

2005

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Statute Law Amendment Bill 2005

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2005

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Statute Law Amendment Bill 2005

A Bill for

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

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

1 **1 Name of Act**

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

3 **2 Commencement**

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

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

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

11 (3) In this section:

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

15 **Example**

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

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

21 **3 Purpose**

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

25 **4 Notes**

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

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

1 **5** **Legislation amended—schs 1–3**

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

1 Schedule 1 Minor amendments

2 (see s 5)

3 Part 1.1 Dangerous Substances Act 2004

4 [1.1] Section 86 (1), note 1

5 *substitute*

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

8 Explanatory note

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

10 [1.2] Section 108, definition of *basis*

11 *substitute*

12 *basis*, for giving a prohibition notice, means—

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

23 Explanatory note

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

1 **[1.3] Section 109**

2 *substitute*

3 **109 Giving prohibition notices**

4 (1) An inspector may give a notice (a *prohibition notice*) to a
5 responsible person for a dangerous substance at premises if the
6 inspector believes, on reasonable grounds, that—

7 (a) someone at the premises has contravened, is contravening, or is
8 likely to contravene, this Act in relation to the substance; and

9 (b) giving the notice is necessary to prevent or minimise risk of
10 serious harm to the health or safety of people, or substantial
11 damage to property or the environment, from a hazard at the
12 premises associated with the substance.

13 (2) An inspector may also give a notice (also a *prohibition notice*) to a
14 responsible person for a dangerous substance at premises if the
15 inspector believes, on reasonable grounds, that—

16 (a) someone at the premises has contravened, is contravening, or is
17 likely to contravene, an improvement notice; or

18 (b) giving the notice is necessary to allow—

19 (i) the inspection, testing or monitoring of anything at the
20 premises used in relation to the handling of the substance;
21 or

22 (ii) the investigation of an accident or other incident
23 (including a dangerous occurrence) at the premises in
24 relation to the substance.

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

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

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

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

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

12 **Explanatory note**

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

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

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

1 **[1.4] Section 110 (2) (b)**

2 *omit*

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

6 *substitute*

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

10 **Explanatory note**

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

12 **[1.5] Section 110 (2) (c)**

13 *omit*

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

15 *substitute*

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

17 **Explanatory note**

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

19 **[1.6] Section 111 (1)**

20 *omit*

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

22 *substitute*

23 section 109 (2) (b)

24 **Explanatory note**

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

1 **[1.7] Section 115 (1)**

2 *substitute*

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

7 **Explanatory note**

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

9 **[1.8] Section 116 (1)**

10 *omit*

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

12 *substitute*

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

14 **Explanatory note**

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

16 **[1.9] Section 118 (1)**

17 *omit*

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

19 *substitute*

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

21 **Explanatory note**

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

1 **Part 1.2 Domestic Animals Act 2000**

2 **[1.10] Section 81 (1)**

3 *before*

4 during stated times

5 *insert*

6 at all times or

7 **Explanatory note**

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

9 **Part 1.3 Occupational Health and Safety**
10 **Act 1989**

11 **[1.11] Section 154, definition of *basis***

12 *substitute*

13 *basis*, for giving a prohibition notice, means—

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

21 **Explanatory note**

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

1 **[1.12] Section 155**

2 *substitute*

3 **155 Giving prohibition notices**

4 (1) An inspector may give a notice (a *prohibition notice*) to a
5 responsible person for a workplace if the inspector believes, on
6 reasonable grounds, that—

7 (a) someone at the workplace has contravened, is contravening, or
8 is likely to contravene, this Act; and

9 (b) giving the notice is necessary to prevent or minimise risk of
10 serious harm to the health or safety of people from a hazard at
11 the workplace.

12 (2) An inspector may also give a notice (also a *prohibition notice*) to a
13 responsible person for a workplace if the inspector believes, on
14 reasonable grounds, that giving the notice is necessary to allow—

15 (a) the inspection, testing or monitoring of anything at the
16 workplace; or

17 (b) the investigation of an accident or other incident (including a
18 dangerous occurrence) at the workplace.

19 **Example for par (2) (a)**

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

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

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

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

1 **Explanatory note**

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

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

14 **[1.13] Section 156 (2) (b)**

15 *omit*

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

19 *substitute*

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

22 **Explanatory note**

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

24 **[1.14] Section 156 (2) (c)**

25 *omit*

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

27 *substitute*

28 section 155 (2) (which is about

29 **Explanatory note**

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

1 **[1.15] Section 158 (1)**

2 *omit*

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

4 *substitute*

5 section 155 (2)

6 **Explanatory note**

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

8 **[1.16] Section 161 (1)**

9 *substitute*

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

13 **Explanatory note**

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

15 **[1.17] Section 162 (1)**

16 *omit*

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

18 *substitute*

19 section 155 (1)

20 **Explanatory note**

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

1 **[1.18] Section 164 (1)**

2 *omit*

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

4 *substitute*

5 section 155 (2) (which is about

6 **Explanatory note**

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

8 **Part 1.4 Road Transport (General) Act**
9 **1999**

10 **[1.19] New section 24 (1A)**

11 *insert*

12 (1A) To remove any doubt, an authorised person may not serve an
13 infringement notice on a person under this section for an offence
14 after the end of the time within which a prosecution may be brought
15 for the offence.

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

18 **Explanatory note**

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

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

1 **[1.20] Section 24**

2 *renumber subsections when Act next republished under Legislation*
3 *Act*

4 **Explanatory note**

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

7 **[1.21] New section 36 (7A)**

8 *insert*

9 (7A) To remove any doubt, an authorised person may not serve an
10 infringement notice on a person under this section for an offence
11 after—

12 (a) if a regulation under subsection (7) prescribes a period for the
13 offence—the end of the prescribed period; or

14 (b) in any other case—the end of the time within which a
15 prosecution may be brought against the person for the offence.

16 **Explanatory note**

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

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

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

1 **[1.22] Section 36**

2 *renumber subsections when Act next republished under Legislation*
3 *Act*

4 **Explanatory note**

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

7 **[1.23] New section 53 (6)**

8 *insert*

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

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

16 **Explanatory note**

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

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

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

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

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

1 **Explanatory note**

2 This amendment increases from 2 to 3 the number of extra people the council may appoint to
3 exercise its functions efficiently. It is related to the omission of section 11 (1) (b) by another
4 amendment.

5 **[1.27] New section 11 (6)**

6 *insert*

7 (6) The maximum period that a person can be a member of the council
8 is 12 years (whether consecutive or not) unless the council
9 otherwise decides to extend the maximum period for the person.

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

13 **Explanatory note**

14 The *Higher Education Support Act 2003* (Cwlth), section 33-15 provides for increased financial
15 assistance to universities that satisfy certain requirements, including the applicable National
16 Governance Protocols (see www.dest.gov.au/highered/governance/nat_gov_prot.htm).

17 National Governance Protocol 6 (see par 7.5.50) includes the requirement that a university's
18 governing body must establish the maximum period that a person may serve on the body which
19 should not generally exceed 12 years unless otherwise specifically agreed by a majority of the
20 governing body.

21 This amendment provides for a maximum period or periods of 12 years or any other period set
22 by the council.

23 **[1.28] Section 12**

24 *substitute*

25 **12 Qualifications for membership of council**

26 (1) A person is not qualified to become or remain a member of the
27 council if the person—

28 (a) is under 18 years old; or

- 1 (b) is disqualified from managing corporations under the
2 Corporations Act, part 2D.6 (Disqualification from managing
3 corporations); or
- 4 (c) is convicted, in the ACT, of an offence punishable by
5 imprisonment for at least 1 year; or
- 6 (d) is convicted outside the ACT, in Australia or elsewhere, of an
7 offence that, if it had been committed in the ACT, would be
8 punishable by imprisonment for at least 1 year.
- 9 (2) Disqualification under subsection (1) (c) or (d) ends on the later of
10 the following:
- 11 (a) 5 years after the date of the person's conviction;
- 12 (b) 5 years after the date of the person's release from prison.

13 **Explanatory note**

14 The *Higher Education Support Act 2003* (Cwlth), section 33-15 provides for increased financial
15 assistance to universities that satisfy certain requirements, including the applicable National
16 Governance Protocols (see www.dest.gov.au/highered/governance/nat_gov_prot.htm).

17 National Governance Protocol 3 (see par 7.5.25) provides that a member of a university's
18 governing body automatically vacates the position if the person is, or becomes, disqualified
19 from acting as a director of a company or managing corporations under the Corporations Act,
20 part 2D.6.

21 This amendment inserts new section 12 (1) (b) which provides that a person is not qualified to
22 become or remain a member of the council if the person is disqualified under the Corporations
23 Act, part 2D.6. The period of disqualification under existing section 12 (2) is increased from
24 2 years to 5 years to bring it into line with the disqualification period under the Corporations
25 Act.

26 Existing section 12 does not apply to the vice-chancellor. This exception is not included in new
27 section 12 and, accordingly, the vice-chancellor is covered by the same qualification
28 requirements as the other members of the council.

29 Existing section 12 (1) (b) (which is about bankruptcy and personal insolvency agreements) is
30 omitted because these matters are grounds for automatic disqualification under the Corporations
31 Act, part 2D.6 (see s 206A).

32 Existing section 12 (1) (c) provides for disqualification if a person has been convicted of an
33 offence against a Commonwealth, State or Territory law and sentenced to imprisonment for

1 1 year or longer. It is updated in new section 12 (1) (c) and (d) in accordance with current
2 drafting practice. In particular, a person is disqualified if the person is convicted of an offence
3 committed outside Australia that, if it had been committed in the ACT, would be punishable by
4 imprisonment for at least 1 year.

5 **[1.29] New section 12A**

6 *insert*

7 **12A Duties of members of council**

8 (1) In exercising the functions of a member of the council, a council
9 member must—

- 10 (a) act always in the best interests of the university as a whole; and
11 (b) act honestly and for a proper purpose; and
12 (c) exercise reasonable care and diligence.

13 (2) Also, a member of the council—

- 14 (a) must avoid conflicts of interest; and
15 (b) must disclose to the council, in accordance with section 14 and
16 the statutes, any conflict between the member's interests and
17 the university's interests; and
18 (c) must not improperly use the member's position, or information
19 obtained because of the member's position, to—
20 (i) gain an advantage for the member or someone else; or
21 (ii) cause detriment to the university or someone else.

22 (3) The duty under subsection (1) (a) must be observed in priority to
23 any duty a member may owe to those electing or appointing the
24 member.

25 (4) The council may, by resolution passed by $\frac{2}{3}$ of the members of the
26 council for the time being, remove a council member from office if
27 the member fails to comply with a duty under subsection (1).

1 **Explanatory note**

2 The *Higher Education Support Act 2003* (Cwlth), section 33-15 provides for increased financial
3 assistance to universities that satisfy certain requirements, including the applicable National
4 Governance Protocols (see www.dest.gov.au/highered/governance/nat_gov_prot.htm).

5 This amendment gives effect to National Governance Protocol 3 (see par 7.5.20). It also
6 includes in subsection (2) (c) the additional elements of the improper use of information and the
7 improper use of position or information to cause detriment to the university or someone else
8 (see section (2) (c) (ii)).

9 **[1.30] Section 14 (1) and (3)**

10 *omit*

11 a direct or indirect pecuniary interest

12 *substitute*

13 an interest

14 **Explanatory note**

15 Section 14 is about the disclosure of interests by council members. This amendment brings the
16 references to interest into line with new section 12A (2) (a) and (b) which is inserted by another
17 amendment. Section 14 operates subject to the University's statutes (see section (4)).
18 Accordingly, details of council members' obligations etc in relation to disclosure of interests
19 (including, for example, conformity with a director's obligations under the Corporations Act)
20 can be set-out in the statutes.

21 **[1.31] Section 15 (1)**

22 *omit*

23 (other than the vice-chancellor)

24 **Explanatory note**

25 This amendment is related to the removal of an exception for the vice-chancellor from
26 section 12 by another amendment.

1 **[1.32] New section 15 (1) (ab)**

2 *insert*

3 (ab) is removed from office under section 12A (4) (Duties of
4 members of council); or

5 **Explanatory note**

6 This amendment provides that the office of a member of the council becomes vacant if the
7 member is removed from office under new section 12A (4) which is inserted by another
8 amendment.

9 **[1.33] Section 15 (1) (e)**

10 *omit*

11 **Explanatory note**

12 Section 15 (1) (e) provides that the office of a member of the council (other than the vice-
13 chancellor) becomes vacant if the member, without reasonable excuse, contravenes
14 section 14 (1). That section is about the disclosure of interests by council members.

15 This amendment omits the paragraph because a council member (including the vice-chancellor)
16 who fails to disclose a conflict of interest may be removed under new section 12A (4) which is
17 inserted by another amendment.

18 **[1.34] Section 15 (1)**

19 *renumber paragraphs when Act next republished under Legislation*
20 *Act*

21 **Explanatory note**

22 This amendment is consequential on the insertion of new section 15 (1) (ab) and the omission
23 of section 15 (1) (e).

1 **[1.35] New section 24 (3)**

2 *insert*

3 (3) A person is not eligible to be appointed as the chancellor if the
4 person is disqualified from managing corporations under the
5 Corporations Act, part 2D.6 (Disqualification from managing
6 corporations).

7 **Explanatory note**

8 The chancellor is automatically a member of the university's council (see section 11 (1) (a)).
9 This amendment is related to new section 12 (1) (b) which provides that a person is not
10 qualified to become or remain a member of the council if the person is disqualified under the
11 Corporations Act, part 2D.6.

12 **[1.36] Section 24A (1)**

13 *omit*

14 or another person

15 **Explanatory note**

16 This amendment restricts the people who may be appointed as the deputy chancellor to
17 members of the council. It is related to the omission of section 11 (1) (b) by another
18 amendment.

19 **[1.37] New section 25 (4)**

20 *insert*

21 (4) A person is not eligible to be appointed as the vice-chancellor if the
22 person is disqualified from managing corporations under the
23 Corporations Act, part 2D.6 (Disqualification from managing
24 corporations).

25 **Explanatory note**

26 The vice-chancellor is automatically a member of the university's council (see section 11 (1)
27 (c)). This amendment is related to new section 12 (1) (b) which provides that a person is not
28 qualified to become or remain a member of the council if the person is disqualified under the
29 Corporations Act, part 2D.6.

1 **[1.38] Section 40 (2) (e) (iii)**

2 *omit*

3 pecuniary interests

4 *substitute*

5 interests

6 **Explanatory note**

7 This amendment brings the reference to pecuniary interests into line with that in new
8 section 12A (2) (a) and (b) which is inserted by another amendment.

1 **Schedule 2 Structural amendments**

2 (see s 5)

3 **Part 2.1 Legislation Act 2001**

4 **[2.1] Section 7, note 2**

5 *substitute*

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

7 **Explanatory note**

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

10 **[2.2] Section 19 (5), example 3**

11 *omit*

12 **Explanatory note**

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

15 **[2.3] Section 22A, definition of *legislative material*, example 1**

16 *substitute*

17 1 Additional material entered in the register under section 19 (3) (Contents of
18 register) that is not an Act or statutory instrument, for example, appointments
19 of Ministers. Ministers are appointed by the Chief Minister under the
20 Self-Government Act, section 41. An instrument notifying an appointment
21 may be entered in the register even though the instrument is not a statutory
22 instrument.

23 **Explanatory note**

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

1 **[2.4] Section 26 (1) (h)**

2 *substitute*

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

5 **Explanatory note**

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

8 **[2.5] Section 33 (1)**

9 *omit*

10 , in writing,

11 **Explanatory note**

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

13 **[2.6] Section 33 (2)**

14 *omit*

15 issued under this section

16 **Explanatory note**

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

18 **[2.7] Section 34 (2)**

19 *omit*

20 , in writing,

21 **Explanatory note**

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

1 **[2.8] Section 34 (4)**

2 *omit*

3 in whole or in part

4 **Explanatory note**

5 This amendment removes unnecessary words.

6 **[2.9] Section 34 (5)**

7 *omit*

8 after the disallowance of the RIS exemption

9 *substitute*

10 after the day the RIS exemption is disallowed

11 **Explanatory note**

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

17 **[2.10] Section 36 (1) (d)**

18 *substitute*

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

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

22 **Explanatory note**

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

1 **[2.11] Section 37 (1)**

2 *omit*

3 in whole or part

4 **Explanatory note**

5 This amendment removes unnecessary words.

6 **[2.12] New section 42 (2)**

7 *insert*

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

11 **Examples**

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

13 **Explanatory note**

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

22 **[2.13] Section 42 (2) and (3)**

23 *renumber as section 42 (3) and (4)*

24 **Explanatory note**

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

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

2 *omit*

3 (or for the purposes of)

4 **Explanatory note**

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

8 **[2.15] Section 45 (4), definition of *disallowable instrument***

9 *substitute*

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

15 **Explanatory note**

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

18 **[2.16] Section 45 (4), definition of *law***

19 *substitute*

20 *law* means—

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

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

25 (b) a Commonwealth Act or a disallowable instrument under a
26 Commonwealth Act (or a provision of such an Act or
27 instrument).

1 **Explanatory note**

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

8 **[2.17] Section 47 (10), definition of ACT law**

9 *substitute*

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

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

14 **Explanatory note**

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

19 **[2.18] Section 47 (10), definition of disallowable instrument**

20 *substitute*

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

26 **Explanatory note**

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

- 1 **[2.19] Section 47 (10), definition of *law of another jurisdiction*,**
2 **paragraph (a)**
3 *substitute*
4 (a) a Commonwealth Act or a disallowable instrument under a
5 Commonwealth Act; or

6 **Explanatory note**

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

9 **[2.20] Section 51 (2)**

- 10 *after*
11 available for inspection
12 *insert*
13 (on the internet or otherwise)

14 **Explanatory note**

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

18 **[2.21] Section 56 (1)**

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

23 **Explanatory note**

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

1 **[2.22] Section 56 (3), example**

2 *substitute*

3 **Example**

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

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

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

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

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

14 **Explanatory note**

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

17 **[2.23] Section 56 (4) (a)**

18 *omit*

19 specifying

20 *substitute*

21 stating

22 **Explanatory note**

23 This amendment updates language.

1 **[2.24] Section 56 (4) (c)**

2 *omit*

3 specified

4 *substitute*

5 stated

6 **Explanatory note**

7 This amendment updates language.

8 **[2.25] Section 56 (4), example**

9 *omit*

10 specifying

11 *substitute*

12 stating

13 **Explanatory note**

14 This amendment updates language.

15 **[2.26] Section 56 (5) (g)**

16 *omit*

17 (in whole or part)

18 *substitute*

19 (completely or partly)

20 **Explanatory note**

21 This amendment updates language.

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

2 *substitute*

3 1 a provision that a levy is payable within 30 days after the day goods
4 are sold

5 **Explanatory note**

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

7 **[2.28] Section 58 (2) (b)**

8 *omit*

9 (in whole or part)

10 *substitute*

11 (completely or partly)

12 **Explanatory note**

13 This amendment updates language.

14 **[2.29] Section 59 (2), example 2**

15 *omit*

16 could

17 *substitute*

18 may

19 **Explanatory note**

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

1 **[2.30] Section 61 (1)**
2 *omit*
3 the maker of, or the appropriate person for,
4 *substitute*
5 an authorised person for making a notification request for

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

11 **[2.31] Section 61 (2)**
12 *omit*
13 the maker of, or appropriate person for,
14 *substitute*
15 an authorised person for making a notification request for

16 **Explanatory note**
17 This amendment is consequential on the amendment of section 61 (1).

18 **[2.32] Section 61 (10)**
19 *substitute*
20 (10) The notification of a registrable instrument is valid even if—
21 (a) a prescribed requirement was not complied with; or
22 (b) the notification was made on the request of a person who was
23 not, or was no longer, a delegate of an authorised person for
24 making a notification request for the instrument.

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

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

8 **[2.33] Section 61 (12)**

9 *substitute*

10 (12) In this section:

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

13 (a) the maker of the instrument; or

14 (b) for a registrable instrument made by the Executive—a Minister
15 or chief executive; or

16 (c) for a registrable instrument made by a Minister—a chief
17 executive; or

18 (d) for a registrable instrument made by the rule-making
19 committee—

20 (i) the secretary of the committee; or

21 (ii) the registrar of a court or tribunal in relation to which the
22 instrument applies; or

23 (e) for any other registrable instrument made by a court or
24 tribunal, or by a member (however described) of a court or
25 tribunal—the registrar of the court or tribunal; or

26 (f) for any other registrable instrument (other than an instrument
27 prescribed by regulation for this paragraph)—a chief
28 executive; or

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

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

10 **[2.34] Section 64 (2)**

11 *omit*

12 under

13 *substitute*

14 in accordance with

15 **Explanatory note**

16 This amendment tightens language.

17 **[2.35] Section 65 (2) (a)**

18 *substitute*

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

20 **Explanatory note**

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

- 1 **[2.36] Section 67 (2)**
2 *omit*
3 after the disallowance
4 *substitute*
5 after the day of the disallowance

6 **Explanatory note**

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

11 **[2.37] Section 68 (3) (a)**

- 12 *substitute*
13 (a) on the day after the day the amendment is notified; or

14 **Explanatory note**

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

19 **[2.38] Section 70 (2)**

- 20 *omit*
21 after the making of the amendment
22 *substitute*
23 after the day the amendment is made

24 **Explanatory note**

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

1 **[2.39] Section 71 (1) (a)**

2 *omit*

3 after the instrument

4 *substitute*

5 after the day the instrument

6 **Explanatory note**

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

10 **[2.40] Section 71 (1) (b)**

11 *omit*

12 after the notice

13 *substitute*

14 after the day the notice

15 **Explanatory note**

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

19 **[2.41] Section 72, definition of *law***

20 *substitute*

21 *law* means an Act or statutory instrument.

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

24 **Explanatory note**

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

1 **[2.45] Section 79 (4), definition of *postponed law***

2 *omit*

3 the notification day

4 *substitute*

5 its notification day

6 **Explanatory note**

7 This amendment tightens language.

8 **[2.46] Section 81 (1), new examples**

9 *insert*

10 **Examples of powers to which section applies**

11 1 power to delegate a function

12 2 power to give or issue an approval, consent, licence, permit or other authority
13 (however described)

14 3 power to make an acting appointment

15 4 power to issue guidelines

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

19 **Explanatory note**

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

23 **[2.47] Section 82, definition of *law***

24 *substitute*

25 ***law*** means an Act or statutory instrument.

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

1 **Explanatory note**

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

6 **[2.48] Section 84 (2)**

7 *omit*

8 begun

9 *substitute*

10 started

11 **Explanatory note**

12 This amendment updates language.

13 **[2.49] Section 84A (4), definition of *law***

14 *substitute*

15 *law* means an Act or subordinate law.

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

18 **Explanatory note**

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

22 **[2.50] Section 88 (1) (b)**

23 *omit*

24 otherwise

25 **Explanatory note**

26 This amendment omits an unnecessary word.

1 **[2.51] New section 88 (1A)**

2 *insert*

3 (1A) Subsection (1) does not apply to a declaration or validation that is
4 made by a law modifying another law.

5 **Explanatory note**

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

8 **[2.52] Section 88**

9 *renumber subsections when Act next republished under Legislation*
10 *Act*

11 **Explanatory note**

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

14 **[2.53] Section 89 (12), definition of *amending law*, paragraph (b)**

15 *substitute*

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

17 **Explanatory note**

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

20 **[2.54] Section 89 (12), definition of *amending law*, paragraph (f),**
21 **new note**

22 *insert*

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

24 **Explanatory note**

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

1 **[2.55] Section 89, example 1**

2 *after*
3 12 April 2002.

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

7 **Explanatory note**

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

10 **[2.56] Section 89, example 2**

11 *after*
12 subsection (1).

13 *insert*
14 It is, therefore, not automatically repealed under section 89.

15 **Explanatory note**

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

18 **[2.57] Section 91 (8)**

19 *substitute*
20 (8) In applying this section to a law that is divided otherwise than into
21 sections, a reference to a section or subsection is a reference to a
22 corresponding provision of the law.

23 **Explanatory note**

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

1 **[2.58] Section 92 (1), example**

2 *omit*

3 and twice in section 20 (3)

4 *substitute*

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

7 **Explanatory note**

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

9 **[2.59] Section 93 (10)**

10 *substitute*

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

14 **Explanatory note**

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

23 **[2.60] Section 96 (4)**

24 *after*

25 made to

26 *insert*

27 , or in relation to,

1 **Explanatory note**

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

5 **[2.61] Chapter 10**

6 *substitute*

7 **Chapter 10 Referring to laws**

8 **97 Definitions for ch 10**

9 (1) In this chapter:

10 *ACT law* means an Act or statutory instrument.

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

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

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

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

19 (2) In this section:

20 *Act*, in relation to another Territory, includes ordinance.

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

23 (a) an Act of the other jurisdiction; or

24 (b) another statutory instrument of the other jurisdiction; or

25 (c) power given by an Act or statutory instrument of the other
26 jurisdiction and also power given otherwise by law.

-
- 1 **98** **References to ACT law include law containing reference**
- 2 In an ACT law, a reference in general terms to an ACT law of the
- 3 same kind includes a reference to the law itself.
- 4 **Example**
- 5 The *ABC Act 2001*, section 27 gives a power to confiscate property under certain
- 6 circumstances. Section 93 of the same Act provides ‘If an Act authorises the
- 7 confiscation of property, the owner of the property has a right of appeal to the
- 8 Magistrates Court.’ The right of appeal under section 93 also applies to the power
- 9 given by section 27 because the reference to ‘an Act’ in section 93 includes a
- 10 reference to the *ABC Act 2001*.
- 11 *Note* An example is part of the Act, is not exhaustive and may extend, but
- 12 does not limit, the meaning of the provision in which it appears
- 13 (see s 126 and s 132).
- 14 **99** **References in ACT statutory instruments to *the Act***
- 15 In a statutory instrument, a reference to *Act* or *the Act*, without
- 16 mentioning a particular Act, is a reference to the Act under which
- 17 the instrument is made or in force.
- 18 **100** **Referring to particular ACT laws**
- 19 (1) An Act may be referred to by—
- 20 (a) the name the Act gives to itself; or
- 21 (b) the year it was passed and its number, together with a reference
- 22 (if necessary) to indicate that it is an Act.
- 23 **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).
- 24 (2) A statutory instrument may be referred to by—
- 25 (a) any name the instrument gives to itself; or
-

- 1 (b) in any other way sufficient in a law of the other jurisdiction for
2 referring to the relevant law; or
- 3 (c) in any way that, under current legislative drafting practice,
4 would be sufficient for referring to the relevant law if it were
5 an ACT law;
- 6 together with a reference to the jurisdiction (or an abbreviation of
7 the jurisdiction).
- 8 (2) In an ACT law, a provision of a law of another jurisdiction may be
9 referred to—
- 10 (a) in a way sufficient in a law of the other jurisdiction for
11 referring to the provision; or
- 12 (b) in any way that, under current legislative drafting practice,
13 would be sufficient for referring to the provision if it were a
14 provision of an ACT law.
- 15 (3) Subsection (2) does not limit any other provision of this chapter.

16 **102** **References to laws include references to laws as in force**
17 **from time to time**

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

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

19 **103 References to repealed laws**

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

22 **Example**

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

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

-
- 1 **104** **References to laws include references to instruments**
2 **under laws**
- 3 (1) In an ACT law, a reference (either generally or specifically) to a law
4 includes a reference to the statutory instruments made or in force
5 under the law.
- 6 (2) In subsection (1), a reference to the statutory instruments made or in
7 force under the law includes a reference to any law or instrument
8 applied, adopted or incorporated (with or without change) under the
9 law.
- 10 (3) This chapter applies to an instrument applied, adopted or
11 incorporated under a law as if—
- 12 (a) the instrument were a law; and
13 (b) any other necessary changes were made.
- 14 (4) In this section:
- 15 *statutory instrument*, of another jurisdiction—see section 97 (2).
- 16 **105** **Referring to provisions of laws**
- 17 In an ACT law, a provision of a law may be referred to by reference
18 to the provision of the law in which it is contained.
- 19 **Example**
- 20 Paragraph (b) of subsection (2) of section 10 of an Act may be referred to by
21 reference to the section, subsection and paragraph, that is, as section 10 (2) (b).
- 22 *Note* An example is part of the Act, is not exhaustive and may extend, but
23 does not limit, the meaning of the provision in which it appears
24 (see s 126 and s 132).
- 25 **106** **References to provisions of laws are inclusive**
- 26 In an ACT law, a reference to any part of a law is a reference to the
27 following:
- 28 (a) the provision of the law that begins the part;
-

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

4 **Examples**

- 5 1 A reference to ‘sections 5 to 9’ includes both section 5 and section 9.
6 2 A reference to ‘sections 260 to 264’ includes a provision such as a part
7 heading between section 260 and section 261.
8 3 A reference to ‘*from child to adult*’ includes both the word ‘child’ and the
9 word ‘adult’.

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

13 **106A References to paragraphs etc of laws**

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

17 **Example**

18 A subsection may be divided into paragraphs as follows:

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

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

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

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

1 (2) In this section:

2 *paragraph* includes a subparagraph and a sub-subparagraph.

3 **Explanatory note**

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

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

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

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

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

Schedule 2 Structural amendments
Part 2.1 Legislation Act 2001

Amendment [2.61]

- 1 The following table lists the provisions of existing chapter 10 and the corresponding provision
2 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)

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

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

7 Additional changes made to particular sections are noted below.

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

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

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

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

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

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

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

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

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

26 **[2.62] Section 107, definition of *law*, new note**

27 *insert*

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

30 **Explanatory note**

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

1 **[2.63] Section 111 (3)**

2 *omit*

3 **Explanatory note**

4 This amendment is consequential on the amendments of section 116.

5 **[2.64] Section 111 (4)**

6 *renumber as section 111 (3)*

7 **Explanatory note**

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

9 **[2.65] New section 116 (1) (o)**

10 *insert*

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

13 **Explanatory note**

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

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

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

24 **[2.66] Section 116 (1) (o)**

25 *renumber as section 116 (1) (p)*

26 **Explanatory note**

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

1 **[2.67] Section 116 (1), new examples**

2 *insert*

3 **Examples of consequential amendments for par (o)**

- 4 1 If an amendment adds 1 or more subsections to a section that is not already
5 divided into subsections, the subsection number (1) may be inserted.
- 6 2 If an amendment omits subsection (1) from a section with 2 subsections, the
7 subsection number (2) may be omitted.
- 8 3 If an amendment omits subsection (2) from a series of 4 subsections
9 (subsections (1) to (4)), subsections (3) and (4) may be renumbered as
10 subsections (2) and (3).
- 11 4 If an amendment adds a new subsection (3A) to a series of 5 subsections
12 (subsections (1) to (5)), the new subsection and subsections (4) and (5) may
13 be renumbered as subsections (4), (5), and (6).
- 14 5 If an amendment omits paragraph (b) from a series of 4 paragraphs
15 (paragraphs (a) to (d)), paragraphs (c) and (d) may be renumbered as
16 paragraphs (b) and (c).
- 17 6 If an amendment adds a new paragraph (aa) to a series of 3 paragraphs
18 (paragraphs (a) to (c)), the paragraphs may be renumbered as paragraphs (a),
19 (b), (c) and (d).
- 20 7 If an amendment makes a change mentioned in any of examples 1 to 6, a
21 cross-reference in any law to any of the provisions that have been
22 renumbered may be correspondingly renumbered.
- 23 8 If an amendment adds a paragraph as the last paragraph in a series of
24 paragraphs that end in a full stop, the full stop may be changed to a
25 semicolon and, if the series of paragraphs is joined by a conjunction
26 (eg 'and'), the conjunction may be added after the semicolon.
- 27 9 If an amendment omits a section example from a section that has 2 section
28 examples, the number of the remaining example may be omitted.
- 29 10 If an amendment adds a subsection note to a subsection that already has a
30 subsection note, the notes may be numbered.

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

34 **Explanatory note**

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

1 **[2.68] Section 116 (2)**

2 *substitute*

3 (2) In this section:

4 *law* includes a law of another jurisdiction.

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

6 **Explanatory note**

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

11 **[2.69] Section 125, definition of law**

12 *substitute*

13 *law* means an Act, subordinate law or disallowable instrument.

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

17 **Explanatory note**

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

22 **[2.70] Section 126 (8)**

23 *substitute*

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

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

1 **Explanatory note**

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

10 **[2.71] Section 127 (6)**

11 *substitute*

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

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

18 **Explanatory note**

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

27 **[2.72] Section 134 (7)**

28 *omit*

29 **Explanatory note**

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

1 **[2.73] Section 134 (8)**

2 *renumber as section 134 (7)*

3 **Explanatory note**

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

5 **[2.74] Section 135 (6)**

6 *omit*

7 **Explanatory note**

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

10 **[2.75] Section 135 (7)**

11 *renumber as section 135 (6)*

12 **Explanatory note**

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

14 **[2.76] Table 142, item 2**

15 *omit*

16 *body*

17 *substitute*

18 *entity*

19 **Explanatory note**

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

21 **[2.77] Section 146 (4), definitions of *applicable law* and**
22 ***applicable provision***

23 *substitute*

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

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

3 ***application date*** means—

4 (a) for an Act, subordinate law or disallowable instrument—
5 1 January 2000; and

6 (b) for any other statutory instrument—1 January 2006.

7 **Explanatory note**

8 This amendment has the effect of extending the operation of section 146 (3), from
9 1 January 2006, to statutory instruments that are not subordinate laws or disallowable
10 instruments. Section 146 (3) has applied to Acts, subordinate laws and disallowable
11 instruments since 1 January 2000.

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

16 **[2.78] Section 156 (1), new example 3**

17 *insert*

18 3 In part 6 of an Act (which is headed ‘Part 6 Complaints’), the word *a* is
19 defined in section 50. The section is not divided into subsections but contains
20 a number of definitions. Section 50 begins with the words ‘In this part:’.
21 However, the dictionary to the Act contains the following definition:

22 *a*—see section 50.

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

24 **Explanatory note**

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

1 **[2.79] Section 156 (2), example 2**

2 *substitute*

3 2 In part 6 of an Act (which is headed ‘Part 6 Complaints’), the word *a* is
4 defined in section 50. The section is not divided into subsections but contains
5 a number of definitions. Section 50 begins with the words ‘In this part:’.
6 However, the dictionary to the Act contains the following definition:

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

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

10 **Explanatory note**

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

14 **[2.80] Section 156 (4)**

15 *substitute*

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

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

21 **Explanatory note**

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

1 **[2.81] Section 175, definition of *law***

2 *substitute*

3 *law* means an Act, subordinate law or disallowable instrument.

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

7 **Explanatory note**

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

12 **[2.82] Section 182, definition of *law***

13 *substitute*

14 *law* means an Act or statutory instrument.

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

17 **Explanatory note**

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

22 **[2.83] Section 183**

23 *substitute*

24 **183 Change of name of entity**

25 (1) If a law changes the name of an entity established under a law, the
26 entity continues in existence under the new name and its identity is
27 not affected by the change.

28 (2) If the name of an entity is changed, a reference in a law to the entity
29 by its previous name is taken, after the change, to be a reference to
30 the entity by its new name.

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

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

6 **Explanatory note**

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

13 **[2.84] New section 184A**

14 *insert*

15 **184A References to entity**

16 (1) In a law, a reference to an entity includes a reference to a person
17 exercising a function of the entity, whether under a delegation,
18 subdelegation or otherwise.

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

22 **Explanatory note**

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

1 **[2.85] Section 185**

2 *omit*

3 In

4 *substitute*

5 (1) In

6 **Explanatory note**

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

9 **[2.86] New section 185 (2)**

10 *insert*

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

14 **Explanatory note**

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

24 **[2.87] Section 186**

25 *substitute*

26 **186 Change of name of position**

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

1 (2) If the name of a position is changed, a reference in a law to the
2 position by its previous name is taken, after the change, to be a
3 reference to the position by its new name.

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

7 **Explanatory note**

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

14 **[2.88] Section 187**

15 *substitute*

16 **187 Chair and deputy chair etc**

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

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

24 **Explanatory note**

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

1 **[2.89] Section 188**

2 *substitute*

3 **188 Meaning of ACT law in ch 18**

4 In this chapter:

5 *ACT law* means an Act or subordinate law.

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

8 **Explanatory note**

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

12 **[2.90] Section 189**

13 *omit*

14 a territory law

15 *substitute*

16 an ACT law

17 **Explanatory note**

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

20 **[2.91] Section 189**

21 *omit*

22 the territory law

23 *substitute*

24 the ACT law

25 **Explanatory note**

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

1 **[2.92] Section 190 (1) (b)**

2 *omit*

3 a law

4 *substitute*

5 an ACT law

6 **Explanatory note**

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

9 **[2.93] Section 191 (1)**

10 *omit*

11 territory laws

12 *substitute*

13 ACT laws

14 **Explanatory note**

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

17 **[2.94] Section 191 (2) (a)**

18 *omit*

19 a territory law

20 *substitute*

21 an ACT law

22 **Explanatory note**

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

1 **[2.95] Section 191 (2)**

2 *omit*

3 the territory law

4 *substitute*

5 the ACT law

6 **Explanatory note**

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

9 **[2.96] Section 191 (3)**

10 *omit*

11 **Explanatory note**

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

14 **[2.97] Section 192**

15 *omit*

16 a territory law

17 *substitute*

18 an ACT law

19 **Explanatory note**

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

1 **[2.98] Section 193 (1) (a)**

2 *omit*

3 a law

4 *insert*

5 an ACT law

6 **Explanatory note**

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

9 **[2.99] Section 195, definition of law**

10 *substitute*

11 *law* means an Act, subordinate law or disallowable instrument.

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

15 **Explanatory note**

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

20 **[2.100] Section 197, note**

21 *omit*

22 42 (2)

23 *substitute*

24 42 (3)

25 **Explanatory note**

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

1 **[2.101] Section 208 (2)**

2 *substitute*

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

6 **Example**

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

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

13 **Explanatory note**

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

21 **[2.102] Section 225B heading**

22 *substitute*

23 **225B Person acting under standing acting arrangement may**
24 **exercise functions etc**

25 **Explanatory note**

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

1 **[2.103] Section 230 (1)**

2 *omit*

3 (1)

4 **Explanatory note**

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

6 **[2.104] Section 230 (2)**

7 *omit*

8 **Explanatory note**

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

12 **[2.105] Section 237 (1)**

13 *omit*

14 in whole or part

15 *substitute*

16 completely or partly

17 **Explanatory note**

18 This amendment updates language.

19 **[2.106] Section 250 heading**

20 *substitute*

21 **250 When document taken to be served**

22 **Explanatory note**

23 This amendment updates language.

1 **[2.107] Section 255 (1)**

2 *substitute*

- 3 (1) This section applies if an Act, subordinate law or disallowable
4 instrument (the *authorising law*) authorises or requires a form to be
5 approved or prescribed under an Act or statutory instrument (the
6 *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.

7 **Explanatory note**

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

10 **[2.108] Section 255 (3), example**

11 *substitute*

12 **Example**

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

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

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

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

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

23 **Explanatory note**

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

1 **[2.109] Section 256 (1) (b)**

2 *omit*

3 a law requires the person

4 *substitute*

5 the person is required under a law

6 **Explanatory note**

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

10 **[2.110] Dictionary, part 1, definition of Act, note**

11 *substitute*

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

15 **Explanatory note**

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

18 **[2.111] Dictionary, part 1, definition of amend, paragraph (d)**

19 *omit*

20 alter; and

21 *substitute*

22 alter.

23 **Explanatory note**

24 This amendment is consequential on the next amendment.

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

2 *omit*

3 **Explanatory note**

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

7 **[2.113] Dictionary, part 1, definition of *auditor-general***

8 *substitute*

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

11 **Explanatory note**

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

13 **[2.114] Dictionary, part 1, new definition of *Australian statistician***

14 *insert*

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

17 **Explanatory note**

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

19 **[2.115] Dictionary, part 1, new definition of *by***

20 *insert*

21 *by* regulation includes under a regulation.

22 **Explanatory note**

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

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

2 *substitute*

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

5 **Explanatory note**

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

8 **[2.117] Dictionary, part 1, definition of *chief planning executive***

9 *substitute*

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

12 **Explanatory note**

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

14 **[2.118] Dictionary, part 1, definition of *city area*, note**

15 *substitute*

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

17 **Explanatory note**

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

20 **[2.119] Dictionary, part 1, definition of *commissioner for fair trading***

21 *substitute*

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

25 **Explanatory note**

26 This amendment remakes the definition in accordance with current drafting practice.
27

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

2 *insert*

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

5 **Explanatory note**

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

7 **[2.121] Dictionary, part 1, definition of *construction occupations***
8 ***registrar***

9 *substitute*

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

13 **Explanatory note**

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

15 **[2.122] Dictionary, part 1, definition of *credit tribunal***

16 *substitute*

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

20 **Explanatory note**

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

22 **[2.123] Dictionary, part 1, new definition of *Deputy Speaker***

23 *insert*

24 *Deputy Speaker* means the Deputy Presiding Officer of the
25 Legislative Assembly.

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

1 **Explanatory note**

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

3 **[2.124] Dictionary, part 1, definition of *insolvent under***
4 ***administration***

5 *omit*

6 **Explanatory note**

7 This amendment omits a redundant definition.

8 **[2.125] Dictionary, part 1, definition of *land development agency***

9 *substitute*

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

12 **Explanatory note**

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

14 **[2.126] Dictionary, part 1, definition of *occupy***

15 *substitute*

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

19 **Explanatory note**

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

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

2 *substitute*

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

6 **Explanatory note**

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

8 **[2.128] Dictionary, part 1, definition of *planning and land***
9 ***authority***

10 *substitute*

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

13 **Explanatory note**

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

15 **[2.129] Dictionary, part 1, definition of *planning and land council***

16 *substitute*

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

19 **Explanatory note**

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

21 **[2.130] Dictionary, part 1, definition of *prescribed***

22 *omit*

23 under regulations

24 *substitute*

25 by regulation

1 **Explanatory note**

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

4 **[2.131] Dictionary, part 1, definition of *public health officer***

5 *substitute*

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

8 **Explanatory note**

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

10 **[2.132] Dictionary, part 1, definition of *regulations***

11 *substitute*

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

14 **Explanatory note**

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

17 **[2.133] Dictionary, part 1, definition of *repeal*, paragraph (f)**

18 *omit*

19 cancel it; and

20 *substitute*

21 cancel it.

22 **Explanatory note**

23 This amendment is consequential on the next amendment.

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

2 *omit*

3 **Explanatory note**

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

7 **[2.135] Dictionary, part 1, definition of *rules*, paragraph (a)**

8 *omit*

9 person or body

10 *substitute*

11 entity

12 **Explanatory note**

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

14 **[2.136] Dictionary, part 1, definition of *transitional***

15 *substitute*

16 *transitional* includes application and saving.

17 **Explanatory note**

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

21 **[2.137] Dictionary, part 1, definition of *under***

22 *omit*

23 or a provision of an Act or statutory instrument

24 **Explanatory note**

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

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

2 *insert*

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

5 **Explanatory note**

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

8 **[2.139] Dictionary, part 2, new definition of *ACT law***

9 *insert*

10 *ACT law*—

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

12 (b) for chapter 18 (Offences)—see section 188.

13 **Explanatory note**

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

15 **[2.140] Dictionary, part 2, new definition of *amend***

16 *insert*

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

19 **Explanatory note**

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

23 **[2.141] Dictionary, part 2, new definition of *another jurisdiction***

24 *insert*

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

1 **Explanatory note**

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

3 **[2.142] Dictionary, part 2, definition of *law*, new paragraph (ca)**

4 *insert*

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

6 **Explanatory note**

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

9 **[2.143] Dictionary, part 2, definition of *law*, paragraph (g)**

10 *omit*

11 section 185

12 *substitute*

13 section 182

14 **Explanatory note**

15 This amendment corrects a cross-reference.

16 **[2.144] Dictionary, part 2, definition of *law***

17 *renumber paragraphs when Act next republished under Legislation*
18 *Act*

19 **Explanatory note**

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

1 **[2.145] Dictionary, part 2, new definition of *law of another***
2 ***jurisdiction***

3 *insert*

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

6 **Explanatory note**

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

9 **[2.146] Dictionary, part 2, definition of *referential term***

10 *relocate to section 116 (2)*

11 **Explanatory note**

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

14 **[2.147] Dictionary, part 2, new definition of *repeal***

15 *insert*

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

18 **Explanatory note**

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

22 **[2.148] Dictionary, part 2, definition of *retrospectively***

23 *relocate to dictionary, part 1*

24 **Explanatory note**

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

1 **Part 2.2 Legislation Regulation 2003**

2 **[2.149] Section 8 (3) (d)**

3 *substitute*

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

6 **Explanatory note**

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

8 **[2.150] Section 9 (3) (d)**

9 *substitute*

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

12 **Explanatory note**

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

14 **[2.151] Section 10 (3) (d)**

15 *substitute*

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

18 **Explanatory note**

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

20 **[2.152] Section 11**

21 *omit*

22 **Explanatory note**

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

1 **[2.153] Dictionary, definition of *appropriate person***

2 *substitute*

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

5 **Explanatory note**

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

1 **Schedule 3 Technical amendments**

2 (see s 5)

3 **Part 3.1 Agents Act 2003**

4 **[3.1] Section 72 (6)**

5 *substitute*

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

8 **Explanatory note**

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

11 **[3.2] Section 81, examples for paragraph (c)**

12 *substitute*

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

- 14 1 finance broker
15 2 financial adviser
16 3 financier
17 4 property valuer
18 5 lawyer
19 6 real estate agent

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

23 **Explanatory note**

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

1 **[3.3] Section 115 (1)**

2 *omit*

3 the agent's audit period

4 *substitute*

5 an audit period of the agent

6 **Explanatory note**

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

11 **[3.4] Section 124 (2)**

12 *omit everything before*

13 , by written notice

14 *substitute*

15 (2) The commissioner for fair trading may

16 **Explanatory note**

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

19 **[3.5] Section 126 (2)**

20 *omit*

21 trustee)—

22 *substitute*

23 trustee), the commissioner must

24 **Explanatory note**

25 This amendment corrects a typographical error.

1 **[3.6] Section 126 (3)**

2 *omit*

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

4 *substitute*

5 , the commissioner must reject the application.

6 **Explanatory note**

7 This amendment corrects a minor drafting error.

8 **[3.7] Section 151 (4)**

9 *omit*

10 **Explanatory note**

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

13 **[3.8] Section 169 (1), definition of *relevant matter*,**
14 **paragraph (b)**

15 *substitute*

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

18 **Explanatory note**

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

1 **Part 3.2** **Agents Regulation 2003**

2 **[3.9] New section 8A (4)**

3 *insert*

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

5 **Explanatory note**

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

8 **[3.10] Section 8.1, definition of *property manager***

9 *substitute*

10 *property manager* means—

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

21 **Explanatory note**

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

1 **[3.11] Division 8.3.3 heading**

2 *substitute*

3 **Division 8.3.3 Property management—real estate**
4 **agents**

5 **Explanatory note**

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

7 **[3.12] Division 8.4.2 heading**

8 *substitute*

9 **Division 8.4.2 Property management—stock and**
10 **station agents**

11 **Explanatory note**

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

13 **Part 3.3 Associations Incorporation Act**
14 **1991**

15 **[3.13] New section 141**

16 *insert*

17 **141 Expiry of pt 11 etc**

18 (1) Section 129 to section 140 are laws to which the Legislation Act,
19 section 88 (Repeal does not end effect of transitional laws etc)
20 applies.

21 (2) This part expires on the day this section commences.

22 **Explanatory note**

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

1 **Part 3.4** **Bail Act 1992**

2 **[3.14] Section 13 (1) (b)**

3 *omit*

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

5 *substitute*

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

8 **Explanatory note**

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

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

13 **[3.15] Section 1**

14 *substitute*

15 **1 Name of Act**

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

17 **Explanatory note**

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

1 **[3.16] Section 4**

2 *substitute*

3 **6 Dictionary**

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

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

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

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

15 **7 Notes**

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

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

19 **8 Meaning of *adult* and *child***

20 In this Act:

21 *adult* means a person who—

22 (a) is at least 18 years old; or

23 (b) is under 18 years old, but is or has been married.

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

26 **Explanatory note**

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

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

3 **[3.17] Section 7 (2)**

4 *substitute*

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

8 **Explanatory note**

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

10 **[3.18] Section 9 (2)**

11 *substitute*

- 12 (2) However, the registrar-general may accept a birth registration
13 statement—
14 (a) that is signed by only 1 of the parents, if satisfied that it is not
15 practicable to obtain the signature of the other parent; or
16 (b) that does not set out particulars required under subsection (1),
17 if satisfied that it is not practicable to obtain the missing
18 particulars.
19 (2A) If the registrar-general accepts a birth registration statement for a
20 child under subsection (2), a person's obligation to have the child's
21 birth registered under this Act is taken to be discharged.

22 **Explanatory note**

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

1 **[3.19] Section 9**
2 *renumber subsections when Act next republished under Legislation*
3 *Act*

4 **Explanatory note**

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

6 **[3.20] Section 11 (1)**

7 *omit*
8 subsection (2) and

9 **Explanatory note**

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

12 **[3.21] Section 11 (2)**

13 *substitute*
14 (2) However, if not all the prescribed particulars are available to the
15 registrar-general, the registrar-general may register a birth by
16 including in the entry the prescribed particulars that are available to
17 the registrar-general.

18 **Explanatory note**

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

20 **[3.22] Section 16 (2)**

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

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

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

5 **Explanatory note**

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

7 **[3.23] Section 18**

8 *substitute*

9 **18 Application to register change of adult's name**

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

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

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

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

17 **Explanatory note**

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

19 **[3.24] Section 19 (1)**

20 *substitute*

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

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

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

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

1 **Explanatory note**

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

3 **[3.25] Section 20 (1)**

4 *substitute*

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

6 **Explanatory note**

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

9 **[3.26] Section 20 (2)**

10 *omit everything before paragraph (a), substitute*

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

13 **Explanatory note**

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

16 **[3.27] Section 20 (3)**

17 *omit*

18 The

19 *substitute*

20 Also, the

21 **Explanatory note**

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

1 **[3.28] Section 23, definition of *birth certificate***

2 *omit*

3 **Explanatory note**

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

6 **[3.29] Section 24**

7 *substitute*

8 **24 Application to alter register to record change of sex**

9 (1) A person may apply to the registrar-general for alteration of the
10 record of the person's sex in the registration of the person's birth
11 if—

- 12 (a) the person is at least 18 years old; and
13 (b) the person's birth is registered in the ACT; and
14 (c) the person has undergone sexual reassignment surgery; and
15 (d) the person is not married.

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

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

19 (2) The parents or guardian of a child may apply to the registrar-general
20 for alteration of the record of the child's sex in the registration of the
21 child's birth if—

- 22 (a) the child's birth is registered in the ACT; and
23 (b) the child has undergone sexual reassignment surgery.

24 (3) However, an application under subsection (2) may be made by
25 1 parent if—

- 26 (a) the applicant is the only parent named in the register; or
27 (b) there is no other surviving parent of the child.

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

3 **Explanatory note**

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

6 **[3.30] Section 27 (1)**

7 *omit*

8 Subject to subsection (2), a

9 *substitute*

10 A

11 **Explanatory note**

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

13 **[3.31] Section 29 heading**

14 *substitute*

15 **29 Effect of certificates issued in relation to transsexual
16 people**

17 **Explanatory note**

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

19 **[3.32] Section 34**

20 *substitute*

21 **34 Circumstances in which deaths are not to be registered**

22 (1) The registrar-general must not register a death unless the
23 registrar-general has been given—

24 (a) a notice under section 35; or

25 (b) a notice under the *Coroners Act 1997*, section 56; or

1 (c) a document issued, made or given under the law of a State, the
2 Commonwealth, another Territory or any other place that the
3 registrar-general is satisfied is equivalent to a document
4 mentioned in paragraph (a) or (b).

5 (2) However, the registrar-general must register a death if satisfied—

6 (a) that a court of the Territory, a State, the Commonwealth or
7 another Territory has found that a person whose death is not
8 registered in the register died in the ACT; or

9 (b) that, having regard to the circumstances of the case, it is proper
10 that the death be registered.

11 **Explanatory note**

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

13 **[3.33] Section 35 (3)**

14 *omit*

15 **Explanatory note**

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

19 **[3.34] New section 36 (3) and (4)**

20 *insert*

21 (3) Subsection (2) is a law to which the Legislation Act, section 88
22 (repeal does not end effect of transitional laws etc) applies.

23 (4) Subsections (2) and (3) and this subsection expire on the day this
24 subsection commences.

25 **Explanatory note**

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

- 1 **[3.35] Section 37 (4)**
- 2 *insert*
- 3 ***disposal***, in relation to human remains, means—
- 4 (a) cremation; or
- 5 (b) burial, including burial at sea; or
- 6 (c) placing the remains in a mausoleum or other permanent resting
- 7 place; or
- 8 (d) placing the remains in the custody of an educational or
- 9 scientific institution for the purpose of medical education or
- 10 research; or
- 11 (e) removal from the ACT, unless the remains have been
- 12 cremated.
- 13 ***funeral director*** means a person who carries on the business of
- 14 arranging for the disposal of human remains.

15 **Explanatory note**

16 This amendment adds the definitions ***disposal*** and ***funeral director*** to the subsection. These

17 definitions have been moved from the interpretation section of the Act (existing section 4) to

18 this subsection because the definitions are only needed for section 37. The interpretation

19 section is being omitted by another amendment.

20 **[3.36] Section 38**

21 *substitute*

- 22 **38 How deaths are registered**
- 23 (1) The registrar-general must register a death by making in the register
- 24 an entry about the death that includes the particulars prescribed by
- 25 regulation.
- 26 (2) However, if not all the prescribed particulars are available for the
- 27 registrar-general, the registrar-general may register the death by

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

3 **Explanatory note**

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

5 **[3.37] New section 39 (6) and (7)**

6 *insert*

7 (6) Subsection (5) is a law to which the Legislation Act, section 88
8 (Repeal does not end effect of transitional laws etc) applies.

9 (7) Subsections (5) and (6) and this subsection expire on the day this
10 subsection commences.

11 **Explanatory note**

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

14 **[3.38] Sections 42 and 43**

15 *substitute*

16 **42 Access to register**

17 (1) A person may apply to the registrar-general for—

18 (a) access to the register; or

19 (b) the provision from the register of the information stated in the
20 application.

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

22 (2) The registrar-general may give the applicant access to the register,
23 or give the applicant any of the stated information that is available,
24 if satisfied that—

25 (a) the applicant has an adequate reason for wanting the access or
26 the information; and

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Amendment [3.38]

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

20 **43 Search of register**

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

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

12 **Explanatory note**

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

15 **[3.39] Section 45 (2)**

16 *substitute*

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

20 **Explanatory note**

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

22 **[3.40] Section 48 (1), new note**

23 *insert*

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

27 **Explanatory note**

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

1 **[3.41] Section 51 heading**

2 *substitute*

3 **51 Confiscation of forged etc instruments**

4 **Explanatory note**

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

6 **[3.42] Section 51 (1) (a) and (b)**

7 *substitute*

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

12 **Explanatory note**

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

15 **[3.43] Section 51 (1)**

16 *renumber paragraphs when Act next republished under Legislation*
17 *Act*

18 **Explanatory note**

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

20 **[3.44] Section 51 (2)**

21 *omit*

22 document

23 *substitute*

24 instrument

25 **Explanatory note**

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

1 **[3.45] Section 52 heading**

2 *substitute*

3 **52 Confiscation of erroneous or false instruments**

4 **Explanatory note**

5 This amendment is consequential on amendments of section 51.

6 **[3.46] Section 52 (1) and (2)**

7 *omit*

8 or other document

9 *substitute*

10 or other instrument

11 **Explanatory note**

12 This amendment is consequential on amendments of section 51.

13 **[3.47] Section 52 (2) (a)**

14 *omit*

15 document

16 *substitute*

17 instrument

18 **Explanatory note**

19 This amendment is consequential on amendments of section 51.

1 **[3.48] Section 52 (2) (b)**

2 *omit*
3 of document
4 *substitute*
5 or instrument

6 **Explanatory note**

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

9 **[3.49] New division 9.6**

10 *insert*

11 **Division 9.6 Expiry of part**

12 **64A Expiry etc**

13 (1) Divisions 9.1 to 9.5 are laws to which the Legislation Act,
14 section 88 (Repeal does not end effect of transitional laws etc)
15 applies.

16 (2) This part expires on the day this division commences.

17 **Explanatory note**

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

20 **[3.50] Section 65**

21 *substitute*

22 **65 Certificate evidence**

23 (1) A certificate or other instrument that purports to state information
24 obtained by the registrar-general under this Act or the repealed Act
25 is evidence of the matters stated in it if it purports—

26 (a) to be signed and sealed by the registrar-general; or

1 (b) to have attached to it, or be otherwise authenticated by, a
2 facsimile of the registrar-general's signature and seal produced
3 by a stamp, machine imprint or any other method authorised by
4 regulation.

5 (2) This section is subject to section 29 (Effect of certificates issued in
6 relation to transsexual people).

7 **Explanatory note**

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

10 **[3.51] Section 66 (1) and (2)**

11 *omit*

12 powers and

13 **Explanatory note**

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

16 **[3.52] Section 66, new note**

17 *insert*

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

21 **Explanatory note**

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

23 **[3.53] Section 69 (2), new note**

24 *insert*

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

26 **Explanatory note**

27 This amendment inserts a standard note about approved forms.

1 **[3.54] New dictionary**

2 *insert*

3 **Dictionary**

4 (see s 2)

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

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

- 8 • ACT
- 9 • change
- 10 • Commonwealth
- 11 • doctor
- 12 • exercise
- 13 • fail
- 14 • function
- 15 • instrument (see s 14)
- 16 • penalty unit (see s 133)
- 17 • registrar-general
- 18 • under.

19 ***adult***—see section 4.

20 ***birth*** includes a stillbirth.

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

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

26 ***child***—see section 4.

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

- 1 *death* does not include a stillbirth.
- 2 *doctor*, for part 4 (Change of sex)—see section 23.
- 3 *parents*, of a child, means the parents jointly.
- 4 *prohibited name* means a name that—
- 5 (a) is obscene or offensive; or
- 6 (b) could not practically be established by repute or usage—
- 7 (i) because it is too long; or
- 8 (ii) because it consists of or includes symbols without
- 9 phonetic significance in the English language; or
- 10 (iii) for any other reason; or
- 11 (c) includes or resembles an official title or rank; or
- 12 (d) is misleading because of similarity with the name of a body or
- 13 organisation; or
- 14 (e) is, in the registrar-general’s opinion, undesirable; or
- 15 (f) is prohibited by regulation.
- 16 *register* means a register maintained under section 39.
- 17 *registering authority* means an authority responsible under a
- 18 corresponding law for the registration of births, deaths and
- 19 marriages.
- 20 *registrable event* means a birth, death, marriage, change of name or
- 21 change of sex.
- 22 *registrable information* means information that is to be or may be
- 23 included in the register.
- 24 *repealed Act* means the *Registration of Births, Deaths and*
- 25 *Marriages Act 1963*.

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

3 *stillbirth* means the birth of a stillborn child.

4 *stillborn child* means—

5 (a) a child of at least 20 weeks gestation; or

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

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

11 **Explanatory note**

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

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

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

1 **Part 3.6** **Board of Senior Secondary**
2 **Studies Act 1997**

3 **[3.55] Section 1**

4 *substitute*

5 **1 Name of Act**

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

7 **Explanatory note**

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

9 **[3.56] Section 2**

10 *substitute*

11 **2 Dictionary**

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

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

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

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

23 **3 Notes**

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

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

1 **Explanatory note**

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

5 **[3.57] Section 3**

6 *substitute*

7 **Part 2 Key concepts**

8 **3A What is *senior secondary education*?**

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

11 **3B What is a *recognised educational institution*?**

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

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

18 **3C What is a *national agreement*?**

19 (1) This section applies to an agreement if it—

20 (a) is entered into by the Territory, the Commonwealth, a State or
21 the Northern Territory; and

22 (b) deals with the provision of vocational education.

23 (2) The Minister may, in writing, declare the agreement is a *national*
24 *agreement*.

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

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

3 **Explanatory note**

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

6 **[3.58] Part 2**

7 *renumber as part 3 when Act next republished under Legislation Act*

8 **Explanatory note**

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

10 **[3.59] Section 4**

11 *substitute*

12 **4 Establishment of board**

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

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

16 (2) The board—

17 (a) is a corporation; and

18 (b) may sue and be sued in its corporate name; and

19 (c) may have a seal.

20 (3) The board represents the Territory when exercising its functions,
21 unless this Act or another territory law otherwise provides.

22 **Explanatory note**

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

1

[3.60] Section 5

2

substitute

3

5 Functions of board

4

The main functions of the board are as follows:

5

(a) to accredit or register courses taught by recognised educational institutions;

6

7

(b) to approve, consistent with national agreements, recognised educational institutions for teaching vocational education courses;

8

9

10

(c) to establish guidelines for the development of courses by the board or by a recognised educational institution;

11

12

(d) to establish principles and procedures for the assessment of attainments of students and the moderation of the assessments;

13

14

(e) to provide to people who have undertaken courses, or units of courses, certificates and transcripts of their attainments;

15

16

(f) to provide information on—

17

(i) the performance of students and former students; and

18

(ii) the policies and procedures of the board;

19

(g) to review its own operations and the operation of this Act;

20

(h) to advise the Minister on any matter mentioned in this section (including something mentioned in section 5A to section 5D).

21

22

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*).

23

24

1 **5A Additional functions about accreditation of courses**

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

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

11 **5B Additional functions about assessment of students**

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

- 13 (a) to prepare guidelines and requirements for the assessment of
14 students' attainments;
- 15 (b) to make arrangements for the administration by recognised
16 educational institutions of the test known as the Australian
17 Scaling Test, or any other test instead of the Australian Scaling
18 Test that is approved by the board;
- 19 (c) to develop and implement procedures for the moderation of
20 students' assessments;
- 21 (d) to develop procedures for—
- 22 (i) recognised educational institutions to review the
23 assessments of their students; and
- 24 (ii) the board to review the procedures used by recognised
25 educational institutions to assess their students or review
26 their student assessments; and
- 27 (iii) recognised educational institutions, or the board, to
28 review disciplinary action taken by recognised

1 educational institutions in relation to their student
2 assessments.

3 **5C Additional functions about certificates of attainment**

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

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

18 **5D Additional functions about performance and policies**

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

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

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

8 **Explanatory note**

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

11 **[3.61] Section 6**

12 *substitute*

13 **6 Other functions of board**

14 The board may—

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

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

22 **Explanatory note**

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

- 1 **[3.62] Section 7 (1)**
2 *omit*
3 directions to the board in relation to
4 *substitute*
5 a direction to the board about

6 **Explanatory note**

7 This amendment updates language.

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

- 9 *omit*
10 shall
11 *substitute*
12 must

13 **Explanatory note**

14 This amendment updates language.

15 **[3.64] Section 8 (1) (a)**

- 16 *omit*
17 chairperson
18 *substitute*
19 chair

20 **Explanatory note**

21 This amendment updates language.

- 1 **[3.65] Section 8 (2) and (3)**
- 2 *substitute*
- 3 (2) The Minister must appoint the board members (other than the chief
4 executive).
- 5 *Note 1* For the making of appointments (including acting appointments), see
6 the Legislation Act, pt 19.3.
- 7 *Note 2* In particular, an appointment may be made by naming a person or
8 nominating the occupant of a position (see s 207).
- 9 *Note 3* Certain Ministerial appointments require consultation with a Legislative
10 Assembly committee and are disallowable (see Legislation Act,
11 div 19.3.3).
- 12 (3) The Minister may appoint a person to be a board member only if
13 satisfied that the person has qualifications and expertise relevant to
14 the functions of the board.

15 **Explanatory note**

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

18 **[3.66] Section 9**

19 *omit*

20 **Explanatory note**

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

1 **[3.67] Section 10**

2 *substitute*

3 **10 Term of appointment of board members**

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

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

9 **Explanatory note**

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

12 **[3.68] Sections 11 to 17**

13 *substitute*

14 **11 Disclosure of interests by board members**

15 (1) A board member who has a material interest in an issue being
16 considered, or about to be considered, by the board must, as soon as
17 practicable after the relevant facts have come to the member's
18 knowledge, disclose the nature of the interest at a board meeting.

19 (2) The disclosure must be recorded in the board's minutes and, unless
20 the board otherwise decides, the board member must not—

21 (a) be present when the board considers the issue; or

22 (b) take part in a decision of the board on the issue.

23 **Example**

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

- 1 The board considers the disclosures and decides that because of the nature of the
2 interests:
- 3 • Albert may be present when the board considers the issue but not take part in
4 the decision
 - 5 • Boris may be present for the consideration and take part in the decision.
- 6 The board does not make a decision allowing Chloe to be present or take part in
7 the board's decision. Accordingly, Chloe cannot be present for the consideration
8 of the issue or take part in the decision.
- 9 *Note* An example is part of the Act, is not exhaustive and may extend, but
10 does not limit, the meaning of the provision in which it appears (see
11 Legislation Act, s 126 and s 132).
- 12 (3) Any other board member who also has a material interest in the
13 issue must not be present when the board is considering its decision
14 under subsection (2).
- 15 (4) In this section:
- 16 *associate*, of a person, means—
- 17 (a) the person's business partner; or
 - 18 (b) a close friend of the person; or
 - 19 (c) a family member of the person.
- 20 *executive officer*, of a corporation, means a person, by whatever
21 name called and whether or not the person is a director of the
22 corporation, who is concerned with, or takes part in, the
23 corporation's management.
- 24 *indirect interest*—without limiting the kinds of indirect interests a
25 person may have, a person has an *indirect interest* in an issue if any
26 of the following has an interest in the issue:
- 27 (a) an associate of the person;
 - 28 (b) a corporation with not more than 100 members that the person,
29 or an associate of the person, is a member of;
 - 30 (c) a subsidiary of a corporation mentioned in paragraph (b);

- 1 (d) a corporation that the person, or an associate of the person, is
2 an executive officer of;
- 3 (e) the trustee of a trust that the person, or an associate of the
4 person, is a beneficiary of;
- 5 (f) a member of a firm or partnership that the person, or an
6 associate of the person, is a member of;
- 7 (g) someone else carrying on a business if the person, or an
8 associate of the person, has a direct or indirect right to
9 participate in the profits of the business.
- 10 **material interest**—a board member has a **material interest** in an
11 issue if the member has—
- 12 (a) a direct or indirect financial interest in the issue; or
- 13 (b) a direct or indirect interest of any other kind if the interest
14 could conflict with the proper exercise of the member’s
15 functions in relation to the board’s consideration of the issue.

16 **12 Ending board member appointments**

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

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

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

5 **13 Time and place of board meetings**

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

8 **14 Presiding member at board meetings**

9 (1) The chair presides at all board meetings at which the chair is
10 present.

11 (2) However, if the chair is absent, the board member chosen by the
12 board members present presides.

13 **15 Quorum at board meetings**

14 Business may be carried on at a board meeting only if at least
15 8 board members (other than the chief executive) are present.

16 **16 Voting at meetings**

17 (1) At a board meeting, each board member has a vote on each question
18 to be decided.

19 (2) A question is to be decided by a majority of the votes of the board
20 members present and voting but, if the votes are equal, the member
21 presiding has a deciding vote.

22 **17 Conduct of meetings etc**

23 (1) The board may conduct its proceedings (including its meetings) as it
24 considers appropriate.

25 (2) A meeting may be held using a method of communication, or a
26 combination of methods of communication, that allows a board

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

3 (3) A board member who takes part in a meeting conducted under
4 subsection (2) is taken, for all purposes, to be present at the meeting.

5 (4) The board must keep minutes of its meetings.

6 **18 Delegation by board**

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

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

12 **Explanatory note**

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

- 15 • existing sections 11 and 12 are omitted because of the Legislation Act, sections 209 and
16 216 and replaced with standard appointment notes (including in relation to acting
17 appointments) which are inserted after new section 8 (2) by another amendment
- 18 • existing section 12A is omitted because delegation of powers by a chief executive is dealt
19 with by the *Public Sector Management Act 1994*, section 36
- 20 • existing section 14 is omitted because of the Legislation Act, section 210 and replaced
21 with a standard note about resignation which is inserted after new section 12 (2).

22 **[3.69] Section 19 (1)**

23 *omit*

24 public servants

25 *insert*

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

27 **Explanatory note**

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

1 **[3.70] Section 19 (2)**

2 *omit*

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

5 *insert*

6 a board staff member

7 **Explanatory note**

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

9 **[3.71] Section 20**

10 *substitute*

11 **20 Protection of board members from liability**

12 (1) A board member does not incur civil liability for an act or omission
13 done honestly and without recklessness for this Act.

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

16 **Explanatory note**

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

18 **[3.72] Part 3 heading**

19 *substitute*

20 **Part 4 Accredited and registered**
21 **courses**

22 **Explanatory note**

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

1 **[3.73] Division 3.1 heading**

2 *substitute*

3 **Division 4.1 Accreditation of courses**

4 **Explanatory note**

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

6 **[3.74] Sections 21 to 23**

7 *substitute*

8 **21 Board may initiate accreditation of course**

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

13 **22 Application for accreditation of course**

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

22 **23 Review of conditional accreditation or refusal**

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

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

14 **Explanatory note**

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

17 **[3.75] Section 24**

18 *omit*

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

20 *substitute*

21 this division, the board must consider

22 **Explanatory note**

23 This amendment updates language and cross-references.

1 **[3.76] Section 25**

2 *substitute*

3 **Division 4.2 Registration of courses**

4 **25 Application for registration of course**

5 (1) A recognised educational institution may apply to the board for the
6 registration of a course to be taught at the institution.

7 (2) The board must—

8 (a) if the application is accompanied by documents and
9 information that satisfies the board that the course complies
10 with the relevant guidelines of the board—register the course;
11 or

12 (b) in any other case—refuse to register the course.

13 (3) A registration is in force for the period that the board decides.

14 (4) A registration may be conditional.

15 (5) The board must tell the applicant, in writing, of its decision.

16 **Explanatory note**

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

19 **[3.77] Division 3.2 heading**

20 *substitute*

21 **Division 4.3 Certificates of attainment**

22 **Explanatory note**

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

1 **[3.78] Sections 26 and 27**

2 *substitute*

3 **26 Issue of certificates of attainment**

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

- 1 **26A Application for review if board refuses to issue certificate**
- 2 (1) This section applies to a certificate of any kind ordinarily issued by
- 3 the board to a person who has completed the studies to which the
- 4 certificate relates, including a certificate of attainment.
- 5 (2) A person dissatisfied by a refusal of the board to issue a certificate
- 6 may apply, in writing, to the board for a review of the refusal.
- 7 (3) The application must—
- 8 (a) state the grounds on which the review is sought; and
- 9 (b) be given to the board within 1 month after the day the board
- 10 states is the day when the certificate would have been issued.
- 11 **27 Review of refusal to issue certificate**
- 12 (1) Within 1 month after the day the board receives an application under
- 13 section 26A, the chair of the board must set up a committee to
- 14 advise the board about the application.
- 15 (2) As soon as practicable after the board receives advice from the
- 16 committee, the board must review its decision and either—
- 17 (a) confirm the refusal; or
- 18 (b) issue the certificate.
- 19 (3) The board must tell the applicant, in writing, of its decision.
- 20 **Explanatory note**
- 21 This amendment brings the language and structure of the sections into line with current drafting
- 22 practice.

1 **[3.79] Division 3.3 heading**

2 *substitute*

3 **Division 4.4 Specialist education providers**

4 **Explanatory note**

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

6 **[3.80] Part 4**

7 *renumber as part 5 when Act next republished under Legislation Act*

8 **Explanatory note**

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

10 **[3.81] Section 28**

11 *substitute*

12 **28 Information about academic performance**

13 (1) A person who has completed the person's senior secondary
14 education may apply in writing to the board for a copy of the
15 information held by the board about the person's academic
16 performance.

17 (2) The board must give a copy of the information to the applicant or to
18 someone else nominated in writing by the applicant.

19 **Explanatory note**

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

1 **[3.82] Section 29**

2 *substitute*

3 **29 Register of courses**

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

12 **Explanatory note**

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

15 **[3.83] Section 30 (2), new note**

16 *insert*

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

18 **Explanatory note**

19 This amendment adds a standard note about approved forms.

20 **[3.84] Section 31**

21 *omit*

22 **Explanatory note**

23 This amendment omits a redundant transitional provision.

1 **[3.85] New dictionary**

2 *insert*

3 **Dictionary**

4 (see s 2)

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

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

- 8 • appoint
- 9 • establish
- 10 • exercise
- 11 • function
- 12 • month.

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

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

18 *board* means the Board of Senior Secondary Studies.

19 *board member* means a member of the board, and includes the
20 chair.

21 *certificate of attainment*—see section 26 (1).

22 *course* means a course of study for senior secondary students.

23 *national agreement*—see section 3C.

24 *recognised educational institution*—see section 3B.

25 *registered course* means a course registered under section 25.

26 *senior secondary education*—see section 3A.

1 **Explanatory note**

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

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

11 **Part 3.7 Building Act 2004**

12 **[3.86] Section 42 (1) (d)**

13 *substitute*

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

16 **Explanatory note**

17 This amendment omits unnecessary words.

18 **Part 3.8 Business Names Regulation 1966**

19 **[3.87] Section 2, definition of agent**

20 *substitute*

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

23 **Explanatory note**

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

1 **[3.88] Section 6 (2)**

2 *substitute*

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

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

9
10 Signature/s

- 11 (2A) The annexure must be signed by each person who signs the form to
12 which the annexure is annexed.

13 **Explanatory note**

14 This amendment makes the form of annexure clearer.

15 **[3.89] Section 6**

16 *renumber subsections when regulation next republished under*
17 *Legislation Act*

18 **Explanatory note**

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

20 **[3.90] Section 7**

21 *substitute*

22 **7 Signature of documents**

- 23 (1) A document relating to a corporation that is lodged for a corporation
24 must be signed by—

25 (a) if the corporation is a foreign company—

26 (i) a director or secretary of the company; or

- 1 (ii) the agent of the company; or
2 (b) in any other case—a director or secretary of the corporation.
3 *Note* A reference to an Act includes a reference to the statutory instruments
4 made or in force under the Act, including any regulation (see
5 Legislation Act, s 104).
6 (2) However, if a foreign company’s agent is a company, the document
7 must be signed by a director or secretary of the agent.
8 (3) This section is subject to the Act, section 15 (Signing of statements).
9 (4) In this section:
10 *foreign company*—see the Corporations Act 2001 (Cwlth),
11 section 9.

12 **Explanatory note**

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

15 **Part 3.9 Construction Occupations**
16 **(Licensing) Act 2004**

17 **[3.91] Section 78 (1)**

18 *substitute*

- 19 (1) The registrar must give a compliance auditor an identity card stating
20 the person’s name and that the person is a compliance auditor.
21 (1A) The identity card must show—
22 (a) a recent photograph of the person; and
23 (b) the card’s date of issue and expiry; and
24 (c) anything else prescribed by regulation.

25 **Explanatory note**

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

1 **[3.92] Section 78**

2 *renumber subsections when next republished under the Legislation*
3 *Act*

4 **Explanatory note**

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

7 **Part 3.10 Coroners Act 1997**

8 **[3.93] Section 3 (1), definition of *custodial officer*, paragraph (g)**

9 *substitute*

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

12 **Explanatory note**

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

15 **[3.94] Section 3 (2) (b) (v)**

16 *substitute*

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

19 **Explanatory note**

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

1 **[3.98] Section 21 (3), definition of *proceeding***

2 *omit*

3 *due*

4 *substitute*

5 *owing*

6 **Explanatory note**

7 This amendment updates language.

8 **[3.99] Section 26 (2)**

9 *substitute*

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

15 **Explanatory note**

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

19 **[3.100] Section 27 (1) and (2)**

20 *substitute*

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

1 (c) judicial powers of a court or tribunal established under the law
2 of the Territory or Commonwealth.

3 (2) The Attorney-General may intervene in the proceeding, on behalf of
4 the Crown, to submit argument on the issue.

5 (2A) If the Attorney-General intervenes in a proceeding under this
6 section, the Attorney-General has the same right of appeal in the
7 proceeding as a party to the proceeding.

8 **Explanatory note**

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

10 **[3.101] Section 27**

11 *renumber subsections when Act next republished under Legislation*
12 *Act*

13 **Explanatory note**

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

16 **[3.102] Section 40, definition of *court*, paragraph (l)**

17 *omit*

18 **Explanatory note**

19 This amendment omits a redundant paragraph.

20 **[3.103] Section 40, definition of *court*, paragraphs (m) to (q)**

21 *renumber as paragraphs (l) to (p)*

22 **Explanatory note**

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

1 **[3.104] New section 53A**

2 *insert*

3 **53A Delegation by secretary of rule-making committee**

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

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

9 **Explanatory note**

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

12 **Part 3.12 Crimes Act 1900**

13 **[3.105] Section 441 (9)**

14 *substitute*

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

19 **Explanatory note**

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

1 **3** **Notes**

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

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

5 **Explanatory note**

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

9 **[3.108] Section 3A**

10 *substitute*

11 **3A** **What is a *designated location*?**

12 (1) A location is a *designated location* if it is—

13 (a) a location mentioned in schedule 1; or

14 (b) a location declared by the Minister under subsection (2) to be a
15 designated location.

16 (2) The Minister may, in writing, declare a location to be a designated
17 location.

18 (3) A declaration under subsection (2) is a disallowable instrument.

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

21 **Explanatory note**

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

1 **Explanatory note**

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

4 **[3.112] Section 5 heading**

5 *substitute*

6 **5 Functions of corporation**

7 **Explanatory note**

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

9 **[3.113] Section 5 (e) and (f)**

10 *substitute*

11 (e) to undertake activities, in cooperation with other people if
12 appropriate, to exercise its other functions; and

13 (f) to exercise other functions given to the corporation under this
14 Act or another territory law.

15 **Explanatory note**

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

17 **[3.114] Section 5, new note**

18 *insert*

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

22 **Explanatory note**

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

1 **[3.115] Section 6**

2 *substitute*

3 **6 Powers of corporation generally**

4 The corporation has all the powers of an individual.

5 **Examples**

6 1 to enter into a contract

7 2 to own, deal with and dispose of property

8 3 to act as a trustee

9 *Note* An example is part of the Act, is not exhaustive and may extend, but

10 does not limit, the meaning of the provision in which it appears (see

11 Legislation Act, s 126 and s 132).

12 **Explanatory note**

13 This amendment omits existing section 6 (1) which is no longer necessary because of the

14 Legislation Act, section 196 and replaces it with a standard note about the power to exercise

15 functions.

16 **[3.116] Section 7**

17 *substitute*

18 **7 Considerations for corporation exercising functions**

19 In exercising its functions, the corporation must consider—

20 (a) any cultural policies or priorities of the Executive known to the

21 corporation; and

22 (b) other cultural activities in the ACT.

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

24 **Explanatory note**

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

1 **[3.117] Section 8**

2 *substitute*

3 **8 Advisory committees**

4 (1) To assist the corporation in the exercise of its functions, the
5 corporation—

6 (a) must set up advisory committees for—

7 (i) museum collections; and

8 (ii) historic places; and

9 (iii) the performing arts; and

10 (b) may set up other advisory committees that the corporation
11 considers necessary.

12 (2) An advisory committee may decide how to exercise its functions.

13 (3) However, an advisory committee is subject to the direction of the
14 corporation in the exercise of its functions.

15 **Explanatory note**

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

17 **[3.118] Section 10 (1)**

18 *omit*

19 (1) The corporation

20 *substitute*

21 The corporation

22 **Explanatory note**

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

1 **[3.119] Section 10 (2)**

2 *omit*

3 **Explanatory note**

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

6 **[3.120] Section 19**

7 *omit*

8 Public Sector Management Act

9 *substitute*

10 *Public Sector Management Act 1994*

11 **Explanatory note**

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

14 **[3.121] Section 28**

15 *substitute*

16 **28 Ministerial directions**

17 (1) The Minister may direct the corporation, in writing, about the
18 exercise of its functions, either generally or for a particular matter.

19 (2) The corporation must give effect to the direction.

20 (3) The Minister must present a copy of a direction to the Legislative
21 Assembly within 5 sitting days after the day it is given to the
22 corporation.

23 (4) The Territory must pay to the corporation the reasonable costs of
24 complying with a direction.

25 (5) The amount payable under subsection (4) is—

26 (a) the amount agreed by the corporation and the Treasurer; or

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

3 **Explanatory note**

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

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

9 **[3.122] Section 29**

10 *substitute*

11 **29 Quarterly reports**

12 (1) As soon as practicable after the end of each quarter, the corporation
13 must give the Minister a report on the operation during the quarter
14 of—

15 (a) this Act; and

16 (b) the corporation.

17 (2) The Minister must present the report to the Legislative Assembly
18 within 6 sitting days after the day the report is received.

19 **Explanatory note**

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

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

1 **[3.123] Section 31**

2 *omit*

3 of

4 **Explanatory note**

5 This amendment omits a redundant word.

6 **[3.124] New section 33**

7 *insert*

8 **33 Repeal of designated location declaration**

9 (1) The *Cultural Facilities Corporation (Designated Location)*
10 *Declaration 2004 (No 1)* DI2004-182 is repealed.

11 (2) This section expires on the day this section commences.

12 **Explanatory note**

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

16 **[3.125] Schedule 1**

17 *substitute*

18 **Schedule 1 Designated locations**

19 (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)

1 **Explanatory note**

2 This amendment updates the list of designated locations to which the Act applies. It corrects
3 minor typographical errors in existing item 2 (Canberra Museum & Gallery) and existing item 4
4 (Calthorpe's House). Also, new item 6 (Mugga Mugga) is added to the list. Mugga Mugga is
5 declared by disallowable instrument DI2004-182 to be a designated location. This amendment,
6 in conjunction with the repeal of the instrument by another amendment, consolidates the list of
7 designated locations without affecting Mugga Mugga's status under the Act.

8 **[3.126] New dictionary**

9 *insert*

10 **Dictionary**

11 (see s 2)

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

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

- 15 • ACT
16 • public servant
17 • quarter
18 • sitting day
19 • under.

20 ***Civic Square precinct*** means the land making up blocks 18, 20 and
21 22, section 19, division of City, Canberra Central district.

22 ***corporation*** means the Cultural Facilities Corporation.

23 ***cultural activities*** includes artistic, historical or other cultural
24 entertainments, displays and exhibitions.

1 *designated location*—see section 3A.

2 *member* means a member of the corporation.

3 **Explanatory note**

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

- 7 • the definition of *plan* (ie the Territory plan) has been omitted because the term (other than
8 in the context of a business plan) is not used in the Act
- 9 • the definition of *Public Sector Management Act* has been omitted because the amendment
10 of section 19 makes the definition redundant.

11 **Part 3.15 Dangerous Substances Act 2004**

12 **[3.127] Section 97 (2) (a)**

13 *omit*

14 measures; and

15 *substitute*

16 measures; or

17 **Explanatory note**

18 Section 97 (2) requires the notification and display of compliance agreements. Similar
19 provisions of the Act are section 103 (2) for improvement notices and section 112 (2) for
20 prohibition notices. In section 97 (2) and section 103 (2) the conjunction used for linking the
21 requirements is ‘and’ and in section 112 (2) ‘or’ is used. The intention is that a person who
22 fails to notify or display the notice in accordance with paragraph (a) or paragraph (b)
23 contravenes the section. This amendment changes ‘and’ to ‘or’ to make the separate obligations
24 clearer, to bring the subsection into line with current drafting practice and to make it consistent
25 with section 112 (2).

1 **[3.128] Section 103 (2) (a)**

2 *omit*

3 under it; and

4 *substitute*

5 under it; or

6 **Explanatory note**

7 Section 103 (2) requires the notification and display of improvement notices. Similar
8 provisions of the Act are section 97 (2) for compliance agreements and section 112 (2) for
9 prohibition notices. In section 97 (2) and section 103 (2) the conjunction used for linking the
10 requirements is 'and' and in section 112 (2) 'or' is used. The intention is that a person who
11 fails to notify or display the notice in accordance with paragraph (a) or paragraph (b)
12 contravenes the section. This amendment changes 'and' to 'or' to make the separate obligations
13 clearer, to bring the subsection into line with current drafting practice and to make it consistent
14 with section 112 (2).

15 **[3.129] Section 108, definitions of *dangerous substance* and**
16 ***premises***

17 *omit*

18 **Explanatory note**

19 This amendment omits the definitions of *dangerous substance* and *premises* for part 6.4. The
20 terms are defined for the Act generally (see section 10 for *dangerous substance* and the
21 dictionary for *premises*). With 1 exception, defining these terms for part 6.4 adds nothing to the
22 definitions for the Act. This amendment also brings this aspect of the Act into line with the
23 *Occupational Health and Safety Act 1989* which does not have similar definitions for its
24 prohibition notice provisions.

25 The exception is the definition of *relevant responsible person* which is amended by another
26 amendment.

1 **[3.130] Section 108, definition of *relevant responsible person***

2 *substitute*

3 *relevant responsible person*, for a prohibition notice, means the
4 responsible person for the dangerous substance stated in the notice
5 to whom the notice is given.

6 **Explanatory note**

7 This amendment is consequential on the omission of the definition of *dangerous substance* in
8 section 108 by another amendment.

9 **[3.131] Section 119 (1)**

10 *omit*

11 A relevant responsible person

12 *substitute*

13 The relevant responsible person

14 **Explanatory note**

15 This amendment makes a minor change to bring the subsection into line with section 107 (1) in
16 relation to improvement notices and the comparable provisions in the *Occupational Health and*
17 *Safety Act 1989* about improvement and prohibition notices.

18 **[3.132] Section 119 (1)**

19 *omit*

20 a dangerous substance to which a prohibition notice relates

21 *substitute*

22 a prohibition notice

23 **Explanatory note**

24 This amendment omits words that are unnecessary because a prohibition notice must relate to a
25 dangerous substance (see section 110 (2) (a) (ii)). It also brings the subsection into line with
26 section 107 (1) in relation to improvement notices and the comparable provisions in the
27 *Occupational Health and Safety Act 1989* about improvement and prohibition notices.

1 **[3.133] Section 169 (1) (c) (i)**

2 *omit*

3 infringement notice

4 *substitute*

5 information

6 **Explanatory note**

7 This amendment corrects a typographical error.

8 **[3.134] Section 200 (4), definition of *authorised person***

9 *substitute*

10 *authorised person*, for an infringement notice offence, means an
11 authorised person for the infringement notice offence under the
12 *Magistrates Court Act 1930*, section 134A.

13 **Explanatory note**

14 This amendment specifies the relevant provision of the *Magistrates Court Act 1930*.

15 **[3.135] Dictionary, definitions of *dangerous substance* and
16 *premises***

17 *substitute*

18 *dangerous substance*—see section 10.

19 *premises* includes land or a structure or vehicle and any part of an
20 area of land or a structure or vehicle.

21 **Explanatory note**

22 This amendment is consequential on the omission of the definitions of *dangerous substance*
23 and *premises* in section 108 by another amendment.

1 **Part 3.16 Domestic Animals Act 2000**

2 **[3.136] Part 4**

3 *omit*

4 (commencement: on a day fixed by the Minister by written notice)

5 **Explanatory note**

6 This amendment omits the part that deals with infringement notices. The *Magistrates Court*
7 *Act 1930*, part 3.8 (Infringement notices for certain offences) provides a system of infringement
8 notices for offences against various Acts. Regulations are made under the *Magistrates Court*
9 *Act 1930* that contain the detail for the infringement notice scheme for a particular Act.

10 The commencement of this amendment is delayed to allow a new *Magistrates Court (Domestic*
11 *Animals Infringement Notices) Regulation 2005* to be prepared.

12 **[3.137] Dictionary, definitions of administering authority,**
13 **authorised person, date of service, infringement notice**
14 **and infringement notice offence**

15 *omit*

16 (commencement: on a day fixed by the Minister by written notice)

17 **Explanatory note**

18 This amendment is consequential on the omission of part 4 by another amendment. The
19 commencement of this amendment is delayed because the omission of part 4 is delayed.

20 **[3.138] Dictionary, definition of infringement notice penalty**

21 *substitute*

22 ***infringement notice penalty***, for an infringement notice offence
23 under the *Magistrates Court (Domestic Animals Infringement*
24 *Notices) Regulation 2005*—see the *Magistrates Court Act 1930*,
25 section 117.

26 (commencement: on a day fixed by the Minister by written notice)

1 **Explanatory note**

2 This amendment is consequential on the omission of part 4 by another amendment. The
3 commencement of this amendment is delayed because the omission of part 4 is delayed. The
4 term infringement notice penalty is used in section 62 (3), section 63 (3) and section 64 (3).

5 **[3.139] Dictionary, definition of *reminder notice***

6 *omit*

7 (commencement: on a day fixed by the Minister by written notice)

8 **Explanatory note**

9 This amendment is consequential on the omission of part 4 by another amendment. The
10 commencement of this amendment is delayed because the omission of part 4 is delayed.

11 **Part 3.17 Domestic Animals Regulation**
12 **2001**

13 **[3.140] Sections 6 to 13**

14 *omit*

15 (commencement: on a day fixed by the Minister by written notice)

16 **Explanatory note**

17 This amendment is consequential on the omission of the *Domestic Animals Act 2000*, part 4
18 (Infringement notices for certain offences) by another amendment. The commencement of this
19 amendment is delayed because the omission of part 4 is delayed.

20 **[3.141] Schedule 1**

21 *omit*

22 (commencement: on a day fixed by the Minister by written notice)

23 **Explanatory note**

24 This amendment is consequential on the omission of the *Domestic Animals Act 2000*, part 4
25 (Infringement notices for certain offences) by another amendment. The commencement of this
26 amendment is delayed because the omission of part 4 is delayed.

1 **Part 3.18 Duties Act 1999**

2 **[3.142] Section 65**

3 *substitute*

4 **65 Transfer of land under Workplace Relations Act**

5 Duty of \$20 is chargeable on a transfer of land made in accordance
6 with the *Workplace Relations Act 1996* (Cwlth), schedule 1B,
7 section 82.

8 **Explanatory note**

9 This amendment updates the reference to the relevant Commonwealth legislation.

10 **[3.143] Section 70 (e)**

11 *omit*

12 *Industrial Relations Act 1988* (Cwlth), section 253ZA

13 *substitute*

14 *Workplace Relations Act 1996* (Cwlth), schedule 1B, section 84

15 **Explanatory note**

16 This amendment updates the reference to the relevant Commonwealth legislation.

17 **[3.144] Section 211 (b)**

18 *substitute*

19 (b) both the following paragraphs apply—

20 (i) a doctor has certified that the applicant is permanently
21 unable to use public transport because of the loss of, or
22 loss of use of, a leg or both legs;

23 (ii) the vehicle is for use by the person in travelling to and
24 from gainful employment.

1 **Explanatory note**

2 This amendment omits a reference to the abolished Commonwealth Department of Social
3 Security and updates the language and structure of the paragraph to bring it into line with
4 current drafting practice. In particular, it provides for a doctor rather than a Commonwealth
5 official to provide the required assessment and makes it clear that the doctor does not certify
6 that the vehicle is for use by the person for travel to or from employment.

7 **[3.145] Section 215**

8 *substitute*

9 **215 Organisations registered under Workplace Relations Act**

10 Duty under this chapter is not chargeable on an application to
11 register a motor vehicle made by an organisation registered under
12 the *Workplace Relations Act 1996* (Cwlth) if the registration is to
13 happen in accordance with that Act, schedule 1B, section 85.

14 **Explanatory note**

15 This amendment updates the reference to the relevant Commonwealth legislation.

16 **[3.146] Section 221 (1) (a)**

17 *omit*

18 *the Motor Traffic Act 1936*

19 *substitute*

20 any other territory law

21 **Explanatory note**

22 This amendment replaces a reference to a repealed Act with a reference to any other territory
23 law.

1 **Part 3.19 Environment Protection Act 1997**

2 **[3.147] Section 10 (2) (b)**

3 *substitute*

4 (b) an offence against a regulation that is prescribed for this
5 section.

6 (commencement: on a day fixed by the Minister by written notice)

7 **Explanatory note**

8 This amendment is consequential on the omission of division 13.1 (On-the-spot fines) by
9 another amendment. Existing paragraph (b) refers to minor environmental offences within the
10 meaning of division 13.1 that are prescribed for that division (see section 114). The
11 commencement of this amendment is delayed because the omission of division 13.1 is delayed.

12 **[3.148] Division 13.1**

13 *omit*

14 (commencement: on a day fixed by the Minister by written notice)

15 **Explanatory note**

16 This amendment omits the division that deals with infringement notices. The *Magistrates*
17 *Court Act 1930*, part 3.8 (Infringement notices for certain offences) provides a system of
18 infringement notices for offences against various Acts. Regulations are made under the
19 *Magistrates Court Act 1930* that contain the detail for the infringement notice scheme for a
20 particular Act.

21 The commencement of this amendment is delayed to allow a new *Magistrates Court*
22 (*Environment Protection Infringement Notices) Regulation 2005* to be prepared.

1 **[3.149] Sections 153 (1), 154 (1) and 155**

2 *omit*

3 a minor environmental offence within the meaning of division 13.1

4 *substitute*

5 an offence against a regulation that is prescribed for this section

6 (commencement: on a day fixed by the Minister by written notice)

7 **Explanatory note**

8 This amendment is consequential on the omission of division 13.1 (On-the-spot fines) by
9 another amendment. Sections 153 and 154 provide for defences to certain offences, including
10 minor environmental offences that are prescribed for division 13.1 (see section 114). The
11 commencement of this amendment is delayed because the omission of division 13.1 is delayed.

12 **[3.150] Section 165 (1) (c) and (d)**

13 *substitute*

14 (c) the annual percentage rate at which interest accruing under
15 section 91 (a) is to be calculated.

16 (commencement: on a day fixed by the Minister by written notice)

17 **Explanatory note**

18 This amendment is consequential on the omission of division 13.1 (On-the-spot fines) by
19 another amendment. It relates to the determination of the administrative charge for the service
20 of a final notice under that division. The commencement of this amendment is delayed because
21 the omission of division 13.1 is delayed.

1 **Part 3.20** **Environment Protection**
2 **Regulation 1997**

3 **[3.151] Section 23G, definition of *units plan***

4 *substitute*

5 *units plan* means a units plan under the *Unit Titles Act 2001*,
6 section 7.

7 **Explanatory note**

8 This amendment is consequential on the amendment of the definition of *units plan* in the *Unit*
9 *Titles Act 2001* by another amendment.

10 **Part 3.21** **Fair Trading Act 1992**

11 **[3.152] Section 51 (1) (e)**

12 *omit*

13 sell or refund other property

14 *substitute*

15 sell or return other property

16 **Explanatory note**

17 This amendment replaces the word ‘refund’ with the more appropriate word ‘return’ and brings
18 the paragraph into line with section 50 (7) (d).

1 **Part 3.22** **Financial Management Act 1996**

2 **[3.153] Section 18 (4)**

3 *substitute*

- 4 (4) The financial management guidelines may prescribe when there is
5 an *urgent need for expenditure* for subsection (2) (a) (i).

6 **Explanatory note**

7 This amendment makes it clear that the guidelines mentioned in the subsection are the financial
8 management guidelines made under the Act and makes the reference to the guidelines
9 consistent with other references in the Act.

10 **[3.154] Section 31 (2) (c)**

11 *substitute*

- 12 (c) that the officers and employees of the department comply with
13 this Act (including the financial management guidelines); and

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

17 **Explanatory note**

18 This amendment brings the paragraph into line with current drafting practice. In particular, it
19 changes the reference to 'this Act and the financial management guidelines' to reflect the
20 Legislation Act, section 104 and a standard note about that section is inserted.

21 **[3.155] Section 54 (3) (d)**

22 *substitute*

- 23 (d) that the officers and staff of the authority comply with this Act
24 (including the financial management guidelines); and

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

1 **Explanatory note**

2 This amendment brings the paragraph into line with current drafting practice. In particular, it
3 changes the reference to ‘this Act and the financial management guidelines’ to reflect the
4 Legislation Act, section 104 and a standard note about that section is inserted.

5 **Part 3.23 Food Act 2001**

6 **[3.156] Section 57 (1) (c)**

7 *substitute*

8 (c) an infringement notice for an offence relating to the thing is
9 served on its owner within 6 months after the day of the
10 seizure, liability for the offence is disputed in accordance with
11 the *Magistrates Court Act 1930*, section 132 (Disputing
12 liability for infringement notice offence) and either—

13 (i) an information is not laid in the Magistrates Court against
14 the person for the offence within 60 days after the day the
15 person gives notice under section 132 that liability is
16 disputed; or

17 (ii) the Magistrates Court does not find the offence proved;
18 or

19 (commencement: on a day fixed by the Minister by written notice)

20 **Explanatory note**

21 This amendment is consequential on the omission of part 9 by another amendment. The
22 commencement of this amendment is delayed because the omission of part 9 is delayed.

1 **[3.157] Part 9**

2 *omit*

3 (commencement: on a day fixed by the Minister by written notice)

4 **Explanatory note**

5 This amendment omits the part that deals with infringement notices. The *Magistrates Court*
6 *Act 1930*, part 3.8 (Infringement notices for certain offences) provides a system of infringement
7 notices for offences against various Acts. Regulations are made under the *Magistrates Court*
8 *Act 1930* that contain the detail for the infringement notice scheme for a particular Act.

9 The commencement of this amendment is delayed to allow a new *Magistrates Court (Food*
10 *Infringement Notices) Regulation 2005* to be prepared.

11 **[3.158] Dictionary, definitions of *date of service, infringement***
12 ***notice, infringement notice offence, infringement notice***
13 ***penalty and reminder notice***

14 *omit*

15 (commencement: on a day fixed by the Minister by written notice)

16 **Explanatory note**

17 This amendment is consequential on the omission of part 9 by another amendment. The
18 commencement of this amendment is delayed because the omission of part 9 is delayed.

19 **[3.159] Dictionary, definitions of *unsafe and unsuitable***

20 *substitute*

21 ***unsafe***, in relation to food—see section 12.

22 ***unsuitable***, in relation to food—see section 13.

23 (commencement: on a day fixed by the Minister by written notice)

24 **Explanatory note**

25 This amendment brings the definitions into line with current drafting practice by including the
26 qualification ‘in relation to food’ in each definition. The delayed commencement removes the
27 need for the Act to be republished only for this amendment before the omission of part 9.

1 **Part 3.26** **Gungahlin Drive Extension**
2 **Authorisation Act 2004**

3 **[3.163] Section 6A (6), example heading**

4 *substitute*

5 **Examples for par (d)**

6 **Explanatory note**

7 This amendment corrects a typographical error.

8 **Part 3.27** **Heritage Act 2004**

9 **[3.164] Section 94 (1) (c)**

10 *omit*

11 information

12 *substitute*

13 infringement notice

14 **Explanatory note**

15 This amendment corrects a typographical error.

16 **[3.165] Section 94 (1) (c) (i)**

17 *omit*

18 infringement notice

19 *substitute*

20 information

21 **Explanatory note**

22 This amendment corrects a typographical error.

1 **[3.166] Section 94 (2) (a)**

2 *substitute*

3 (a) is forfeited to the Territory; and

4 **Explanatory note**

5 This amendment corrects a typographical error.

6 **Part 3.28 Hotel School Act 1996**

7 **[3.167] Section 14 (3)**

8 *substitute*

9 (3) An arrangement or direction under subsection (2) must not be
10 inconsistent with the *Financial Management Act 1996*.

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

14 **Explanatory note**

15 This amendment brings the subsection into line with current drafting practice. In particular, it
16 changes the reference to ‘or the financial management guidelines under that Act’ to reflect the
17 Legislation Act, section 104 and a standard note about that section is inserted.

18 **Part 3.29 Intoxicated Persons (Care and
19 Protection) Act 1994**

20 **[3.168] Sections 1 and 3**

21 *substitute*

22 **1 Name of Act**

23 This Act is the *Intoxicated People (Care and Protection) Act 1994*.

1 **2 Dictionary**

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

3 *Note 1* The dictionary at the end of this Act defines certain words and
4 expressions used in this Act, and includes references (*signpost*
5 *definitions*) to other words and expressions defined elsewhere in this
6 Act or in other legislation.

7 For example, the signpost definition '*prohibited substance*—see the
8 *Drugs of Dependence Act 1989*, section 3.' means that the term
9 'prohibited substance' is defined in that section and the definition
10 applies to this Act.

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

15 **3 Notes**

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

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

19 **Explanatory note**

20 This amendment brings the naming section into line with current drafting practice and inserts
21 standard dictionary and notes provisions. The definitions in existing section 3 are included in
22 the new dictionary which is inserted by another amendment.

23 This amendment also changes the name of the Act by changing 'Persons' to 'People' in
24 accordance with current drafting practice.

25 **[3.169] Section 6 (2) (a)**

26 *substitute*

27 (a) the full name of the intoxicated person (if known);

28 **Explanatory note**

29 This amendment is consequential on the omission of the definition of *name and address* in
30 existing section 3 (2) by another amendment.

1 **[3.170] Section 6 (3)**

2 *omit*

3 An officer referred to in subsection (1)

4 *substitute*

5 The police officer

6 **Explanatory note**

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

8 **[3.171] Section 15 (2) (c) (iii)**

9 *substitute*

10 (iii) if the applicant is an incorporated association or any other
11 kind of entity—a written statement signed on behalf of
12 the association or entity by an office-holder stating that
13 the association or entity can meet its debts.

14 **Explanatory note**

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

16 **[3.172] New section 15 (3)**

17 *insert*

18 (3) In this section:

19 ***name and address***, of an applicant, means—

20 (a) if the applicant is an individual—the individual’s full name and
21 business address; or

22 (b) in any other case—the full name and residential address of
23 each office-holder of the applicant.

24 ***office-holder*** means—

25 (a) for a corporation—an executive officer; or

1 (b) for an incorporated association—the president, secretary or
2 public officer of the association; or

3 (c) for any other entity—anyone with overall responsibility for the
4 conduct of the entity.

5 **Explanatory note**

6 This amendment is consequential on the omission of the definition of *name and address* in
7 existing section 3 (2) by another amendment. The definition of *office-holder* in existing
8 section 3 (1) is included in this section in accordance with current drafting practice because it is
9 the only provision in the Act in which it is used.

10 **[3.173] New section 16 (2) (a)**

11 *substitute*

12 (a) the full name and address of the person to whom it is granted;
13 and

14 **Explanatory note**

15 This amendment is consequential on the omission of the definition of *name and address* in
16 existing section 3 (2) by another amendment.

17 **[3.174] Section 20 (3) (b)**

18 *substitute*

19 (b) whether, in the opinion of the licensee, the licensee has
20 complied with the Act (including any standards);

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

24 **Explanatory note**

25 This amendment brings the paragraph into line with current drafting practice. In particular, it
26 changes the reference to ‘the Act and standards’ to reflect the Legislation Act, section 104 and a
27 standard note about that section is inserted.

1 **[3.175] Section 23 (1) (e)**

2 *substitute*

3 (e) the licensee has contravened this Act (including any
4 standards);

5 **Explanatory note**

6 This amendment brings the paragraph into line with current drafting practice. In particular, it
7 changes the reference to ‘the Act and standards’ to reflect the Legislation Act, section 104 and a
8 standard note about that section is inserted.

9 **[3.176] Section 27**

10 *substitute*

11 **27 Inspectors**

12 (1) The chief executive may appoint a public servant as an inspector for
13 this Act.

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

16 *Note 2* In particular, a person may be appointed for a particular provision of a
17 law (see Legislation Act, s 7 (3)) and an appointment may be made by
18 naming a person or nominating the occupant of a position (see s 207).

19 (2) If—

20 (a) immediately before the commencement of this section, the
21 duties of an office in the public service included exercising the
22 functions of an inspector; and

23 (b) the chief executive has not made an appointment under
24 subsection (1); and

25 (c) the duties of the office have not ceases to include exercising
26 the functions of an inspector;

1 the public servant for the time being occupying the office is an
2 inspector.

3 *Note* **Occupying** a position is defined in the Legislation Act, dict, pt 1 (see
4 also def **office**).

5 (3) Subsection (2) is a law to which the Legislation Act, section 88
6 (Repeal does not end effect of transitional laws etc) applies.

7 (4) Subsections (2) and (3) and this subsection expire 1 year after the
8 day this section commences.

9 **Explanatory note**

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

12 The amendment includes transitional arrangements that operate until new appointments are
13 made.

14 **[3.177] Section 28 (1)**

15 *substitute*

16 (1) The Minister must issue to an inspector an identity card that
17 specifies the inspector's full name and office, and on which appears
18 a recent photograph of the inspector.

19 **Explanatory note**

20 This amendment is consequential on the omission of the definition of *name and address* in
21 existing section 3 (2) by another amendment.

22 **[3.178] New dictionary**

23 *insert*

24 **Dictionary**

25 (see s 2)

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

- 1 *Note 2* For example, the Legislation Act, dict, pt 1 defines the following terms:
- 2 • administrative appeals tribunal
- 3 • adult
- 4 • police officer
- 5 • under.
- 6 *carer* means a person who works with intoxicated people at a
- 7 licensed place.
- 8 *caring service* means a service that provides immediate, short-term
- 9 care for intoxicated people, but does not include a service provided
- 10 at a hospital or other medical facility.
- 11 *inspector* means an inspector under section 27.
- 12 *intoxicated* means apparently under the influence of alcohol,
- 13 another drug or substance, or a combination of alcohol, drugs or
- 14 substances.
- 15 **Examples of substances**
- 16 1 glue
- 17 2 petrol
- 18 3 another solvent
- 19 *Note* An example is part of the Act, is not exhaustive and may extend, but
- 20 does not limit, the meaning of the provision in which it appears (see
- 21 Legislation Act, s 126 and s 132).
- 22 *licensed place* means a place where a licensee is licensed to provide
- 23 a caring service.
- 24 *licensee* means a person who holds a licence under section 16.
- 25 *manager*, for a licensed place, means the person in charge of the
- 26 place.
- 27 *prescribed* includes prescribed by the standards.
- 28 *prohibited substance*—see the *Drugs of Dependence Act 1989*,
- 29 section 3.

1 **public place** means a place to which the public, or a section of the
2 public, has access, whether by payment or not, and includes a school
3 and any land or premises that belong to or are occupied or used in
4 relation to a school.

5 **responsible person**, in relation to an intoxicated person, includes—

6 (a) a relative, guardian or friend of the intoxicated person who is
7 an adult; or

8 (b) a lawyer acting on behalf of the intoxicated person.

9 **school** means a government school (including a pre-school) or non-
10 government school under the *Education Act 2004*.

11 **standard** means a standard made under section 31.

12 **Explanatory note**

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

- 16 • the definition of **admission statement** is omitted because the term is used only in section 6
17 and a definition is unnecessary
- 18 • the definition of **caring service** is amended consequential on another amendment
- 19 • the definition of **health practitioner** is omitted as the term is no longer used in the Act
- 20 • the definition of **office-holder** has been moved to section 15 (3) by another amendment
- 21 • the definition of **public place** is simplified and includes school-related areas previously
22 covered by the definition of **school**
- 23 • the definition of **responsible person** is updated by changing the reference to ‘solicitor’ to
24 ‘lawyer’.

- 1 **[3.179] Further amendments, mentions of *persons***
2 *omit*
3 persons
4 *substitute*
5 people
6 *in*
7 • part 2 heading
8 • section 4 heading
9 • section 5 heading
10 • section 15 (2) (b) (iii)
11 • section 16 (1) (a)
12 • section 20 (3) (a)
13 • section 21 (1)
14 • section 22 (1)
15 • section 29 (1) (a)
16 • section 31 (2) (c), (d), (e) and (f)

17 **Explanatory note**

18 This amendment is consequential on the change of the Act's name by another amendment.

19 **Part 3.30 Judicial Commissions Act 1994**

20 **[3.180] Section 3 (1), definition of *magistrate***

21 *substitute*

22 *magistrate* does not include a registrar.

23 **Explanatory note**

24 This amendment updates the definition. *Magistrate* is defined in the Legislation Act,
25 dictionary, part 1 as a magistrate under the *Magistrates Court Act 1930*. The *Magistrates Court*
26 *Act 1930*, dictionary defines *magistrate* as the Chief Magistrate, a magistrate, or a special
27 magistrate and, if a function of a magistrate is exercisable by a registrar, includes a registrar

1 exercising the function. The existing definition in the *Judicial Commissions Act 1994* does not
2 include a registrar.

3 **Part 3.31** **Land (Planning and**
4 **Environment) Act 1991**

5 **[3.181] Section 172A (5), definition of *units plan***

6 *substitute*

7 *units plan* means a units plan under the *Unit Titles Act 2001*,
8 section 7.

9 **Explanatory note**

10 This amendment is consequential on the amendment of the definition of *units plan* in the *Unit*
11 *Titles Act 2001* by another amendment.

12 **[3.182] Section 264 (1)**

13 *substitute*

14 (1) The planning and land authority must give an inspector an identity
15 card stating the person's name and that the person is a compliance
16 auditor.

17 (1A) The identity card must show—

- 18 (a) a recent photograph of the person; and
19 (b) the card's date of issue and expiry; and
20 (c) anything else prescribed by regulation.

21 **Explanatory note**

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

24 **[3.183] Section 264**

25 *renumber subsections when next republished under the Legislation*
26 *Act*

1 **Explanatory note**

2 This amendment is consequential on the insertion of new section 264 (1A) by another
3 amendment.

4 **[3.184] Section 283**

5 *substitute*

6 **283 Delegation by Executive**

7 (1) The Executive may delegate to a person a function under part 2
8 (Planning) or part 5 (Land administration), other than a function
9 under the following provisions:

- 10 • section 163 (4) (Leases to community organisations)
11 • section 164 (3) (Special leases)
12 • section 167 (1) (Eligibility for certain classes of leases).

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

15 (2) If, immediately before the commencement of this section, a person
16 was authorised to act on the Executive's behalf in the exercise of a
17 function mentioned in subsection (1), then, on the commencement
18 of this section, the Executive is taken to have delegated the function
19 to the person.

20 (3) Subsection (2) is a law to which the Legislation Act, section 88
21 (Repeal does not end effect of transitional laws etc) applies.

22 (4) Subsections (2) and (3) and this subsection expire 1 year after the
23 day this section commences.

24 **Explanatory note**

25 This amendment changes the power of authorisation under the section to a power of delegation
26 and inserts a standard note about delegations in line with current drafting practice. The
27 reference to section 178 (3) is omitted because the relevant power is exercisable by the planning
28 and land authority.

1 Part 3.32 Land Tax Act 2004

2 [3.185] Section 27 (6), definition of *units plan*

3 *substitute*

4 *units plan* means a units plan under the *Unit Titles Act 2001*,
5 section 7.

6 Explanatory note

7 This amendment is consequential on the amendment of the definition of *units plan* in the *Unit*
8 *Titles Act 2001* by another amendment.

9 Part 3.33 Leases (Commercial and Retail) 10 Act 2001

11 [3.186] Dictionary, new definition of *continuous occupation lease*

12 *insert*

13 *continuous occupation lease*—see section 10.

14 Explanatory note

15 This amendment adds a new signpost definition for *continuous occupation lease*.

16 [3.187] Dictionary, definition of *enter into*

17 *substitute*

18 *entered into*, for a lease—see section 5.

19 Explanatory note

20 This amendment brings the definition into line with current drafting practice by including the
21 qualification ‘for a lease’.

1 **[3.188] Dictionary, new definition of *retail premises***

2 *insert*

3 *retail premises*—see section 7 (2).

4 **Explanatory note**

5 This amendment adds a new signpost definition for *retail premises*.

6 **Part 3.34 Long Service Leave (Building**
7 **and Construction Industry) Act**
8 **1981**

9 **[3.189] Section 37 (3)**

10 *substitute*

11 (3) For subsection (1) (b), the *prescribed amount* for a 2-month period
12 is—

13 (a) 1.5% of the total of the amounts of ordinary remuneration paid
14 or payable by the employer to his or her employees (other than
15 apprentices) during that period; or

16 (b) if the Minister determines another percentage of that total—the
17 other percentage.

18 *Note* A determination under par (b) must be made on the advice of the board
19 and is a notifiable instrument (see s (9A) and s (9B)).

20 **Explanatory note**

21 This amendment omits an outdated reference to the gazette and brings the subsection into line
22 with current drafting practice. The requirement to notify the other percentage in the gazette is
23 replaced, by another amendment, with a requirement that the determination be a notifiable
24 instrument under the Legislation Act. This amendment reflects the current position applying
25 under transitional provisions of the Legislation Act.

1 **[3.190] New section 37 (9A) and (9B)**

2 *insert*

3 (9A) The Minister may, on the advice of the board, determine, in writing,
4 a percentage for subsection (3) (b).

5 (9B) A determination under subsection (3) (b) is a notifiable instrument.

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

7 **Explanatory note**

8 This amendment is consequential on the amendment of section 37 (3) by another amendment.

9 **[3.191] Section 37**

10 *renumber subsections when Act next republished under Legislation*
11 *Act*

12 **Explanatory note**

13 This amendment is consequential on the insertion of new section 37 (9A) and (9B) by another
14 amendment.

15 **[3.192] Section 38 (3) and (4)**

16 *substitute*

17 (3) For subsection (1) (b), the *defined amount* for a 2-month period
18 is—

19 (a) 2.5% of the total of the amounts of ordinary remuneration paid
20 or payable to the registered contractor during that period for
21 the performance by the contractor of building and construction
22 work; or

23 (b) if the Minister determines another percentage of that total—the
24 other percentage.

25 (4) The Minister may, on the advice of the board, determine, in writing,
26 a percentage for subsection (3) (b).

27 (5) A determination under subsection (3) (b) is a notifiable instrument.

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

1 **[3.195] New section 5**

2 *in pt 2.1, insert*

3 **5 Arrangement of court business**

4 (1) The Chief Magistrate is responsible for ensuring the orderly and
5 prompt discharge of the Magistrates Court's business.

6 (2) The Chief Magistrate may, subject to consultation with the
7 magistrates that is appropriate and practicable, make arrangements
8 about a magistrate who is to constitute the court in particular matters
9 or classes of matters.

10 (3) In this section:

11 *magistrate* includes special magistrate.

12 **Explanatory note**

13 This amendment remakes existing section 10G as new section 5 and brings the structure of the
14 section into line with current drafting practice. The section deals with arrangements about the
15 Magistrates Court's business and is more appropriately placed in part 2.1.

16 The definition of *magistrate* in subsection (3) has been included to ensure that the definition of
17 *magistrate* in the dictionary does not apply to the section despite its relocation.

18 **[3.196] Division 2.2.1**

19 *substitute*

20 **Division 2.2.1 Magistrates other than special**
21 **magistrates**

22 **6 Meaning of *magistrate* in div 2.2.1**

23 In this division:

24 *magistrate* means—

25 (a) the Chief Magistrate; or

26 (b) a person who is appointed under section 7 as a magistrate.

1 **7 Appointment of Chief Magistrate and other magistrates**

- 2 (1) There is to be a Chief Magistrate and other magistrates.
3 (2) The Chief Magistrate and other magistrates are appointed by the
4 Executive.

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

- 7 (3) If a magistrate is appointed as the Chief Magistrate, the person stops
8 holding the position of magistrate.

9 **7A Eligibility for appointment as magistrate**

10 A person is not eligible for appointment as a magistrate unless the
11 person is a lawyer and has been a lawyer for at least 5 years.

12 **7B Seniority of magistrates**

13 Magistrates other than the Chief Magistrate have seniority according
14 to—

- 15 (a) the dates their appointments took effect; or
16 (b) if the appointments of 2 or more of them took effect on the
17 same date—the precedence given to them by the instruments of
18 their appointment.

19 **7C Conditions of appointment of magistrates**

20 A magistrate holds the position on the conditions (if any) about
21 matters not provided for under this Act or another territory law that
22 are decided by the Executive.

-
- 1 **7D Term of appointment of magistrates**
- 2 (1) A magistrate is appointed for the term ending when the magistrate
- 3 turns 65 years old.
- 4 *Note 1* The *Judicial Commissions Act 1994*, s 4 provides that a magistrate may
- 5 only be removed from office in accordance with that Act.
- 6 *Note 2* A magistrate’s appointment also ends if the magistrate resigns (see
- 7 Legislation Act, s 210).
- 8 (2) A person who is at least 65 years old must not be appointed as a
- 9 magistrate.
- 10 **7E Acting Chief Magistrate**
- 11 (1) The Executive may appoint a magistrate to act as Chief Magistrate.
- 12 *Note* See the Legislation Act, s 209, div 19.3.2 and div 19.3.2A about acting
- 13 appointments.
- 14 (2) If no appointment is made under subsection (1), the senior
- 15 magistrate who is in the ACT and is able and willing to act must act
- 16 as Chief Magistrate.
- 17 **7F Retirement**
- 18 (1) This section applies if a magistrate is—
- 19 (a) an eligible employee for the *Superannuation Act 1976* (Cwlth);
- 20 or
- 21 (b) a member of the superannuation scheme for the
- 22 *Superannuation Act 1990* (Cwlth).
- 23 (2) The Executive may retire the magistrate on the ground of invalidity
- 24 with the magistrate’s consent.
- 25 **7G Magistrates not to do other work**
- 26 (1) A magistrate must not practise as a lawyer.

- 1 (2) A magistrate must not, without the Attorney-General's written
2 consent—
- 3 (a) engage in remunerative employment otherwise than in
4 connection with duties as a magistrate; or
- 5 (b) accept appointment to another position under a law of the
6 Territory, the Commonwealth, a State or another Territory.
- 7 (3) The Attorney-General must consult with the Chief Magistrate before
8 giving consent.

9 **7H Rights of public servants**

- 10 (1) A magistrate who was a public servant or APS employee
11 immediately before his or her appointment keeps his or her existing
12 and accruing rights.

- 13 (2) In this section:

14 *APS employee*—see the *Public Service Act 1999* (Cwlth), section 7.

15 **Explanatory note**

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

18 The amendment of existing section 6A (new section 6) brings the definition into line with
19 current drafting practice.

20 The amendment of existing section 7 (new section 7) replaces the term 'office' with 'position'.
21 *Position* is defined in the Legislation Act, dictionary, part 1 to include office. A standard note
22 about appointments is also inserted.

23 The amendment of existing section 8 (new section 7A) replaces the term 'legal practitioner'
24 with 'lawyer'. *Lawyer* is defined in the Legislation Act, dictionary, part 1.

25 The amendment of existing section 10 (new section 7C) recognises that other territory laws, for
26 example, the *Remuneration Tribunal Act 1995*, make provision about conditions of appointment
27 of magistrates.

28 The amendment of existing section 10A (new section 7D) inserts notes about the *Judicial*
29 *Commissions Act 1994* and resignation.

-
- 1 Existing section 10B is no longer necessary because of the Legislation Act, section 210 which
2 deals with resignation. A standard note about resignation is inserted in section 7D.
- 3 Most of existing section 10C (1) (new section 7E) is no longer necessary because of the
4 Legislation Act, section 209 which deals with acting appointments. A standard note about
5 acting appointments is inserted.
- 6 The amendment of existing section 10C (2) replaces the term ‘Territory’ with ‘ACT’. When
7 ‘the Territory’ is used in the geographical sense, current drafting practice is to use ‘ACT’
8 instead. *ACT* is defined in the Legislation Act, dictionary, part 1.
- 9 Existing section 10C (3) is no longer necessary because the bar on acting for longer than 1 year
10 is contained in the Legislation Act, section 221 (1).
- 11 Existing section 10C (4) is no longer necessary because of the Legislation Act, section 220
12 which provides that while the appointee is acting in the position—
- 13 (a) the appointee has, subject to the instrument making or evidencing the appointment, all the
14 functions of the occupant of the position; and
- 15 (b) all territory laws apply in relation to the appointee as if the appointee were the occupant of
16 the position.
- 17 Existing section 10C (5) is no longer necessary because of the Legislation Act, section 219 (1)
18 which provides that the appointer may decide the terms of the acting appointment and end the
19 appointment at any time.
- 20 Existing section 10C (6) is no longer necessary because of the Legislation Act, section 221 (2)
21 which provides that, if the appointee is acting in a position that becomes vacant while the
22 appointee is acting, the appointee may continue to act until the first of the following happens:
- 23 (a) the appointer ends the appointment;
- 24 (b) the vacancy is filled;
- 25 (c) 1 year after the position became vacant.
- 26 Existing section 10C (7) is no longer necessary because of the Legislation Act, section 222
27 which provides that an acting appointment ends if the appointee resigns.
- 28 Existing section 10C (8) is no longer necessary because of the Legislation Act, section 225
29 which provides that an acting appointment, or anything done under an acting appointment, is
30 not invalid only because of a defect or irregularity in or in relation to the appointment. It also
31 provides that anything done by or in relation to the appointee while the appointee purports to
32 act in the position is not invalid only because—
- 33 (a) the occasion for the appointment had not arisen or had ended; or

- 1 (b) the appointment had ended; or
- 2 (c) the occasion for the appointee to act had not arisen or had ended.
- 3 The amendment of existing section 10E (1) (new section 7G) replaces the term ‘legal
4 practitioner’. *Lawyer* is defined in the Legislation Act, dictionary, part 1.
- 5 The amendment of existing section 10E (2) and (3) replaces the term ‘duties’ with ‘functions’
6 and ‘office’ with ‘position’. *Function* is defined in the Legislation Act, dictionary, part 1 to
7 include authority, duty and power and *position* is defined in the Legislation Act, dictionary,
8 part 1 to include office.
- 9 The amendment of existing section 10F (new section 7H) removes a reference to a repealed
10 Commonwealth Act and updates terms. ‘Public servant’ is the term used instead of ‘officer of
11 the public service’, and is defined in the Legislation Act, dictionary, part 1. ‘APS employee’ is
12 the term used instead of ‘officer of the Australian Public Service’, and is defined in the
13 Commonwealth *Public Service Act 1999*.
- 14 Existing section 10G has been moved to part 2.1 as new section 5. The section deals with
15 arrangements about the Magistrates Court’s business and is more appropriately placed in
16 part 2.1.

17 **[3.197] Division 2.2.2**

18 *substitute*

19 **Division 2.2.2 Special magistrates**

20 **8 Appointment of special magistrates**

21 The Executive may appoint special magistrates.

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

24 **8A Term of appointment of special magistrates**

25 (1) A special magistrate is appointed—

26 (a) for the term mentioned in the instrument of appointment; or

1 (b) if a term is not mentioned—for the term ending when the
2 special magistrate turns 70 years old.

3 *Note 1* The *Judicial Commissions Act 1994*, s 4 provides that a magistrate may
4 only be removed from office in accordance with that Act.

5 *Note 2* A special magistrate's appointment also ends if the special magistrate
6 resigns (see Legislation Act, s 210).

7 (2) A person who is at least 70 years old must not be appointed as a
8 special magistrate.

9 (3) A person must not be appointed as a special magistrate for a term
10 that extends beyond the person's 70th birthday.

11 **8B Conditions of appointment of special magistrates**

12 A special magistrate holds the position on the conditions (if any)
13 about matters not provided for under this Act or another territory
14 law that are decided by the Executive.

15 **Explanatory note**

16 This amendment brings the language and structure of the sections into line with current drafting
17 practice and renumbers the sections. In particular:

- 18 • a standard note about appointments is inserted in new section 8
- 19 • existing section 10K is omitted because of the Legislation Act, section 210 and replaced
20 with a standard note about resignation which is inserted in section 8A
- 21 • the amendment of existing section 10L (new section 8B) recognises that other territory
22 laws make provision about conditions of appointment of special magistrates.

1 **[3.198] Division 2.2.3**

2 *substitute*

3 **Division 2.2.3 Registrar and other court officers**

4 **9 Appointment of registrar etc**

- 5 (1) The Minister may appoint a registrar of the Magistrates Court.

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

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

- 10 (2) The registrar may appoint the deputy registrars of the court, bailiffs
11 and other officers that are required.

- 12 (3) In subsection (2):
13 *registrar* does not include a deputy registrar.

14 **9A Staff assisting registrar**

15 The staff assisting the registrar are to be employed under the *Public*
16 *Sector Management Act 1994*.

17 **9B Registrar's functions**

18 The registrar must exercise the functions that are given to the
19 registrar under this Act or another territory law or that the Chief
20 Magistrate directs.

21 **Explanatory note**

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

24 Standard notes about appointments are inserted in new section 9.

25 The amendment of existing section 10MA (new section 9A) removes an unnecessary provision
26 (existing section 10MA (2)). It is not necessary to state that the *Public Sector Management*
27 *Act 1994* applies in relation to the management of the staff because the fact that the staff are

1 employed under the Act (stated in existing section 10MA (1), remade as new section 9A) means
2 that the Act applies in relation to their management.

3 The amendment of existing section 10N (new section 9B) replaces the term ‘perform’ with
4 ‘exercise’. The Legislation Act, dictionary, part 1 defines *exercise* a function to include
5 perform the function. Also, the term ‘duties’ is replaced with ‘function’. The Legislation Act,
6 dictionary, part 1 defines *function* to include duty.

7 New section 9B recognises that the registrar is given functions by territory laws apart from this
8 Act.

9 **[3.199] Section 10P**

10 *substitute*

11 **10P Oath etc of office**

12 (1) A person appointed as the Chief Magistrate, a magistrate or special
13 magistrate must not exercise the functions given to a magistrate
14 under any territory law unless the person has sworn an oath or made
15 an affirmation in accordance with the form in schedule 1.

16 (2) The oath must be sworn or affirmation made before the Chief
17 Justice.

18 **Explanatory note**

19 This amendment brings the language of the section into line with current drafting practice and
20 renumbers the section. The Legislation Act, dictionary, part 1 defines *function* to include duty
21 and power, and is the drafting term used now. *Chief Justice* is defined in the Legislation Act,
22 dictionary, part 1 as the Chief Justice of the Supreme Court.

23 **[3.200] Section 10Q**

24 *omit*

25 by virtue

26 *substitute*

27 because

28 **Explanatory note**

29 This amendment updates language.

1 **[3.201] Section 10Q**

2 *renumber as section 11*

3 **Explanatory note**

4 This amendment is consequentially on the renumbering of sections by other amendments.

5 **[3.202] Section 11**

6 *relocate to Magistrates Court Rules 1932, part 19 as section 99*

7 **Explanatory note**

8 This amendment relocates a section about procedural matters (authentication of court processes)
9 to the rules.

10 **[3.203] Sections 12 and 13**

11 *substitute*

12 **12 Acts by magistrate out of court etc**

13 (1) Any magistrate out of court or the registrar may do all or any of the
14 following:

15 (a) receive an information;

16 (b) issue a summons or warrant on an information;

17 (c) issue a summons or warrant to compel the attendance of a
18 witness;

19 (d) do anything else that is necessary and preliminary to a hearing.

20 (2) Without limiting subsection (1), if a law in force in the ACT
21 provides that an information or complaint may be laid or made
22 before, or a summons or warrant issued by, a court or justice of the
23 peace, the information or complaint may be laid or made, and the
24 summons or warrant may be issued, by a magistrate or the registrar.

1 **13 Issue of warrant of commitment etc after case decided**

2 After a case has been heard and decided, any magistrate or the
3 registrar may issue a warrant of commitment or writ of execution for
4 the purposes of the case.

5 **Explanatory note**

6 The amendment of section 12 brings the language of the section into line with current drafting
7 practice. The amendment also removes redundant references to a clerk or registrar ‘of petty
8 sessions’.

9 The amendment of section 13 updates language. In particular, the amendment removes the
10 archaic word ‘thereon’.

11 **[3.204] Section 15**

12 *substitute*

13 **15 Process not invalid only because of death of magistrate**
14 **etc**

15 A summons, warrant or writ issued by a magistrate or registrar is not
16 invalid only because of the magistrate or registrar dying or
17 otherwise ceasing to hold the position.

18 **Explanatory note**

19 This amendment updates language.

20 **[3.205] Section 17 heading**

21 *substitute*

22 **17 Magistrates may exercise functions of justices of peace**

23 **Explanatory note**

24 This amendment updates language and substitutes a heading that more accurately reflects the
25 contents of the section. The Legislation Act, dictionary, part 1 defines *function* to include
26 power, and is the drafting term used now.

1 **[3.206] Section 17A (1)**

2 *omit*

3 or plaint

4 **Explanatory note**

5 This amendment omits a reference to redundant Supreme Court procedure.

6 **[3.207] Section 17A (4)**

7 *omit*

8 some person at his or her last-known or usual place of abode or
9 business

10 *substitute*

11 someone at the person's last-known or usual home or business
12 address

13 **Explanatory note**

14 This amendment updates language.

15 **[3.208] Section 17D**

16 *substitute*

17 **17D No action for acts done under Supreme Court order**

18 An action is not maintainable against a magistrate for doing an act if
19 the magistrate does the act in accordance with a Supreme Court
20 order.

21 **Explanatory note**

22 This amendment updates language. In particular, a redundant reference to 'an order of the
23 judge' has been removed. It is a hangover from when there was only 1 judge of the Supreme
24 Court, and when there was a distinction between court and chambers in the Supreme Court.

1 **[3.209] Section 17F**

2 *omit*

3 judge

4 *substitute*

5 Supreme Court

6 **Explanatory note**

7 This amendment updates a reference. Referring to ‘the judge’ rather than ‘the Supreme Court’
8 is a hangover from when there was only 1 judge of the Supreme Court, and when there was a
9 distinction between court and chambers in the Supreme Court.

10 **[3.210] Section 17G**

11 *substitute*

12 **17G Payment into court**

13 (1) After an action under this part has been started but before the case
14 has been heard, a defendant may pay into court the amount the
15 defendant considers appropriate.

16 (2) Judgment must be given for the defendant if the Supreme Court at
17 the trial considers that the plaintiff is not entitled to damages beyond
18 the amount paid into court, and the amount paid into court, or the
19 part of it that is enough to meet the defendant’s costs, must be paid
20 out of court to the defendant, and the rest (if any) must be paid to
21 the plaintiff.

22 (3) If the plaintiff accepts the amount paid into court in satisfaction of
23 the plaintiff’s damages in the action, the plaintiff may apply to the
24 Supreme Court for an order for the payment of the amount out of
25 court to the plaintiff, with or without costs.

26 (4) If the Supreme Court makes the order, the action is decided and the
27 order is a bar to any other action for the same cause.

28 **Explanatory note**

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

1 **[3.211] Section 17I**

2 *omit*

3 or plaint

4 **Explanatory note**

5 This amendment omits a reference to redundant Supreme Court procedure.

6 **[3.212] Section 19**

7 *omit*

8 , and the jurisdiction is taken to be given to and may be exercised by
9 the court

10 **Explanatory note**

11 This amendment omits words that are redundant because of the Legislation Act, section 176.
12 Under that section, if a law authorises a proceeding to be brought in a particular court or
13 tribunal in relation to a matter, the law vests the court or tribunal with jurisdiction in the matter.

14 **[3.213] Section 23B (1)**

15 *substitute*

16 (1) In this section:

17 *penalty* includes—

18 (a) the cancellation, forfeiture, suspension or other loss of a
19 licence or privilege; and

20 (b) the disqualification from obtaining or holding a licence or
21 exercising a privilege.

22 *the court*, in relation to a proceeding, means the magistrate who
23 convicted the defendant or made the order against the defendant.

24 **Explanatory note**

25 This amendment brings the language and structure of the definitions into line with current
26 drafting practice.

27 The amendment also omits the definition of *business day*, because that term is defined in the
28 Legislation Act, dictionary, part 1.

1 **[3.214] Section 23B (6)**

2 *substitute*

- 3 (6) If, under subsection (2), the court reopens a proceeding and, in the
4 absence of a party to the proceeding, amends a conviction or order,
5 the registrar must serve written notice of the amended conviction or
6 order on the absent party as soon as practicable.

7 **Explanatory note**

8 This amendment updates language.

9 **[3.215] Section 25**

10 *substitute*

11 **25 Informations**

12 A proceeding may be started in the court by information laid by the
13 informant or by a lawyer or anyone else representing the informant.

14 **Explanatory note**

15 This amendment replaces the term ‘legal practitioner’ with ‘lawyer’ in accordance with current
16 drafting practice and updates language. *Lawyer* is defined in the Legislation Act, dictionary,
17 part 1.

18 **[3.216] Section 30**

19 *substitute*

20 **30 Form of information**

- 21 (1) If a warrant is intended to be issued in the first instance against the
22 person charged, the information must be in writing and on oath.
- 23 (2) The oath may be made by the informant or someone else.
- 24 (3) If a summons instead of a warrant is intended to be issued in the
25 first instance against the person charged, the information may be
26 made orally and without oath.

- 1 (4) Subsection (3) applies whether or not the law under which the
2 information is laid requires it to be in writing.

3 **Explanatory note**

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

6 **[3.217] Section 41 (1) (b)**

7 *substitute*

- 8 (b) by leaving a copy of the summons at the last-known or usual
9 home or business address of the person with someone who
10 appears to be at least 16 years old and to live or be employed at
11 the address.

12 **Explanatory note**

13 This amendment updates language.

14 **[3.218] Division 3.3.4 heading**

15 *substitute*

16 **Division 3.3.4 Warrants**

17 **Explanatory note**

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

19 **[3.219] Section 42**

20 *substitute*

21 **42 Issue of warrant and summons**

- 22 (1) This section applies if—
23 (a) an information is laid before a magistrate under division 3.3.2
24 against a person for an offence; and
25 (b) the information is substantiated by the oath of the informant or
26 a witness; and

- 1 (c) the person is not in custody.
- 2 (2) The magistrate may issue a warrant for the person's arrest, and for
3 bringing the person before the court to answer to the information
4 and to be further dealt with according to law.
- 5 (3) However, the magistrate may issue a summons instead of the
6 warrant if the magistrate considers it appropriate.
- 7 (4) The issue of the summons does not prevent a magistrate from
8 issuing a warrant at any time before or after the time mentioned in
9 the summons for the person's appearance.
- 10 (5) However, subsection (4) does not authorise the issue of a warrant to
11 bring the person before the court to answer to the information if a
12 summons has been served on the person for the offence in
13 accordance with section 116B (Service of summons for prescribed
14 offence).

15 **Explanatory note**

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

18 **[3.220] Section 47**

19 *substitute*

20 **47 Form of arrest warrant**

21 A warrant issued on an information must—

- 22 (a) briefly state the offence or matter of the information; and
- 23 (b) name or otherwise describe the person against whom it is
24 issued; and
- 25 (c) order the police officers to whom it is directed to—
- 26 (i) arrest the person; and
- 27 (ii) bring the person before the court to answer the
28 information and to be further dealt with according to law.

1 **Explanatory note**

2 This amendment brings the language of the section into line with current drafting practice. It
3 ensures that the language of this section and section 42 (Issue of warrant and summons) is
4 consistent.

5 **[3.221] Section 49**

6 *omit*

7 grant or

8 **Explanatory note**

9 This amendment omits words made redundant by other amendments.

10 **[3.222] Sections 53 and 54**

11 *substitute*

12 **53 Conduct of case generally**

13 (1) The informant may—

14 (a) conduct his or her case personally or by a lawyer; and

15 (b) examine and cross-examine the witnesses giving evidence for
16 or against the informant; and

17 (c) if the defendant gives any evidence or examines any witness
18 about anything other than general character—call and examine
19 witnesses in reply.

20 (2) The defendant may—

21 (a) fully answer and defend personally or by a lawyer; and

22 (b) give evidence; and

23 (c) examine and cross-examine the witnesses giving evidence for
24 or against the defendant.

1 **54 If both parties present in court to hear case**

2 The court must hear and decide an information if both parties to the
3 information appear personally or by lawyers or anyone else
4 appearing for them.

5 **Explanatory note**

6 This amendment brings the language of the sections into line with current drafting practice. In
7 particular, the term ‘legal practitioner’ is replaced with ‘lawyer’. *Lawyer* is defined in the
8 Legislation Act, dictionary, part 1.

9 **[3.223] Division 3.4.2 heading**

10 *substitute*

11 **Division 3.4.2 Warrants for witnesses**

12 **Explanatory note**

13 This amendment is consequential on the omission of section 55.

14 **[3.224] Section 55**

15 *omit*

16 **Explanatory note**

17 This amendment omits a section that deals with matters now covered by other laws and that is,
18 in a number of respects, inconsistent with the *Evidence Act 1995* (Cwlth). That Act, section 21
19 deals with when sworn evidence of witnesses in the Magistrates Court must be on oath or
20 affirmation. The *Oaths and Affirmations Act 1984*, section 11 and the Legislation Act,
21 section 178 provide authority for the administration of oaths and affirmations by the
22 Magistrate’s Court.

23 **[3.225] Section 78**

24 *omit*

25 division 3.3.4 (Warrants of arrest)

26 *substitute*

27 division 3.3.4 (Warrants)

1 **Explanatory note**

2 This amendment is consequential on the amendment of division 3.3.4 heading by another
3 amendment.

4 **[3.226] Section 79**

5 *substitute*

6 **79 Recognisances taken out of court**

7 (1) A recognisance under this Act need not be entered into before the
8 court, but may be entered into by the parties before—

9 (a) a magistrate; or

10 (b) the registrar; or

11 (c) a police officer in charge of a police station; or

12 (d) if a party is in a prison or remand centre—the officer in charge
13 of the prison or the administrator of the remand centre.

14 (2) The provisions of this Act in relation to recognisances taken before
15 the court apply in relation to the recognisance as if it had been
16 entered into before the court.

17 **Explanatory note**

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

19 **[3.227] Section 84 (1)**

20 *omit*

21 legal practitioners

22 *substitute*

23 lawyers

24 **Explanatory note**

25 This amendment updates the term in accordance with current drafting practice. *Lawyer* is
26 defined in the Legislation Act, dictionary, part 1.

-
- 1 **[3.228] Sections 85 to 87**
- 2 *substitute*
- 3 **85 Proceeding if either party not present at adjourned**
- 4 **hearing**
- 5 (1) This section applies if either or both of the parties do not appear
- 6 personally or by lawyers or anyone else appearing for them at the
- 7 time and place to which the hearing or further hearing is adjourned.
- 8 (2) The court may—
- 9 (a) go ahead with the hearing or further hearing as if the party or
- 10 parties were present; or
- 11 (b) if the informant does not appear—dismiss the information,
- 12 with or without costs as the court considers just.
- 13 **86 Proceeding if both parties present at adjourned hearing**
- 14 (1) This section applies if the parties appear personally or by lawyers or
- 15 anyone else appearing for them at the time and place to which the
- 16 hearing or further hearing is adjourned.
- 17 (2) The court may go ahead with the hearing or further hearing.
- 18 **87 Witness to attend adjourned etc hearing**
- 19 (1) This section applies to a person who is required by summons to
- 20 attend a hearing to give evidence or produce a document if the
- 21 hearing is adjourned or postponed.
- 22 (2) The person must attend at the time and place to which the hearing is
- 23 adjourned or postponed without the issue or service of a further
- 24 summons.
- 25 (3) However, the person is entitled to additional expenses for attending.

1 **Explanatory note**

2 This amendment brings the language of the sections into line with current drafting practice. In
3 particular, the amendment of sections 85 and 86 replaces the term ‘legal practitioners’ with
4 ‘lawyers’. *Lawyer* is defined in the Legislation Act, dictionary, part 1.

5 **[3.229] Section 89**

6 *substitute*

7 **89 Disobedience of summons**

8 (1) This section applies if—

9 (a) a person is alleged by an information to have committed an
10 indictable offence; and

11 (b) a summons is issued against the person; and

12 (c) the person does not appear before the court at the time and
13 place mentioned in the summons; and

14 (d) the court is satisfied, on oath, that the summons was properly
15 served on the person a reasonable time before the time
16 mentioned in the summons for the appearance; and

17 (e) the information is substantiated by the oath of the informant or
18 a witness.

19 (2) The court may issue a warrant for the person’s arrest and for
20 bringing the person before the court to answer to the information
21 and to be further dealt with according to law.

22 (3) This section does not apply if an order has been made under
23 section 89A (1) excusing the person from attending before the court.

24 **Explanatory note**

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

1 **[3.230] Section 89A (3)**

2 *omit*

3 legal practitioner

4 *substitute*

5 lawyer

6 **Explanatory note**

7 This amendment updates the term in accordance with current drafting practice. *Lawyer* is
8 defined in the Legislation Act, dictionary, part 1.

9 **[3.231] Section 89A (6)**

10 *substitute*

11 (6) A notice under subsection (4) or (5) may be given to a person by—

12 (a) giving a copy of the notice to the person; or

13 (b) leaving a copy of the notice at the last-known or usual home or
14 business address of the person with someone who appears to be
15 at least 16 years old and to live or be employed at the address.

16 **Explanatory note**

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

18 **[3.232] Section 90 (7)**

19 *omit*

20 legal practitioner

21 *substitute*

22 lawyer

23 **Explanatory note**

24 This amendment updates the term in accordance with current drafting practice. *Lawyer* is
25 defined in the Legislation Act, dictionary, part 1.

1 **[3.233] Section 90AA (1)**

2 *substitute*

3 (1) If the informant has given notice to the accused person in
4 accordance with section 90, the court at the preliminary examination
5 may admit a written statement (a copy of which accompanied the
6 notice) as evidence of the matters in the statement.

7 (1A) The statement is the deposition of the person who made it if
8 admitted into evidence.

9 **Explanatory note**

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

11 **[3.234] Section 90AA (9)**

12 *omit*

13 legal practitioner

14 *substitute*

15 lawyer

16 **Explanatory note**

17 This amendment updates the term in accordance with current drafting practice. *Lawyer* is
18 defined in the Legislation Act, dictionary, part 1.

19 **[3.235] Section 90AA**

20 *renumber subsections when Act next republished under Legislation*
21 *Act*

22 **Explanatory note**

23 This amendment is consequential on the insertion of new section 90AA (1A) by another
24 amendment.

1 **[3.236] Section 90AB**

2 *substitute*

3 **90AB Preliminary examination if written statements not**
4 **tendered**

- 5 (1) This section applies if—
- 6 (a) a person is alleged to have committed an indictable offence;
- 7 and
- 8 (b) a notice has not been given to the person in accordance with
- 9 section 90.
- 10 (2) The court must take the preliminary examination or statement on
- 11 oath of anyone (a *sworn person*) who knows the facts and
- 12 circumstances of the case.
- 13 (3) The examination or statement must be taken in the presence or
- 14 hearing of—
- 15 (a) the person; and
- 16 (b) if the person asks—a lawyer representing the person.
- 17 (4) The person or the person's lawyer may cross-examine a sworn
- 18 person.

19 **Explanatory note**

20 This amendment brings the language of the section into line with current drafting practice. In
21 particular, it replaces the term 'legal practitioner' with 'lawyer'. *Lawyer* is defined in the
22 Legislation Act, dictionary, part 1.

1 **[3.237] Section 90ABA heading**

2 *substitute*

3 **90ABA Attendance not required under s 90AA or s 90AB if order**
4 **made under s 89A**

5 **Explanatory note**

6 This amendment updates a cross-reference.

7 **[3.238] Section 90A (6) and (7)**

8 *substitute*

9 (6) If—

10 (a) the court accepts the plea; and

11 (b) any of the following subparagraphs applies to the offence:

12 (i) the offence is under a law in force in the ACT punishable
13 either on indictment or summary conviction;

14 (ii) the offence may be dealt with summarily without the
15 accused person's consent;

16 (iii) the offence may be dealt with summarily if the accused
17 person consents and the accused person consents to it
18 being dealt with summarily;

19 (iv) the offence may be dealt with summarily if the prosecutor
20 requests and the prosecutor requests that it be dealt with
21 summarily; and

22 (c) it appears to the court that it is proper to deal with the case
23 summarily;

24 the court may, without hearing further evidence, sentence or
25 otherwise deal with the accused person and finally dispose of the
26 charge and all incidental matters.

27 (7) If—

- 1 (a) the court accepts the plea; and
- 2 (b) any of the following subparagraphs applies to the offence:
- 3 (i) it does not appear to the court that it is proper to deal with
- 4 the case summarily;
- 5 (ii) the offence is punishable only on indictment;
- 6 (iii) the offence may be dealt with summarily if the accused
- 7 person consents, but the accused person does not consent
- 8 to it being dealt with summarily;
- 9 (iv) the offence may be dealt with summarily if the prosecutor
- 10 requests, but the prosecutor does not request that it be
- 11 dealt with summarily;
- 12 (v) this subsection applies to the accused person under the
- 13 Crimes Act, section 375;

14 the Magistrates Court must commit the accused person to the

15 sittings of the Supreme Court that the Supreme Court directs and the

16 Supreme Court must deal with the accused person in accordance

17 with subsections (8) to (12).

18 **Explanatory note**

19 This amendment brings the language and structure of the subsections into line with current

20 drafting practice.

21 **[3.239] Section 90A (9)**

22 *substitute*

23 (9) The Supreme Court may order that the proceeding before the

24 Magistrates Court where the accused person pleaded guilty be

25 continued at a time and place stated in the order.

26 (9A) The Supreme Court must make an order under subsection (9) if—

27 (a) it appears to the Supreme Court from the information or

28 evidence given to or before it that the facts in relation to which

29 the accused person was charged before the Magistrates Court

1 do not support the charge to which the accused person pleaded
2 guilty; or

3 (b) the accused person or a lawyer representing the accused person
4 or informant asks that the order be made.

5 **Explanatory note**

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

8 **[3.240] Section 90A (12)**

9 *omit*

10 specified

11 *substitute*

12 stated

13 **Explanatory note**

14 This amendment is consequential on the remaking of section 90A (9).

15 **[3.241] Section 90A**

16 *renumber subsections when Act next republished under Legislation*
17 *Act*

18 **Explanatory note**

19 This amendment is consequential on the insertion of new section 90A (9A) by another
20 amendment.

21 **[3.242] Section 91**

22 *substitute*

23 **91 Court may discharge accused**

24 When all the evidence offered by the prosecution in relation to the
25 indictable offence with which the accused person is charged has
26 been taken, the court must—

- 1 (a) if the court is of the opinion, having regard to all the evidence
2 before it, that the evidence is capable of satisfying a jury
3 beyond reasonable doubt that the person has committed an
4 indictable offence—proceed in accordance with section 92; or
- 5 (b) if the court is not of the opinion mentioned in paragraph (a)
6 and the person is in custody in relation to the offence—
7 immediately order that the person be released from custody in
8 relation to the offence.

9 **Explanatory note**

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

11 **[3.243] Section 93**

12 *omit*

13 , which by law would be

14 *substitute*

15 if it is

16 **Explanatory note**

17 This amendment updates language.

18 **[3.244] Section 94**

19 *substitute*

20 **94 Discharge or committal for trial**

21 When all the evidence for the prosecution and the defence have been
22 taken in relation to the indictable offence with which the accused
23 person is charged, the court must—

- 24 (a) if the court is of the opinion, having regard to all the evidence
25 before it, that a jury would not convict the person of an
26 indictable offence and the person is in custody in relation to the
27 offence—immediately order that the person be released from
28 custody in relation to the offence; or

- 1 (b) if the court is not of the opinion mentioned in paragraph (a)—it
2 must commit the person for trial for the offence before the
3 Supreme Court and, by warrant, commit the person in custody
4 until the trial or until the defendant is released on bail.

5 **Explanatory note**

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

7 **[3.245] Section 95 (c)**

8 *omit*

9 legal practitioner

10 *substitute*

11 lawyer

12 **Explanatory note**

13 This amendment updates the term in accordance with current drafting practice. *Lawyer* is
14 defined in the Legislation Act, dictionary, part 1.

15 **[3.246] Section 105**

16 *substitute*

17 **105 Court may commit noncompliant witness**

18 (1) If a witness does not enter into a recognisance required by the court,
19 the court may, by warrant, commit the witness to a prison or remand
20 centre until after the defendant's trial, unless the witness enters into
21 the recognisance before a magistrate.

22 (2) If the witness is committed to a prison or remand centre, a
23 magistrate may, by order, direct the person in charge of the prison or
24 the superintendent of the remand centre to release the witness from
25 custody on the warrant if—

26 (a) the defendant is not committed for trial for the offence with
27 which the defendant is charged; or

1 (b) the relevant officer declines to file an information against the
2 defendant for the offence; or

3 (c) the witness enters into the recognisance before a magistrate.

4 **Explanatory note**

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

7 **[3.247] Section 105A**

8 *substitute*

9 **105A Meaning of *certified copy* of depositions in div 3.5.6**

10 In this division:

11 *certified copy*, of depositions, means—

12 (a) if a record of the deposition was made in accordance with
13 section 316 (2)—a transcript of the record certified in
14 accordance with section 314 (2); or

15 (b) if the depositions were taken down in writing and signed in
16 accordance with section 316 (3)—the depositions as taken
17 down and signed.

18 **Explanatory note**

19 This amendment brings the language and structure of the definition into line with current
20 drafting practice.

21 **[3.248] Section 106 (2)**

22 *substitute*

23 (2) In this section:

24 *depositions* means a certified copy of depositions.

25 *statement* includes a certified copy of the statement (if any) made by
26 a defendant in reply to the question mentioned in section 92 (1).

1 **Explanatory note**

2 This amendment brings the structure of the definitions into line with current drafting practice
3 and updates language.

4 **[3.249] Section 107 (2)**

5 *omit*

6 or cause to be given

7 **Explanatory note**

8 This amendment omits unnecessary words.

9 **[3.250] Section 108**

10 *substitute*

11 **108 Accused person may obtain copies of depositions etc**

12 (1) This section applies if—

13 (a) a person is charged with an indictable offence; and

14 (b) the Magistrates Court commits the person for trial before the
15 Supreme Court.

16 (2) At any time before the person's trial before the Supreme Court
17 starts, the person may apply to the registrar—

18 (a) for certified copies of depositions in the case; and

19 (b) for the evidence given on the cross-examination or the
20 examination of any witnesses in the case.

21 (3) The registrar must give the person the certified copies of depositions
22 and the evidence applied for under subsection (2).

23 (4) If the person is in custody, the person having the custody of the
24 person must give any application under subsection (2) to the
25 registrar.

1 **Explanatory note**

2 This amendment omits unnecessary words from the heading and brings the language of the
3 section into line with current drafting practice .

4 **[3.251] Section 109 (1) (b)**

5 *omit*

6 legal practitioner

7 *substitute*

8 lawyer

9 **Explanatory note**

10 This amendment updates the term in accordance with current drafting practice. *Lawyer* is
11 defined in the Legislation Act, dictionary, part 1.

12 **[3.252] Section 110 heading**

13 *substitute*

14 **110 Hearing in absence of defendant**

15 **Explanatory note**

16 This amendment omits unnecessary words.

17 **[3.253] Section 110 (1) (a)**

18 *omit*

19 *ex parte*

20 **Explanatory note**

21 This amendment omits unnecessary words.

1 **[3.254] Section 110 (1) (b)**

2 *omit 2nd mention of*

3 *its*

4 *substitute*

5 *a*

6 **Explanatory note**

7 This amendment updates language.

8 **[3.255] Section 110 (4) (a)**

9 *substitute*

10 (a) a lawyer; or

11 **Explanatory note**

12 This amendment replaces the term ‘legal practitioner’ with ‘lawyer’ in accordance with current
13 drafting practice. *Lawyer* is defined in the Legislation Act, dictionary, part 1.

14 **[3.256] Section 110 (4) (d)**

15 *substitute*

16 (d) a person prescribed by regulation or rule.

17 **Explanatory note**

18 This amendment makes it clear that a person can be prescribed for the paragraph by regulation
19 or rule of court.

20 **[3.257] Section 111**

21 *substitute*

22 **111 Adjournment if defendant does not appear**

23 (1) This section applies if—

24 (a) the defendant does not appear before the court for the hearing
25 of the information; and

- 1 (b) the court has issued a warrant for the defendant's arrest.
- 2 (2) The court must adjourn the hearing until the defendant is arrested.
- 3 (3) If the defendant is arrested under the warrant, the defendant must be
4 detained in safe custody, until the defendant can be brought before
5 the court at a time and place fixed by the court.
- 6 (4) The court must give the informant notice of the time and place
7 fixed.

8 **Explanatory note**

9 This amendment brings the structure of the section into line with current drafting practice. The
10 amendment also revises the heading to accurately reflect the section's application.

11 **[3.258] Section 112**

12 *omit*

13 **Explanatory note**

14 This amendment omits an unnecessary provision (see *Magistrates Court Act 1930*, section 54).

15 **[3.259] Sections 114 to 116**

16 *substitute*

17 **114 If defendant does not admit the case**

- 18 (1) This section applies if the defendant does not admit the truth of the
19 information.
- 20 (2) The court must hear—
- 21 (a) the informant and the informant's witnesses (if any); and
- 22 (b) if the defendant wants to give evidence—the defendant; and
- 23 (c) the defendant's witnesses (if any); and
- 24 (d) if the defendant has given evidence other than about the
25 defendant's general character—the informant's witnesses in
26 reply (if any).

- 1 (3) Having heard each party and the evidence, the court must decide the
2 information and do 1 of the following as justice requires:
- 3 (a) convict the defendant;
- 4 (b) make an order on the defendant;
- 5 (c) dismiss the information.

6 **115 Conduct of summary proceeding**

- 7 (1) The defendant or a lawyer representing the defendant may address
8 the court after all the evidence for the informant and the evidence (if
9 any) for the defendant and for the informant in reply has been given.
- 10 (2) The informant or a lawyer representing the informant may make a
11 closing address.

12 **Explanatory note**

13 This amendment brings the language and structure of the sections into line with current drafting
14 practice. In particular, the amendment replaces the term 'legal practitioner' with 'lawyer'.
15 *Lawyer* is defined in the Legislation Act, dictionary, part 1.

16 The amendment also omits existing section 115 as it is unnecessary (see section 85).

17 **[3.260] Section 116A**

18 *substitute*

19 **116A Definitions for pt 3.7**

- 20 (1) In this part:
- 21 *defendant* means a person who has been properly served with a
22 summons in accordance with section 116B.
- 23 *law in force in the ACT* includes a statute of the Australian National
24 University about parking or traffic.
- 25 (2) For this part (other than section 116B (2)), a *notice to defendant*
26 *form*, *notice of intention to defend form* and *plea of guilty form*

1 includes a copy of the form printed on the back of a copy of a
2 summons.

3 **Explanatory note**

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

5 **[3.261] Section 116AA (2) (g) and (h)**

6 *substitute*

7 (g) any other Act or any regulation prescribed by regulation.

8 *Note 1* A reference to an Act includes a reference to the statutory instruments
9 made or in force under the Act, including any regulation (see
10 Legislation Act, s 104).

11 *Note 2* A reference to an Act includes a reference to a provision of an Act, and
12 a reference to a subordinate law includes a reference to a provision of a
13 subordinate law (see Legislation Act, s 7 and s 8).

14 **Explanatory note**

15 This amendment amends paragraph (g) by omitting the reference to ‘a provision of an Act or
16 regulation’. This is no longer necessary because of the Legislation Act, section 7 and section 8.
17 The amendment also omits paragraph (h) which is no longer necessary because of the
18 Legislation Act, section 104. Standard notes about those sections are inserted.

19 The amendment also inserts notes to assist in the interpretation of the subsection.

20 **[3.262] Section 116B (1)**

21 *substitute*

22 (1) A summons for a person in relation to a prescribed offence may be
23 served on the person—

24 (a) by giving 2 copies of the summons to the person; or

25 (b) by sending 2 copies of the summons by prepaid post, addressed
26 to the person, at the person’s last-known home or business
27 address; or

28 (c) by leaving 2 copies of the summons at the person’s last-known
29 home or business address with someone who appears to be at
30 least 16 years old and to live or be employed at the address.

1 **Explanatory note**

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

3 **[3.263] Section 116B (3)**

4 *substitute*

5 (3) Service of a summons on a person in relation to a prescribed offence
6 in a way mentioned in subsection (1) (a) or (c) must be made not
7 less than 14 days before the day the person is required by the
8 summons to appear before the court.

9 **Explanatory note**

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

11 **[3.264] Section 116BA**

12 *substitute*

13 **116BA Giving of notice by registrar**

14 If the registrar is required to give notice to a person under this part,
15 the notice may be given by sending the notice by prepaid post,
16 addressed to the person, at the person's last-known home or
17 business address.

18 **Explanatory note**

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

20 **[3.265] Section 116C (3) (b)**

21 *substitute*

22 (b) a lawyer;

23 **Explanatory note**

24 This amendment replaces the term 'legal practitioner' with 'lawyer' in accordance with current
25 drafting practice. *Lawyer* is defined in the Legislation Act, dictionary, part 1.

1 **[3.266] Section 116C (3) (d)**

2 *substitute*

3 (d) a person prescribed by regulation or rule.

4 **Explanatory note**

5 This amendment makes it clear that a person can be prescribed for the paragraph by regulation
6 or rule of court.

7 **[3.267] Section 116H (1) (b)**

8 *omit*

9 legal practitioner

10 *substitute*

11 lawyer

12 **Explanatory note**

13 This amendment updates the term in accordance with current drafting practice. *Lawyer* is
14 defined in the Legislation Act, dictionary, part 1.

15 **[3.268] Section 116H (2)**

16 *substitute*

17 (2) If—

18 (a) the court convicts a defendant of an offence against a law
19 mentioned in a paragraph of section 116AA (1); and

20 (b) the law provides in effect that a penalty other than a fine may
21 be imposed on the defendant; and

22 (c) when the defendant is sentenced, the defendant is not before
23 the court or is not represented before the court by a lawyer; and

24 (d) the court considers that a penalty other than a fine may be
25 appropriate;

26 the court must adjourn the hearing and fix a time and place for
27 sentence.

1 **[3.273] Section 143**

2 *substitute*

3 **143 Consequences if information dismissed**

4 (1) The court must make an order of dismissal if the court dismisses an
5 information.

6 (2) The court must give the defendant a certificate of dismissal signed
7 by the adjudicating magistrate or the registrar if the defendant
8 applies for it.

9 (3) If a certificate of dismissal is produced to a court—

10 (a) the court must accept it as proof of the matters stated in it if
11 there is no evidence to the contrary; and

12 (b) it is a bar to any other information or proceeding in any court
13 (other than an appeal) for the same matter against the same
14 party.

15 **Explanatory note**

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

17 **[3.274] Section 146, definition of *fine*, paragraph (a)**

18 *omit*

19 pecuniary

20 *substitute*

21 financial

22 **Explanatory note**

23 This amendment updates language.

1 **[3.275] Section 146, definition of *government agency*,**
2 **paragraph (c)**

3 *substitute*

4 (c) a territory entity prescribed by regulation.

5 **Explanatory note**

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

7 **[3.276] Section 146, definition of *outstanding fine***

8 *substitute*

9 *outstanding fine*, in relation to a person, means the total of—

10 (a) the whole or any part of a fine that the person is liable to pay;
11 and

12 (b) the whole or any part of an administrative fee that the person is
13 liable to pay in relation to the fine.

14 **Explanatory note**

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

16 **[3.277] Section 148 (1)**

17 *substitute*

18 (1) If the court imposes a fine on a person for an offence, the court—

19 (a) must allow time for payment, if the summons for the offence
20 was served in accordance with section 116B; or

21 (b) may allow time for payment, in any other case.

22 **Explanatory note**

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

1 **[3.278] Sections 155 and 156**

2 *substitute*

3 **155 Fine amounts to be paid to registrar**

4 (1) This section applies if—

5 (a) a person must pay an amount because of a conviction or court
6 order; and

7 (b) the person pays the amount to a police officer or someone else.

8 (2) The police officer or other person must immediately pay the amount
9 to the registrar.

10 **156 Execution to stop on payment**

11 (1) This section applies if—

12 (a) a warrant is issued under section 154D (Committal to prison—
13 fine defaulters) for a fine defaulter; and

14 (b) the fine defaulter pays the police officer executing the warrant
15 the amounts mentioned in it.

16 (2) The police officer must stop executing the warrant.

17 **Explanatory note**

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

20 **[3.279] Section 166A, definition of *fine*, paragraph (a)**

21 *omit*

22 pecuniary

23 *substitute*

24 financial

25 **Explanatory note**

26 This amendment updates language.

1 **[3.280] Section 166A, definition of *reciprocating court***

2 *substitute*

3 *reciprocating court* means a court declared under section 166B to
4 be a reciprocating court.

5 **Explanatory note**

6 This amendment revises the definition to remove references to classes of courts that are
7 unnecessary because of the Legislation Act, section 48.

8 **[3.281] Section 166B (1)**

9 *substitute*

- 10 (1) If a State has laws providing for the enforcement in the State of a
11 territory fine against a body corporate, the Attorney-General may, in
12 writing, declare a court of summary jurisdiction in the State to be a
13 reciprocating court.

14 **Explanatory note**

15 This amendment revises the subsection to remove references to classes of courts that are
16 unnecessary because of the Legislation Act, section 48.

17 **[3.282] Section 166C (1)**

18 *substitute*

- 19 (1) If—
- 20 (a) a fine is payable by a body corporate under a conviction of a
21 reciprocating court; and
- 22 (b) the registrar receives a written request from the relevant officer
23 of the reciprocating court for the enforcement of the conviction
24 accompanied by—
- 25 (i) a copy, certified by the relevant officer to be correct, of
26 the conviction; and
- 27 (ii) a certificate signed by the relevant officer stating the
28 amount of the fine that remains unpaid;

1 the registrar must register the conviction by filing in the court the
2 certified copy of the conviction and noting the date of the
3 registration on the copy.

4 **Explanatory note**

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

7 **[3.283] Section 166C (2) (a)**

8 *omit*
9 specified
10 *substitute*
11 stated

12 **Explanatory note**

13 This amendment is consequential on the remaking of section 166C (1).

14 **[3.284] Section 166C (4)**

15 *substitute*
16 (4) If—
17 (a) a writ is issued under subsection (2) in relation to a fine; and
18 (b) before execution, the registrar receives a notification
19 mentioned in subsection (3) in relation to the fine;
20 the registrar must arrange for the return of the writ.
21 (4A) On the return of the writ, the registrar must—
22 (a) if the amount of the fine has been paid in full—withdraw the
23 writ; or
24 (b) if part of the amount of the fine remains unpaid—amend the
25 writ to show the amount still unpaid.

1 **Explanatory note**

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

3 **[3.285] Section 166C**

4 *renumber subsections when Act next republished under Legislation*
5 *Act*

6 **Explanatory note**

7 This amendment is consequential on the insertion of new section 166C (4A).

8 **[3.286] Section 185 (1) (b)**

9 *omit*
10 *neglects or refuses*
11 *substitute*
12 *fails*

13 **Explanatory note**

14 This amendment updates language.

15 **[3.287] Section 185 (1)**

16 *omit*
17 *in that behalf*

18 **Explanatory note**

19 This amendment omits unnecessary words.

20 **[3.288] Section 185 (2)**

21 *substitute*
22 (2) In subsection (1) (b):
23 *order* does not include an order under the Crimes Act, section 350.

24 **Explanatory note**

25 This amendment brings the definition into line with current drafting practice.

1 **[3.289] Section 187 (1)**

2 *omit*
3 forthwith
4 *substitute*
5 immediately

6 **Explanatory note**

7 This amendment updates language.

8 **[3.290] Section 193**

9 *omit*
10 pecuniary
11 *substitute*
12 financial

13 **Explanatory note**

14 This amendment updates language.

15 **[3.291] Section 195**

16 *substitute*

17 **195 Convictions etc to be given to Supreme Court registrar**

- 18 (1) This section applies if a person is convicted of an indictable offence
19 by the court or an information in relation to an indictable offence is
20 dismissed by the court.
- 21 (2) The court must immediately give the registrar of the Supreme Court
22 a copy of the conviction and recognisances or a copy of the
23 certificate of dismissal (if any).
- 24 (3) The court must keep a conviction and dismissal book and record
25 each conviction or dismissal in it.

1 **Explanatory note**

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

4 **[3.292] Section 214 (3) (a) (i)**

5 *substitute*

- 6 (i) order the production of a document or anything else that
7 was an exhibit in, or was otherwise connected with, the
8 proceeding out of which the appeal arose and that appears
9 to it to be necessary to produce for deciding the appeal;
10 and

11 **Explanatory note**

12 This amendment brings the language of the subparagraph into line with current drafting
13 practice.

14 **[3.293] Section 219B (2)**

15 *substitute*

- 16 (2) In subsection (1) (f):

17 *sentence or penalty* includes a decision or order made under the
18 Crimes Act, section 402 (1) or (3), section 403 (1), section 404 (4)
19 or (7) or section 405 (1) or (3), whether or not the person is
20 convicted of the offence.

21 **Explanatory note**

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

23 **[3.294] Section 219C (1)**

24 *omit*

25 If

26 *substitute*

27 This section applies if—

1 **Explanatory note**

2 This amendment, and the other amendments of section 219C (1), bring the structure of the
3 subsection into line with current drafting practice.

4 **[3.295] Section 219C (1) (c)**

5 *omit*

6 Magistrates Court;

7 *substitute*

8 Magistrates Court.

9 **Explanatory note**

10 This amendment, and the other amendments of section 219C (1), bring the structure of the
11 subsection into line with current drafting practice.

12 **[3.296] Section 219C (1)**

13 *omit*

14 the Supreme Court may

15 *substitute*

16 (1A) The Supreme Court may

17 **Explanatory note**

18 This amendment, and the other amendments of section 219C (1), bring the structure of the
19 subsection into line with current drafting practice.

20 **[3.297] Section 219C**

21 *renumber subsections and paragraphs when Act next republished*
22 *under Legislation Act*

23 **Explanatory note**

24 This amendment is consequential on the insertion of new section 219C (1A).

1 **[3.298] Section 222**

2 *omit*

3 or the judge

4 **Explanatory note**

5 This amendment omits an outdated and unnecessary reference to ‘the judge’ of the Supreme
6 Court. Referring to ‘the judge’ rather than just ‘the Supreme Court’ is a hangover from when
7 there was only 1 judge of the Supreme Court, and when there was a distinction between court
8 and chambers in the Supreme Court.

9 **[3.299] Section 222 (2)**

10 *omit*

11 or cause to be given

12 **Explanatory note**

13 This amendment omits unnecessary words.

14 **[3.300] Section 222 (2)**

15 *omit*

16 or claim (if any)

17 **Explanatory note**

18 This amendment omits an outdated and unnecessary reference to a ‘claim’.

19 **[3.301] Section 223**

20 *substitute*

21 **223 Amendment of documents**

22 (1) This section applies if—

23 (a) a document mentioned in section 222 (2) is given to the
24 Supreme Court; and

25 (b) the offence charged or intended to be charged by the document
26 appears to have been established; and

- 1 (c) the Magistrates Court’s judgment appears to be in substance
2 justified; and
- 3 (d) the defects or errors appear to be defects of form only or
4 mistakes not affecting the substance of the proceeding before
5 the Magistrates Court.
- 6 (2) The Supreme Court must allow the warrant of commitment, and
7 may allow the conviction, judgment or order also, to be immediately
8 amended as necessary in accordance with the facts.
- 9 (3) The person committed must then be remanded to the person’s
10 former custody.

11 **Explanatory note**

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

14 **[3.302] Sections 224, 225 (2), 226 and 227 (2)**

15 *omit*

16 or the judge

17 **Explanatory note**

18 This amendment omits outdated and unnecessary references to ‘the judge’ of the Supreme
19 Court. Referring to ‘the judge’ rather than just ‘the Supreme Court’ is a hangover from when
20 there was only 1 judge of the Supreme Court, and when there was a distinction between court
21 and chambers in the Supreme Court.

22 **[3.303] Section 228**

23 *substitute*

24 **228 No summons or information**

- 25 (1) This section applies to a conviction or order in a case if—
- 26 (a) a relevant person is present at the hearing of the case; and
- 27 (b) there is no summons or information (or an amendment of a
28 summons or information) in relation to the person; and

- 1 (c) the person does not object at the hearing about the matter
2 mentioned in paragraph (b).
- 3 (2) The conviction or order stands.
- 4 (3) In this section:
- 5 *relevant person* means—
- 6 (a) a convicted person; or
- 7 (b) a person against whom an order has been made; or
- 8 (c) a person whose goods have been condemned or ordered to be
9 sold as forfeited.

10 **Explanatory note**

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

13 **[3.304] Section 249 (2)**

14 *substitute*

- 15 (2) Record of the security having been made may be provided by entry
16 of it in the court's records.

17 **Explanatory note**

18 This amendment simplifies the subsection by removing unnecessary detail.

19 **[3.305] Section 311 (4) and (5)**

20 *substitute*

- 21 (4) In this Act:
- 22 *appearance*, in relation to a proceeding and whether by a party or
23 anyone else, includes appearance in accordance with this section if
24 this section applies.
- 25 (5) In this section:
- 26 *proceeding* does not include a proceeding about bail.

1 **Explanatory note**

2 This amendment brings the language and structure of the definitions into line with current
3 drafting practice.

4 **[3.306] Section 316 (5)**

5 *omit*

6 cause to be erased

7 *substitute*

8 erase

9 **Explanatory note**

10 This amendment updates language.

11 **[3.307] Schedule 1**

12 *omit*

13 (see s 10P)

14 *substitute*

15 (see s 10)

16 **Explanatory note**

17 This amendment is consequential on the remaking of section 10P as section 10.

18 **[3.308] Dictionary, definition of *magistrate*, paragraph (b)**

19 *substitute*

20 (b) for division 2.2.1 (Magistrates other than special magistrates)—
21 see section 6.

22 **Explanatory note**

23 This amendment is consequential on the remaking of division 2.2.1 (including section 6A) by
24 another amendment.

- 1 **[3.309] Dictionary, new definitions**
- 2 *insert*
- 3 *notice to defendant form*, for part 3.7 (Service and pleading by post
4 for certain offences) (other than section 116B (2))—see
5 section 116A (2).
- 6 *notice of intention to defend form*, for part 3.7 (Service and
7 pleading by post for certain offences) (other than
8 section 116B (2))—see section 116A (2).
- 9 *plea of guilty form*, for part 3.7 (Service and pleading by post for
10 certain offences) (other than section 116B (2))—see
11 section 116A (2).

12 **Explanatory note**

13 This amendment inserts signpost definitions in line with current drafting practice.

14 **[3.310] Dictionary, definitions of *registered operator* and *trader's***
15 ***plate***

16 *omit*

17 **Explanatory note**

18 This amendment omits signpost definitions of definitions that are being omitted from
19 section 117 by another amendment.

20 **[3.311] Dictionary, new definition of *vehicle-related offence***

21 *insert*

22 *vehicle-related offence*, for part 3.8 (Infringement notices for
23 certain offences)—see section 117.

24 **Explanatory note**

25 This amendment inserts a signpost definition in accordance with current drafting practice.

1 **Part 3.36** **Magistrates Court (Land**
2 **Planning and Environment**
3 **Infringement Notices) Regulation**
4 **2003**

5 **[3.312] Sections 10 and 11**

6 *substitute*

7 **10 Contents of infringement notices—identifying authorised**
8 **person**

9 An infringement notice served on a person by an authorised person
10 for an infringement notice offence against the Land Act must
11 identify the authorised person by—

- 12 (a) the authorised person's full name, or surname and initials; or
13 (b) any unique number given, for this regulation, to the authorised
14 person by the administering authority.

15 **11 Contents of reminder notices—identifying authorised**
16 **person**

17 A reminder notice served on a person by an authorised person for an
18 infringement notice offence against the Land Act must identify the
19 authorised person by—

- 20 (a) the authorised person's full name, or surname and initials; or
21 (b) any unique number given, for this regulation, to the authorised
22 person by the administering authority.

23 **Explanatory note**

24 This amendment brings the sections into line with current drafting practice. The existing
25 sections require an authorised person to be identified on an infringement or reminder notice by
26 name and the issue and expiry dates of the authorised person's identity card. The intention of

1 the infringement notice scheme under the *Magistrates Court Act 1930* is that an authorised
2 person must be identified by name or, if the authorised person is given a unique identifying
3 number by the administering authority for the infringement notice scheme, by name or
4 identifying number. An identifying number may be appropriate for particular situations. The
5 issue and expiry dates of an authorised person's identify card are not relevant to the issue of an
6 infringement or reminder notice.

7 **Part 3.37** **Magistrates Court (Sale of**
8 **Residential Property**
9 **Infringement Notices) Regulation**
10 **2004**

11 **[3.313] Sections 9 and 10**

12 *omit*

13 surname and initials; and

14 *substitute*

15 surname and initials; or

16 **Explanatory note**

17 This amendment brings the sections into line with current drafting practice. The existing
18 sections require an authorised person to be identified on an infringement or reminder notice by
19 name *and* any unique identifying number given to the authorised person by the administering
20 authority for the infringement notice scheme. The intention of the infringement notice scheme
21 under the *Magistrates Court Act 1930* is that an authorised person must be identified by name
22 or, if the authorised person is given a unique identifying number, by the authorised person's
23 name *or* identifying number. An identifying number may be appropriate for particular
24 situations.
25

1
2 **Part 3.38** **Magistrates Court (Security**
3 **Industry Infringement Notices)**
4 **Regulation 2003**

5 **[3.314] Sections 10 and 11**

6 *substitute*

7 **10 Contents of infringement notices—identifying authorised**
8 **person**

9 An infringement notice served on a person by an authorised person
10 for an infringement notice offence against the Security Act must
11 identify the authorised person by—

- 12 (a) the authorised person’s full name, or surname and initials; or
13 (b) any unique number given, for this regulation, to the authorised
14 person by the administering authority.

15 **11 Contents of reminder notices—identifying authorised**
16 **person**

17 A reminder notice served on a person by an authorised person for an
18 infringement notice offence against the Security Act must identify
19 the authorised person by—

- 20 (a) the authorised person’s full name, or surname and initials; or
21 (b) any unique number given, for this regulation, to the authorised
22 person by the administering authority.

23 **Explanatory note**

24 This amendment brings the sections into line with current drafting practice. The existing
25 sections require an authorised person to be identified on an infringement or reminder notice by
26 name and the issue and expiry dates of the authorised person’s identity card. The intention of
27 the infringement notice scheme under the *Magistrates Court Act 1930* is that an authorised
28 person must be identified by name or, if the authorised person is given a unique identifying

1 number by the administering authority for the infringement notice scheme, by name or
2 identifying number. An identifying number may be appropriate for particular situations. The
3 issue and expiry dates of an authorised person's identify card are not relevant to the issue of an
4 infringement or reminder notice.

5 **Part 3.39** **Magistrates Court (Trade**
6 **Measurement Infringement**
7 **Notices) Regulation 2002**

8 **[3.315] Sections 10 and 11**

9 *substitute*

10 **10 Contents of infringement notices—identifying authorised**
11 **person**

12 An infringement notice served on a person by an authorised person
13 for an infringement notice offence against the trade measurement
14 legislation must identify the authorised person by—

- 15 (a) the authorised person's full name, or surname and initials; or
16 (b) any unique number given, for this regulation, to the authorised
17 person by the administering authority.

18 **11 Contents of reminder notices—identifying authorised**
19 **person**

20 A reminder notice served on a person by an authorised person for an
21 infringement notice offence against the trade measurement
22 legislation must identify the authorised person by—

- 23 (a) the authorised person's full name, or surname and initials; or
24 (b) any unique number given, for this regulation, to the authorised
25 person by the administering authority.

1 **Explanatory note**

2 This amendment brings the sections into line with current drafting practice. The existing
3 sections require an authorised person to be identified on an infringement or reminder notice by
4 name and the issue and expiry dates of the authorised person's identity card. The intention of
5 the infringement notice scheme under the *Magistrates Court Act 1930* is that an authorised
6 person must be identified by name or, if the authorised person is given a unique identifying
7 number by the administering authority for the infringement notice scheme, by name or
8 identifying number. An identifying number may be appropriate for particular situations. The
9 issue and expiry dates of an authorised person's identify card are not relevant to the issue of an
10 infringement or reminder notice.

11 **Part 3.40** **Magistrates Court (Utilities**
12 **Infringement Notices) Regulation**
13 **2002**

14 **[3.316] Sections 11 and 12**

15 *omit*

16 surname and initials; and

17 *substitute*

18 surname and initials; or

19 **Explanatory note**

20 This amendment brings the sections into line with current drafting practice. The existing
21 sections require an authorised person to be identified on an infringement or reminder notice by
22 name *and* any unique identifying number given to the authorised person by the administering
23 authority for the infringement notice scheme. The intention of the infringement notice scheme
24 under the *Magistrates Court Act 1930* is that an authorised person must be identified by name
25 or, if the authorised person is given a unique identifying number, by the authorised person's
26 name *or* identifying number. An identifying number may be appropriate for particular
27 situations.

1 **Part 3.41** **National Environment Protection**
2 **Council Act 1994**

3 **[3.317] Section 13 (2) (a) and (b)**

4 *substitute*

5 (a) be developed and agreed in conjunction with the National
6 Transport Commission; and

7 (b) be determined in accordance with the *National Transport*
8 *Commission Act 2003* (Cwlth) and, if appropriate, the *Motor*
9 *Vehicle Standards Act 1989* (Cwlth).

10 **Explanatory note**

11 This amendment reflects Commonwealth legislative changes following the repeal of the
12 *National Road Transport Commission Act 1991* (Cwlth) and the establishment of the National
13 Transport Commission under the *National Transport Commission Act 2003* (Cwlth). This
14 amendment brings the paragraphs into line with the equivalent provision of the corresponding
15 Commonwealth Act (see *National Environment Protection Council Act 1994* (Cwlth)
16 section 14 2)).

17 **Part 3.42** **Nature Conservation Act 1980**

18 **[3.318] Part 13**

19 *omit*

20 (commencement: on a day fixed by the Minister by written notice)

21 **Explanatory note**

22 This amendment omits the part that deals with infringement notices. The *Magistrates Court*
23 *Act 1930*, part 3.8 (Infringement notices for certain offences) provides a system of infringement
24 notices for offences against various Acts. Regulations are made under the *Magistrates Court*
25 *Act 1930* that contain the detail for the infringement notice scheme for a particular Act.

26 The commencement of this amendment is delayed to allow a new *Magistrates Court (Nature*
27 *Conservation Infringement Notices) Regulation 2005* to be prepared.

1 **[3.319] Section 137 (2), new note**

2 *insert*

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

4 (commencement: on a day fixed by the Minister by written notice)

5 **Explanatory note**

6 This amendment inserts a standard note about approved forms. The delayed commencement
7 removes the need for the Act to be republished only for this amendment before the omission of
8 part 13.

9 **[3.320] Dictionary, definitions of *final infringement notice*,
10 *infringement notice*, *on-the-spot fine*, *relevant amount*,
11 *relevant period for payment* and *schedule 1 offence***

12 *omit*

13 (commencement: on a day fixed by the Minister by written notice)

14 **Explanatory note**

15 This amendment is consequential on the omission of part 13 by another amendment. The
16 commencement of this amendment is delayed because the omission of part 13 is delayed.

17 **[3.321] Schedule 1**

18 *omit*

19 (commencement: on a day fixed by the Minister by written notice)

20 **Explanatory note**

21 This amendment is consequential on the omission of part 13 by another amendment. The
22 commencement of this amendment is delayed because the omission of part 13 is delayed.

1 **Part 3.43 Occupational Health and Safety**
2 **Act 1989**

3 **[3.322] Section 117 (1) (c) (i)**

4 *omit*

5 infringement notice

6 *substitute*

7 information

8 **Explanatory note**

9 This amendment corrects a typographical error.

10 **[3.323] Section 143 (2) (a)**

11 *omit*

12 measures; and

13 *substitute*

14 measures; or

15 **Explanatory note**

16 Section 143 (2) requires the notification and display of compliance agreements. Similar
17 provisions of the Act are section 150 (2) for improvement notices and section 159 (2) for
18 prohibition notices. In section 143 (2) and section 150 (2) the conjunction used for linking the
19 requirements is 'and' and in section 159 (2) 'or' is used. The intention is that a person who
20 fails to notify or display the notice in accordance with paragraph (a) or paragraph (b)
21 contravenes the section. This amendment changes 'and' to 'or' to make the separate obligations
22 clearer, to bring the subsection into line with current drafting practice and to make it consistent
23 with section 159 (2).

1 **[3.324] Section 150 (2) (a)**

2 *omit*

3 under it; and

4 *substitute*

5 under it; or

6 **Explanatory note**

7 Section 150 (2) requires the notification and display of improvement notices. Similar
8 provisions of the Act are section 143 (2) for compliance agreements and section 159 (2) for
9 prohibition notices. In section 143 (2) and section 150 (2) the conjunction used for linking the
10 requirements is 'and' and in section 159 (2) 'or' is used. The intention is that a person who
11 fails to notify or display the notice in accordance with paragraph (a) or paragraph (b)
12 contravenes the section. This amendment changes 'and' to 'or' to make the separate obligations
13 clearer, to bring the subsection into line with current drafting practice and to make it consistent
14 with section 159 (2).

15 **Part 3.44 Pharmacy Act 1931**

16 **[3.325] Section 46 (a)**

17 *substitute*

18 (a) ensure the prescriber's full name is printed on the prescription;
19 and

20 **Explanatory note**

21 This amendment clarifies the requirement for a prescriber to issue prescriptions only if the
22 prescriber's name is printed on the prescription.

1 **Part 3.45 Planning and Land Act 2002**

2 **[3.326] Section 37 (1)**

3 *omit*

4 after the disclosure of an interest

5 *insert*

6 after the day an interest is disclosed

7 **Explanatory note**

8 This amendment expressly provides that, in working out the period within which the Minister
9 must be told about the disclosure of an interest, the day when the interest is disclosed is not
10 counted. The amendment is in accordance with current drafting practice and reflects the present
11 position under the Legislation Act, section 151 (2) and (3) (b).

12 **Part 3.46 Public Health Regulation 2000**

13 **[3.327] Dictionary, definition of *drug***

14 *omit*

15 and toilet articles not listed here

16 *substitute*

17 and other toilet articles

18 **Explanatory note**

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

1 **Part 3.47** **Public Sector Management Act**
2 **1994**

3 **[3.328] Section 3, definitions of *industrial award* and *relevant***
4 ***staff organisation*, paragraph (a)**

5 *omit*

6 *Industrial Relations Act 1988*

7 *substitute*

8 *Workplace Relations Act 1996*

9 **Explanatory note**

10 This amendment updates references to a Commonwealth Act.

11 **[3.329] Section 39, definition of *designated group*, paragraph (d)**

12 *substitute*

13 (d) people who have a disability.

14 **Explanatory note**

15 This amendment replaces the term ‘impairment’ with ‘disability’. This is the term now used in
16 the *Discrimination Act 1991*.

17 **[3.330] Section 39, new definition of *disability***

18 *insert*

19 *disability*—see the *Discrimination Act 1991*, section 5AA.

20 **Explanatory note**

21 This amendment inserts a new signpost definition of *disability* to direct users to the specific
22 provision of the *Discrimination Act 1991* that defines the term. This is in line with current
23 drafting practice.

1 **[3.331] Section 156 (1), definition of executive office-holder,**
2 **paragraph (a)**

3 *omit*

4 *Industrial Relations Act 1988*

5 *substitute*

6 *Workplace Relations Act 1996*

7 **Explanatory note**

8 This amendment updates a reference to a Commonwealth Act.

9 **[3.332] Section 186 (2) (a)**

10 *omit*

11 *Industrial Relations Act 1988*

12 *substitute*

13 *Workplace Relations Act 1996*

14 **Explanatory note**

15 This amendment updates a reference to a Commonwealth Act.

16 **[3.333] Section 268 (1)**

17 *omit*

18 (1) The

19 *substitute*

20 The

21 **Explanatory note**

22 This amendment is consequential on the omission of section 268 (2) by another amendment.

1 **[3.334] Section 268 (2)**

2 *omit*

3 **Explanatory note**

4 This amendment omits a redundant provision. Section 268 (2) refers to the *Public Sector*
5 *Management Act 1994*, schedule 4 which does not exist.

6 **[3.335] Schedule 2, clause 2.4, definition of *relevant staff***
7 ***organisation*, paragraph (a)**

8 *omit*

9 *Industrial Relations Act 1988*

10 *substitute*

11 *Workplace Relations Act 1996*

12 **Explanatory note**

13 This amendment updates a reference to a Commonwealth Act.

14 **Part 3.48 Rates Act 2004**

15 **[3.336] Section 8 (2)**

16 *substitute*

17 (2) In this section:

18 *school* means a non-government school under the *Education*
19 *Act 2004*, and includes a playground belonging to, or used in
20 relation to, the school.

21 **Explanatory note**

22 This amendment simplifies the definition of *school* and corrects a minor typographical error.

1 **[3.337] Dictionary, definition of *units plan***

2 *substitute*

3 *units plan* means a units plan under the *Unit Titles Act 2001*,
4 section 7.

5 **Explanatory note**

6 This amendment is consequential on the amendment of the definition of *units plan* in the *Unit*
7 *Titles Act 2001* by another amendment.

8 **Part 3.49 Rehabilitation of Offenders**
9 **(Interim) Act 2001**

10 **[3.338] Section 68 (5)**

11 *substitute*

12 (5) The *Magistrates Court Act 1930*, section 7G (Magistrates not to do
13 other work) does not apply to the appointment of a magistrate as a
14 judicial member.

15 **Explanatory note**

16 This amendment is consequential on the remaking of the *Magistrates Court Act 1930*, existing
17 section 10E as new section 7G by another amendment.

18 **Part 3.50 Remand Centres Act 1976**

19 **[3.339] Section 15 (1) (b)**

20 *omit*

- 21 • section 105 (Court may commit refractory witness)

22 *substitute*

- 23 • section 105 (Court may commit noncompliant witness)

24 **Explanatory note**

25 This amendment is consequential on the amendment of the *Magistrates Court Act 1930*,
26 section 105 by an earlier amendment.

1 **Part 3.51 Residential Tenancies**
2 **Amendment Act 2004**

3 **[3.340] Section 39 heading**

4 *substitute*

5 **39 Appeal from decisions of tribunal**
6 **Section 125 (2)**

7 (commencement: 8 March 2005)

8 **Explanatory note**

9 This amendment is consequential on an amendment of the *Residential Tenancies Act 1997*
10 made by the *Court Procedures (Consequential Amendments) Act 2004* (see sch 1, amdt 1.626).
11 The amendment omitted the *Residential Tenancies Act 1997*, section 125 and remade
12 section 126 (which deals with appeals to the Supreme Court from decisions of the Residential
13 Tenancies Tribunal) as section 125. The *Residential Tenancies Amendment Act 2004* (which
14 was passed about the same time as the *Court Procedures (Consequential Amendments)*
15 *Act 2004*) included an amendment of the *Residential Tenancies Act 1997*, section 126. This
16 amendment ensures that the amendment made to section 126 by the *Residential Tenancies*
17 *Amendment Act 2004* is effective and confirms an editorial amendment made under the
18 Legislation Act, section 144.

19 The amendment is backdated to 8 March 2005, which is the day the relevant provision of the
20 *Residential Tenancies Amendment Act 2004* commenced.

21 **Part 3.52 Roads and Public Places Act**
22 **1937**

23 **[3.341] Section 12E (2) and (3)**

24 *substitute*

25 (2) The vehicle may be removed by, or under the direction of, a roads
26 and public places officer and placed in a retention area.

27 (3) However, if the vehicle is a vehicle for which there is a registered
28 operator, the vehicle may be removed and placed in a retention area
29 only if—

1 (a) a roads and public places officer has given the operator a
2 written notice under subsection (4); and

3 (b) the vehicle has not been removed within 2 days after the day
4 the operator was given the notice.

5 **Explanatory note**

6 The amendment of subsection (2) makes it clear that a vehicle may be removed only by, or
7 under the direction of, a roads and public places officer. The amendment of subsection (3)
8 brings the structure of the subsection into line with current drafting practice and makes it clear
9 that the notice must be given to the registered operator.

10 **[3.342] Section 12E (4)**

11 *omit*

12 The notice must require the person—

13 *substitute*

14 The notice must include a statement requiring the person—

15 **Explanatory note**

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

17 **Part 3.53 Road Transport (Alcohol and**
18 **Drugs) Act 1977**

19 **[3.343] Part 1 heading, note**

20 *omit*

21 **Explanatory note**

22 This amendment is consequential on new notes being inserted in section 1 by another
23 amendment.

1 **[3.344] Section 1, new notes**

2 *insert*

3 *Note 1* This Act is part of the road transport legislation. See the *Road*
4 *Transport (General) Act 1999* for various provisions about the
5 administration and enforcement of the road transport legislation
6 generally.

7 *Note 2* Other road transport legislation includes the following:

- 8 • *Road Transport (Dimensions and Mass) Act 1990*
- 9 • *Road Transport (Driver Licensing) Act 1999*
- 10 • *Road Transport (Public Passenger Services) Act 2001*
- 11 • *Road Transport (Safety and Traffic Management) Act 1999*
- 12 • *Road Transport (Vehicle Registration) Act 1999.*

13 *Note 3* A reference to an Act includes a reference to the statutory instruments
14 made or in force under the Act, including any regulation (see
15 Legislation Act, s 104).

16 **Explanatory note**

17 This amendment restructures the existing note at part 1 heading in accordance with current
18 drafting practice.

19 **[3.345] Section 3 heading**

20 *substitute*

21 **3 Dictionary**

22 **Explanatory note**

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

24 **[3.346] Section 41A (3)**

25 *omit*

26 the owner, registered operator or driver

27 *substitute*

28 an owner, a registered operator or the driver

1 **Explanatory note**

2 This amendment makes it clear that the provision operates in relation to each owner or
3 registered operator if there is more than 1 owner or 1 registered operator.

4 **Part 3.54 Road Transport (Dimensions and**
5 **Mass) Act 1990**

6 **[3.347] Part 1 heading, note**

7 *omit*

8 **Explanatory note**

9 This amendment is consequential on new notes being inserted in section 1 by another
10 amendment.

11 **[3.348] Section 1, new notes**

12 *insert*

13 *Note 1* This Act is part of the road transport legislation. See the *Road*
14 *Transport (General) Act 1999* for various provisions about the
15 administration and enforcement of the road transport legislation
16 generally.

17 *Note 2* Other road transport legislation includes the following:

- 18 • *Road Transport (Alcohol and Drugs) Act 1977*
- 19 • *Road Transport (Driver Licensing) Act 1999*
- 20 • *Road Transport (Public Passenger Services) Act 2001*
- 21 • *Road Transport (Safety and Traffic Management) Act 1999*
- 22 • *Road Transport (Vehicle Registration) Act 1999.*

23 *Note 3* A reference to an Act includes a reference to the statutory instruments
24 made or in force under the Act, including any regulation (see
25 Legislation Act, s 104).

26 **Explanatory note**

27 This amendment restructures the existing note at part 1 heading in accordance with current
28 drafting practice.

1 **[3.349] Section 3 heading**

2 *substitute*

3 **3 Dictionary**

4 **Explanatory note**

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

6 **Part 3.55 Road Transport (Driver**
7 **Licensing) Act 1999**

8 **[3.350] Part 1 heading, note**

9 *omit*

10 **Explanatory note**

11 This amendment is consequential on new notes being inserted in section 1 by another
12 amendment.

13 **[3.351] Section 1, new notes**

14 *insert*

15 *Note 1* This Act is part of the road transport legislation. See the *Road*
16 *Transport (General) Act 1999* for various provisions about the
17 administration and enforcement of the road transport legislation
18 generally.

19 *Note 2* Other road transport legislation includes the following:

- 20
- 21 • *Road Transport (Alcohol and Drugs) Act 1977*
 - 22 • *Road Transport (Dimensions and Mass) Act 1990*
 - 23 • *Road Transport (Public Passenger Services) Act 2001*
 - 24 • *Road Transport (Safety and Traffic Management) Act 1999*
 - 25 • *Road Transport (Vehicle Registration) Act 1999.*

26 *Note 3* A reference to an Act includes a reference to the statutory instruments
27 made or in force under the Act, including any regulation (see
Legislation Act, s 104).

1 **Explanatory note**

2 This amendment restructures the existing note at part 1 heading in accordance with current
3 drafting practice.

4 **[3.352] Section 3, note**

5 *substitute*

6 *Note 1* This Act establishes a driver licensing system, including a demerit
7 points system, and provides for the classes of driver licences and for the
8 issue, suspension, cancellation and renewal of driver licences.

9 *Note 2* The Commonwealth Act mentioned in s 3 (a) (i) has been repealed and
10 replaced by the *National Transport Commission Act 2003* (Cwlth), and
11 the agreements scheduled to the repealed Act have been independently
12 terminated and replaced by the *Inter-Governmental Agreement for*
13 *Regulatory and Operational Reform in Road, Rail and Intermodal*
14 *Transport*.

15 **Explanatory note**

16 This amendment adds new note 2 to give a context to the references in the provision to the
17 *National Road Transport Commission Act 1991* (Cwlth) consequent on the repeal of that Act
18 and the establishment of the National Transport Commission by the *National Transport*
19 *Commission Act 2003* (Cwlth).

20 **[3.353] Section 4 heading**

21 *substitute*

22 **4 Dictionary**

23 **Explanatory note**

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

25 **[3.354] Section 25**

26 *omit*

27 to make representations why

28 *substitute*

29 to make representations about why

1 **Explanatory note**

2 This amendment improves the clarity of the provision.

3 **[3.355] Section 27**

4 *substitute*

5 **27 Regulations may apply certain documents etc**

6 (1) A regulation may apply a publication of the National Transport
7 Commission approved, or of matters approved, by the Australian
8 Transport Council or any other instrument as in force from time to
9 time.

10 *Note 1* The text of an applied, adopted or incorporated law or instrument,
11 whether applied as in force from time to time or as at a particular time,
12 is taken to be a notifiable instrument if the operation of the Legislation
13 Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

14 *Note 2* A notifiable instrument must be notified under the Legislation Act.

15 (2) For a regulation, a regulation may define a term defined by this Act
16 (or apply the definition of a term in an instrument mentioned in
17 subsection (1))—

18 (a) in the same (or in substantially the same) way as it is defined
19 by this Act; or

20 (b) by reference to a matter included in the term as defined by this
21 Act; or

22 (c) by reference to a combination of matters included in the term
23 as defined by this Act and in any other term defined by this
24 Act; or

25 (d) for applying a publication of the National Transport
26 Commission approved, or of matters approved, by the
27 Australian Transport Council—in the same way as it is defined
28 in the publication despite anything in this Act or other road
29 transport legislation.

- 1 (3) In this section:
2 *publication of the National Transport Commission* includes—
3 (a) a document published by or for the National Road Transport
4 Commission under the *National Road Transport Commission*
5 *Act 1991* (Cwlth); and
6 (b) a document published for the National Transport Commission.
7 *Note* The Commonwealth Act mentioned in par (a) has been repealed and
8 replaced by the *National Transport Commission Act 2003* (Cwlth).

9 **Explanatory note**

10 This amendment updates the section consequent on the repeal of the *National Road Transport*
11 *Commission Act 1991* (Cwlth) and the establishment of the National Transport Commission by
12 the *National Transport Commission Act 2003* (Cwlth). The amendment brings the language of
13 the section into line with current drafting practice.

14 **[3.356] Dictionary, definition of *Australian Transport Council***

15 *substitute*

16 *Australian Transport Council* means the Australian Transport
17 Council mentioned in the *National Transport Commission Act 2003*
18 (Cwlth), section 4 or its successor.

19 **Explanatory note**

20 This amendment updates the definition consequent on the repeal of the *National Road*
21 *Transport Commission Act 1991* (Cwlth) and the establishment of the National Transport
22 Commission by the *National Transport Commission Act 2003* (Cwlth).

23 **[3.357] Dictionary, definition of *National Road Transport***
24 ***Commission***

25 *substitute*

26 *National Transport Commission* means the National Transport
27 Commission established by the *National Transport Commission*
28 *Act 2003* (Cwlth) or its successor.

1 **Explanatory note**

2 This amendment is consequent on the repeal of the *National Road Transport Commission*
3 *Act 1991* (Cwlth) and the establishment of the National Transport Commission by the *National*
4 *Transport Commission Act 2003* (Cwlth).

5 **Part 3.56 Road Transport (General) Act**
6 **1999**

7 **[3.358] Part 1 heading, note**

8 *omit*

9 **Explanatory note**

10 This amendment is consequential on new notes being inserted in section 1 by another
11 amendment.

12 **[3.359] Section 1, new notes**

13 *insert*

14 *Note 1* This Act is part of the road transport legislation. It provides for the
15 administration and enforcement of the road transport legislation
16 generally.

17 *Note 2* Other road transport legislation includes the following:

- 18 • *Road Transport (Alcohol and Drugs) Act 1977*
- 19 • *Road Transport (Dimensions and Mass) Act 1990*
- 20 • *Road Transport (Driver Licensing) Act 1999*
- 21 • *Road Transport (Public Passenger Services) Act 2001*
- 22 • *Road Transport (Safety and Traffic Management) Act 1999*
- 23 • *Road Transport (Vehicle Registration) Act 1999.*

24 *Note 3* A reference to an Act includes a reference to the statutory instruments
25 made or in force under the Act, including any regulation (see
26 Legislation Act, s 104).

27 **Explanatory note**

28 This amendment restructures the existing note at part 1 heading in accordance with current
29 drafting practice.

1 **[3.360] Section 3, new note**

2 *insert*

3 *Note* The Commonwealth Act mentioned in s 3 (a) has been repealed and
4 replaced by the *National Transport Commission Act 2003* (Cwlth), and
5 the agreements scheduled to the repealed Act have been independently
6 terminated and replaced by the *Inter-Governmental Agreement for*
7 *Regulatory and Operational Reform in Road, Rail and Intermodal*
8 *Transport*.

9 **Explanatory note**

10 This amendment adds a new note to give a context to the references in the provision to the
11 *National Road Transport Commission Act 1991* (Cwlth) consequent on the repeal of that Act
12 and the establishment of the National Transport Commission by the *National Transport*
13 *Commission Act 2003* (Cwlth).

14 **[3.361] Section 10 (1)**

15 *omit*

16 (1) In the road transport legislation,

17 *substitute*

18 In the road transport legislation,

19 **Explanatory note**

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

21 **[3.362] Section 10 (1) (a) (ii)**

22 *omit*

23 a previous

24 *insert*

25 the

26 **Explanatory note**

27 Section 10 defines who is a responsible person for a vehicle. Paragraph (1) (a) (ii) provides
28 that, if the vehicle has been disposed of by 'a previous registered operator', anyone who
29 acquired the vehicle from the operator is a responsible person for the vehicle. Accordingly,

1 anyone who has acquired the vehicle from any previous registered operator, as distinct from
2 only the most recent registered operator, is a responsible person for the vehicle. This
3 amendment removes the anomaly so that only someone who has acquired the vehicle from the
4 most recent registered operator is a responsible person for the vehicle.

5 **[3.363] Section 10 (2)**

6 *substitute*

7 *Note* A statutory instrument may make different provisions about different
8 matters and apply the provisions differently by reference to stated
9 exceptions or factors (see Legislation Act, s 48).

10 **Explanatory note**

11 This amendment omits subsection (2). The subsection provides that regulations may prescribe
12 different people for different provisions of the road transport legislation for subsection (1) (d)
13 (which is about prescribing a person to be a responsible person for a vehicle). The subsection is
14 unnecessary because the Legislation Act, section 48 authorises a statutory instrument to make
15 different provisions about different matters. A standard note about section 48 is inserted.

16 **[3.364] Section 214 (1)**

17 *omit*

18 (1) An authorised insurer

19 *substitute*

20 An authorised insurer

21 **Explanatory note**

22 This amendment is consequential on the omission of subsection (2) by another amendment.

23 **[3.365] Section 214 (2)**

24 *substitute*

25 *Note* A statutory instrument may make different provisions about different
26 matters and apply the provisions differently by reference to stated
27 exceptions or factors (see Legislation Act, s 48).

28 **Explanatory note**

29 This amendment omits subsection (2). The subsection provides that regulations may prescribe
30 different maximum premiums for different kinds of motor vehicles, motor vehicles used for

1 different purposes etc. The subsection is unnecessary because the Legislation Act, section 48
2 authorises a statutory instrument to make different provisions about different matters. A
3 standard note about section 48 is inserted.

4 **[3.366] Section 229**

5 *substitute*

6 **229 Regulations may apply certain documents etc**

7 (1) A regulation may apply a publication of the National Transport
8 Commission approved, or of matters approved, by the Australian
9 Transport Council or any other instrument as in force from time to
10 time.

11 *Note 1* The text of an applied, adopted or incorporated law or instrument,
12 whether applied as in force from time to time or as at a particular time,
13 is taken to be a notifiable instrument if the operation of the Legislation
14 Act, s 47 (5) or (6) is not disappplied (see s 47 (7)).

15 *Note 2* A notifiable instrument must be notified under the Legislation Act.

16 (2) For a regulation, a regulation may define a term defined by this Act
17 (or apply the definition of a term in an instrument mentioned in
18 subsection (1))—

19 (a) in the same (or in substantially the same) way as it is defined
20 by this Act; or

21 (b) by reference to a matter included in the term as defined by this
22 Act; or

23 (c) by reference to a combination of matters included in the term
24 as defined by this Act and in any other term defined by this
25 Act; or

26 (d) for applying a publication of the National Transport
27 Commission approved, or of matters approved, by the
28 Australian Transport Council—in the same way as it is defined
29 in the publication despite anything in this Act or other road
30 transport legislation.

1 (3) In this section:

2 *publication of the National Transport Commission* includes—

3 (a) a document published by or for the National Road Transport
4 Commission under the *National Road Transport*
5 *Commission Act 1991* (Cwlth); and

6 (b) a document published for the National Transport Commission.

7 *Note* The Commonwealth Act mentioned in par (a) has been repealed and
8 replaced by the *National Transport Commission Act 2003* (Cwlth).

9 **Explanatory note**

10 This amendment updates the section consequent on the repeal of the *National Road Transport*
11 *Commission Act 1991* (Cwlth) and the establishment of the National Transport Commission by
12 the *National Transport Commission Act 2003* (Cwlth). The amendment brings the language of
13 the section into line with current drafting practice.

14 **[3.367] Dictionary, definition of *Australian Transport Council***

15 *substitute*

16 *Australian Transport Council* means the Australian Transport
17 Council mentioned in the *National Transport Commission Act 2003*
18 (Cwlth), section 4 or its successor.

19 **Explanatory note**

20 This amendment updates the definition consequent on the repeal of the *National Road*
21 *Transport Commission Act 1991* (Cwlth) and the establishment of the National Transport
22 Commission by the *National Transport Commission Act 2003* (Cwlth).

23 **[3.368] Dictionary, definition of *National Road Transport***
24 ***Commission***

25 *substitute*

26 *National Transport Commission* means the National Transport
27 Commission established by the *National Transport Commission*
28 *Act 2003* (Cwlth) or its successor.

1 **Explanatory note**

2 This amendment is consequent on the repeal of the *National Road Transport Commission*
3 *Act 1991* (Cwlth) and the establishment of the National Transport Commission by the *National*
4 *Transport Commission Act 2003* (Cwlth).

5 **Part 3.57 Road Transport (Public**
6 **Passenger Services) Act 2001**

7 **[3.369] Part 1 heading, note**

8 *omit*

9 **Explanatory note**

10 This amendment is consequential on new notes being inserted in section 1 by another
11 amendment.

12 **[3.370] Section 1, new notes**

13 *insert*

14 *Note 1* This Act is part of the road transport legislation. See the *Road*
15 *Transport (General) Act 1999* for various provisions about the
16 administration and enforcement of the road transport legislation
17 generally.

18 *Note 2* Other road transport legislation includes the following:

- 19 • *Road Transport (Alcohol and Drugs) Act 1977*
20 • *Road Transport (Dimensions and Mass) Act 1990*
21 • *Road Transport (Driver Licensing) Act 1999*
22 • *Road Transport (Safety and Traffic Management) Act 1999*
23 • *Road Transport (Vehicle Registration) Act 1999.*

24 *Note 3* A reference to an Act includes a reference to the statutory instruments
25 made or in force under the Act, including any regulation (see
26 Legislation Act, s 104).

27 **Explanatory note**

28 This amendment restructures the existing note at part 1 heading in accordance with current
29 drafting practice.

1 **[3.371] New section 10A**

2 *in division 2.1, insert*

3 **10A Meaning of *bus* and *public bus***

4 In this Act:

5 *bus* means a motor vehicle built mainly to carry people that seats
6 over 9 adults (including the driver).

7 *public bus* means a bus used to provide a bus service.

8 **Explanatory note**

9 This amendment relocates (without change) the dictionary definitions of these terms to a more
10 appropriate place in the Act.

11 **[3.372] Section 17 (3) (f) and (g)**

12 *substitute*

13 (f) the records (including accounts) to be made and kept, how they
14 are to be made and kept, and their inspection; and

15 (g) the provision of information and reports to the road transport
16 authority about the regular route service and the verification of
17 the information and reports; and

18 (commencement: the later of the commencement of this Act or the *Road*
19 *Transport (Public Passenger Services) (Hire Cars) Amendment Act 2004*)

20 **Explanatory note**

21 Section 17 (3) includes examples of things that may be included in a service contract for a
22 regular route service. This amendment brings these paragraphs into line with the approach in
23 the other provisions of the Act in relation to examples of things that may be included in a
24 regulation. In particular, it removes the references to the holder of a service contract. The
25 dictionary definition of *holder* provides that the holder of a service contract means the person
26 who (apart from the road transport authority) is a party to the contract. The term is only used in
27 this context in the paragraphs being replaced by this amendment. The dictionary definition is
28 consequentially omitted by another amendment.

29 The commencement of this amendment is delayed because the dictionary definition of *holder* is
30 amended by the *Road Transport (Public Passenger Services) (Hire Cars) Amendment Act 2004*.

1 **[3.373] Dictionary, definition of *bus***

2 *substitute*

3 *bus*—see section 10A.

4 **Explanatory note**

5 This amendment is consequential on the insertion of new section 10A by another amendment.

6 **[3.374] Dictionary, definition of *holder***

7 *omit*

8 (commencement: the later of the commencement of this Act or the *Road*
9 *Transport (Public Passenger Services) (Hire Cars) Amendment Act 2004*)

10 **Explanatory note**

11 This amendment is consequential on the replacement of section 17 (3) (f) and (g) by another
12 amendment. The commencement of this amendment is delayed because the dictionary
13 definition of *holder* is amended by the *Road Transport (Public Passenger Services) (Hire Cars)*
14 *Amendment Act 2004*.

15 **[3.375] Dictionary, definition of *public bus***

16 *substitute*

17 *public bus*—see section 10A.

18 **Explanatory note**

19 This amendment is consequential on the insertion of new section 10A by another amendment.

20 **Part 3.58 Road Transport (Safety and**
21 **Traffic Management) Act 1999**

22 **[3.376] Part 1 heading, note**

23 *omit*

24 **Explanatory note**

25 This amendment is consequential on new notes being inserted in section 1 by another
26 amendment.

1 **[3.377] Section 1, new notes**

2 *insert*

3 *Note 1* This Act is part of the road transport legislation. See the *Road*
4 *Transport (General) Act 1999* for various provisions about the
5 administration and enforcement of the road transport legislation
6 generally.

7 *Note 2* Other road transport legislation includes the following:

- 8 • *Road Transport (Alcohol and Drugs) Act 1977*
9 • *Road Transport (Dimensions and Mass) Act 1990*
10 • *Road Transport (Driver Licensing) Act 1999*
11 • *Road Transport (Public Passenger Services) Act 2001*
12 • *Road Transport (Vehicle Registration) Act 1999.*

13 *Note 3* A reference to an Act includes a reference to the statutory instruments
14 made or in force under the Act, including any regulation (see
15 Legislation Act, s 104).

16 **Explanatory note**

17 This amendment restructures the existing note at part 1 heading in accordance with current
18 drafting practice.

19 **[3.378] Section 3, new note**

20 *insert*

21 *Note* The Commonwealth Act mentioned in s 3 (a) (i) has been repealed and
22 replaced by the *National Transport Commission Act 2003* (Cwlth), and
23 the agreements scheduled to the repealed Act have been independently
24 terminated and replaced by the *Inter-Governmental Agreement for*
25 *Regulatory and Operational Reform in Road, Rail and Intermodal*
26 *Transport.*

27 **Explanatory note**

28 This amendment adds a new note to give a context to the references in the provision to the
29 *National Road Transport Commission Act 1991* (Cwlth) consequent on the repeal of that Act
30 and the establishment of the National Transport Commission by the *National Transport*
31 *Commission Act 2003* (Cwlth).

1 **[3.379] Section 4 heading**

2 *substitute*

3 **4 Dictionary**

4 **Explanatory note**

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

6 **[3.380] Section 19 heading**

7 *substitute*

8 **19 Offences about prescribed traffic control devices**

9 **Explanatory note**

10 This amendment adds the word ‘prescribed’ to the heading.

11 **[3.381] Section 34**

12 *substitute*

13 **34 Regulations may apply certain documents etc**

14 (1) A regulation may apply a publication of the National Transport
15 Commission approved, or of matters approved, by the Australian
16 Transport Council or any other instrument as in force from time to
17 time.

18 *Note 1* The text of an applied, adopted or incorporated law or instrument,
19 whether applied as in force from time to time or as at a particular time,
20 is taken to be a notifiable instrument if the operation of the Legislation
21 Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

22 *Note 2* A notifiable instrument must be notified under the Legislation Act.

23 (2) For a regulation, a regulation may define a term defined by this Act
24 (or apply the definition of a term in an instrument mentioned in
25 subsection (1))—

26 (a) in the same (or in substantially the same) way as it is defined
27 by this Act; or

- 1 (b) by reference to a matter included in the term as defined by this
2 Act; or
- 3 (c) by reference to a combination of matters included in the term
4 as defined by this Act and in any other term defined by this
5 Act; or
- 6 (d) for applying a publication of the National Transport
7 Commission approved, or of matters approved, by the
8 Australian Transport Council—in the same way as it is defined
9 in the publication despite anything in this Act or other road
10 transport legislation.

11 (3) In this section:

12 *publication of the National Transport Commission* includes—

- 13 (a) a document published by or for the National Road Transport
14 Commission under the *National Road Transport Commission*
15 *Act 1991* (Cwlth); and
- 16 (b) a document published for the National Transport Commission.

17 *Note* The Commonwealth Act mentioned in par (a) has been repealed and
18 replaced by the *National Transport Commission Act 2003* (Cwlth).

19 **Explanatory note**

20 This amendment updates the section consequent on the repeal of the *National Road Transport*
21 *Commission Act 1991* (Cwlth) and the establishment of the National Transport Commission by
22 the *National Transport Commission Act 2003* (Cwlth). The amendment brings the language of
23 the section into line with current drafting practice.

1 **[3.382] Dictionary, definition of *Australian Transport Council***

2 *substitute*

3 *Australian Transport Council* means the Australian Transport
4 Council mentioned in the *National Transport Commission Act 2003*
5 (Cwlth), section 4 or its successor.

6 **Explanatory note**

7 This amendment updates the definition consequent on the repeal of the *National Road*
8 *Transport Commission Act 1991* (Cwlth) and the establishment of the National Transport
9 Commission by the *National Transport Commission Act 2003* (Cwlth).

10 **[3.383] Dictionary, definition of *National Road Transport***
11 ***Commission***

12 *substitute*

13 *National Transport Commission* means the National Transport
14 Commission established by the *National Transport Commission*
15 *Act 2003* (Cwlth) or its successor.

16 **Explanatory note**

17 This amendment is consequent on the repeal of the *National Road Transport Commission*
18 *Act 1991* (Cwlth) and the establishment of the National Transport Commission by the *National*
19 *Transport Commission Act 2003* (Cwlth).

20 **Part 3.59 Road Transport (Vehicle**
21 **Registration) Act 1999**

22 **[3.384] Part 1 heading, note**

23 *omit*

24 **Explanatory note**

25 This amendment is consequential on new notes bring inserted in section 1 by another
26 amendment.

1 **[3.385] Section 1, new notes**

2 *insert*

3 *Note 1* This Act is part of the road transport legislation. See the *Road*
4 *Transport (General) Act 1999* for various provisions about the
5 administration and enforcement of the road transport legislation
6 generally.

7 *Note 2* Other road transport legislation includes the following:

- 8 • *Road Transport (Alcohol and Drugs) Act 1977*
- 9 • *Road Transport (Dimensions and Mass) Act 1990*
- 10 • *Road Transport (Driver Licensing) Act 1999*
- 11 • *Road Transport (Public Passenger Services) Act 2001*
- 12 • *Road Transport (Safety and Traffic Management) Act 1999.*

13 *Note 3* A reference to an Act includes a reference to the statutory instruments
14 made or in force under the Act, including any regulation (see
15 Legislation Act, s 104).

16 **Explanatory note**

17 This amendment restructures the existing note at part 1 heading in accordance with current
18 drafting practice.

19 **[3.386] Section 3, new note**

20 *insert*

21 *Note* The Commonwealth Act mentioned in s 3 (a) (i) has been repealed and
22 replaced by the *National Transport Commission Act 2003* (Cwlth), and
23 the agreements scheduled to the repealed Act have been independently
24 terminated and replaced by the *Inter-Governmental Agreement for*
25 *Regulatory and Operational Reform in Road, Rail and Intermodal*
26 *Transport.*

27 **Explanatory note**

28 This amendment adds a new note to give a context to the references in the provision to the
29 *National Road Transport Commission Act 1991* (Cwlth) consequent on the repeal of that Act
30 and the establishment of the National Transport Commission by the *National Transport*
31 *Commission Act 2003* (Cwlth).

1 **[3.387] Section 4 heading**

2 *substitute*

3 **4 Dictionary**

4 **Explanatory note**

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

6 **[3.388] Section 16**

7 *substitute*

8 **16 Regulations may apply certain documents etc**

9 (1) A regulation may apply a publication of the National Transport
10 Commission approved, or of matters approved, by the Australian
11 Transport Council or any other instrument as in force from time to
12 time.

13 *Note 1* The text of an applied, adopted or incorporated law or instrument,
14 whether applied as in force from time to time or as at a particular time,
15 is taken to be a notifiable instrument if the operation of the Legislation
16 Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

17 *Note 2* A notifiable instrument must be notified under the Legislation Act.

18 (2) For a regulation, a regulation may define a term defined by this Act
19 (or apply the definition of a term in an instrument mentioned in
20 subsection (1))—

21 (a) in the same (or in substantially the same) way as it is defined
22 by this Act; or

23 (b) by reference to a matter included in the term as defined by this
24 Act; or

25 (c) by reference to a combination of matters included in the term
26 as defined by this Act and in any other term defined by this
27 Act; or

1 (d) for applying a publication of the National Transport
2 Commission approved, or of matters approved, by the
3 Australian Transport Council—in the same way as it is defined
4 in the publication despite anything in this Act or other road
5 transport legislation.

6 (3) In this section:

7 ***publication of the National Transport Commission*** includes—

8 (a) a document published by or for the National Road Transport
9 Commission under the *National Road Transport Commission*
10 *Act 1991* (Cwlth); and

11 (b) a document published for the National Transport Commission.

12 *Note* The Commonwealth Act mentioned in par (a) has been repealed and
13 replaced by the *National Transport Commission Act 2003* (Cwlth).

14 **Explanatory note**

15 This amendment updates the section consequent on the repeal of the *National Road Transport*
16 *Commission Act 1991* (Cwlth) and the establishment of the National Transport Commission by
17 the *National Transport Commission Act 2003* (Cwlth). The amendment brings the language of
18 the section into line with current drafting practice.

19 **[3.389] Dictionary, definition of *Australian Transport Council***

20 *substitute*

21 ***Australian Transport Council*** means the Australian Transport
22 Council mentioned in the *National Transport Commission Act 2003*
23 (Cwlth), section 4 or its successor.

24 **Explanatory note**

25 This amendment updates the definition consequent on the repeal of the *National Road*
26 *Transport Commission Act 1991* (Cwlth) and the establishment of the National Transport
27 Commission by the *National Transport Commission Act 2003* (Cwlth).

1 **[3.390] Dictionary, definition of *garage address*, paragraph (b) (i)**

2 *substitute*

3 (i) the vehicle has only 1 registered operator—the home
4 address of the registered operator; or

5 **Explanatory note**

6 This amendment replaces the reference of ‘1 operator’ to ‘1 registered operator’ for consistency
7 with paragraph (b) (ii) and (iii) of the definition.

8 **[3.391] Dictionary, definition of *National Road Transport*
9 *Commission***

10 *substitute*

11 *National Transport Commission* means the National Transport
12 Commission established by the *National Transport Commission*
13 *Act 2003* (Cwlth) or its successor.

14 **Explanatory note**

15 This amendment is consequent on the repeal of the *National Road Transport Commission*
16 *Act 1991* (Cwlth) and the establishment of the National Transport Commission by the *National*
17 *Transport Commission Act 2003* (Cwlth).

18 **[3.392] Dictionary, definition of *registered operator*, new note**

19 *insert*

20 *Note* A reference to the registered operator includes each registered operator
21 (see s 29).

22 **Explanatory note**

23 This amendment inserts a note about the extended meaning of the registered operator to assist
24 users of the Act.

1 **Part 3.60** **Road Transport (Vehicle**
2 **Registration) Regulation 2000**

3 **[3.393] Schedule 1, section 1.1 (1), new note**

4 *insert*

5 *Note* The Commonwealth Act mentioned in s (1) has been repealed and
6 replaced by the *National Transport Commission Act 2003* (Cwlth).

7 **Explanatory note**

8 This amendment adds a new note to give a context to the references in the provision to the
9 *National Road Transport Commission Act 1991* (Cwlth) consequent on the repeal of that Act
10 and the establishment of the National Transport Commission by the *National Transport*
11 *Commission Act 2003* (Cwlth).

12 **[3.394] Schedule 1, section 1.3**

13 *omit*

14 **Explanatory note**

15 This amendment omits an unnecessary provision about how a provision in the schedule is to be
16 referred to by another provision of the schedule.

17 **[3.395] Dictionary, definition of *emergency worker***

18 *substitute*

19 ***emergency worker***—see the *Road Transport (Safety and Traffic*
20 *Management) Regulation 2000*, section 33 (1), definition of
21 ***emergency worker***.

22 **Explanatory note**

23 The existing definition defines the term by reference to the *Road Transport (Safety and Traffic*
24 *Management) Regulation 1999*, dictionary. That definition was omitted by another enactment
25 without the above definition being consequentially amended. This amendment corrects that
26 oversight.

- 1 **[3.396] Dictionary, definition of *road tank vehicle***
2 *substitute*
- 3 *road tank vehicle* has the same meaning as in the 6th edition of the
4 *Australian Code for the Transport of Dangerous Goods by Road*
5 *and Rail* as approved by the Competent Authorities Panel, the
6 Australian Committee for the Transport of Dangerous Goods and
7 the Transport Ministers of Australia and published jointly by—
- 8 (a) the National Road Transport Commission under the *National*
9 *Road Transport Commission Act 1991* (Cwlth); and
- 10 (b) the Federal Office of Road Safety (now known as the
11 Australian Transport Safety Bureau).
- 12 *Note* The Commonwealth Act mentioned in par (a) has been repealed and
13 replaced by the *National Transport Commission Act 2003* (Cwlth).

14 **Explanatory note**

15 This amendment updates the definition consequent on the repeal of the *National Road*
16 *Transport Commission Act 1991* (Cwlth) and the establishment of the National Transport
17 Commission by the *National Transport Commission Act 2003* (Cwlth).

18 **Part 3.61 Sale of Motor Vehicles Act 1977**

- 19 **[3.397] Sections 5 and 5A**
20 *substitute*
- 21 **5 Registrar of Motor Vehicle Dealers**
- 22 The chief executive must appoint a public servant as Registrar of
23 Motor Vehicle Dealers.
- 24 *Note 1* For the making of appointments (including acting appointments), see
25 the Legislation Act, pt 19.3.
- 26 *Note 2* In particular, an appointment may be made by naming a person or
27 nominating the occupant of a position (see Legislation Act, s 207).

1 **5A Deputy Registrar of Motor Vehicle Dealers**

2 (1) The chief executive must appoint a public servant as Deputy
3 Registrar of Motor Vehicle Dealers.

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

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

8 (2) The deputy registrar may exercise any function of the registrar,
9 subject to any direction of the registrar.

10 **Explanatory note**

11 This amendment corrects an error in the title of the registrar and deputy registrar. The *Statute*
12 *Law Amendment Act 2003 (No 2)*, amendment 3.202 updated the appointment provisions but
13 inadvertently used the titles ‘Registrar of Motor Vehicles’ and ‘Deputy Registrar of Motor
14 Vehicles’.

15 **[3.398] Section 52 (1)**

16 *omit*

17 , except as provided by the *Evidence Act 1971*, section 57,

18 **Explanatory note**

19 This amendment removes a redundant reference. Section 52 relates to a person who appears as
20 a witness at an inquiry before the registrar and refuses to give sworn evidence. The *Evidence*
21 *Act 1971*, section 57 (now repealed) related to a person being asked a question that would tend
22 to incriminate the person or the person’s spouse. It was repealed by the *Sexuality*
23 *Discrimination Legislation Amendment Act 2004* which removed discrimination relating to
24 sexuality and marital status. The Legislation Act, section 170 preserves the common law
25 privilege against selfincrimination and the *Evidence Act 1995* (Cwlth), section 128 contains
26 provisions that apply if a witness raises the privilege in a proceeding.

1 **[3.399] Section 66 and sections 70 to 70H**

2 *omit*

3 (commencement: on a day fixed by the Minister by written notice)

4 **Explanatory note**

5 This amendment omits sections that deal with infringement notices. The *Magistrates Court*
6 *Act 1930*, part 3.8 (Infringement notices for certain offences) provides a system of infringement
7 notices for offences against various Acts. Regulations are made under the *Magistrates Court*
8 *Act 1930* that contain the detail for the infringement notice scheme for a particular Act.

9 The commencement of this amendment is delayed to allow a new *Magistrates Court (Sale of*
10 *Motor Vehicles Infringement Notices) Regulation 2005* to be prepared.

11 **[3.400] Schedule 3**

12 *omit*

13 (commencement: on a day fixed by the Minister by written notice)

14 **Explanatory note**

15 This amendment is consequential on the omission of section 66 and sections 70 to 70H by
16 another amendment. The commencement of this amendment is delayed because the omission
17 of those sections is delayed.

18 **[3.401] Dictionary, definitions of *final infringement notice,***
19 ***infringement notice, notified person, on-the-spot fine,***
20 ***relevant amount, relevant period for payment and***
21 ***schedule 3 offence***

22 *omit*

23 (commencement: on a day fixed by the Minister by written notice)

24 **Explanatory note**

25 This amendment is consequential on the omission of section 66 and sections 70 to 70H by
26 another amendment. The commencement of this amendment is delayed because the omission
27 of those sections is delayed.

1 **Part 3.62** **Sale of Motor Vehicles**
2 **Regulation 1977**

3 **[3.402] Section 3 (e)**

4 *substitute*

- 5 (e) for an application by a corporation—whether a director of the
6 corporation is a bankrupt or a debtor under a personal
7 insolvency agreement.

8 **Explanatory note**

9 The *Bankruptcy Legislation Amendment Act 2004* (Cwlth) amended the *Bankruptcy Act 1966*
10 (Cwlth) to replace the concepts of deed of assignment, deed of arrangement and composition
11 with the new single concept of personal insolvency agreement. This amendment brings the
12 paragraph into line with the new concept.

13 **Part 3.63** **Superannuation (Legislative**
14 **Assembly Members) Act 1991**

15 **[3.403] Section 7 (1) (d)**

16 *substitute*

- 17 (d) the chief executive of the administrative unit responsible for
18 the *Financial Management Act 1996*.

19 **Explanatory note**

20 This amendment updates a redundant reference to ‘under Treasurer’.

1 **Part 3.64 Supreme Court Act 1933**

2 **[3.404] Section 58A (2)**

3 *substitute*

4 (2) In this section:

5 *depositions*, of a witness, means—

6 (a) if a record of the depositions was made in accordance with the
7 *Magistrates Court Act 1930*, section 316 (2) (Record of
8 proceedings)—a transcript of the record certified in accordance
9 with that Act, section 314 (2) (Registrar to give directions for
10 preparation of transcript); or

11 (b) if the depositions were taken down in writing and signed in
12 accordance with the *Magistrates Court Act 1930*,
13 section 316 (3)—the depositions taken down and signed.

14 **Explanatory note**

15 This amendment updates cross-references.

16 **Part 3.65 Supreme Court Rules 1937**

17 **[3.405] Order 80 rule 13**

18 *omit*

19 section 108 (Copies of depositions may be obtained by accused)

20 *substitute*

21 section 108 (Accused person may obtain copies of depositions etc)

22 **Explanatory note**

23 This amendment is consequential on the amendment of the *Magistrates Court Act 1930*,
24 section 108 by another amendment.

1 **Part 3.66** **Territory Owned Corporations**
2 **Act 1990**

3 **[3.406] Section 1**

4 *substitute*

5 **2 Name of Act**

6 This Act is the *Territory-owned Corporations Act 1990*.

7 **Explanatory note**

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

9 **[3.407] Section 33B (1)**

10 *omit*

11 *Affirmative Action (Equal Opportunity for Women) Act 1986*

12 *substitute*

13 *Equal Opportunity for Women in the Workplace Act 1999*

14 **Explanatory note**

15 This amendment updates a reference to a Commonwealth Act.

16 **Part 3.67** **Territory plan**

17 **[3.408] Part A3, clause 6.1, paragraph (c)**

18 *omit*

19 by notice published in the Government Gazette pursuant to
20 section 32 of the Land Act,

21 *substitute*

22 by instrument under the Land Act, section 32 (1),

1 **Explanatory note**

2 A variation of the territory plan under *Land (Planning and Environment) Act 1991*, section 32 is
3 a notifiable instrument. This amendment removes from the clause an unnecessary (and
4 outdated) reference to a notice being published in the Government Gazette.

5 **[3.409] Part A3, clause 8.3**

6 *substitute*

7 **8.3** The formal adoption of an entry on, and removal from, the Register
8 of, a planning guideline is a notifiable instrument and must also be
9 notified in a daily newspaper by the Authority.

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

11 **Explanatory note**

12 This amendment omits an outdated reference to the gazette and by providing that an instrument
13 adopting a planning guideline on the Register, or removing it, is a notifiable instrument under
14 the Legislation Act. This amendment reflects the current position applying under transitional
15 provisions of the Legislation Act.

16 **Part 3.68 Tertiary Accreditation and**
17 **Registration Act 2003**

18 **[3.410] Section 62 (2)**

19 *substitute*

20 (2) The committee must include as members—

21 (a) people who are, in the council’s opinion, qualified in an area
22 relevant to the courses proposed to be offered by the relevant
23 higher education provider; and

24 (b) people who are, in the council’s opinion, qualified to assess the
25 financial and management capacity of the higher education
26 provider.

1 **Explanatory note**

2 This amendment makes it clear that a committee must have among its members people who
3 have all the relevant qualifications and that every board member is not required to possess all
4 the relevant qualifications.

5 **Part 3.69 Trustee Act 1925**

6 **[3.411] Section 6 (6) (c)**

7 *substitute*

8 (c) a separate set of up to 4 trustees may be appointed for any part
9 of the trust property held on trusts that are distinct from those
10 relating to any other part of the trust property even if a new
11 trustee is not to be appointed for the other part;

12 **Explanatory note**

13 This amendment simplifies the paragraph by omitting an unnecessary reference to the plural ‘or
14 parts’ of the trust property (see Legislation Act, section 145 (Gender and number)).

15 **[3.412] Section 14F (1)**

16 *omit*

17 instrument creating a trust

18 *substitute*

19 trust instrument

20 **Explanatory note**

21 This amendment uses the defined term *trust instrument* to omit unnecessary words.

1 **[3.413] Section 14F (4)**

2 *omit*
3 instrument creating the trust
4 *substitute*
5 trust instrument

6 **Explanatory note**

7 This amendment uses the defined term *trust instrument* to omit unnecessary words.

8 **[3.414] Section 22 (3)**

9 *substitute*
10 (3) If—
11 (a) a preferential right to subscribe for shares in a company is
12 offered to the trustee; and
13 (b) the shares are subject to a special or reserve liability; and
14 (c) the company is wound up;
15 the trustee may exercise the right and hold the shares as if they were
16 part of the trustee's original holding in the company.

17 **Explanatory note**

18 This amendment brings the structure of the subsection with current drafting practice to make its
19 meaning clear.

20 **[3.415] Section 25**

21 *substitute*

22 **25 Continued holding**

23 A trustee is not liable for breach of trust only because the trustee
24 continues to hold an investment after the investment is no longer
25 authorised by the trust instrument or by law.

1 **Explanatory note**

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

3 **[3.416] Section 27B (1)**

4 *substitute*

5 (1) A power to postpone sale is implied in every trust for sale, unless
6 the contrary intention appears in the trust instrument.

7 **Explanatory note**

8 This amendment updates language and makes clear that any contrary intention must be found in
9 the trust instrument.

10 **[3.417] Section 27D (2)**

11 *substitute*

12 (2) This section applies to a trust unless the contrary intention appears
13 in the trust instrument.

14 **Explanatory note**

15 This amendment corrects a typographical error.

16 **[3.418] Section 28 (3) (b)**

17 *substitute*

18 (b) that the balance of the purchase money is payable in
19 instalments, the first not later than 3 years after the date of the
20 contract of sale and the others at intervals of not longer than
21 1 year beginning on the day the first instalment is payable, and
22 interest is payable, at least every 6 months, on any unpaid
23 amount;

24 **Explanatory note**

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

1 **[3.419] Section 36 (1)**

2 *substitute*

3 (1) A trustee may give a lease of land in possession for a term of not
4 longer than—

5 (a) if the trustee has power to manage the land, or holds the land
6 on trust for sale with an express power to postpone the sale—
7 5 years; or

8 (b) in any other case—3 years.

9 **Explanatory note**

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

11 **[3.420] Section 36 (3)**

12 *substitute*

13 (3) Any lease that a trustee is authorised to make under this section, or
14 under the trust instrument or other instrument giving the
15 authorisation, may—

16 (a) provide for rent increases at times stated in the lease; or

17 (b) give an option for renewal that does not extend the lease
18 beyond the term for which the trustee is authorised to make the
19 lease.

20 **Explanatory note**

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

22 **[3.421] Section 36 (8)**

23 *substitute*

24 (8) The execution of a lease by the lessor is evidence, for the lessee and
25 anyone deriving title from the lessee, of the execution of the lease
26 by the lessee.

1 **Explanatory note**

2 This amendment updates language and omits words made unnecessary by another amendment.

3 **[3.422] Section 43 (4)**

4 *omit*

5 in virtue only

6 *substitute*

7 only because

8 **Explanatory note**

9 This amendment updates language.

10 **[3.423] Section 46 (6)**

11 *substitute*

12 (6) An appropriation must not, except as otherwise provided in this
13 section, be made in relation to a settled legacy, share or interest,
14 unless 1 of the following consents in writing:

15 (a) the trustee (if any) of the legacy, share or interest, if the trustee
16 is not making the appropriation;

17 (b) the person who is, for the time being, entitled to the income.

18 **Explanatory note**

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

20 **[3.424] Section 46 (8)**

21 *omit*

22 save

23 *substitute*

24 except that

25 **Explanatory note**

26 This amendment updates language.

1 **[3.425] Section 46 (10)**

2 *omit*

3 the same

4 *substitute*

5 it

6 **Explanatory note**

7 This amendment updates language.

8 **[3.426] Section 47 (1)**

9 *substitute*

10 (1) If an amount is held in trust for a child, someone with a legal
11 disability or someone who cannot be found, the trustee may pay the
12 amount to the public trustee and, if the amount is paid to the public
13 trustee, must give the public trustee—

14 (a) a copy of the trust instrument, or, if there is no trust instrument,
15 a statutory declaration setting out the trusts on which the
16 amount is held; and

17 (b) any information about the disability or identity of the person
18 for whom the amount is held in trust that the public trustee
19 requires.

20 **Explanatory note**

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

22 **[3.427] Section 47 (8)**

23 *substitute*

24 (8) This section does not—

25 (a) deprive a person of any right or remedy to which the person is
26 entitled against a trustee or anyone else; or

- 1 (b) require the public trustee to make or continue to make any
2 inquiry or investigation to find out who might be entitled to
3 amounts paid to the trustee under subsection (1) after those
4 amounts have been paid to the Minister under subsection (4).

5 **Explanatory note**

6 This amendment brings the structure of the subsection into line with current drafting practice to
7 make its meaning clear.

8 **[3.428] Section 48**

9 *substitute*

10 **48 Receipts**

11 (1) This section applies if trustees give a written receipt to a person for
12 personal property payable, transferable or deliverable to the trustees
13 under a trust or power.

14 (2) The receipt—

15 (a) is a sufficient discharge for the property; and

16 (b) relieves the person from—

17 (i) seeing to the application of the property; or

18 (ii) being answerable for any loss or misapplication of the
19 property.

20 (3) In this section:

21 *personal property* includes an amount of money.

22 **Explanatory note**

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

1 **[3.429] Section 49 (1) (e)**

2 *omit*

3 whatever

4 **Explanatory note**

5 This amendment omits a redundant word.

6 **[3.430] Section 49 (1) (f)**

7 *substitute*

8 (f) for any of those purposes, enter into, give or execute any
9 agreement, instrument or arrangement, or do anything,
10 considered appropriate by the trustees, majority of trustees, or
11 trustee.

12 **Explanatory note**

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

14 **[3.431] Section 54 (1)**

15 *omit*

16 by writing under their hands

17 *substitute*

18 by signed instrument

19 **Explanatory note**

20 This amendment updates language.

21 **[3.432] Section 54A (1) and (2)**

22 *substitute*

23 (1) If 2 or more people receive an amount in a fiduciary position (other
24 than as trustees under a will, settlement or like instrument) and
25 deposit the amount with a bank, the bank may, if authorised by
26 them—

- 1 (a) pay a cheque drawn on the bank by 1 or more of them or by an
2 agent authorised by them; and
- 3 (b) recognise as valid an endorsement on a bill of exchange or
4 promissory note payable to their order if the endorsement is an
5 endorsement by 1 or more of them or by an agent authorised by
6 them.
- 7 (2) If a person receives an amount in a fiduciary position (other than as
8 trustee under a will, settlement or like instrument) and deposits the
9 amount with a bank, the bank may, if authorised by the person—
- 10 (a) pay a cheque drawn on the bank by an agent authorised by the
11 person; and
- 12 (b) recognise as valid an endorsement on a bill of exchange or
13 promissory note payable to the order of the person if the
14 endorsement is an endorsement by an agent authorised by the
15 person.

16 **Explanatory note**

17 This amendment brings the language and structure of the subsections into line with current
18 drafting practice.

19 **[3.433] Section 58**

20 *substitute*

21 **58 Powers of attorney**

- 22 (1) This section applies if—
- 23 (a) a trustee pays an amount, or does something else, honestly
24 under a power of attorney given by a person; and
- 25 (b) when the trustee does the thing—
- 26 (i) the person is dead or has done something to end the
27 power of attorney; but
- 28 (ii) the trustee is unaware of this.

- 1 (2) The trustee is not liable for doing the thing.
- 2 (3) If the trustee pays an amount to a person (the *payee*)—
- 3 (a) this section does not affect the rights against the payee of
- 4 anyone entitled to the amount (an *affected person*); and
- 5 (b) the affected person is entitled to the same remedies against the
- 6 payee as the affected person would have had against the
- 7 trustee.

8 **Explanatory note**

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

10 practice.

11 **[3.434] Section 62**

12 *substitute*

13 **62 Notice affecting a trustee**

- 14 (1) A trustee acting for more than 1 trust or estate is not affected by
- 15 notice of anything in relation to a particular trust or estate if the
- 16 trustee has notice of it only because the trustee acts for another trust
- 17 or estate.
- 18 (2) This section does not apply if the trustee is fraudulent.

19 **Explanatory note**

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

21 practice.

22 **[3.435] Section 64 (1) to (3)**

23 *substitute*

- 24 (1) If a trustee is absent from the ACT or is about to leave the ACT, the
- 25 trustee may, by registered deed, delegate the execution of the trust.
- 26 (2) However, the trustee delegates the execution of the trust only if—

- 1 (a) each co-trustee, and anyone else authorised to appoint trustees,
2 consents to the delegation by the deed or another registered
3 deed; and
- 4 (b) the delegation is to—
- 5 (i) the public trustee; or
- 6 (ii) a trustee company; or
- 7 (iii) a person living in the ACT who either is a co-trustee or
8 can be appointed a trustee of the trust.
- 9 (3) The delegation may be made in relation to all or any part of the
10 trust.

11 **Explanatory note**

12 This amendment brings the structure of the subsection into line with current drafting practice to
13 make its meaning clear.

14 **[3.436] Section 67**

15 *substitute*

16 **67 Power of attorney**

- 17 (1) A delegation under this part is taken to be a power of attorney
18 within the meaning of the *Powers of Attorney Act 1956*.
- 19 (2) That Act, other than an excepted provision, applies to the
20 delegation.
- 21 (3) In this section:
- 22 ***excepted provision*** means any of the following provisions:
- 23 • section 6 (Irrevocable power of attorney for value)
 - 24 • section 7 (Power of attorney irrevocable for fixed period)
 - 25 • section 8 (Protection of purchaser under irrevocable power of
26 attorney).

1 **Explanatory note**

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

4 **[3.437] Section 71 (6)**

5 *substitute*

6 (6) Subject to subsection (4), the order may vest the property in anyone,
7 in any way and for any interest that the Supreme Court directs, or
8 may release or dispose of any contingent right to a person as the
9 court directs.

10 **Explanatory note**

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

12 **[3.438] Section 71 (8) and (9)**

13 *substitute*

- 14 (8) This section does not prevent the Supreme Court from—
- 15 (a) directing a reconveyance or the payment of costs incurred if
16 the order is improperly obtained; or
- 17 (b) making a further vesting order.
- 18 (9) If a legal interest in property ends because of the dissolution of a
19 corporation, the Supreme Court may, by order—
- 20 (a) create a corresponding interest; and
- 21 (b) vest the corresponding interest in the person who would have
22 been entitled to the interest if it had not ended.

23 **Explanatory note**

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

1 **[3.439] Section 75 (1) (b)**

2 *substitute*

- 3 (b) in any other case—the Supreme Court may order that the land
4 vests in anyone, in any way and for any estate that the court
5 directs.

6 **Explanatory note**

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

8 **[3.440] Section 75 (2)**

9 *substitute*

- 10 (2) The order may only be made if—

11 (a) the mortgagee did not enter into possession, and the amount
12 owing under the mortgage has been paid to a person entitled to
13 receive the amount; or

14 (b) the person entitled to receive the amount consents to any order
15 for reconveyance of the land.

16 **Explanatory note**

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

19 **[3.441] Section 75 (3) (b)**

20 *omit*

21 the same

22 *substitute*

23 the land

24 **Explanatory note**

25 This amendment updates language.

1 **[3.442] Section 75 (5)**

2 *substitute*

3 (5) This section does not prevent the Supreme Court from—

4 (a) directing a reconveyance or the payment of costs incurred if
5 the order is improperly obtained; or

6 (b) making a further vesting order.

7 **Explanatory note**

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

10 **[3.443] Section 76 (1)**

11 *substitute*

12 (1) If the Supreme Court makes an order directing the sale or mortgage
13 of land, the court may make an order vesting the land, or part of it,
14 for any estate the court considers appropriate in the purchaser, the
15 mortgagee, or anyone else.

16 **Explanatory note**

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

18 **[3.444] Section 81 (1) and (2)**

19 *omit*

20 by the trust instrument, or by law

21 *substitute*

22 by instrument or by law

23 **Explanatory note**

24 This amendment updates language.

1 **[3.445] Section 82 (1) (d)**

2 *substitute*

3 (d) to erect, or join in erecting, a fence of which part is on the land
4 and part on adjoining land;

5 **Explanatory note**

6 This amendment brings the language and structure of the paragraph into line with current
7 drafting practice.

8 **[3.446] Dictionary heading**

9 *substitute*

10 **Dictionary**

11 (see s 2)

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

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

- 15 • ACT
- 16 • affidavit
- 17 • appoint
- 18 • asset
- 19 • child
- 20 • instrument (see s 14)
- 21 • interest
- 22 • land
- 23 • lawyer
- 24 • month
- 25 • person
- 26 • power
- 27 • proceeding
- 28 • property
- 29 • public trustee

- 1 • registrar-general
2 • sign
3 • statutory declaration
4 • will
5 • year.

6 **Explanatory note**

7 This amendment inserts standard dictionary notes in line with current drafting practice that
8 draw to the attention of the reader that the dictionary is not the only source for definitions of
9 terms.

10 **Part 3.70 Unit Titles Act 2001**

11 **[3.447] New section 12A**

12 *insert*

13 **12A Meaning of *annexed***

14 A unit subsidiary or an easement that is stated by this Act to be
15 ***annexed*** to a unit, common property or an estate in leasehold is
16 taken to be appurtenant to the unit, common property or estate.

17 *Note* Property in a unit subsidiary or easement that is, at law, ‘appurtenant’ to
18 a unit, common property or a leasehold estate is transferred with that
19 estate when the unit, common property or lease is transferred.

20 **Explanatory note**

21 This amendment remakes the dictionary definition as a separate section because it is an
22 important term for the Act.

1 **[3.448] Section 59 (2)**

2 *omit*

3 *(special purpose funds)*

4 *substitute*

5 *(a special purpose fund)*

6 **Explanatory note**

7 This amendment revises the tagged-term definition in the singular to be consistent with the
8 dictionary definition.

9 **[3.449] Section 71 (1), note**

10 *substitute*

11 *Note* Information about representatives of units owned by 2 or more people,
12 or by a company, must be provided to the owners corporation under the
13 following sections:

- 14 • s 41 (Multiple owners of units—authorisation of representatives)
15 • s 43 (Company-owned units—authorisation of representatives).

16 **Explanatory note**

17 This amendment replaces an obsolete reference to ‘company representatives’ with ‘a company’.

18 **[3.450] Section 116**

19 *substitute*

20 **116 Value of votes**

21 (1) Every vote at a general meeting is of equal value, unless a poll is
22 taken.

23 (2) On a poll, the value of each vote (the *voting value*) is the value that
24 is proportional to the unit entitlement of the unit for which it is
25 exercised.

26 **Explanatory note**

27 This amendment updates the definition of *voting value* to bring it into line with current drafting
28 practice.

1 **[3.451] Dictionary, definition of *annexed***

2 *substitute*

3 *annexed*—see section 12A.

4 **Explanatory note**

5 This amendment is consequential on the insertion of a new section 12A by another amendment.

6 **[3.452] Dictionary, definition of *article***

7 *insert*

8 *article*, for an owner corporation, means an article of the corporation
9 under section 126.

10 **Explanatory note**

11 This amendment inserts a definition of *article* for an owner's corporation in line with current
12 drafting practice.

13 **[3.453] Dictionary, definition of *company representative***

14 *omit*

15 **Explanatory note**

16 This amendment omits a definition made obsolete by the existing definition of *representative*.

17 **[3.454] Dictionary, definition of *entitled to vote***

18 *substitute*

19 *entitled to vote*, in relation to a motion at a general meeting of an
20 owners corporation, means a person who is entitled to vote on the
21 motion under section 110.

22 **Explanatory note**

23 This amendment brings the definition into line with current drafting practice.

1 **[3.455] Dictionary, definitions of *GST* and *mortgagee's***
2 ***representative***

3 *omit*

4 **Explanatory note**

5 This amendment omits the definition of *GST* which is defined in the Legislation Act,
6 dictionary, part 1, and omits the definition of *mortgagee's representative* made obsolete by the
7 existing definition of *representative*.

8 **[3.456] Dictionary, definition of *schedule of unit entitlement***

9 *substitute*

10 *schedule of unit entitlement*, in relation to a units plan, means the
11 schedule of unit entitlement forming part of the plan under
12 section 8.

13 **Explanatory note**

14 This amendment brings the definition into line with current drafting practice.

15 **[3.457] Dictionary, definition of *unit owners' representative***

16 *omit*

17 **Explanatory note**

18 This amendment omits a definition made obsolete by the definition of *representative*.

19 **[3.458] Dictionary, definition of *units plan***

20 *substitute*

21 *units plan* means the units plan under section 7.

22 **Explanatory note**

23 This amendment brings the definition into line with current drafting practice.

1 **Part 3.71** **Victims of Crime (Financial**
2 **Assistance) Act 1983**

3 **[3.459] Section 66 (3)**

4 *substitute*

5 (3) In this section:

6 *infringement notice* includes an offence notice under the *Drugs of*
7 *Dependence Act 1989*.

8 *Note* The Legislation Act dict, pt 1 defines *infringement notice* as including
9 an infringement notice under the *Magistrates Court Act 1930* or the
10 *Road Transport (General) Act 1999*.

11 **Explanatory note**

12 This amendment omits existing paragraph (c) which refers to a litter notice under the repealed
13 *Litter Act 1977* and updates the list of infringement notices in existing paragraph (d) by
14 substituting new paragraph (b) which relies on the Legislation Act definition of that term.
15 A note about the definition is also inserted.

16 **Part 3.72** **Waste Minimisation Act 2001**

17 **[3.460] Dictionary, note 2**

18 *insert*

- 19 • environment protection authority

20 **Explanatory note**

21 This amendment adds the example ‘environment protection authority’ to the list of defined
22 terms found in the Legislation Act that are used in the Act.

23 **[3.461] Dictionary, definition of *EMA***

24 *substitute*

25 *EPA* means the environmental protection authority.

1 **Explanatory note**

2 This amendment updates the definition. The name of the authority was changed from
3 ‘environmental management authority’ to environmental protection authority’ by the
4 *Environment Protection Amendment Act 2001*.

5 **[3.462] Further amendments, mentions of *EMA***

6 *omit*

7 *EMA*

8 *substitute*

9 *EPA*

10 *in*

- 11 • section 7 (b) (i)
- 12 • section 8 (2) (h)
- 13 • section 9 (2) (b)
- 14 • section 10
- 15 • section 11
- 16 • section 12
- 17 • section 13
- 18 • section 14
- 19 • section 15
- 20 • section 17
- 21 • section 18
- 22 • section 19
- 23 • section 20 (2) (d)
- 24 • section 44
- 25 • section 47

26 **Explanatory note**

27 This amendment is consequential on the new definition of *EPA* inserted by another amendment.

1 Part 3.73 Workers Compensation Act 1951

2 [3.463] Section 197 (2) (a)

3 *omit*

4 section 274 (2) (Cases in which appeals may be brought)

5 *substitute*

6 section 274 (2) (Cases in which appeal may be brought)

7 Explanatory note

8 This amendment corrects a reference to the *Magistrates Court Act 1930*, section 274 heading.

9 Part 3.74 Workers Compensation 10 Regulation 2002

11 [3.464] Section 62 (3)

12 *substitute*

13 (3) The sections of the Act are as follows:

- 14 • section 156 (Information for insurers on application for issue or
15 renewal of policies)
- 16 • section 157 (Information for insurers after renewal of policies)
- 17 • section 158 (Information for insurers after end or cancellation of
18 policies)
- 19 • section 159 (Information for new insurers after change of
20 insurers)
- 21 • section 160 (Six-monthly information for insurers).

22 Explanatory note

23 This amendment is consequential on the *Workers Compensation Amendment Act 2003 (No 2)*.
24 That Act substituted new sections 156 to 160 for sections 156 to 159 of the *Workers*
25 *Compensation Act 1951*. The 2 groups of sections impose essentially similar obligations on
26 insurers but with increased penalties for noncompliance with the obligations.

- 1 This amendment confirms editorial amendments made by the parliamentary counsel under the
2 Legislation Act, section 114 for republication number 8 of the regulation. The editorial
3 amendments updated the names of the headings to sections 156 to 159 and added section 160 to
4 the list.
-

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2005.

2 Notification

Notified under the Legislation Act on 2005.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.
