



Australian Capital Territory

Statute Law Amendment Act 2007 (No 3)

A2007-39

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Australian Capital Territory

Statute Law Amendment Act 2007 (No 3)

A2007-39

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

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

J2007-158

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 2007 (No 3)*.

2 Commencement

This Act commences on the 21st day after its notification day.

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

3 Purpose

The purpose of this Act is to improve the quality of the statute law of the Territory by amending legislation 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 and 3

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

Schedule 1 Minor amendments

(see s 5)

Part 1.1 Environment Protection Act 1997

[1.1] Schedule 1, section 1.1, definition of *ozone-depleting substance*

omit

Explanatory note

This amendment is consequential on the omission of schedule 1, table 1.2, item 1 by another amendment.

[1.2] Schedule 1, table 1.2, item 1

omit

Explanatory note

This amendment omits a redundant provision that regulated certain dealings with ozone-depleting substances or things containing those substances if the dealing had been a prescribed activity. No relevant dealings are prescribed and ozone-depleting substances are now regulated under the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cwlth).

[1.3] Schedule 2, section 2.1, definitions of *high-octane unleaded petrol, leaded petrol, low-octane unleaded petrol, maximum lead concentration and unleaded petrol*

omit

Explanatory note

This amendment is consequential on the omission of schedule 2, part 2.4 by another amendment.

[1.4] Schedule 2, part 2.4

omit

Explanatory note

This amendment omits redundant provisions that regulated petrol quality. Schedule 2, part 2.4 was enacted in the context of the introduction of unleaded petrol. Fuel quality is now regulated under the *Fuel Quality Standards Act 2000* (Cwlth).

[1.5] Dictionary, definitions of *high-octane unleaded petrol, leaded petrol, low-octane unleaded petrol, maximum lead concentration and unleaded petrol*

omit

Explanatory note

This amendment is consequential on the omission of schedule 2, part 2.4 by another amendment.

Part 1.2 Environment Protection Regulation 2005

[1.6] Section 67 (2) (h)

omit

Explanatory note

This amendment is consequential on the omission of the definition of *ozone-depleting substance* from the *Environment Protection Act 1997*, schedule 1, section 1.1 by another amendment. The definition refers to the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cwlth).

Schedule 2 Legislation Act 2001

Note to sch 2

Statute law amendment bills may include a second schedule for amendments of the Legislation Act. This bill does not provide for such amendments but the schedule heading is retained to preserve the usual numbering of schedule 3, which provides for minor and technical amendments proposed by the parliamentary counsel.

Schedule 3 **Technical amendments**

(see s 5)

Part 3.1 **Anglican Church of Australia Trust Property Act 1917**

[3.1] **New part 2 heading**

before section 5, insert

Part 2 **Trustees—constitution and succession**

Explanatory note

This amendment inserts a new part heading to bring the Act more closely into line with current legislative drafting practice.

[3.2] **New part 3 heading**

before section 24, insert

Part 3 **Trust property—management, investment and dealings**

Explanatory note

This amendment inserts a new part heading to bring the Act more closely into line with current legislative drafting practice.

[3.3] New part 4 heading

before section 32, insert

Part 4 Variation of trusts

Explanatory note

This amendment inserts a new part heading to bring the Act more closely into line with current legislative drafting practice.

[3.4] New part 5 heading

before section 37, insert

Part 5 Miscellaneous

Explanatory note

This amendment inserts a new part heading to bring the Act more closely into line with current legislative drafting practice.

Part 3.2 Animal Diseases Act 2005

[3.5] Section 85, table 85, item 3

substitute

- 3 refusing to give consent under section 23 (4) (Public notices for quarantine areas)

Explanatory note

This amendment revises the item to refer correctly to the relevant provision number and text.

Part 3.3 Animal Diseases Regulation 2006

[3.6] Section 15 (1) (a) (iii) (B)

substitute

- (B) an authorised person decides it is impractical or too dangerous to tag the animal;

Explanatory note

This amendment changes a reference to *authorised officer* to *authorised person*, a defined term. The term *authorised officer* is not used in the Act.

Part 3.4 Animal Welfare Act 1992

[3.7] Section 6A

omit

Explanatory note

This section and section 78 deal with issuing identity cards to certain people. The people covered by this section are to be included in section 78 by another amendment, making this section redundant.

[3.8] Section 78 (5), definition of *authorised person*, new paragraphs (c) and (d)

insert

- (c) the authority;
- (d) delegate of the authority with any delegated powers of an inspector.

Explanatory note

This amendment amends the definition to extend the class of people to whom identity cards may be issued under this section. The effect of this amendment is that this section will now cover people who could be issued cards under section 6A, which is being omitted by another amendment.

[3.9] Section 98 (1) and (2)

omit

purporting to be

Explanatory note

This amendment omits unnecessary words that might give the impression that a forgery is admissible evidence. The fact that a document is taken to be genuine unless proven otherwise, is made clear by another amendment.

[3.10] Section 98 (1), new note

insert

Note A document that purports to be signed by an office holder such as the authority is presumed to have been signed by the office holder unless the contrary is proved (see *Evidence Act 1995* (Cwlth), s 150).

Explanatory note

This amendment inserts a note that makes clear that if a document is forged, it will not have evidentiary value. The amendment clarifies the effect of words omitted by another amendment.

[3.11] Dictionary, definition of *identity card*

substitute

identity card means—

- (a) in relation to an inspector (other than a police officer), an authorised officer or a delegate of the authority—an identity card issued to the person under section 78; or

Note The authority is an inspector (see s 76 (2) (a)).

- (b) in relation to a police officer—proof of identification of a type approved for general purposes by the chief police officer.

Explanatory note

This amendment is consequent on the omission of section 6A, and combining the effect of section 6A and section 78 into a single provision, by other amendments.

Part 3.5 Boxing Control Act 1993

[3.12] Dictionary, definitions of *authority* and *promoter*

omit

Explanatory note

This amendment omits definitions of terms that are no longer used in the Act.

Part 3.6 Clinical Waste Act 1990

[3.13] Section 20 (4), definition of *authorised insurer*

substitute

authorised insurer means a person carrying on an insurance business in Australia under—

- (a) an authorisation under the *Insurance Act 1973* (Cwlth), part 3 (Authorisation to carry on insurance business); or
- (b) a determination under that Act, section 7 (Determination that certain provisions do not apply).

Explanatory note

This amendment corrects a reference to a provision in the *Insurance Act 1973* (Cwlth), and extends the meaning of the term to take account of someone who carries on insurance business in Australia because a determination under that Act, section 7 is in force in relation to the person.

Part 3.7 Community Title Act 2001

[3.14] Section 18

omit

parts of the land

substitute

lots

Explanatory note

This amendment brings the terminology of the section into line with the rest of the Act.

[3.15] Section 56 (1)

omit

or common property

Explanatory note

This amendment omits a reference to common property, in the context of ‘a lot or common property’, which is redundant because common property must comprise a lot. The mention of lot is sufficient.

[3.16] Section 56 (1) and (2)

omit

or the common property

Explanatory note

This amendment omits a reference to common property, in the context of ‘the lot or the common property’, which is redundant because common property must comprise a lot. The mention of lot is sufficient.

[3.17] Schedule 1, section 1.5 heading

substitute

1.5 Use of lots

Explanatory note

This amendment substitutes the heading to the section to omit a reference to common property and substitute 'lot'. The section provides for the use of lots, including lots that do not comprise common property. Common property must comprise a lot, therefore, the mention of lot is sufficient.

[3.18] Schedule 1, section 1.5

omit

or the common property

Explanatory note

This amendment omits references to common property, in the context of 'another lot or the common property', which are redundant because common property must comprise a lot. The mention of lot is sufficient.

[3.19] Dictionary, note 2, 4th dot point

omit

- Territory owned corporation

Explanatory note

This amendment omits a redundant reference to a term that is no longer used in the Act.

[3.20] Dictionary, definition of *eligible person*

omit

or common property

Explanatory note

This amendment omits a reference to common property, in the context of 'a lot or common property', which are redundant because common property must comprise a lot. The mention of lot is sufficient.

[3.21] Dictionary, definition of *eligible person*, paragraph (a)

omit

the common property

substitute

the lot

Explanatory note

This amendment omits a reference to common property, in the context of ‘an easement over the common property’, and substitutes ‘lot’. Common property must comprise a lot and, for the purpose of the definition of *eligible person*, there is no difference between lots that are common property and lots that are not common property.

Part 3.8 Contractors Debts Act 1897

[3.22] Dictionary, new notes

insert

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:

- Magistrates Court
- notifiable instrument (see s 10)
- penalty unit (see s 133)
- Supreme Court.

Explanatory note

This amendment inserts dictionary notes in accordance with current legislative drafting practice.

Part 3.9 Discrimination Act 1991

[3.23] Section 116 (2) (b)

substitute

- (b) if the member becomes bankrupt or executes a personal insolvency agreement.

Explanatory note

This amendment brings the paragraph into line with the concept of personal insolvency agreement under the *Bankruptcy Act 1966* (Cwlth). Under that Act, personal insolvency agreements have replaced the concepts of deed of assignment, deed of arrangement and composition.

Part 3.10 Domestic Violence Agencies Act 1986

[3.24] Section 4

substitute

4 Establishment of council

The Domestic Violence Prevention Council is established.

Explanatory note

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

[3.25] Section 5 (2), new note

insert

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 of *entity*).

Explanatory note

This amendment adds a standard note about the powers of an entity.

[3.26] Section 11

substitute

11 Appointment

The Minister must appoint a Domestic Violence Project Coordinator.

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).

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

Explanatory note

This amendment brings the section into line with current legislative drafting practice. In particular, it omits a reference to the appointment being in writing because the Legislation Act, section 206 requires appointments to be made or evidenced in writing. Standard notes about appointments are also added.

[3.27] Section 12, new note

insert

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

Explanatory note

This amendment adds a standard note about the powers of an entity.

[3.28] Section 13

substitute

13 Term and conditions of office

The coordinator must be appointed—

- (a) for a term not longer than 3 years; and

- (b) on terms and conditions stated in the instrument of appointment unless otherwise provided for in this Act or another territory law.

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 of *appoint*).

Explanatory note

This amendment brings the section into line with current legislative drafting practice. The amendment omits the note on resignation. That note is inserted with the termination provision by another amendment.

[3.29] Section 14, new note

insert

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

Explanatory note

This amendment inserts a note on resignation with the relevant termination provision.

[3.30] Section 15

omit

Explanatory note

This amendment omits an unnecessary provision. The Legislation Act, section 209 provides for the making of acting appointments. A standard note about acting appointments has been included in section 11 by another amendment.

[3.31] Section 16

substitute

16 Protection of coordinators etc from liability

- (1) The coordinator, or a person acting under the direction of the coordinator, is not personally liable for anything done, or omitted to be done honestly and without recklessness—
- (a) in the exercise of a function under this Act or another law; or

- (b) in the reasonable belief that the act was in the exercise of a function under this Act or another law.
- (2) Any liability that would, apart from this section attach to the coordinator, or a person acting under the direction of the coordinator, attaches instead to the Territory.

Explanatory note

This amendment simplifies the language of the provision to bring it more closely into line with current legislative drafting practice.

[3.32] Section 17

omit

, in writing,

Explanatory note

Section 17 provides for the Minister to approve crisis support organisations and provides that an approval is a disallowable instrument. This amendment omits words that are now redundant because of the effect of the Legislation Act, section 42 (2), which requires disallowable instruments to be in writing.

[3.33] Dictionary, new notes

insert

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:

- police officer
- public servant
- statutory office-holder
- territory law.

Explanatory note

This amendment inserts 2 standard notes in the dictionary.

Part 3.11 Eggs (Labelling and Sale) Act 2001

[3.34] Dictionary, note

substitute

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:

- Executive
- may (see s 146)
- must (see s 146)
- person
- Territory law.

Explanatory note

This amendment brings the dictionary notes in line with current legislative drafting practice.

Part 3.12 Electricity Safety Act 1971

[3.35] Section 31 (3) and (4)

substitute

- (3) A person is not personally liable for anything done, or omitted to be done, honestly and without recklessness—
- (a) in the exercise of a function under this section; or
 - (b) in the reasonable belief that the act was in the exercise of a function under this section.
- (4) Any liability that would, apart from this section, attach to a person attaches instead to the Territory.

Explanatory note

This amendment brings the language and structure of the subsections more closely into line with current legislative drafting practice.

[3.36] Section 36 (2) and (3)

substitute

- (2) A person is not personally liable for anything done, or omitted to be done, honestly and without recklessness—
- (a) in the exercise of a function under this section; or
 - (b) in the reasonable belief that the act was in the exercise of a function under this section.
- (3) Any liability that would, apart from this section, attach to a person attaches instead to the Territory.

Explanatory note

This amendment brings the language and structure of the subsections more closely into line with current legislative drafting practice.

[3.37] Section 41 (1)

substitute

- (1) The construction occupations registrar may appoint a person to be 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, an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

Explanatory note

This amendment brings the language of existing section 41 (1) into line with current legislative drafting practice and adds standard notes about appointments. It also omits the requirement for appointments to be in writing. This requirement is now in the Legislation Act, section 206 (1).

[3.38] Sections 64 (1) and 65 (1)

omit

, in writing,

Explanatory note

This amendment omits words that are now redundant because of the effect of the Legislation Act, section 42 (2), which requires disallowable and notifiable instruments to be in writing.

[3.39] Section 65 (2), new note

insert

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

Explanatory note

This amendment inserts a standard note to help users of the legislation.

[3.40] Dictionary, note 2, new dot point

insert

- planning and land authority

Explanatory note

This amendment inserts a reference to a term used in the Act.

[3.41] Dictionary, new definition of *approved first seller*

insert

approved first seller, for part 3 (Prescribed articles of electrical equipment)—see section 9.

Explanatory note

This amendment updates the dictionary by including a signpost definition for a term defined for part 3.

[3.42] Dictionary, definition of *article of electrical equipment*, paragraph (a)

omit

; and

substitute

; or

Explanatory note

This amendment substitutes the correct conjunction for the definition to bring the definition into line with current legislative drafting practice.

[3.43] Dictionary, new definitions

insert

business premises, for part 7 (Enforcement)—see section 37.

connected with, for part 7 (Enforcement)—see section 38 (1).

corresponding law, for part 3 (Prescribed articles of electrical equipment)—see section 9.

declaration of compliance, for part 3 (Prescribed articles of electrical equipment)—see section 9.

Explanatory note

This amendment updates the dictionary by including signpost definitions for terms defined for part 3 and part 7.

[3.44] Dictionary, definition of *inspector*

substitute

inspector means a person appointed as an inspector under section 41.

Explanatory note

This amendment is consequent on the remaking of section 41 (1) by another amendment.

[3.45] Dictionary, new definition of *offence*

insert

offence, for part 7 (Enforcement)—see section 38 (2).

Explanatory note

This amendment updates the dictionary by including a signpost definition for a term defined for part 7.

[3.46] Dictionary, definition of *prohibited*

substitute

prohibited, in relation to an article of electrical equipment, means an article that is prohibited under section 28 (1).

Explanatory note

This amendment brings the definition into line with current legislative drafting practice, replacing a signpost definition with a more accurate definition of the term.

[3.47] Dictionary, new definitions

insert

relevant distributor, for part 6 (Serious electrical accidents)—see section 32.

relevant safety standard, for part 3 (Prescribed articles of electrical equipment)—see section 9.

serious electrical accident, for part 6 (Serious electrical accidents)—see section 32.

Explanatory note

This amendment updates the dictionary by including signpost definitions for terms defined for part 3 and part 6.

Part 3.13 Environment Protection Act 1997

[3.48] Section 167

omit

Explanatory note

This amendment omits a redundant provision. The section requires the Minister to review the operation of the Act and to table a report on the outcome of the review in the Legislative Assembly. The report was tabled in the Legislative Assembly on 22 June 2004.

[3.49] Schedule 1, section 1.1, definition of *primary production*

omit

Explanatory note

This amendment omits a redundant provision. The term is defined by reference to the *Income Tax Assessment Act 1936* (Cwlth) which no longer defines the term. Also, the term is not otherwise used in the Environment Protection Act. The term is used in the *Environment Protection Regulation 2005* and a separate amending regulation will define the term for the regulation.

Part 3.14 Environment Protection Regulation 2005

[3.50] Section 67 (1) (d) and (2) (c)

omit

Explanatory note

This amendment omits redundant provisions. Section 67 displaces the operation of the Legislation Act, section 47 which provides that laws or instruments applied, adopted or incorporated by an Act, regulation or disallowable instrument must be notified on the legislation register. If the operation of section 47 is displaced, the laws or instruments need not be published on the register. Subsection (1) (d) refers to the *Ozone Protection Act 1989* (NSW) and subsection (2) (c) to the *Civil Aviation Regulations 1988* (Cwlth). Neither piece of legislation is otherwise referred to in the *Environment Protection Act 1997* or the regulation.

[3.51] Dictionary, definitions of CFC, halon and HCFC

omit

Explanatory note

This amendment omits redundant definitions. The terms are not otherwise used in the regulation.

Part 3.15 Evidence Act 1971

[3.52] Section 18 (1) (b)

omit

and to have been attested by a person other than a person referred to in section 17

Explanatory note

This amendment omits a redundant cross-reference to section 17. That provision was omitted by the *Justice and Community Safety Legislation Act 2005 (No 2)*.

Part 3.16 Executive Documents Release Act 2001

[3.53] Section 10

substitute

10 Review by AAT

- (1) Application may be made to the administrative appeals tribunal for review of a release restraint determination.
- (2) The chief executive must give notice of a release restraint determination to each person affected by the determination.

- (3) The notice must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

Explanatory note

This amendment remakes existing section 10 as new subsection 10 (1) and adds standard provisions about giving notice of reviewable decisions.

Part 3.17 Fair Trading Act 1992

[3.54] Section 7

substitute

7 Meaning of *acquisition*, *supply* and *resupply*

- (1) In this Act—
- (a) a reference to the *acquisition* of goods includes a reference to the acquisition of property in, or rights in relation to, goods under a supply of the goods; and
 - (b) a reference to the *supply* or *acquisition* of goods or services includes a reference to agreeing to supply or acquire goods or services; and
 - (c) a reference to the *supply* or *acquisition* of goods includes a reference to the supply or acquisition of goods together with other property or services (or both); and
 - (d) a reference to the *supply* or *acquisition* of services includes a reference to the supply or acquisition of services together with property or other services (or both); and
 - (e) a reference to the *resupply* of goods acquired from a person includes a reference to—
 - (i) a supply of the goods (the *first goods*) to another person in an altered form or condition; and

- (ii) a supply to another person of goods in which the first goods have been incorporated; and
 - (f) a reference to the *disposal* or *acquisition* of an interest in land includes a reference to—
 - (i) an agreement to dispose of or acquire the interest; and
 - (ii) the disposal or acquisition of the interest together with goods.
- (2) For this Act:
- (a) the obtaining of credit by a person for the acquisition of goods or services by the person is an *acquisition* by the person of services; and
 - (b) any amount by which the price of the goods or services is increased because credit was obtained is the price of the services represented by the obtaining of credit.

Explanatory note

This amendment brings the form of the definitions more closely into line with current legislative drafting practice.

[3.55] Section 25C (1)

omit

In this Act:

insert

In this division:

Explanatory note

This amendment revises the opening words of section 25C (1) because the term *pyramid selling scheme* is used only in division 2.2.

[3.56] Section 26 (2) (g)

omit

legal practitioner

substitute

lawyer

Explanatory note

This amendment updates language in line with current legislative drafting practice.

[3.57] Section 28 (1)

omit

in pursuance of

substitute

following

Explanatory note

This amendment updates language in line with current legislative drafting practice.

[3.58] Section 29 (9), definition of *directory*

omit

in good faith

substitute

honestly

Explanatory note

This amendment updates language in line with current legislative drafting practice.

[3.59] Section 30 (2)

omit

, on or after the commencing date,

Explanatory note

This amendment omits words that are now redundant. The commencement date was 1 January 1993.

[3.60] Section 31 (1) (a) (vi)

omit

, being

substitute

that are

Explanatory note

This amendment updates language in line with current legislative drafting practice.

[3.61] Section 31 (3), definition of *prescribed information provider*

omit

, without limiting the generality of the foregoing,

Explanatory note

This amendment omits redundant words in line with current legislative drafting practice.

[3.62] Section 31 (3), definition of *relevant interests in land*

omit

, being interests

substitute

that are interests

Explanatory note

This amendment updates language in line with current legislative drafting practice.

[3.63] Section 45 (a)

omit

or information of a kind, so specified, being information that is in the possession of the person to whom the order is directed or to which that lastmentioned person has access

substitute

or information of a stated kind that is in the possession of, or available to, the person to whom the order is directed

Explanatory note

This amendment brings the language more closely into line with current legislative drafting practice.

[3.64] Section 51 (4)

substitute

- (4) An order under this section must not be expressed to operate for a period longer than 30 days if the order is made on an application that was made in the absence of a party to the proceeding.

Explanatory note

This amendment updates language in line with current legislative drafting practice.

[3.65] Dictionary, definition of *acquire*, new note

insert

Note See s 7 for a more detailed definition of *acquisition*.

Explanatory note

This amendment inserts a note to help users of the legislation.

[3.66] Dictionary, definition of *covenant*

omit

, and *proposed covenant* has a corresponding meaning

Explanatory note

This amendment omits words that are redundant. The term *proposed covenant* is not used in the Act.

[3.67] Dictionary, new definitions of *disposal* and *resupply*

insert

disposal—see section 7.

resupply—see section 7.

Explanatory note

This amendment inserts definitions of terms defined in section 7 for the Act.

[3.68] Dictionary, definition of *services*

omit

and without limiting the generality of the foregoing, includes

substitute

including

Explanatory note

This amendment updates language in line with current legislative drafting practice.

[3.69] Dictionary, definition of *services*

omit

benefits being the supply

substitute

benefits comprising the supply

Explanatory note

This amendment updates language in line with current legislative drafting practice.

[3.70] Dictionary, definition of *supply*, new note

insert

Note See s 7 for a more detailed definition of *supply*.

Explanatory note

This amendment inserts a note to help users of the legislation.

Part 3.18 First Home Owner Grant Act 2000

[3.71] Section 50

omit

(2) This section does not apply

substitute

(3) This section does not apply

Explanatory note

This amendment corrects the numbering of the subsection.

[3.72] Sections 54 (1) and 55 (1)

omit

, in writing,

Explanatory note

This amendment omits words that are now redundant because of the effect of the Legislation Act, section 42 (2), which requires disallowable and notifiable instruments to be in writing.

[3.73] Section 56 (2)

substitute

- (2) A regulation may create offences and fix maximum penalties of not more than 10 penalty units for the offences.

Explanatory note

This amendment brings language into line with current legislative drafting practice.

Part 3.19 Health Professionals Act 2004

[3.74] Section 14 (2)

substitute

- (2) To remove any doubt, each of the following is a **health professional**:
- (a) a chiropractor;
 - (b) a dental hygienist;
 - (c) a dental prosthetist;
 - (d) a dental technician;
 - (e) a dental therapist;
 - (f) a dentist;
 - (g) an enrolled nurse;
 - (h) a medical practitioner;

- (i) a medical radiation scientist;
- (j) a midwife;
- (k) a nurse;
- (l) an optometrist;
- (m) an osteopath;
- (n) a pharmacist;
- (o) a physiotherapist;
- (p) a podiatrist;
- (q) a psychologist;
- (r) a veterinary surgeon.

Explanatory note

This amendment updates the section to add references to a chiropractor, a medical radiation scientist and an osteopath so that the list includes every health profession regulated under the Act.

Part 3.20 Independent Competition and Regulatory Commission Act 1997

[3.75] Section 5 (4)

omit

Explanatory note

This amendment omits a provision that requires judicial notice to be taken of the commission's seal on a document. It is unnecessary because the *Evidence Act 1995* (Cwlth), section 150 provides that if the imprint of a seal appears on a document and purports to be the imprint of the seal of a stated kind of body, including a body created under a Territory law, it is presumed that the imprint is the imprint of that seal and that the document was duly sealed. The *Evidence Act 1995* (Cwlth) applies to proceedings under Territory laws.

[3.76] Section 8 (1) (h)

omit

Explanatory note

This amendment omits a provision that gives the commission powers that are necessary and convenient for the exercise of its functions. It is redundant because the Legislation Act, section 196 provides that a provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function. A note to that effect is included for the section by another amendment.

[3.77] Section 8 (2) (c)

substitute

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, defs of *entity* and *function*).

Explanatory note

This amendment brings the section into line with current legislative drafting practice. In particular, existing subsection (2) (c), which gives the commission the powers that are necessary and convenient for the exercise of its functions, is omitted because the Legislation Act, section 196 provides that a provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function. A note to that effect is inserted by the amendment.

[3.78] Section 13 (1), new note

insert

Note 2 For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

Explanatory note

This amendment adds a standard note about delegations. The Legislation Act, section 232 requires a delegation to be made by signed writing. The Legislation Act, section 234 allows the delegation of any part of functions that may be delegated.

[3.79] Section 13 (2) and (3)

substitute

- (2) However, the commission must not delegate—
- (a) its function of making price directions, reports or providing advice about proposed access agreements; and
 - (b) if the commission is conducting an arbitration—its function of making a determination in relation to the arbitration

Explanatory note

This amendment updates language in line with current legislative drafting practice.

[3.80] Section 14

substitute

14 Protection from liability

- (1) A person is not personally liable for anything done, or omitted to be done, honestly and without recklessness—
- (a) in the exercise of a function under this Act; or
 - (b) in the reasonable belief that the act was in the exercise of a function under this Act.

- (2) Any liability that would, apart from this section, attach to a person attaches instead to the Territory.

Explanatory note

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

[3.81] Section 24W

substitute

24W Protection from liability of panel members, parties and representatives

- (1) A person who is or has been a member of an industry panel is not personally liable for anything done, or omitted to be done, honestly and without recklessness—
- (a) in the exercise of a function under this Act; or
 - (b) in the reasonable belief that the act was in the exercise of a function under this Act.
- (2) Any liability that would, apart from this section, attach to a person who is or has been a member of an industry panel attaches instead to the Territory.
- (3) A person who is or has been a party to an application or a representative of a party is not personally liable for anything done, or omitted to be done, honestly and without recklessness, as a party to an application or a representative of a party.

Explanatory note

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

[3.82] Section 38 (c)

omit

in good faith

substitute

honestly

Explanatory note

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

[3.83] Section 44 (3) (a)

omit

performance

substitute

exercise

Explanatory note

This amendment brings the language into line with current legislative drafting practice. *Exercise* a function is defined in the Legislation Act, dictionary, part 1 to include perform the function.

[3.84] Section 44 (4)

omit

For the avoidance of doubt,

substitute

To remove any doubt,

Explanatory note

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

[3.85] Schedule 2, section 2.1 (1) and (2)

substitute

- (1) The Executive must appoint the following commissioners (*standing commissioners*):

- (a) 1 senior commissioner;
(b) 2 assistant commissioners.

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 Legislation Act s 207).

- (1A) The instrument making or evidencing the appointment must state whether a standing commissioner is appointed as a senior commissioner or assistant commissioner.

- (2) A standing commissioner holds office (subject to this Act) for a term not longer than 5 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 of *appoint*).

Explanatory note

This amendment remakes the provisions in accordance with current legislative drafting practice. It omits the requirement for appointments to be in writing. This requirement is now in the Legislation Act, section 206 (1). The amendment also adds standard notes about appointments.

The existing reference to holding office for the period specified in the instrument of appointment is omitted. It is unnecessary because the Legislation Act, section 206 (2) provides that if a law provides for a maximum period of appointment, the instrument of appointment must state the period for which the appointment is made.

The existing reference to eligibility for reappointment is unnecessary because the Legislation Act, section 208 (1) (c) provides that if a person is eligible for appointment the person may be reappointed. A standard note about reappointment is added.

[3.86] Schedule 2, section 2.1D

omit

Explanatory note

This provision is redundant. The Legislation Act, section 212 provides that an appointment, or anything done under an appointment, is not invalid only because of a defect or irregularity in the appointment.

[3.87] Schedule 2, section 2.5 (6)

substitute

- (6) A commissioner ceases to hold office if the commissioner becomes bankrupt or executes a personal insolvency agreement.

Explanatory note

This amendment brings the provision into line with the concept of personal insolvency agreement under the *Bankruptcy Act 1966* (Cwlth). Under that Act, personal insolvency agreements have replaced the concepts of deed of assignment, deed of arrangement and composition.

[3.88] Schedule 2, section 2.6

omit

Explanatory note

This provision is redundant. The Legislation Act, section 209 provides that a power of appointment includes power to make an acting appointment during any period when an appointee cannot for any reason exercise functions of the position. The Legislation Act, section 225 provides that an acting appointment, or anything done under an acting appointment, is not invalid only because of a defect or irregularity in the appointment.

[3.89] Schedule 3, section 3.1 (1), new notes

insert

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 Legislation Act s 207).

Note 3 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 of *appoint*).

Explanatory note

The amendment adds standard notes about appointments.

[3.90] Schedule 3, section 3.3

omit

Explanatory note

This provision is redundant. The Legislation Act, section 212 provides that an appointment, or anything done under an appointment, is not invalid only because of a defect or irregularity in the appointment. The Legislation Act, section 199 (5) provides that the function of a body may still be exercised if there is a vacancy in the body's membership.

[3.91] Schedule 3, section 3.9 (6)

substitute

- (6) A member of a panel ceases to hold office if the member becomes bankrupt or executes a personal insolvency agreement.

Explanatory note

This amendment brings the provision into line with the concept of personal insolvency agreement under the *Bankruptcy Act 1966* (Cwlth). Under that Act, personal insolvency agreements have replaced the concepts of deed of assignment, deed of arrangement and composition.

[3.92] Dictionary, new definitions

insert

access provider, for part 6 (Arbitration of access regime disputes)—see section 30.

eligible person, for part 4C (Review of price directions)—see section 24J.

Explanatory note

This amendment adds signpost definitions for terms defined in the Act.

[3.93] Dictionary, definition of *price direction*

substitute

price direction—

- (a) for this Act generally, means a direction under section 20 about prices for the provision of regulated services, as varied (if at all) under part 4B (Variation of price directions); and
- (b) for part 4C (Review of price directions)—see section 24J.

Explanatory note

This amendment adds a signpost definition for the term in part 4C.

[3.94] Dictionary, new definition of *third party*

insert

third party, for part 6 (Arbitration of access regime disputes)—see section 30.

Explanatory note

This amendment adds a signpost definition for the term.

Part 3.21 Jurisdiction of Courts (Cross-vesting) Act 1993

[3.95] Dictionary, new notes

insert

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:

- Commonwealth
- Executive
- Federal Court
- notifiable instrument (see s 10)
- Supreme Court.

Explanatory note

This amendment inserts dictionary notes in accordance with current legislative drafting practice.

[3.96] Dictionary, definition of *Federal Court*

omit

Explanatory note

This amendment omits a redundant definition. *Federal Court* is defined in the Legislation Act, dict, pt 1.

Part 3.22 Legal Profession Act 2006

[3.97] Section 21 (5), new note

insert

Note **Another jurisdiction** is a State or another Territory (see dict, def of **jurisdiction**).

Explanatory note

This amendment inserts a note to make it clear that, in accordance with the definition of **jurisdiction** in the dictionary, another jurisdiction is a State or another Territory.

Part 3.23 Lotteries Act 1964

[3.98] Dictionary, definition of **unlawful game**

substitute

unlawful game—see the *Unlawful Games Act 1984*, dictionary.

Explanatory note

This amendment is consequential on the insertion of a new dictionary into the *Unlawful Games Act 1984* by another amendment.

Part 3.24 Mental Health (Treatment and Care) Act 1994

[3.99] Section 11, new note

insert

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

Explanatory note

This amendment adds a standard note about the powers of an entity and is consequential on the omission of section 12 by another amendment.

[3.100] Section 12

omit

Explanatory note

This amendment omits an unnecessary section. The Legislation Act, section 196 provides that a provision of law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function. A standard note about necessary and convenient powers is added to section 11 by another amendment.

[3.101] Section 48 (1)

omit

, in writing,

Explanatory note

This amendment omits words that are redundant because of the effect of the Legislation Act, section 42 (2) which requires notifiable instruments to be in writing.

[3.102] Sections 67 (1) and 76 (2), new notes

insert

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 Legislation Act, s 207).

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

Explanatory note

This amendment adds standard notes about appointments.

[3.103] Section 81 (2) (b)

substitute

- (b) if the member becomes bankrupt or executes a personal insolvency agreement.

Explanatory note

This amendment brings the paragraph into line with the concept of personal insolvency agreement under the *Bankruptcy Act 1966* (Cwlth). Under that Act, personal insolvency agreements have replaced the concepts of deed of assignment, deed of arrangement and composition.

[3.104] Section 82 (4)

substitute

- (4) The registrar may delegate the registrar's functions under this Act 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 updates the delegation provision and adds a standard note about delegations. The Legislation Act, section 232 requires a delegation to be made by signed writing. The Legislation Act, section 234 allows the delegation of any part of functions that may be delegated.

[3.105] Section 100, new note

insert

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

Explanatory note

This amendment adds a standard note about appointments.

[3.106] Section 121 (1), new notes

insert

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 Legislation Act, s 207).

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

Explanatory note

This amendment adds standard notes about appointments.

[3.107] Section 121 (4)

omit

perform the duties

substitute

exercise the functions

Explanatory note

This amendment brings language into line with current legislative drafting practice by substituting the current drafting terms. *Exercise* a function is defined in the Legislation Act dictionary, part 1 to include perform the function. *Function* is defined to include authority, duty and power.

[3.108] Section 122 heading

substitute

122 Official visitor—functions

Explanatory note

This amendment brings language into line with current legislative drafting practice by omitting a reference to ‘duties’. *Function* is defined in the Legislation Act, dictionary, part 1, to include duty.

[3.109] Section 123, new definition of *inspector*

insert

inspector means an inspector appointed under section 132.

Explanatory note

This amendment defines the term for part 12 (Private psychiatric institutions).

[3.110] Section 132

substitute

132 Appointment of inspectors

- (1) The Minister may appoint a person as an inspector for this part.
- (2) An inspector must exercise functions for this part that the chief psychiatrist directs.

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 Legislation Act, s 207).

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

Explanatory note

This amendment brings the section into line with current legislative drafting practice. In particular, it omits a reference to the appointment being ‘by instrument’ because the Legislation Act, section 206 requires appointments to be made or evidenced in writing. Standard notes about appointments are also added.

[3.111] Sections 146 (1) and 146A (1)

omit

, in writing,

Explanatory note

This amendment omits words that are redundant because of the effect of the Legislation Act, section 42 (2), which requires disallowable and notifiable instruments to be in writing.

[3.112] Section 146A (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.

[3.113] Dictionary, definition of *inspector*

insert

inspector, for part 12 (Private psychiatric institutions)—see section 123.

Explanatory note

This amendment inserts a signpost definition, consequent on the insertion of a new definition by another amendment.

Part 3.25 Payroll Tax Act 1987

[3.114] Section 2D (3) (a)

omit

, as the case may be

Explanatory note

This amendment omits redundant language and brings the provision more closely into line with current legislative drafting practice.

[3.115] Section 9 (1) (h) (i)

omit

in writing

Explanatory note

This amendment omits words that are redundant because of the effect of the Legislation Act, section 42 (2), which requires notifiable instruments to be in writing.

[3.116] Section 9A (6)

omit

, in writing,

Explanatory note

This amendment omits words that are redundant because of the effect of the Legislation Act, section 42 (2), which requires notifiable instruments to be in writing.

[3.117] Section 11 (3), definitions of *DFY*

omit each definition

Explanatory note

This amendment omits the definitions, consequent on the insertion of a new definition into section 11 (4) by another amendment.

[3.118] Section 11 (4), new definition of *DFY*

insert

DFY means the number of days in the financial year in which the group period falls or in the group year.

Explanatory note

This amendment inserts a new definition of the term, consequent on the omission of the definition of this term from section 11 (3) by another amendment. It also omits a reference to ‘as the case requires’ to bring the definition into line with current legislative drafting practice.

[3.119] Section 11 (4), definition of *group tax period*

omit

, as the case requires,

Explanatory note

This amendment omits redundant language and brings the provision more closely into line with current legislative drafting practice.

[3.120] Section 17 (4) (b)

omit

, as the case requires

Explanatory note

This amendment omits redundant language and brings the language more closely into line with current legislative drafting practice.

[3.121] Schedule 1, section 1.3 (1) (b)

omit

in writing

Explanatory note

This amendment omits redundant language and brings the language more closely into line with current legislative drafting practice.

Part 3.26 Taxation Administration Act 1999

[3.122] Section 139 (1) (f)

omit

section 16 (1)

substitute

section 7

Explanatory note

This amendment updates a cross-reference to a provision in the *Payroll Tax 1987* that was inserted by the *Revenue Legislation Amendment Act 2006*, section 23.

Part 3.27 Unlawful Games Act 1984

[3.123] Section 3, definitions

relocate to dictionary

Explanatory note

This amendment relocates the definitions to a new dictionary that is inserted by another amendment.

[3.124] Section 3, remainder

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.

Note 2 A definition in the dictionary 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 inserts standard dictionary and notes provisions consequent on the insertion of a new dictionary by another amendment.

[3.125] 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
- Executive
- penalty unit (see s 133)
- prescribed.

Explanatory note

This amendment inserts a new dictionary in accordance with current legislative drafting practice.

Part 3.28 Victims of Crime (Financial Assistance) Act 1983

[3.126] Section 2, definition of *dependant*, paragraph (b)

substitute

- (b) a person who would have been wholly or partly dependent for economic support on the victim's income at the time of the victim's death but for the incapacity of the victim because of the criminal injury that resulted in the victim's death; or

Explanatory note

This amendment brings the language and structure of the definition more closely into line with current legislative drafting practice.

[3.127] Section 2, definitions (as amended)

relocate to dictionary

Explanatory note

This amendment relocates the definitions to a new dictionary that is inserted by another amendment.

[3.128] Section 2, remainder

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 '*criminal injury*—see section 4.' means that the term '*criminal injury*' 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)).

2A 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 inserts standard dictionary and notes provisions consequent on the insertion of a new dictionary by another amendment.

[3.129] Section 3

substitute

3 What is a *violent crime*?

Each of the following is a violent crime:

- (a) an offence against a section of the *Crimes Act 1900* mentioned in table 3, column 2;
- (b) an offence against the Criminal Code, section 309 (Robbery) or section 310 (Aggravated robbery);
- (c) an offence against any other law prescribed by regulation.

Note A reference to an offence against an ACT law includes a reference to an offence against the Criminal Code, part 2.4 (Extensions of criminal responsibility) or section 717 (Accessory after the fact) that relates to the ACT law (see Legislation Act, s 189).

Table 3 Violent crimes—Crimes Act

column 1 item	column 2 section	column 3 description
1	12	murder
2	15	manslaughter
3	19, 20, 25, 31	grievous bodily harm offences
4	21	wounding

column 1 item	column 2 section	column 3 description
5	22, 26	assault offences
6	23, 24	actual bodily harm offences
7	27	endangering life
8	28	endangering health
9	30	threat to kill
10	32	demands with threats
11	34	forcible confinement
12	35	stalking
13	36	torture
14	37	abduction of young person
15	38	kidnapping
16	40	unlawfully taking child
17	41	exposing or abandoning child
18	42	child destruction
19	43	childbirth—grievous bodily harm
20	51, 52, 53	sexual assault offences
21	54	sexual intercourse without consent
22	55	sexual intercourse with young person
23	56	sexual relationship with young person
24	57 to 61	indecent offences
25	62	incest
26	63	abduction
27	74, 75	female genital mutilation offences

Explanatory note

This amendment updates the section by omitting references to sections 45 and 182 of the *Crimes Act 1900* that are no longer in force and bringing the language and structure of the section into line with current legislative drafting practice.

[3.130] Section 72

omit

Explanatory note

This amendment omits a redundant provision. The section required the Minister to commission an independent review of the operation of the Act and to table a report on the outcome of the review in the Legislative Assembly. The report was tabled to the Legislative Assembly on 7 March 2002.

[3.131] Section 73 (1)

omit

, in writing,

Explanatory note

This amendment omits words that are now redundant because of the effect of the Legislation Act, section 42 (2), which requires notifiable instruments to be in writing.

[3.132] Section 73 (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.

[3.133] 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
- chief officer (fire brigade)

- chief officer (rural fire service)
- Criminal Code
- fire brigade
- individual
- Magistrates Court
- person
- Supreme Court
- the Territory.

amount of financial assistance—see section 5 (2) (c).

applicant—see section 5 (2) (a).

application—see section 5 (2) (b).

assisted person—see section 52.

convicted—see section 6 (2) (a).

conviction—

(a) for this Act generally—see section 6 (2) (b); and

(b) for part 5 (Compensation levy)—see section 67.

defendant—see section 52.

levy—for part 5 (Compensation levy)—see section 65.

notice of objection—see section 52.

order for restriction—see section 52.

provisional order for restriction—see section 52.

recovery proceedings—see section 52.

related crime—see section 52.

Explanatory note

This amendment inserts a new dictionary in accordance with current legislative drafting practice. It includes signpost definitions for defined terms that are not included in the existing interpretation section.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 27 September 2007.

2 Notification

Notified under the Legislation Act on 6 December 2007.

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 2007 (No 3), which originated in the Legislative Assembly as the Statute Law Amendment Bill 2007 (No 2) and was passed by the Assembly on 20 November 2007.

Clerk of the Legislative Assembly

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