

2000

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

STATUTE LAW AMENDMENT BILL 2000 (No 2)

EXPLANATORY MEMORANDUM

**Circulated by the authority of
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Attorney-General**

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Background to the Bill

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.

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**.

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.

Maintenance of the statute book is necessary for a number of reasons.

First, the law is consistently 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.

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.

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.

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.

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* and authorised the Parliamentary Counsel to make editorial changes when republishing legislation.

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. 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 obsolete language and the omission of provisions made redundant by amendments of the *Interpretation Act 1967*.

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.

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

This clause provides for the Act's name. When enacted, the Act may be cited using this name.

Clause 2 Commencement

Clause 2 deals with the Bill's commencement. The clause provides that the Bill commences on the day its passing is notified in the Gazette.

Clause 3 Purpose

Clause 3 states the Bill's purpose.

Clause 4 Amended Acts and regulations—schs 1-3

Clause 4 gives effect to the amendments made by Schedules 1 to 3.

Clause 5 Repealed Acts—schs 4

Subclause 5 (1) gives effect to the repeals made by Schedule 4.

Subclause 5 (2) declares that the Acts mentioned in Part 4.5 (Repeal of spent appropriation and supply Acts) of Schedule 4 are laws to which the *Interpretation Act 1967*, section 42 applies. The declaration under this subclause removes any doubt that any residual legal effect that the repealed Acts have is preserved after their repeal.

Subclause 5 (3) declares that the provisions mentioned in the subclause are laws to which the *Interpretation Act 1967*, section 42 applies. The provisions mentioned in the subclause are substantive (that is, non-repealing or amending) provisions of Acts and subordinate laws repealed by Schedules 4 and 5. The declaration under this subclause removes any doubt that any residual legal effect that the provisions may have is preserved after their repeal.

Schedule 1 Minor amendments

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

Schedule 1 includes the following amendments:

- (a) an amendment of the *Drugs of Dependence Act 1989* to update the definition of *intern* to reflect changes made some time ago to the *Medical Practitioners Act 1930*;
- (b) an amendment of the *Instruments Act 1933* to remove a spent provision that contains a reference to a Commonwealth Minister;
- (c) amendments of the *Litter Act 1977*, consequential on the repeal of the *Protection of Lands Act 1937* in Schedule 4, to extend the coverage of the Act from roads and road related areas to all unleased Territory land and to bring the definitions of *road* and *road related area* into line with definitions in the *Trespass on Territory Land Act 1932*;

- (d) amendments of the *National Crime Authority (Territory Provisions) Act 1991* to change certain references from 'Attorney-General' to 'Minister' to allow the Act to be administered by a Minister other than the Attorney-General;
- (e) amendments of the *Nature Conservation Act 1980* to update some provisions;
and
- (f) an amendment of the *Parole Act 1976* to correct a reference to the Commonwealth Attorney-General that should now be a reference to the Territory Attorney-General.

Each amendment in Schedule 1 is explained by an explanatory note in the Schedule after the amendment.

Schedule 2 Structural amendments

Schedule 2 is for non-controversial amendments initiated by the Parliamentary Counsel's Office of the *Interpretation Act 1967* and other Acts of 'general application' (such as the *Legislation (Republication) Act 1996* and the *Subordinate Laws Act 1989*) or otherwise affecting the structure of the statute book. The amendments ensure that the underlying structure of the statute book is kept under review and developed to reflect best practice.

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.

The amendments included in this Schedule reflect the continuing review of the *Interpretation Act 1967* by the Parliamentary Counsel's Office. Improvements in the *Interpretation Act 1967* 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.

Legislation can be shortened and simplified if repetition is avoided. The *Interpretation Act 1967* does this in at least 3 ways.

First, by providing standard definitions of commonly used words and expressions. Examples of this can be found in the dictionary to the Act (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).

Second, by providing standard sets of provisions regulating aspects of the operation of all legislation. An example of this is Part 2 (Notification, numbering and commencement of Acts).

Third, by implying powers additional to those given expressly by an individual Act. Examples of this are sections 28 and 28A (which deal with appointments) and the provisions proposed to be inserted by the *Statute Law Amendment Bill 2000* about instruments under Acts.

Shortening legislation results in less clutter and increased simplicity. Reliance on the standard provisions of the *Interpretation Act 1967* 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.

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, the *Interpretation Act 1967* has 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* operate automatically throughout the statute book wherever the provision applies.

Schedule 2 includes the following amendments of the *Interpretation Act 1967*:

- (a) an amendment inserting new sections about the making of statutory instruments to complement the sections proposed to be inserted by the *Statute Law Amendment Bill 2000*;
- (b) an amendment remaking section 33 of the *Interpretation Act 1967* (which deals with penalties for offences) in clearer English and to deal with a number of cases that are not clearly covered by the existing section;
- (c) amendments to provide for the automatic repeal of spent appropriation Acts and commencement provisions;
- (d) amendments inserting new sections setting out rules dealing with the placement of inserted provisions and the provisions that are included in other provisions for amendment purposes (eg whether a note to a paragraph is omitted when the paragraph is amended);
- (e) an amendment inserting new sections to make it clear that a reference to a law includes a reference to all the instruments under the law, to remove the need for the standard definition of *the Act* in subordinate laws, and to provide a way of referring to repealed laws;
- (f) amendments to insert new definitions in the dictionary to the *Interpretation Act 1967* relating to officials, things and concepts that are used from time to time in Territory laws.

Each amendment in Schedule 1 is explained by an explanatory note in the Schedule after the commencement.

Schedule 3 Technical amendments

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

The amendments in Schedule 3 are of 3 kinds.

First, the Schedule includes amendments consequential on or related to the repeal of the *Scaffolding and Lifts Act 1957* and the *Dangerous Goods Act 1984* by the Bill. The *Scaffolding and Lifts Act 1957* previously applied the *Scaffolding and Lifts Act 1912* of New South Wales and the regulations under that Act as ACT laws. The *Dangerous Goods Act 1984* previously applied the *Dangerous Goods Act 1975* of New South Wales and the regulations under that Act as ACT laws. The New South Wales Acts became ACT Acts under amendments of the *Interpretation Act 1967* made by the *Law Reform (Miscellaneous Provisions) Act 1999*. Other Acts that applied New South Wales laws will be reviewed in future Statute Law Amendment Bills.

Second, the Schedule has other amendments consequential on the repeals made by Schedules 4 and 5. For example, an amendment in Schedule 2 inserts transitional provisions that are being relocated from an Act being repealed by Schedule 4.

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.

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.

Schedule 4 Repeal of redundant or obsolete Acts

Schedule 4 provides for the repeal of redundant or obsolete Acts. The Schedule has 5 Parts.

Part 4.1 deals with the repeal of the *Scaffolding and Lifts Act 1957* and the *Dangerous Goods Act 1984*.

Part 4.2 deals with the repeal of 4 Acts that are no longer needed, including 2 Acts recommended for repeal by National Competition Policy reviews (the *Theatres and Public Halls Act 1928* and the *Protection of Lands Act 1937*).

Part 4.3 deals with the repeal of most of the remaining amending and repealing Acts that do have substantive provisions. The Part (and the repeals included in the *Statute Law Amendment Bill 2000*) complements a provision included in the *Interpretation Act 1967* last year that provides for the automatic repeal of amending and repealing Acts enacted after 1 January 2000 when all their provisions have commenced.

Part 4.4 deals with the repeal of amending and repealing Acts with substantive provisions that are no longer needed or are being relocated by amendments in the Bill.

Part 4.5 deals with the repeal of spent appropriation and supply Acts.

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

Each Part of Schedule 4 has an explanatory note at the beginning of the Part explaining the repeals made by the Part.

Schedule 5 Repeal of redundant or obsolete subordinate laws

Schedule 5 provides for the repeal of redundant or obsolete subordinate laws. The Schedule has 2 Parts.

Part 5.1 deals with the repeal of the amending and repealing subordinate laws.

Part 5.2 deals with non-amending or repealing subordinate laws that are obsolete or redundant.

Any residual legal effect of the subordinate laws repealed by Schedule 4 is saved by the *Interpretation Act 1967* (as applied by the *Subordinate Laws Act 1989*, section 9).

Each Part of Schedule 5 has an explanatory note at the beginning of the Part explaining the repeals made by the Part.