

2005

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

STATUTE LAW AMENDMENT BILL 2005

EXPLANATORY STATEMENT

**Circulated by the authority of
Jon Stanhope MLA
Attorney General**

Background

The objective of this bill is to further enhance the ACT's statute book to ensure that it is of the highest standard. The bill does so by amending Acts and regulations for statute law revision purposes only.

This bill forms part of the technical amendments program for ACT legislation. Under guidelines for the technical amendments program approved by the government, the essential criteria for the inclusion of amendments in the bill are that the amendments are minor or technical and non-controversial.

The development of a technical amendments program for ACT legislation was in response to the need for greater flexibility in the drafting of amendments for statute law revision purposes and to minimise costs associated with keeping ACT legislation up-to-date. Statute law amendment bills are an important part of maintaining and enhancing the standard of ACT law. They provide an opportunity to make amendments and repeals that, taken alone, would generally be insufficiently important to justify separate legislation and are inappropriate to make as editorial amendments under the *Legislation Act 2001*, chapter 11 (which provides for the republication of Acts and statutory instruments). However, the cumulative effect of the amendments and repeals made through a technical amendments program and statute law amendment bills can have a substantial impact on the ACT statute book and the overall quality of ACT law.

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. Statute law amendments under the technical amendments program can greatly assist the process of modernisation of the statute book. Laws need to be kept up-to-date to reflect ongoing technological and societal change.

The bill contains three schedules and has been structured to assist the transparency of the amendments made by it.

When enacted, this bill will help to improve the quality of the ACT's statute book by making it simpler, more consistent and more coherent, and will help to keep it up-to-date.

Clause 1 — Name of Act

This clause provides for the bill's name.

Clause 2 — Commencement

This clause provides for the bill's commencement 21 days after the day it is notified under the *Legislation Act 2001*. This will enable the Parliamentary Counsel's Office to have up-to-date republications of the affected legislation ready for the legislation register on the day the amendments commence.

Clause 3 — Purpose

This clause states the bill's purpose.

Clause 4 — Notes

This clause confirms that an explanatory note in the bill does not form part of the Act when it is enacted.

Clause 5 — Legislation amended—schs 1-3

This clause gives effect to the amendments made by schedules 1 to 3.

Schedule 1 — Minor amendments

Schedule 1 provides for minor, non-controversial amendments initiated by agencies. Each amendment is explained in an explanatory note in the schedule.

Part 1.1 — *Dangerous Substances Act 2004*

The amendments change the grounds on which a prohibition notice can be issued under the Act in two ways.

First, two currently independent grounds for the issue of a notice are combined so that they must both be satisfied before a prohibition notice can be issued. The grounds are:

- an inspector believes, on reasonable grounds, that a person at premises has contravened, is contravening, or is likely to contravene, the Act in relation to a dangerous substance (see s 109 (a)); and
- an inspector believes, on reasonable grounds, that giving the notice is necessary to prevent or minimise risk of serious harm to the health or safety of people, or substantial damage to

property or the environment, from a hazard at the premises associated with a dangerous substance (see s 109 (b) (i)).

The change is made because existing section 109 (a) is too general and unnecessarily applies to minor contraventions and the issue of a notice under section 109 (b) (i) is not appropriate if there is no contravention of the Act.

Second, a new ground (see new s 109 (2) (a)) is added. The new ground allows a prohibition notice to be issued for a contravention or likely contravention of an improvement notice. This new ground recognises that a prohibition notice may need to be issued in relation to a dangerous substance even though the risk is less than that of the serious harm required for the issue of a prohibition notice under new section 109 (1) and it is considerably narrower than the ground for the issue of a notice under existing section 109 (a) (see above).

In summary, the overall effect of the amendments is to tighten the grounds on which a prohibition notice can be issued.

Part 1.2 — *Domestic Animals Act 2000*

The Act currently provides that a cat curfew may operate between stated times. This amendment makes it clear that a cat curfew can operate on a 24 hour basis.

Part 1.3 — *Occupational Health and Safety Act 1989*

The amendments tighten the grounds on which a prohibition notice can be issued under the Act in a way similar to that mentioned for the *Dangerous Substances Act 2004* above. The presently independent grounds relating to contravention of the Act and the necessity to prevent or minimise risk of serious harm to the health or safety of people from a hazard at a workplace are combined. However, the amendments for this Act do not include the new ground of a failure to comply with an improvement notice for the *Dangerous Substances Act 2004* mentioned above. This ground is specific to that Act because the effects of an incident involving a dangerous substance can extend far beyond the place where the substance is located.

Part 1.4 — *Road Transport (General) Act 1999*

The amendments put beyond doubt that the Act's infringement notice scheme does not allow an infringement notice to be served for an offence, or an infringement notice offence to be

prosecuted, after the end of the one-year period within which a prosecution must normally be brought for a summary offence. The amendments mirror amendments already made to the infringement notice scheme under the *Magistrates Court Act 1930*.

Part 1.5 — University of Canberra Act 1989

The amendments relate to the membership of the university's council and the duties of council members. The amendments will assist the university to qualify for increased financial assistance under the *Higher Education Support Act 2003* (Cwlth) by giving effect to certain of the national governance protocols under the Act (see s 33-15).

Schedule 2 — Structural amendments of Legislation Act

Schedule 2 provides for non-controversial structural amendments of the *Legislation Act 2001* and *Legislation Regulation 2003* initiated by the Parliamentary Counsel's Office. Each amendment is explained in an explanatory note in the schedule.

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.

Shortening legislation results in less clutter and increased simplicity. Reliance on the standard provisions achieves simplification by eliminating the need to repeat standard technical definitions and other provisions in every Act. Awareness of standard provisions, particularly in the Legislation Act, is being promoted by the inclusion of notes in Acts and regulations drawing attention to them.

The amendments in the schedule also reflect the process of continuous review and improvement of the operation of the Legislation Act and the enhancement of access to ACT legislation.

The process of continuous review and improvement is, for example, reflected in the following amendments of section 61 (Notification of registrable instruments):

- (a) The group of people who can request the notification of registrable instruments is broadened, in particular, to allow any chief executive to make a notification request

for an instrument made by the Executive or a Minister. Experience has shown that the existing provisions are unnecessarily restrictive. For example, existing section 61 provides for an Executive instrument to be notified by a Minister. In practice, Ministers delegate the function to chief executives who subdelegate to other public servants. Further, the notification of a package of legislative instruments that includes an Executive instrument (eg a regulation) requires delegations between administrative units. The amendments will allow the notification process to be simplified without affecting the power to make registrable instruments (nor the people who can make registrable instruments).

- (b) Another amendment of section 61 ensures the legal effectiveness of the notification of a registrable instrument made on the request of a person who was not authorised to make the request. Once a registrable instrument is notified it will not matter that there may have been, for example, a defect in a delegation relied on to make the notification request. The amendment will remove any need for people seeking to rely on a notified registrable instrument to check the validity of a delegation used in making the notification request. The amendment complements the judicial notice provision about notification made by the *Legislation Act*, section 26 (1) (b) and section 242 (Delegation not affected by defect etc).

Other amendments of the *Legislation Act 2001* include the following:

- (a) Remaking chapter 10 (Referring to laws) to simplify its provisions and reorganise them into a more logical arrangement. Also, its scope is extended in two main areas. First, the chapter will apply to all statutory instruments rather than distinguishing between subordinate laws and disallowable instruments and other statutory instruments. There is no reason in principle why this distinction needs to be maintained as a general rule. There is in fact considerable advantage to users of ACT legislation in having the provisions of the chapter apply as consistently as possible to all statutory instruments. Second, in addition to setting out how ACT laws may refer to other ACT laws and Commonwealth and State laws, the chapter will provide for how United Kingdom and New Zealand laws may be referred to by ACT laws.

- (b) Relocating the power to make editorial amendments consequential on substantive amendments made by laws from part 11.2 (Substantive amendments made by laws) to part 11.3 (Editorial changes) and including in section 116 examples of the kinds of editorial amendments that may be made. The examples reflect current drafting practice.
- (c) The scope of chapter 17 (Entities and positions) is amended to make two aspects of its operation clear in relation to an entity or position established under non-ACT laws. First, if the name of the entity or position changes, a reference in an ACT law to the entity or position by its previous name is a reference to the entity or position by its new name. Second, a reference to a position established under a non-ACT law includes a reference to an occupant of the position and a delegate. For example, a reference to the chief police officer includes a reference to a person acting in the position and a delegate of the chief police officer. Also, a new section 184A is inserted into the chapter to make it clear that a reference in an ACT law to an entity established under a non-ACT law includes a reference to a person exercising a function of the entity, whether as a delegate or otherwise.
- (d) Extending section 208, which provides that the power to appoint a person includes the power to suspend the person, end the person's appointment or reappoint the person, so that the power to reappoint a person will also be exercisable in the same way and subject to the same conditions as the power to make the appointment.

Schedule 3 — Technical amendments

Schedule 3 contains minor or technical amendments of legislation initiated by the Parliamentary Counsel's Office. Each amendment is explained in an explanatory note in the schedule.

The amendments include the correction of minor errors, updating language, improving syntax and other minor changes to update or improve the form of legislation. For example, the schedule includes amendments of five Acts, including the *Births, Deaths and Marriages Registration Act 1997* and *Magistrates Court Act 1930*, that have been reviewed as part of an ongoing program of updating and improving the language and form of legislation. These amendments generally include the insertion of dictionaries and the inclusion of notes for the

benefit of users of legislation. The notes are part of the overall strategy to raise awareness of the impact of the Legislation Act on other legislation.