

**2001**

**THE LEGISLATIVE ASSEMBLY FOR  
THE AUSTRALIAN CAPITAL TERRITORY**

**STATUTE LAW AMENDMENT BILL 2001  
EXPLANATORY MEMORANDUM**

**Circulated by the authority of  
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## STATUTE LAW AMENDMENT BILL 2001

### Background to the Bill

1. The objective of this Bill is to further the aim of ensuring that the ACT's statute book is of the highest standard. The Bill does so by amending and repealing Acts and regulations for statute law revision purposes only.
2. Under guidelines approved by the Government the essential criteria for the inclusion of amendments in the Bill are that the amendments are **minor and non-controversial**.
3. The ACT statute book is all ACT legislation taken as a body of law. A statute book that is well maintained significantly enhances access to legislation by making it easier to find in an up-to-date form and easier to read and understand.
4. Maintenance of the statute book is necessary for a number of reasons.
5. First, the law is constantly changing to reflect, for example, changes in society's values and technological change. The statute book needs to be updated to take account of these changes.
6. Second, the ACT statute book has been created over some 90 years from various sources. It includes United Kingdom and New South Wales laws predating the establishment of the Territory, pre self-government Commonwealth laws, New South Wales laws applied to the Territory by the Commonwealth before self-government and laws made by the Legislative Assembly (or under its authority) since self-government. Drafting practices, language usage, and printing formats and styles have changed markedly over the years, and maintaining a minimum level of consistency requires review and amendment. Increasing the cohesion between legislation coming from different sources and enacted at different times can assist improved access to the law.
7. Third, the statute book is created by a complex mosaic of individual non-amending and amending items of legislation. An item of legislation is often thought of in isolation from other legislation. However, individual items of legislation are rarely

self-contained and in fact interact with other items of legislation (and the common law). Changes to the law often generate the need for consequential amendments elsewhere. Unless these consequential amendments are found and made, the interaction between individual items of legislation can become confused and lead to legal uncertainty and reduced access to the law.

8. The proposal to develop a technical amendments program for ACT legislation arose out of the need to introduce greater flexibility in the drafting of amendments for statute law revision purposes and minimise the costs associated with keeping ACT legislation up-to-date. Statute Law Amendment Bills (and Portfolio Amendment Bills) are an important part of maintaining and enhancing the standard of ACT law. The Bills provide an opportunity to make amendments and repeals that, taken alone, would be of insufficient importance to justify separate legislation and are inappropriate to make using the *Legislation (Republication) Act 1996*. However, the cumulative effect of the amendments and repeals made through a technical amendments program can have a substantial impact on the overall quality of ACT law.

9. In the past only a small part of the Territory's legislation would be substantively amended during a particular year. In many cases, Territory legislation would not be amended for substantial periods. The general practice for amending legislation was to prepare a separate Bill (or regulations) that reflected the title of the item or items of legislation being amended. This is a costly and time consuming process. Although the process works well for amendments involving significant changes of policy, the process is not appropriate to handle the large number of minor changes needed to keep the ACT statute book up-to-date. The Legislative Assembly recognised this when it enacted the *Legislation (Republication) Act 1996* (which is soon to be replaced by the *Legislation Act 2001*) and authorised the Parliamentary Counsel to make editorial changes when republishing legislation.

10. The *Legislation (Republication) Act 1996* provides an excellent process for handling the myriad of editorial changes that do not justify amending legislation, especially changes to printing formats and styles, spelling changes and minor changes to standard provisions to reflect changed drafting practices. However, there are changes needed to keep the statute book up-to-date that cannot be handled through

the republication process. For example, any change (however minor) that might change the legal effect of a provision would be unsuitable for the republication process and beyond the republication powers under the Act. In addition, there are changes that might be implemented under the *Legislation (Republication) Act 1996* but are better referred to the Legislative Assembly for enactment to maintain confidence in the integrity of the statute book. These changes include the correction of minor errors, the updating of language and the omission of provisions made redundant by provisions of the *Interpretation Act 1967* or the *Legislation Act 2001*.

11. The Bill makes a range of technical law reform changes rather than substantive policy changes to various ACT laws to bring provisions up-to-date, repeal unnecessary legislation and make other amendments for statute law revision purposes. The Bill has been structured to assist the transparency of the amendments and repeals made by it. This is explained further in the notes on clauses.

12. The Bill will improve the quality of the ACT's statute book by amending and repealing Acts and regulations for statute law revision purposes.

#### **Notes on clauses**

##### **Clause 1 Name of Act**

13. Clause 1 provides for the Act's name. When enacted, the Act may be referred to using this name.

##### **Clause 2 Commencement**

14. Clause 2 deals with the Bill's commencement. All repeals and most amendments in the Bill commence on the day its passing is notified in the Gazette. However, because some amendments interact with the commencement of other legislation, it is necessary for some amendments to commence at different times. These different commencement times are indicated by the inclusion of special commencement provisions after the end of the relevant amendments. The clause includes examples of these special commencement provisions.

##### **Clause 3 Purpose**

15. Clause 3 states the Bill's purpose.

**Clause 4 Explanatory notes**

16. Clause 4 provides that an explanatory note in the Bill does not form part of the Act when it is enacted. The clause includes a note referring to the provisions of the *Interpretation Act 1967* that deal with the legal status of notes. The provision made by the clause about explanatory notes is consistent with the effect of the *Interpretation Act 1967* provisions.

**Clause 5 Amended Acts and regulations—schs 1-3**

17. Clause 5 gives effect to the amendments made by schedules 1 to 3.

**Clause 6 Repealed Acts and regulations—sch 4**

18. Clause 6 gives effect to the repeals made by schedule 4.

**Schedule 1 Minor amendments**

19. Schedule 1 is for minor, non-controversial amendments initiated by government agencies.

20. Schedule 1 includes the following amendments:

- (a) an amendment of the *Dangerous Goods Act 1975* to allow the chief inspector of dangerous goods to delegate functions to public servants who are not inspectors;
- (b) an amendment of the *Districts Act 1966* that is consequential on amendments of the *Public Place Names Act 1989* included in the schedule;
- (c) amendments of the *Health Act 1993* to allow the Minister to appoint public sector quality assurance committees separately from any appointment of members and to make consequential and technical changes (at present the committees can only be established by the appointment of members);
- (d) amendments of the *Mental Health (Treatment and Care) Act 1994* to correct cross-references and include a missing reference and omit an unnecessary provision;

- (e) amendments of the *Public Place Names Act 1989* to require Torres Strait Islander vocabulary to be considered as well as Aboriginal vocabulary in naming public places and to make consequential and technical changes;
  - (f) amendments of the *Radiation Act 1983* to allow recommendations of the National Health and Medical Research Council about exposure to ionizing radiation, and codes of practice about the transport of radioactive material, to be implemented in the ACT. (The amendments will ensure that the ACT can fully comply with internationally accepted standards and will have the effect of reducing permissible levels of exposure to ionizing radiation.)
21. Each amendment in schedule 1 is explained by an explanatory note in the schedule after the amendment.

## **Schedule 2 Structural amendments**

### **(a) Purpose of schedule 2**

22. Schedule 2 is for non-controversial amendments initiated by the Parliamentary Counsel's Office of Acts of 'general application' (such as the *Interpretation Act 1967* and the *Legislation Act 2001*) or otherwise affecting the structure of the statute book. The amendments result from the ongoing review of the structure of the statute book to ensure its development in accordance with best practice.

23. Structural issues are particularly concerned with making the statute book more coherent and concise, and therefore more accessible. Strategies to achieve these objectives include such things as avoiding unnecessary duplication and the maximum degree of standardisation of legislative provisions consistent with policy requirements and operational needs.

### **(b) Acts of 'general application'**

24. The amendments included in this schedule reflect, in part, the continuing review of Acts of 'general application' by the Parliamentary Counsel's Office. Improvements in them are an important strategy used by the Office in maintaining and enhancing the quality of ACT legislation by shortening and simplifying legislation and ensuring improved consistency and coherence in the statute book.

25. Legislation can be shortened and simplified if repetition is avoided. Acts of 'general application' such as the *Interpretation Act 1967* do this in at least 3 ways.

26. First, by providing standard definitions of commonly used words and expressions. Examples of this can be found in the dictionary to the *Interpretation Act 1967* (which lists a large number of words and expressions used in ACT legislation) and sections 23 to 24A (which deal with the meaning of references to Territory, Minister and chief executive). These provisions are being relocated to the *Legislation Act 2001* by amendments in schedule 2.

27. Second, by providing standard sets of provisions regulating aspects of the operation of all legislation. An example of this is the *Interpretation Act 1967*, part 2 (Notification, numbering and commencement of Acts). These provisions have already been included in the *Legislation Act 2001* (see chapters 4 and 8).

28. Third, by implying powers additional to those given expressly by an individual Act. Examples of this are in the *Interpretation Act 1967*, sections 28 and 28A (which deal with appointments). These sections are being relocated to the *Legislation Act 2001* by an amendment in schedule 2.

29. Shortening legislation results in less clutter and increased simplicity. Reliance on the standard provisions of Acts of 'general application' achieves simplification by eliminating the need to insert standard technical definitions and other provisions in every Act. Awareness of these standard provisions is being promoted by the inclusion of notes in Acts drawing attention to them.

30. Because of the incremental way in which the statute book is altered by the enactment of new legislation, consistency and coherence can be difficult to maintain. For example, terms can be defined differently in different items of legislation even though no difference may have been intended. Apart from relieving the statute book of much of the detail with which it would otherwise be burdened, Acts of 'general application' have an important quality control function by promoting consistency in the form and language of the whole statute book. Increased consistency in form and language helps to promote greater coherence in the statute book and improves accessibility to legislation by removing needless variation in legislative provisions.

Improvements to a standard provision of the *Interpretation Act 1967* (or the *Legislation Act 2001*) operate automatically throughout the statute book wherever the provision applies.

**(c) Public Access to Legislation**

31. The *Legislation Act 2001*, passed earlier this year by the Legislative Assembly (but not yet commenced), is the cornerstone of the Public Access to Legislation project—an initiative that will put the ACT at the forefront of providing public access to legislation in Australia.

32. The main elements of the project are—

- a) the publication of authorised, electronic versions of legislation on an approved Internet site or sites; and
- b) the restructuring and simplification of the 'machinery of government' legislation dealing with the 'life cycle' of ACT legislation (ie making, notification, commencement, publication, presentation and disallowance (where relevant), interpretation, evidentiary value, amendment, republication and repeal).

33. Before the enactment of the *Legislation Act 2001*, the provisions dealing with the 'life cycle' of legislation were found across the statute book, particularly in the *Interpretation Act 1967*, the *Evidence Act 1991*, the *Subordinate Laws Act 1989* and the *Legislation (Republication) Act 1996*.

34. When it commences, the *Legislation Act 2001* will bring many of the core 'life cycle' provisions together in a single modern Act. However, a large number of the provisions of the *Interpretation Act 1967* have not yet been relocated to the *Legislation Act 2001*.

35. It was proposed to relocate the remaining provisions of the *Interpretation Act 1967* to the *Legislation Act 2001* by a bill to be presented to the Legislative Assembly later this year. However, it is unlikely that this Bill can be drafted and presented in time to allow it to be passed before the next Legislative Assembly election. This Bill, therefore, relocates most of these provisions to the *Legislation Act 2001*.



36. A problem with reliance on Acts of 'general application' is that readers of legislation may not be aware of their provisions. To raise the awareness of provisions in Acts of 'general application', the Parliamentary Counsel's Office has begun including notes drawing attention to the provisions in Bills and draft subordinate laws. The notes have been well received by users of legislation. The use of notes is proposed to be increased as part of the implementation of the Public Access to Legislation project. The *Legislation (Republication) Act 1996* and the *Legislation Act 2001* both authorise the Parliamentary Counsel to include or change notes in preparing republications of ACT laws. To minimise the disruption to users of legislation by changes in references to provisions presently in the *Interpretation Act 1967*, amendments in schedule 2 remake, in an updated form, as many of *Interpretation Act 1967* provisions as possible as provisions of the *Legislation Act 2001*.

37. A bill will be drafted to relocate the small number of remaining provisions of the *Interpretation Act 1967*. It is anticipated that this bill will be presented to the Legislative Assembly later this year, but will not be passed before the commencement of the *Legislation Act 2001*. The *Legislation Act 2001* will then provide a modern comprehensive set of provisions dealing with all aspects of the 'life cycle' of ACT legislation.

**(d) Provisions relocated from Interpretation Act 1967**

38. Schedule 2 includes amendments remaking, as provisions of the *Legislation Act 2001*, the following provisions of the *Interpretation Act 1967*:

- section 11AA (Construction of Acts—legislative powers of the Assembly)
- section 11BA (Terms used in instruments have same meanings as in authorising laws)
- section 11C (Changes of drafting practice not to affect meaning)
- section 11D (Examples)
- section 11E (Defined terms—other parts of speech and grammatical forms)
- section 11F (Application of definitions in dictionaries and sections)
- section 11G (Definitions apply subject to contrary intention)
- section 11H (Material that is part of an Act)
- section 12 (Material that is not part of an Act)

- section 12A (Paragraphs)
- section 13 (Forms)
- section 13A (Production of records kept in computers etc)
- section 13B (Change of name of entity or position)
- section 13BA (Change of membership of body)
- section 13BB (Functions and powers etc of bodies)
- section 13C (Content of statements of reasons for decisions)
- section 13D (Attainment of particular age)
- section 13E (Power to determine includes authority to administer oath)
- section 14 (Reference to provisions of a law is inclusive)
- section 15 (References to persons generally)
- section 16 (Meaning of *may* and *must*)
- section 17 (Service of documents)
- section 18 (Service by post)
- section 19 (Gender and number)
- section 21 (References to the Governor-General)
- section 22 (References to the Governor of a State)
- section 23 (References to *the Territory* or *this Territory*)
- section 23A (References to Territory implied)
- section 24 (References to a *Minister* or the *Minister*)
- section 24A (References to a *chief executive* or the *chief executive*)
- section 25 (References to occupant of position)
- section 25AA (References to Assembly committees that no longer exist)
- section 25AB (References to Australian Standards)
- section 25A (Chairperson and deputy chairperson)
- division 3.3 (General provisions about functions and powers)
- division 3.5 (Appointments)
- division 3.6 (Delegations)
- section 31A (Jurisdiction of courts)
- section 32 (Corporations liable to, and may sue for, penalties)
- section 32A (Penalties not at end of sections or subsections)
- section 33 (Penalties not at end of sections and subsections)
- section 33AA (Meaning of penalty unit etc)

- section 33A (Effect of alterations in penalties)
- section 33D (Indictable offences)
- section 33E (Offences punishable on summary conviction)
- section 34 (Civil proceedings)
- section 35 (Measurement of distance)
- section 63 (Transitional provisions about penalties)
- dictionary.

**(e) Other amendments of Interpretation Act 1967**

39. Apart from the omission of provisions to be relocated to *Legislation 2001*, schedule 2 omits from the *Interpretation Act 1967*, schedule 1 items about former NSW Acts repealed by this Act, includes a new definition to reflect changes in corporations law, and makes other technical and consequential amendments.

**(f) Other amendments of Legislation Act 2001**

40. Apart from the insertion of provisions relocated from the *Interpretation Act 1967*, schedule 2 includes the following amendments of the *Legislation Act 2001*:

- section 41 (Exercise of regulation - making powers) is amended to extend its application to the making of the other statutory instruments
- proposed new section 84A (which remakes *Interpretation Act 1967*, section 33A) would extend the effect of section 33A to the creation of new offences as well as changes in penalties
- existing section 97 (References to a law include law containing reference) has been extended to cover statutory instruments that are not subordinate laws or disallowable instruments
- proposed new section 168 provides that references to a person with an interest in land/or other property include the person's personal representatives, successors and assigns
- significantly revised provisions have been included dealing with acting appointments (new divisions 18.3.2), delegations (new part 18.4) and service of documents (new part 18.5)
- a number of new definitions of commonly used terms have been included in the dictionary
- a new transitional provision (section 253) is inserted to deal with determinations about fees in force immediately before the commencement of the *Legislation Act 2001*

- the omission from schedule 1 of items about former NSW Acts repealed by this Act and other technical amendments of the schedule.

41. Each amendment in schedule 2 is explained by an explanatory note in the schedule after the amendment. Some general explanatory notes are also included for groups of amendments or inserted provisions.

### **Schedule 3 Technical amendments**

42. Schedule 3 contains minor, technical amendments of legislation initiated by the Parliamentary Counsel's Office

43. First, the schedule includes amendments consequential on or related to the repeal of the *Conveyancing Act 1951*, the *Law of Property (Miscellaneous Provisions) Act 1958* and the *Trustee Act 1957*. Those Acts previously applied the *Trustee Act 1925* of New South Wales, and provisions of the *Conveyancing Act 1919* of New South Wales, as ACT laws. The provisions of these New South Wales Acts that applied in the ACT became ACT Acts under amendments of the *Interpretation Act 1967* made by the *Law Reform (Miscellaneous Provisions) Act 1999*.

44. Second, the schedule includes amendments remaking in an updated form in other former NSW Acts provisions of the following former NSW Acts that are still needed:

- the *Apportionment Act 1905*
- the *Conveyancing and Law of Property (Supplemental) Act 1901*
- the *Dedication by User Limitation Act 1902*
- the *Forfeiture of Leases Act 1901*
- the *Partition Act 1900*

These former NSW Acts are repealed by the Bill. Repeal of these Acts will help to reduce the fragmentation of ACT property and conveyancing law.

45. Third, the schedule includes amendments updating NSW-specific provisions of former NSW Acts that apply in the Territory. These amendments enable the *Interpretation Act 1967*, part 4 and the *Magistrates Court Act 1930*, section 19(2), to be omitted by the Bill. These provisions which converted NSW-specific references to ACT equivalents, are no longer needed.

46. Fourth, the schedule includes amendments consequential on the remaking of existing provisions of the *Interpretation Act 1967* in the *Legislation Act 2001*.

47. Finally, the Schedule contains technical amendments to facilitate the continuing program of updating and republishing the laws of the Territory under the *Legislation (Republication) Act 1996*. Technical amendments are made to update Territory laws where—

- that Act does not apply;
- there are doubts about its application in a particular case; or
- it is desirable for a change to be made by a separate Act.

48. Because of the number of minor amendments made by schedule 3, an explanatory note about each of the amendments in the schedule is included after the amendment. Some general explanatory notes are also included for groups of amendments.

#### **Schedule 4 Repeal of redundant or obsolete Acts and regulations**

49. Schedule 4 provides for the repeal of redundant or obsolete Acts and regulations. The schedule has 4 parts.

50. Part 4.1 deals with the repeal of former NSW Acts that are incorporated into other former NSW Acts. (The *Forfeiture of Leases Act 1901* is repealed by an amendment in schedule 3).

51. Part 4.2 deals with the repeal of the *Conveyancing Act 1951*, the *Law of Property (Miscellaneous Provisions) Act 1958* and the *Trustee Act 1957*. These Acts formerly applied the *Trustee Act 1925* (NSW), and provisions of the *Conveyancing Act 1919* (NSW), as ACT laws.

52. Part 4.3 repeals amending regulations. These regulations are spent.

53. Part 4.4 repeals a number of Acts and regulations that are redundant and obsolete. The Acts repealed by the part include the *Education Services for Overseas Students (Registration and Regulation of Providers) Act 1994* (the **ACT Act**)

54. The Commonwealth *Education Services for Overseas Students Act 2000* (the *Commonwealth Act*) is to commence on 1 July 2001. That Act will provide a comprehensive regulatory framework for the administration of educational services for overseas students. The Commonwealth Act will introduce a compulsory national assurance fund to provide protection for overseas students funds, and abolish the current requirement for providers to maintain trust accounts. The ACT Act is, therefore, no longer needed to regulate the education for overseas student industry in the ACT. Failure to repeal the ACT Act will not only result in unnecessary regulatory duplication, but will put ACT providers at a significant disadvantage by comparison to their interstate competitors. Unless the ACT Act is repealed, ACT providers will have prepaid student fees tied up in trust funds as well as having to pay a premium to the national assurance fund. Students will not receive any additional protection if both trust funds and the assurance fund are in operation,

55. Any residual legal effect of the Acts and regulations repealed by schedule 4 is saved by the *Interpretation Act 1967* (especially sections 39, 41 and 42).

56. Each part (and division) of schedule 4 has an explanatory note at the beginning of the part (or division) explaining the repeals made by the part (or division).