 This Act is part of the road transport legislation. See the *Road Transport (General) Act 1999* for various provisions about the administration and enforcement of the road transport legislation generally.

Note 2 Other road transport legislation includes the following:

- *Road Transport (Dimensions and Mass) Act 1990*
- *Road Transport (Driver Licensing) Act 1999*
- *Road Transport (Public Passenger Services) Act 2001*
- *Road Transport (Safety and Traffic Management) Act 1999*
- *Road Transport (Vehicle Registration) Act 1999*.

Note 3 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

Explanatory note

This amendment restructures the existing note at part 1 heading in accordance with current drafting practice.

[3.345] Section 3 heading

substitute

3 Dictionary

Explanatory note

This amendment brings the heading into line with current drafting practice.

[3.346] Section 41A (3)

omit

the owner, registered operator or driver

substitute

an owner, a registered operator or the driver

Explanatory note

This amendment makes it clear that the provision operates in relation to each owner or registered operator if there is more than 1 owner or 1 registered operator.

Part 3.54 Road Transport (Dimensions and Mass) Act 1990

[3.347] Part 1 heading, note

omit

Explanatory note

This amendment is consequential on new notes being inserted in section 1 by another amendment.

[3.348] Section 1, new notes

insert

Note 1 This Act is part of the road transport legislation. See the *Road Transport (General) Act 1999* for various provisions about the administration and enforcement of the road transport legislation generally.

Note 2 Other road transport legislation includes the following:

- *Road Transport (Alcohol and Drugs) Act 1977*
- *Road Transport (Driver Licensing) Act 1999*
- *Road Transport (Public Passenger Services) Act 2001*
- *Road Transport (Safety and Traffic Management) Act 1999*
- *Road Transport (Vehicle Registration) Act 1999.*

Note 3 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

Explanatory note

This amendment restructures the existing note at part 1 heading in accordance with current drafting practice.

[3.349] Section 3 heading

substitute

3 Dictionary

Explanatory note

This amendment brings the heading into line with current drafting practice.

Part 3.55 Road Transport (Driver Licensing) Act 1999

[3.350] Part 1 heading, note

omit

Explanatory note

This amendment is consequential on new notes being inserted in section 1 by another amendment.

[3.351] Section 1, new notes

insert

Note 1 This Act is part of the road transport legislation. See the *Road Transport (General) Act 1999* for various provisions about the administration and enforcement of the road transport legislation generally.

Note 2 Other road transport legislation includes the following:

- *Road Transport (Alcohol and Drugs) Act 1977*
- *Road Transport (Dimensions and Mass) Act 1990*
- *Road Transport (Public Passenger Services) Act 2001*
- *Road Transport (Safety and Traffic Management) Act 1999*
- *Road Transport (Vehicle Registration) Act 1999*.

Note 3 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

Explanatory note

This amendment restructures the existing note at part 1 heading in accordance with current drafting practice.

[3.352] Section 3, note

substitute

Note 1 This Act establishes a driver licensing system, including a demerit points system, and provides for the classes of driver licences and for the issue, suspension, cancellation and renewal of driver licences.

Note 2 The Commonwealth Act mentioned in s 3 (a) (i) has been repealed and replaced by the *National Transport Commission Act 2003* (Cwlth), and the agreements scheduled to the repealed Act have been independently terminated and replaced by the *Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport*.

Explanatory note

This amendment adds new note 2 to give a context to the references in the provision to the *National Road Transport Commission Act 1991* (Cwlth) consequent on the repeal of that Act and the establishment of the National Transport Commission by the *National Transport Commission Act 2003* (Cwlth).

[3.353] Section 4 heading

substitute

4 Dictionary

Explanatory note

This amendment brings the heading into line with current drafting practice.

[3.354] Section 25

omit

to make representations why

substitute

to make representations about why

Explanatory note

This amendment improves the clarity of the provision.

[3.355] Section 27

substitute

27 Regulations may apply certain documents etc

- (1) A regulation may apply a publication of the National Transport Commission approved, or of matters approved, by the Australian Transport Council or any other instrument as in force from time to time.

Note 1 The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or as at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

Note 2 A notifiable instrument must be notified under the Legislation Act.

- (2) For a regulation, a regulation may define a term defined by this Act (or apply the definition of a term in an instrument mentioned in subsection (1))—
- (a) in the same (or in substantially the same) way as it is defined by this Act; or
 - (b) by reference to a matter included in the term as defined by this Act; or
 - (c) by reference to a combination of matters included in the term as defined by this Act and in any other term defined by this Act; or
 - (d) for applying a publication of the National Transport Commission approved, or of matters approved, by the Australian Transport Council—in the same way as it is defined in the publication despite anything in this Act or other road transport legislation.

(3) In this section:

publication of the National Transport Commission includes—

- (a) a document published by or for the National Road Transport Commission under the *National Road Transport Commission Act 1991* (Cwlth); and
- (b) a document published for the National Transport Commission.

Note The Commonwealth Act mentioned in par (a) has been repealed and replaced by the *National Transport Commission Act 2003* (Cwlth).

Explanatory note

This amendment updates the section consequent on the repeal of the *National Road Transport Commission Act 1991* (Cwlth) and the establishment of the National Transport Commission by the *National Transport Commission Act 2003* (Cwlth). The amendment brings the language of the section into line with current drafting practice.

[3.356] Dictionary, definition of *Australian Transport Council*

substitute

Australian Transport Council means the Australian Transport Council mentioned in the *National Transport Commission Act 2003* (Cwlth), section 4 or its successor.

Explanatory note

This amendment updates the definition consequent on the repeal of the *National Road Transport Commission Act 1991* (Cwlth) and the establishment of the National Transport Commission by the *National Transport Commission Act 2003* (Cwlth).

[3.357] Dictionary, definition of *National Road Transport Commission*

substitute

National Transport Commission means the National Transport Commission established by the *National Transport Commission Act 2003* (Cwlth) or its successor.

Explanatory note

This amendment is consequent on the repeal of the *National Road Transport Commission Act 1991* (Cwlth) and the establishment of the National Transport Commission by the *National Transport Commission Act 2003* (Cwlth).

Part 3.56 Road Transport (General) Act 1999

[3.358] Part 1 heading, note

omit

Explanatory note

This amendment is consequential on new notes being inserted in section 1 by another amendment.

[3.359] Section 1, new notes

insert

Note 1 This Act is part of the road transport legislation. It provides for the administration and enforcement of the road transport legislation generally.

Note 2 Other road transport legislation includes the following:

- *Road Transport (Alcohol and Drugs) Act 1977*
- *Road Transport (Dimensions and Mass) Act 1990*
- *Road Transport (Driver Licensing) Act 1999*
- *Road Transport (Public Passenger Services) Act 2001*
- *Road Transport (Safety and Traffic Management) Act 1999*
- *Road Transport (Vehicle Registration) Act 1999*.

Note 3 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

Explanatory note

This amendment restructures the existing note at part 1 heading in accordance with current drafting practice.

[3.360] Section 3, new note

insert

Note The Commonwealth Act mentioned in s 3 (a) has been repealed and replaced by the *National Transport Commission Act 2003* (Cwlth), and the agreements scheduled to the repealed Act have been independently terminated and replaced by the *Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport*.

Explanatory note

This amendment adds a new note to give a context to the references in the provision to the *National Road Transport Commission Act 1991* (Cwlth) consequent on the repeal of that Act and the establishment of the National Transport Commission by the *National Transport Commission Act 2003* (Cwlth).

[3.361] Section 10 (1)

omit

(1) In the road transport legislation,

substitute

In the road transport legislation,

Explanatory note

This amendment is consequential on the omission of section 10 (2) by another amendment.

[3.362] Section 10 (1) (a) (ii)

omit

a previous

insert

the

Explanatory note

Section 10 defines who is a responsible person for a vehicle. Paragraph (1) (a) (ii) provides that, if the vehicle has been disposed of by 'a previous registered operator', anyone who acquired the vehicle from the operator is a responsible person for the vehicle. Accordingly,

anyone who has acquired the vehicle from any previous registered operator, as distinct from only the most recent registered operator, is a responsible person for the vehicle. This amendment removes the anomaly so that only someone who has acquired the vehicle from the most recent registered operator is a responsible person for the vehicle.

[3.363] Section 10 (2)

substitute

Note A statutory instrument may make different provisions about different matters and apply the provisions differently by reference to stated exceptions or factors (see Legislation Act, s 48).

Explanatory note

This amendment omits subsection (2). The subsection provides that regulations may prescribe different people for different provisions of the road transport legislation for subsection (1) (d) (which is about prescribing a person to be a responsible person for a vehicle). The subsection is unnecessary because the Legislation Act, section 48 authorises a statutory instrument to make different provisions about different matters. A standard note about section 48 is inserted.

[3.364] Section 214 (1)

omit

- (1) An authorised insurer

substitute

An authorised insurer

Explanatory note

This amendment is consequential on the omission of subsection (2) by another amendment.

[3.365] Section 214 (2)

substitute

Note A statutory instrument may make different provisions about different matters and apply the provisions differently by reference to stated exceptions or factors (see Legislation Act, s 48).

Explanatory note

This amendment omits subsection (2). The subsection provides that regulations may prescribe different maximum premiums for different kinds of motor vehicles, motor vehicles used for

different purposes etc. The subsection is unnecessary because the Legislation Act, section 48 authorises a statutory instrument to make different provisions about different matters. A standard note about section 48 is inserted.

[3.366] Section 229

substitute

229 Regulations may apply certain documents etc

- (1) A regulation may apply a publication of the National Transport Commission approved, or of matters approved, by the Australian Transport Council or any other instrument as in force from time to time.

Note 1 The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or as at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

Note 2 A notifiable instrument must be notified under the Legislation Act.

- (2) For a regulation, a regulation may define a term defined by this Act (or apply the definition of a term in an instrument mentioned in subsection (1))—
- (a) in the same (or in substantially the same) way as it is defined by this Act; or
 - (b) by reference to a matter included in the term as defined by this Act; or
 - (c) by reference to a combination of matters included in the term as defined by this Act and in any other term defined by this Act; or
 - (d) for applying a publication of the National Transport Commission approved, or of matters approved, by the Australian Transport Council—in the same way as it is defined in the publication despite anything in this Act or other road transport legislation.

(3) In this section:

publication of the National Transport Commission includes—

- (a) a document published by or for the National Road Transport Commission under the *National Road Transport Commission Act 1991* (Cwlth); and
- (b) a document published for the National Transport Commission.

Note The Commonwealth Act mentioned in par (a) has been repealed and replaced by the *National Transport Commission Act 2003* (Cwlth).

Explanatory note

This amendment updates the section consequent on the repeal of the *National Road Transport Commission Act 1991* (Cwlth) and the establishment of the National Transport Commission by the *National Transport Commission Act 2003* (Cwlth). The amendment brings the language of the section into line with current drafting practice.

[3.367] Dictionary, definition of *Australian Transport Council*

substitute

Australian Transport Council means the Australian Transport Council mentioned in the *National Transport Commission Act 2003* (Cwlth), section 4 or its successor.

Explanatory note

This amendment updates the definition consequent on the repeal of the *National Road Transport Commission Act 1991* (Cwlth) and the establishment of the National Transport Commission by the *National Transport Commission Act 2003* (Cwlth).

[3.368] Dictionary, definition of *National Road Transport Commission*

substitute

National Transport Commission means the National Transport Commission established by the *National Transport Commission Act 2003* (Cwlth) or its successor.

Explanatory note

This amendment is consequent on the repeal of the *National Road Transport Commission Act 1991* (Cwlth) and the establishment of the National Transport Commission by the *National Transport Commission Act 2003* (Cwlth).

Part 3.57 Road Transport (Public Passenger Services) Act 2001

[3.369] Part 1 heading, note

omit

Explanatory note

This amendment is consequential on new notes being inserted in section 1 by another amendment.

[3.370] Section 1, new notes

insert

Note 1 This Act is part of the road transport legislation. See the *Road Transport (General) Act 1999* for various provisions about the administration and enforcement of the road transport legislation generally.

Note 2 Other road transport legislation includes the following:

- *Road Transport (Alcohol and Drugs) Act 1977*
- *Road Transport (Dimensions and Mass) Act 1990*
- *Road Transport (Driver Licensing) Act 1999*
- *Road Transport (Safety and Traffic Management) Act 1999*
- *Road Transport (Vehicle Registration) Act 1999*.

Note 3 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

Explanatory note

This amendment restructures the existing note at part 1 heading in accordance with current drafting practice.

[3.371] New section 10A

in division 2.1, insert

10A Meaning of *bus* and *public bus*

In this Act:

bus means a motor vehicle built mainly to carry people that seats over 9 adults (including the driver).

public bus means a bus used to provide a bus service.

Explanatory note

This amendment relocates (without change) the dictionary definitions of these terms to a more appropriate place in the Act.

[3.372] Section 17 (3) (f) and (g)

substitute

- (f) the records (including accounts) to be made and kept, how they are to be made and kept, and their inspection; and
- (g) the provision of information and reports to the road transport authority about the regular route service and the verification of the information and reports; and

(commencement: the later of the commencement of this Act or the *Road Transport (Public Passenger Services) (Hire Cars) Amendment Act 2004*)

Explanatory note

Section 17 (3) includes examples of things that may be included in a service contract for a regular route service. This amendment brings these paragraphs into line with the approach in the other provisions of the Act in relation to examples of things that may be included in a regulation. In particular, it removes the references to the holder of a service contract. The dictionary definition of *holder* provides that the holder of a service contract means the person who (apart from the road transport authority) is a party to the contract. The term is only used in this context in the paragraphs being replaced by this amendment. The dictionary definition is consequentially omitted by another amendment.

The commencement of this amendment is delayed because the dictionary definition of *holder* is amended by the *Road Transport (Public Passenger Services) (Hire Cars) Amendment Act 2004*.

[3.373] Dictionary, definition of *bus*

substitute

bus—see section 10A.

Explanatory note

This amendment is consequential on the insertion of new section 10A by another amendment.

[3.374] Dictionary, definition of *holder*

omit

(commencement: the later of the commencement of this Act or the *Road Transport (Public Passenger Services) (Hire Cars) Amendment Act 2004*)

Explanatory note

This amendment is consequential on the replacement of section 17 (3) (f) and (g) by another amendment. The commencement of this amendment is delayed because the dictionary definition of *holder* is amended by the *Road Transport (Public Passenger Services) (Hire Cars) Amendment Act 2004*.

[3.375] Dictionary, definition of *public bus*

substitute

public bus—see section 10A.

Explanatory note

This amendment is consequential on the insertion of new section 10A by another amendment.

Part 3.58 Road Transport (Safety and Traffic Management) Act 1999

[3.376] Part 1 heading, note

omit

Explanatory note

This amendment is consequential on new notes being inserted in section 1 by another amendment.

[3.377] Section 1, new notes

insert

Note 1 This Act is part of the road transport legislation. See the *Road Transport (General) Act 1999* for various provisions about the administration and enforcement of the road transport legislation generally.

Note 2 Other road transport legislation includes the following:

- *Road Transport (Alcohol and Drugs) Act 1977*
- *Road Transport (Dimensions and Mass) Act 1990*
- *Road Transport (Driver Licensing) Act 1999*
- *Road Transport (Public Passenger Services) Act 2001*
- *Road Transport (Vehicle Registration) Act 1999*.

Note 3 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

Explanatory note

This amendment restructures the existing note at part 1 heading in accordance with current drafting practice.

[3.378] Section 3, new note

insert

Note The Commonwealth Act mentioned in s 3 (a) (i) has been repealed and replaced by the *National Transport Commission Act 2003* (Cwlth), and the agreements scheduled to the repealed Act have been independently terminated and replaced by the *Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport*.

Explanatory note

This amendment adds a new note to give a context to the references in the provision to the *National Road Transport Commission Act 1991* (Cwlth) consequent on the repeal of that Act and the establishment of the National Transport Commission by the *National Transport Commission Act 2003* (Cwlth).

[3.379] Section 4 heading

substitute

4 Dictionary

Explanatory note

This amendment brings the heading into line with current drafting practice.

[3.380] Section 19 heading

substitute

19 Offences about prescribed traffic control devices

Explanatory note

This amendment adds the word ‘prescribed’ to the heading.

[3.381] Section 34

substitute

34 Regulations may apply certain documents etc

- (1) A regulation may apply a publication of the National Transport Commission approved, or of matters approved, by the Australian Transport Council or any other instrument as in force from time to time.

Note 1 The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or as at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

Note 2 A notifiable instrument must be notified under the Legislation Act.

- (2) For a regulation, a regulation may define a term defined by this Act (or apply the definition of a term in an instrument mentioned in subsection (1))—
- (a) in the same (or in substantially the same) way as it is defined by this Act; or

- (b) by reference to a matter included in the term as defined by this Act; or
 - (c) by reference to a combination of matters included in the term as defined by this Act and in any other term defined by this Act; or
 - (d) for applying a publication of the National Transport Commission approved, or of matters approved, by the Australian Transport Council—in the same way as it is defined in the publication despite anything in this Act or other road transport legislation.
- (3) In this section:

publication of the National Transport Commission includes—

- (a) a document published by or for the National Road Transport Commission under the *National Road Transport Commission Act 1991* (Cwlth); and
- (b) a document published for the National Transport Commission.

Note The Commonwealth Act mentioned in par (a) has been repealed and replaced by the *National Transport Commission Act 2003* (Cwlth).

Explanatory note

This amendment updates the section consequent on the repeal of the *National Road Transport Commission Act 1991* (Cwlth) and the establishment of the National Transport Commission by the *National Transport Commission Act 2003* (Cwlth). The amendment brings the language of the section into line with current drafting practice.

[3.382] Dictionary, definition of *Australian Transport Council*

substitute

Australian Transport Council means the Australian Transport Council mentioned in the *National Transport Commission Act 2003* (Cwlth), section 4 or its successor.

Explanatory note

This amendment updates the definition consequent on the repeal of the *National Road Transport Commission Act 1991* (Cwlth) and the establishment of the National Transport Commission by the *National Transport Commission Act 2003* (Cwlth).

[3.383] Dictionary, definition of *National Road Transport Commission*

substitute

National Transport Commission means the National Transport Commission established by the *National Transport Commission Act 2003* (Cwlth) or its successor.

Explanatory note

This amendment is consequent on the repeal of the *National Road Transport Commission Act 1991* (Cwlth) and the establishment of the National Transport Commission by the *National Transport Commission Act 2003* (Cwlth).

Part 3.59 Road Transport (Vehicle Registration) Act 1999

[3.384] Part 1 heading, note

omit

Explanatory note

This amendment is consequential on new notes bring inserted in section 1 by another amendment.

[3.385] Section 1, new notes

insert

Note 1 This Act is part of the road transport legislation. See the *Road Transport (General) Act 1999* for various provisions about the administration and enforcement of the road transport legislation generally.

Note 2 Other road transport legislation includes the following:

- *Road Transport (Alcohol and Drugs) Act 1977*
- *Road Transport (Dimensions and Mass) Act 1990*
- *Road Transport (Driver Licensing) Act 1999*
- *Road Transport (Public Passenger Services) Act 2001*
- *Road Transport (Safety and Traffic Management) Act 1999*.

Note 3 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

Explanatory note

This amendment restructures the existing note at part 1 heading in accordance with current drafting practice.

[3.386] Section 3, new note

insert

Note The Commonwealth Act mentioned in s 3 (a) (i) has been repealed and replaced by the *National Transport Commission Act 2003* (Cwlth), and the agreements scheduled to the repealed Act have been independently terminated and replaced by the *Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport*.

Explanatory note

This amendment adds a new note to give a context to the references in the provision to the *National Road Transport Commission Act 1991* (Cwlth) consequent on the repeal of that Act and the establishment of the National Transport Commission by the *National Transport Commission Act 2003* (Cwlth).

[3.387] Section 4 heading

substitute

4 Dictionary

Explanatory note

This amendment brings the heading into line with current drafting practice.

[3.388] Section 16

substitute

16 Regulations may apply certain documents etc

- (1) A regulation may apply a publication of the National Transport Commission approved, or of matters approved, by the Australian Transport Council or any other instrument as in force from time to time.

Note 1 The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or as at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

Note 2 A notifiable instrument must be notified under the Legislation Act.

- (2) For a regulation, a regulation may define a term defined by this Act (or apply the definition of a term in an instrument mentioned in subsection (1))—
- (a) in the same (or in substantially the same) way as it is defined by this Act; or
 - (b) by reference to a matter included in the term as defined by this Act; or
 - (c) by reference to a combination of matters included in the term as defined by this Act and in any other term defined by this Act; or

- (d) for applying a publication of the National Transport Commission approved, or of matters approved, by the Australian Transport Council—in the same way as it is defined in the publication despite anything in this Act or other road transport legislation.
- (3) In this section:
- publication of the National Transport Commission* includes—
- (a) a document published by or for the National Road Transport Commission under the *National Road Transport Commission Act 1991* (Cwlth); and
- (b) a document published for the National Transport Commission.

Note The Commonwealth Act mentioned in par (a) has been repealed and replaced by the *National Transport Commission Act 2003* (Cwlth).

Explanatory note

This amendment updates the section consequent on the repeal of the *National Road Transport Commission Act 1991* (Cwlth) and the establishment of the National Transport Commission by the *National Transport Commission Act 2003* (Cwlth). The amendment brings the language of the section into line with current drafting practice.

[3.389] Dictionary, definition of *Australian Transport Council*

substitute

Australian Transport Council means the Australian Transport Council mentioned in the *National Transport Commission Act 2003* (Cwlth), section 4 or its successor.

Explanatory note

This amendment updates the definition consequent on the repeal of the *National Road Transport Commission Act 1991* (Cwlth) and the establishment of the National Transport Commission by the *National Transport Commission Act 2003* (Cwlth).

[3.390] Dictionary, definition of *garage address*, paragraph (b) (i)

substitute

- (i) the vehicle has only 1 registered operator—the home address of the registered operator; or

Explanatory note

This amendment replaces the reference of ‘1 operator’ to ‘1 registered operator’ for consistency with paragraph (b) (ii) and (iii) of the definition.

[3.391] Dictionary, definition of *National Road Transport Commission*

substitute

National Transport Commission means the National Transport Commission established by the *National Transport Commission Act 2003* (Cwlth) or its successor.

Explanatory note

This amendment is consequent on the repeal of the *National Road Transport Commission Act 1991* (Cwlth) and the establishment of the National Transport Commission by the *National Transport Commission Act 2003* (Cwlth).

[3.392] Dictionary, definition of *registered operator*, new note

insert

Note A reference to the registered operator includes each registered operator (see s 29).

Explanatory note

This amendment inserts a note about the extended meaning of the registered operator to assist users of the Act.

Part 3.60 Road Transport (Vehicle Registration) Regulation 2000

[3.393] Schedule 1, section 1.1 (1), new note

insert

Note The Commonwealth Act mentioned in s (1) has been repealed and replaced by the *National Transport Commission Act 2003* (Cwlth).

Explanatory note

This amendment adds a new note to give a context to the references in the provision to the *National Road Transport Commission Act 1991* (Cwlth) consequent on the repeal of that Act and the establishment of the National Transport Commission by the *National Transport Commission Act 2003* (Cwlth).

[3.394] Schedule 1, section 1.3

omit

Explanatory note

This amendment omits an unnecessary provision about how a provision in the schedule is to be referred to by another provision of the schedule.

[3.395] Dictionary, definition of *emergency worker*

substitute

emergency worker—see the *Road Transport (Safety and Traffic Management) Regulation 2000*, section 33 (1), definition of ***emergency worker***.

Explanatory note

The existing definition defines the term by reference to the *Road Transport (Safety and Traffic Management) Regulation 1999*, dictionary. That definition was omitted by another enactment without the above definition being consequentially amended. This amendment corrects that oversight.

[3.396] Dictionary, definition of *road tank vehicle*

substitute

road tank vehicle has the same meaning as in the 6th edition of the *Australian Code for the Transport of Dangerous Goods by Road and Rail* as approved by the Competent Authorities Panel, the Australian Committee for the Transport of Dangerous Goods and the Transport Ministers of Australia and published jointly by—

- (a) the National Road Transport Commission under the *National Road Transport Commission Act 1991* (Cwlth); and
- (b) the Federal Office of Road Safety (now known as the Australian Transport Safety Bureau).

Note The Commonwealth Act mentioned in par (a) has been repealed and replaced by the *National Transport Commission Act 2003* (Cwlth).

Explanatory note

This amendment updates the definition consequent on the repeal of the *National Road Transport Commission Act 1991* (Cwlth) and the establishment of the National Transport Commission by the *National Transport Commission Act 2003* (Cwlth).

Part 3.61 Sale of Motor Vehicles Act 1977

[3.397] Sections 5 and 5A

substitute

5 Registrar of Motor Vehicle Dealers

The chief executive must appoint a public servant as Registrar of Motor Vehicle Dealers.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

5A Deputy Registrar of Motor Vehicle Dealers

- (1) The chief executive must appoint a public servant as Deputy Registrar of Motor Vehicle Dealers.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

- (2) The deputy registrar may exercise any function of the registrar, subject to any direction of the registrar.

Explanatory note

This amendment corrects an error in the title of the registrar and deputy registrar. The *Statute Law Amendment Act 2003 (No 2)*, amendment 3.202 updated the appointment provisions but inadvertently used the titles ‘Registrar of Motor Vehicles’ and ‘Deputy Registrar of Motor Vehicles’.

[3.398] Section 52 (1)

omit

, except as provided by the *Evidence Act 1971*, section 57,

Explanatory note

This amendment removes a redundant reference. Section 52 relates to a person who appears as a witness at an inquiry before the registrar and refuses to give sworn evidence. The *Evidence Act 1971*, section 57 (now repealed) related to a person being asked a question that would tend to incriminate the person or the person’s spouse. It was repealed by the *Sexuality Discrimination Legislation Amendment Act 2004* which removed discrimination relating to sexuality and marital status. The Legislation Act, section 170 preserves the common law privilege against selfincrimination and the *Evidence Act 1995* (Cwlth), section 128 contains provisions that apply if a witness raises the privilege in a proceeding.

[3.399] Section 66 and sections 70 to 70H

omit

(commencement: on a day fixed by the Minister by written notice)

Explanatory note

This amendment omits sections that deal with infringement notices. The *Magistrates Court Act 1930*, part 3.8 (Infringement notices for certain offences) provides a system of infringement notices for offences against various Acts. Regulations are made under the *Magistrates Court Act 1930* that contain the detail for the infringement notice scheme for a particular Act.

The commencement of this amendment is delayed to allow a new *Magistrates Court (Sale of Motor Vehicles Infringement Notices) Regulation 2005* to be prepared.

[3.400] Schedule 3

omit

(commencement: on a day fixed by the Minister by written notice)

Explanatory note

This amendment is consequential on the omission of section 66 and sections 70 to 70H by another amendment. The commencement of this amendment is delayed because the omission of those sections is delayed.

[3.401] Dictionary, definitions of *final infringement notice, infringement notice, notified person, on-the-spot fine, relevant amount, relevant period for payment and schedule 3 offence*

omit

(commencement: on a day fixed by the Minister by written notice)

Explanatory note

This amendment is consequential on the omission of section 66 and sections 70 to 70H by another amendment. The commencement of this amendment is delayed because the omission of those sections is delayed.

Part 3.62 **Sale of Motor Vehicles Regulation 1977**

[3.402] Section 3 (e)

substitute

- (e) for an application by a corporation—whether a director of the corporation is a bankrupt or a debtor under a personal insolvency agreement.

Explanatory note

The *Bankruptcy Legislation Amendment Act 2004* (Cwlth) amended the *Bankruptcy Act 1966* (Cwlth) to replace the concepts of deed of assignment, deed of arrangement and composition with the new single concept of personal insolvency agreement. This amendment brings the paragraph into line with the new concept.

Part 3.63 **Superannuation (Legislative Assembly Members) Act 1991**

[3.403] Section 7 (1) (d)

substitute

- (d) the chief executive of the administrative unit responsible for the *Financial Management Act 1996*.

Explanatory note

This amendment updates a redundant reference to ‘under Treasurer’.

Part 3.64 Supreme Court Act 1933

[3.404] Section 58A (2)

substitute

(2) In this section:

depositions, of a witness, means—

- (a) if a record of the depositions was made in accordance with the *Magistrates Court Act 1930*, section 316 (2) (Record of proceedings)—a transcript of the record certified in accordance with that Act, section 314 (2) (Registrar to give directions for preparation of transcript); or
- (b) if the depositions were taken down in writing and signed in accordance with the *Magistrates Court Act 1930*, section 316 (3)—the depositions taken down and signed.

Explanatory note

This amendment updates cross-references.

Part 3.65 Supreme Court Rules 1937

[3.405] Order 80 rule 13

omit

section 108 (Copies of depositions may be obtained by accused)

substitute

section 108 (Accused person may obtain copies of depositions etc)

Explanatory note

This amendment is consequential on the amendment of the *Magistrates Court Act 1930*, section 108 by another amendment.

Part 3.66 Territory Owned Corporations Act 1990

[3.406] Section 1

substitute

2 Name of Act

This Act is the *Territory-owned Corporations Act 1990*.

Explanatory note

This amendment brings the naming section into line with current drafting practice.

[3.407] Section 33B (1)

omit

Affirmative Action (Equal Opportunity for Women) Act 1986

substitute

Equal Opportunity for Women in the Workplace Act 1999

Explanatory note

This amendment updates a reference to a Commonwealth Act.

Part 3.67 Territory plan

[3.408] Part A3, clause 6.1, paragraph (c)

omit

by notice published in the Government Gazette pursuant to section 32 of the Land Act,

substitute

by instrument under the Land Act, section 32 (1),

Explanatory note

A variation of the territory plan under *Land (Planning and Environment) Act 1991*, section 32 is a notifiable instrument. This amendment removes from the clause an unnecessary (and outdated) reference to a notice being published in the Government Gazette.

[3.409] Part A3, clause 8.3

substitute

8.3 The formal adoption of an entry on, and removal from, the Register of, a planning guideline is a notifiable instrument and must also be notified in a daily newspaper by the Authority.

Note A notifiable instrument must be notified under the Legislation Act.

Explanatory note

This amendment omits an outdated reference to the gazette and by providing that an instrument adopting a planning guideline on the Register, or removing it, is a notifiable instrument under the Legislation Act. This amendment reflects the current position applying under transitional provisions of the Legislation Act.

Part 3.68 Tertiary Accreditation and Registration Act 2003

[3.410] Section 62 (2)

substitute

- (2) The committee must include as members—
- (a) people who are, in the council’s opinion, qualified in an area relevant to the courses proposed to be offered by the relevant higher education provider; and
 - (b) people who are, in the council’s opinion, qualified to assess the financial and management capacity of the higher education provider.

Explanatory note

This amendment makes it clear that a committee must have among its members people who have all the relevant qualifications and that every board member is not required to possess all the relevant qualifications.

Part 3.69 Trustee Act 1925

[3.411] Section 6 (6) (c)

substitute

- (c) a separate set of up to 4 trustees may be appointed for any part of the trust property held on trusts that are distinct from those relating to any other part of the trust property even if a new trustee is not to be appointed for the other part;

Explanatory note

This amendment simplifies the paragraph by omitting an unnecessary reference to the plural ‘or parts’ of the trust property (see Legislation Act, section 145 (Gender and number)).

[3.412] Section 14F (1)

omit

instrument creating a trust

substitute

trust instrument

Explanatory note

This amendment uses the defined term *trust instrument* to omit unnecessary words.

[3.413] Section 14F (4)

omit

instrument creating the trust

substitute

trust instrument

Explanatory note

This amendment uses the defined term *trust instrument* to omit unnecessary words.

[3.414] Section 22 (3)

substitute

(3) If—

- (a) a preferential right to subscribe for shares in a company is offered to the trustee; and
- (b) the shares are subject to a special or reserve liability; and
- (c) the company is wound up;

the trustee may exercise the right and hold the shares as if they were part of the trustee's original holding in the company.

Explanatory note

This amendment brings the structure of the subsection with current drafting practice to make its meaning clear.

[3.415] Section 25

substitute

25 Continued holding

A trustee is not liable for breach of trust only because the trustee continues to hold an investment after the investment is no longer authorised by the trust instrument or by law.

Explanatory note

This amendment brings the language of the section into line with current drafting practice.

[3.416] Section 27B (1)

substitute

- (1) A power to postpone sale is implied in every trust for sale, unless the contrary intention appears in the trust instrument.

Explanatory note

This amendment updates language and makes clear that any contrary intention must be found in the trust instrument.

[3.417] Section 27D (2)

substitute

- (2) This section applies to a trust unless the contrary intention appears in the trust instrument.

Explanatory note

This amendment corrects a typographical error.

[3.418] Section 28 (3) (b)

substitute

- (b) that the balance of the purchase money is payable in instalments, the first not later than 3 years after the date of the contract of sale and the others at intervals of not longer than 1 year beginning on the day the first instalment is payable, and interest is payable, at least every 6 months, on any unpaid amount;

Explanatory note

This amendment brings the language of the paragraph into line with current drafting practice.

[3.419] Section 36 (1)

substitute

- (1) A trustee may give a lease of land in possession for a term of not longer than—
 - (a) if the trustee has power to manage the land, or holds the land on trust for sale with an express power to postpone the sale—5 years; or
 - (b) in any other case—3 years.

Explanatory note

This amendment brings the language of the subsection into line with current drafting practice.

[3.420] Section 36 (3)

substitute

- (3) Any lease that a trustee is authorised to make under this section, or under the trust instrument or other instrument giving the authorisation, may—
 - (a) provide for rent increases at times stated in the lease; or
 - (b) give an option for renewal that does not extend the lease beyond the term for which the trustee is authorised to make the lease.

Explanatory note

This amendment brings the language of the subsection into line with current drafting practice.

[3.421] Section 36 (8)

substitute

- (8) The execution of a lease by the lessor is evidence, for the lessee and anyone deriving title from the lessee, of the execution of the lease by the lessee.

Explanatory note

This amendment updates language and omits words made unnecessary by another amendment.

[3.422] Section 43 (4)

omit

in virtue only

substitute

only because

Explanatory note

This amendment updates language.

[3.423] Section 46 (6)

substitute

- (6) An appropriation must not, except as otherwise provided in this section, be made in relation to a settled legacy, share or interest, unless 1 of the following consents in writing:
- (a) the trustee (if any) of the legacy, share or interest, if the trustee is not making the appropriation;
 - (b) the person who is, for the time being, entitled to the income.

Explanatory note

This amendment brings the language of the subsection into line with current drafting practice.

[3.424] Section 46 (8)

omit

save

substitute

except that

Explanatory note

This amendment updates language.

[3.425] Section 46 (10)

omit

the same

substitute

it

Explanatory note

This amendment updates language.

[3.426] Section 47 (1)

substitute

- (1) If an amount is held in trust for a child, someone with a legal disability or someone who cannot be found, the trustee may pay the amount to the public trustee and, if the amount is paid to the public trustee, must give the public trustee—
 - (a) a copy of the trust instrument, or, if there is no trust instrument, a statutory declaration setting out the trusts on which the amount is held; and
 - (b) any information about the disability or identity of the person for whom the amount is held in trust that the public trustee requires.

Explanatory note

This amendment brings the language of the subsection into line with current drafting practice.

[3.427] Section 47 (8)

substitute

- (8) This section does not—
 - (a) deprive a person of any right or remedy to which the person is entitled against a trustee or anyone else; or

- (b) require the public trustee to make or continue to make any inquiry or investigation to find out who might be entitled to amounts paid to the trustee under subsection (1) after those amounts have been paid to the Minister under subsection (4).

Explanatory note

This amendment brings the structure of the subsection into line with current drafting practice to make its meaning clear.

[3.428] Section 48

substitute

48 Receipts

- (1) This section applies if trustees give a written receipt to a person for personal property payable, transferable or deliverable to the trustees under a trust or power.
- (2) The receipt—
- (a) is a sufficient discharge for the property; and
 - (b) relieves the person from—
 - (i) seeing to the application of the property; or
 - (ii) being answerable for any loss or misapplication of the property.
- (3) In this section:
- personal property* includes an amount of money.

Explanatory note

This amendment brings the language and structure of the section into line with current drafting practice.

[3.429] Section 49 (1) (e)

omit

whatever

Explanatory note

This amendment omits a redundant word.

[3.430] Section 49 (1) (f)

substitute

- (f) for any of those purposes, enter into, give or execute any agreement, instrument or arrangement, or do anything, considered appropriate by the trustees, majority of trustees, or trustee.

Explanatory note

This amendment brings the language of the paragraph into line with current drafting practice.

[3.431] Section 54 (1)

omit

by writing under their hands

substitute

by signed instrument

Explanatory note

This amendment updates language.

[3.432] Section 54A (1) and (2)

substitute

- (1) If 2 or more people receive an amount in a fiduciary position (other than as trustees under a will, settlement or like instrument) and deposit the amount with a bank, the bank may, if authorised by them—

-
- (a) pay a cheque drawn on the bank by 1 or more of them or by an agent authorised by them; and
 - (b) recognise as valid an endorsement on a bill of exchange or promissory note payable to their order if the endorsement is an endorsement by 1 or more of them or by an agent authorised by them.
- (2) If a person receives an amount in a fiduciary position (other than as trustee under a will, settlement or like instrument) and deposits the amount with a bank, the bank may, if authorised by the person—
- (a) pay a cheque drawn on the bank by an agent authorised by the person; and
 - (b) recognise as valid an endorsement on a bill of exchange or promissory note payable to the order of the person if the endorsement is an endorsement by an agent authorised by the person.

Explanatory note

This amendment brings the language and structure of the subsections into line with current drafting practice.

[3.433] Section 58

substitute

58 Powers of attorney

- (1) This section applies if—
- (a) a trustee pays an amount, or does something else, honestly under a power of attorney given by a person; and
 - (b) when the trustee does the thing—
 - (i) the person is dead or has done something to end the power of attorney; but
 - (ii) the trustee is unaware of this.

- (2) The trustee is not liable for doing the thing.
- (3) If the trustee pays an amount to a person (the *payee*)—
 - (a) this section does not affect the rights against the payee of anyone entitled to the amount (an *affected person*); and
 - (b) the affected person is entitled to the same remedies against the payee as the affected person would have had against the trustee.

Explanatory note

This amendment brings the language and structure of the section into line with current drafting practice.

[3.434] Section 62

substitute

62 Notice affecting a trustee

- (1) A trustee acting for more than 1 trust or estate is not affected by notice of anything in relation to a particular trust or estate if the trustee has notice of it only because the trustee acts for another trust or estate.
- (2) This section does not apply if the trustee is fraudulent.

Explanatory note

This amendment brings the language and structure of the section into line with current drafting practice.

[3.435] Section 64 (1) to (3)

substitute

- (1) If a trustee is absent from the ACT or is about to leave the ACT, the trustee may, by registered deed, delegate the execution of the trust.
- (2) However, the trustee delegates the execution of the trust only if—

-
- (a) each co-trustee, and anyone else authorised to appoint trustees, consents to the delegation by the deed or another registered deed; and
- (b) the delegation is to—
- (i) the public trustee; or
 - (ii) a trustee company; or
 - (iii) a person living in the ACT who either is a co-trustee or can be appointed a trustee of the trust.
- (3) The delegation may be made in relation to all or any part of the trust.

Explanatory note

This amendment brings the structure of the subsection into line with current drafting practice to make its meaning clear.

[3.436] Section 67

substitute

67 Power of attorney

- (1) A delegation under this part is taken to be a power of attorney within the meaning of the *Powers of Attorney Act 1956*.
- (2) That Act, other than an excepted provision, applies to the delegation.
- (3) In this section:
- excepted provision*** means any of the following provisions:
- section 6 (Irrevocable power of attorney for value)
 - section 7 (Power of attorney irrevocable for fixed period)
 - section 8 (Protection of purchaser under irrevocable power of attorney).

Explanatory note

This amendment brings the language and structure of the section line with current drafting practice.

[3.437] Section 71 (6)

substitute

- (6) Subject to subsection (4), the order may vest the property in anyone, in any way and for any interest that the Supreme Court directs, or may release or dispose of any contingent right to a person as the court directs.

Explanatory note

This amendment brings the language of the subsection into line with current drafting practice.

[3.438] Section 71 (8) and (9)

substitute

- (8) This section does not prevent the Supreme Court from—
- (a) directing a reconveyance or the payment of costs incurred if the order is improperly obtained; or
 - (b) making a further vesting order.
- (9) If a legal interest in property ends because of the dissolution of a corporation, the Supreme Court may, by order—
- (a) create a corresponding interest; and
 - (b) vest the corresponding interest in the person who would have been entitled to the interest if it had not ended.

Explanatory note

This amendment brings the language and structure of the subsections more closely into line with current drafting practice.

[3.439] Section 75 (1) (b)

substitute

- (b) in any other case—the Supreme Court may order that the land vests in anyone, in any way and for any estate that the court directs.

Explanatory note

This amendment brings the language of the paragraph into line with current drafting practice.

[3.440] Section 75 (2)

substitute

- (2) The order may only be made if—
- (a) the mortgagee did not enter into possession, and the amount owing under the mortgage has been paid to a person entitled to receive the amount; or
 - (b) the person entitled to receive the amount consents to any order for reconveyance of the land.

Explanatory note

This amendment brings the language and structure of the subsection into line with current drafting practice.

[3.441] Section 75 (3) (b)

omit

the same

substitute

the land

Explanatory note

This amendment updates language.

[3.442] Section 75 (5)

substitute

- (5) This section does not prevent the Supreme Court from—
- (a) directing a reconveyance or the payment of costs incurred if the order is improperly obtained; or
 - (b) making a further vesting order.

Explanatory note

This amendment brings the language and structure of the subsection into line with current drafting practice.

[3.443] Section 76 (1)

substitute

- (1) If the Supreme Court makes an order directing the sale or mortgage of land, the court may make an order vesting the land, or part of it, for any estate the court considers appropriate in the purchaser, the mortgagee, or anyone else.

Explanatory note

This amendment brings the language of the subsection into line with current drafting practice.

[3.444] Section 81 (1) and (2)

omit

by the trust instrument, or by law

substitute

by instrument or by law

Explanatory note

This amendment updates language.

[3.445] Section 82 (1) (d)

substitute

- (d) to erect, or join in erecting, a fence of which part is on the land and part on adjoining land;

Explanatory note

This amendment brings the language and structure of the paragraph into line with current drafting practice.

[3.446] Dictionary heading

substitute

Dictionary

(see s 2)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACT
- affidavit
- appoint
- asset
- child
- instrument (see s 14)
- interest
- land
- lawyer
- month
- person
- power
- proceeding
- property
- public trustee

- registrar-general
- sign
- statutory declaration
- will
- year.

Explanatory note

This amendment inserts standard dictionary notes in line with current drafting practice that draw to the attention of the reader that the dictionary is not the only source for definitions of terms.

Part 3.70 Unit Titles Act 2001

[3.447] New section 12A

insert

12A Meaning of *annexed*

A unit subsidiary or an easement that is stated by this Act to be *annexed* to a unit, common property or an estate in leasehold is taken to be appurtenant to the unit, common property or estate.

Note Property in a unit subsidiary or easement that is, at law, ‘appurtenant’ to a unit, common property or a leasehold estate is transferred with that estate when the unit, common property or lease is transferred.

Explanatory note

This amendment remakes the dictionary definition as a separate section because it is an important term for the Act.

[3.448] Section 59 (2)

omit

(special purpose funds)

substitute

(a special purpose fund)

Explanatory note

This amendment revises the tagged-term definition in the singular to be consistent with the dictionary definition.

[3.449] Section 71 (1), note

substitute

Note Information about representatives of units owned by 2 or more people, or by a company, must be provided to the owners corporation under the following sections:

- s 41 (Multiple owners of units—authorisation of representatives)
- s 43 (Company-owned units—authorisation of representatives).

Explanatory note

This amendment replaces an obsolete reference to ‘company representatives’ with ‘a company’.

[3.450] Section 116

substitute

116 Value of votes

- (1) Every vote at a general meeting is of equal value, unless a poll is taken.
- (2) On a poll, the value of each vote (the *voting value*) is the value that is proportional to the unit entitlement of the unit for which it is exercised.

Explanatory note

This amendment updates the definition of *voting value* to bring it into line with current drafting practice.

[3.451] Dictionary, definition of *annexed*

substitute

annexed—see section 12A.

Explanatory note

This amendment is consequential on the insertion of a new section 12A by another amendment.

[3.452] Dictionary, definition of *article*

insert

article, for an owner corporation, means an article of the corporation under section 126.

Explanatory note

This amendment inserts a definition of *article* for an owner's corporation in line with current drafting practice.

[3.453] Dictionary, definition of *company representative*

omit

Explanatory note

This amendment omits a definition made obsolete by the existing definition of *representative*.

[3.454] Dictionary, definition of *entitled to vote*

substitute

entitled to vote, in relation to a motion at a general meeting of an owners corporation, means a person who is entitled to vote on the motion under section 110.

Explanatory note

This amendment brings the definition into line with current drafting practice.

[3.455] Dictionary, definitions of *GST* and *mortgagee's representative*

omit

Explanatory note

This amendment omits the definition of *GST* which is defined in the Legislation Act, dictionary, part 1, and omits the definition of *mortgagee's representative* made obsolete by the existing definition of *representative*.

[3.456] Dictionary, definition of *schedule of unit entitlement*

substitute

schedule of unit entitlement, in relation to a units plan, means the schedule of unit entitlement forming part of the plan under section 8.

Explanatory note

This amendment brings the definition into line with current drafting practice.

[3.457] Dictionary, definition of *unit owners' representative*

omit

Explanatory note

This amendment omits a definition made obsolete by the definition of *representative*.

[3.458] Dictionary, definition of *units plan*

substitute

units plan means the units plan under section 7.

Explanatory note

This amendment brings the definition into line with current drafting practice.

Part 3.71 Victims of Crime (Financial Assistance) Act 1983

[3.459] Section 66 (3)

substitute

(3) In this section:

infringement notice includes an offence notice under the *Drugs of Dependence Act 1989*.

Note The Legislation Act dict, pt 1 defines ***infringement notice*** as including an infringement notice under the *Magistrates Court Act 1930* or the *Road Transport (General) Act 1999*.

Explanatory note

This amendment omits existing paragraph (c) which refers to a litter notice under the repealed *Litter Act 1977* and updates the list of infringement notices in existing paragraph (d) by substituting new paragraph (b) which relies on the Legislation Act definition of that term. A note about the definition is also inserted.

Part 3.72 Waste Minimisation Act 2001

[3.460] Dictionary, note 2

insert

- environment protection authority

Explanatory note

This amendment adds the example ‘environment protection authority’ to the list of defined terms found in the Legislation Act that are used in the Act.

[3.461] Dictionary, definition of ***EMA***

substitute

EPA means the environmental protection authority.

Explanatory note

This amendment updates the definition. The name of the authority was changed from ‘environmental management authority’ to environmental protection authority’ by the *Environment Protection Amendment Act 2001*.

[3.462] Further amendments, mentions of *EMA*

omit

EMA

substitute

EPA

in

- section 7 (b) (i)
- section 8 (2) (h)
- section 9 (2) (b)
- section 10
- section 11
- section 12
- section 13
- section 14
- section 15
- section 17
- section 18
- section 19
- section 20 (2) (d)
- section 44
- section 47

Explanatory note

This amendment is consequential on the new definition of *EPA* inserted by another amendment.

Part 3.73 Workers Compensation Act 1951

[3.463] Section 197 (2) (a)

omit

section 274 (2) (Cases in which appeals may be brought)

substitute

section 274 (2) (Cases in which appeal may be brought)

Explanatory note

This amendment corrects a reference to the *Magistrates Court Act 1930*, section 274 heading.

Part 3.74 Workers Compensation Regulation 2002

[3.464] Section 62 (3)

substitute

- (3) The sections of the Act are as follows:
- section 156 (Information for insurers on application for issue or renewal of policies)
 - section 157 (Information for insurers after renewal of policies)
 - section 158 (Information for insurers after end or cancellation of policies)
 - section 159 (Information for new insurers after change of insurers)
 - section 160 (Six-monthly information for insurers).

Explanatory note

This amendment is consequential on the *Workers Compensation Amendment Act 2003 (No 2)*. That Act substituted new sections 156 to 160 for sections 156 to 159 of the *Workers Compensation Act 1951*. The 2 groups of sections impose essentially similar obligations on insurers but with increased penalties for noncompliance with the obligations.

This amendment confirms editorial amendments made by the parliamentary counsel under the Legislation Act, section 114 for republication number 8 of the regulation. The editorial amendments updated the names of the headings to sections 156 to 159 and added section 160 to the list.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 17 March 2005.

2 Notification

Notified under the Legislation Act on 12 May 2005.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Statute Law Amendment Bill 2005, which was passed by the Legislative Assembly on 3 May 2005.

Clerk of the Legislative Assembly