

**2006**

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**ADMINISTRATIVE (MISCELLANEOUS AMENDMENTS) BILL 2006**

**EXPLANATORY STATEMENT**

**Circulated by the authority of  
Jon Stanhope MLA  
Chief Minister**

## ADMINISTRATIVE (MISCELLANEOUS AMENDMENTS) BILL 2006

### **Explanatory Statement**

This explanatory statement relates to the Bill as introduced into the ACT Legislative Assembly.

### **Overview of Bill**

The Strategic and Functional Review of the ACT Public Sector and Services was undertaken to review public sector structures and finances and to identify options to improve efficiency through more effective government structures. A number of recommendations of the Review require the abolition of independent statutory bodies and the transfer for their functions back to the Territory to be carried out by government departments.

This Bill contains provisions designed to implement some of the recommendations of the Review involving the restructuring of a number of agencies. Provisions in this Bill are linked to Budget provisions.

The Bill inserts provisions into the *Financial Management Act 1996* that will facilitate the transfer of assets and liabilities from statutory bodies back to the Territory as functions are taken over by government departments. The provisions will ensure that neither the Territory nor third parties dealing with the statutory bodies will be disadvantaged by the change in the entity delivering the service or carrying out the function.

### **Outline of Provisions**

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

This clause sets out the name of the Act as the *Administrative Functions Review Amendment Act 2006*.

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

The Act commences on 1 July 2006.

Provision is made for some of the provisions to commence at a different time. While most of the provisions in the Act will commence on 1 July 2006 to fit with the Budget for the 2006/07 financial year, these commencement provisions allow for some of the provisions abolishing statutory bodies to come into effect later. This will allow the restructuring process to proceed at an appropriate time.

In addition, some provisions have a special commencement provision that specifies a different time on which the provision will commence. This allows some of the facilitative provisions to commence earlier than 1 July 2006 in order to allow the process of transfer of the business of statutory bodies to a government department.

Sections 4(1)(b) and (5), which repeal the *Australian Capital Tourism Act 1997* and registrable instruments made under that Act and sections 4(1)(e) and (6), which repeal the *Stadiums Authority Act 2000* and registrable instruments made under that Act will commence on a day fixed by the Minister in a written notice.

### **Clause 3      *Legislation amended – schedule 1***

This clause provides that the Acts set out in schedule 1 are amended in the way described in the schedule.

### **Clause 4      *Legislation repealed***

This clause provides that certain legislation is repealed. The Acts and Regulation repealed are:

- *ACTION Authority Act 2001*;
- *Australian Capital Tourism Corporation Act 1997*;
- *Health Promotion Act 1995*;
- *Small Business Commissioner Act 2004*; and
- *Stadiums Authority Act 2000*.

Each of those Acts establishes a statutory entity, which is abolished by the repeal of the Act.

A number of regulations and other registerable instruments are also repealed as a consequence of the changes made by the Act.

The *Planning and Land Regulation 2003* is repealed because it only provides when advice of the Planning and Land Council must be sought and that Council is abolished by amendments in the Act.

The *Independent Competition and Regulatory Commission (Terms of Reference) Determination 2006 (No 1)*, *Independent Pricing and Regulatory Commission (Reference for Investigation) Declaration 1998*; and *Independent Pricing and Regulatory Commission (Specified Requirements Relating to Investigations) 1999* are repealed as they relate to the declaration of bus services as a regulated industry under the *Independent Competition and Regulatory Commission Act 1997*.

Under the *Independent Competition and Regulatory Commission Act 1997* a Minister may declare an industry to be regulated. This instrument is now being repealed to reflect the fact that ACTION will no longer operate on a commercial basis as a result of being incorporated into the Department of Territory and Municipal Services. Therefore, ACTION should cease to be a regulated industry.

For completeness, all other registerable instruments made under the repealed Act are themselves repealed.

### **Schedule 1      *Legislation amended***

#### **Part 1.1      *ACTION Authority Act 2001***

The amendments in this part are to implement the Government decision to move the responsibility for providing a bus service for the ACT away from an independent

statutory body and back to the Department of Territory and Municipal Services. From 1 July 2006 the services that were being provided by the ACTION Authority will be provided by the Department of Territory and Municipal Services. The name “ACTION” will be retained for those services.

#### Amendment 1.1

Section 6(4) and 6(5) are omitted as they would prevent the ACTION Authority from disposing of its business and major assets without approval from the Legislative Assembly. While such a provision is important when a public utility is being run by an independent statutory authority, it would make restructure of the enterprise by the Government unnecessarily difficult. The requirement to have the approval of the Treasurer before entering into large contracts or arrangements for sale, mortgage or disposal of significant assets will remain.

The amendment will take effect 3 days after the Act is notified on the legislation register in order to facilitate the restructure process.

#### Part 1.2 *Emergencies Act 2004*

The amendments in this part are to implement the Government decision to move to a more streamlined structure for emergency services that provides high quality and responsive services to the community, while reducing overhead costs associated with maintaining a separate statutory authority. The functions of Emergency Services Authority will be integrated with the Department of Justice and Community Safety. An ACT Emergency Services Commissioner will be appointed within the Department. The Emergency Services Commissioner will have responsibility for operational matters and the statutory powers of the service chiefs will be retained.

The roles of, and support for, the Ambulance Service, the Fire Brigade, the Rural Fire Service and State Emergency Service will be maintained within the Department.

#### Amendment 1.2

Existing section 3(c) is replaced by a new provision that refers to the emergency services commissioner, rather than the emergency services authority. Without changing the substance of the provision, which sets out one of the objects of the Act, the change reflects the move from an independent statutory authority to a commissioner being responsible for the management of the Ambulance Service, the Fire Brigade, the Rural Fire Service and State Emergency Service.

#### Amendment 1.3

The existing Chapter 2 in the Act is replaced by a new Chapter 2 in which provision is made for the appointment of a public servant to be Emergency Services Commissioner and the role of the Commissioner is set out.

The new Chapter 2 contains:

Section 7, which allows the chief executive of the Department of Justice and Community Safety to appoint an ACT public servant to be the ACT Emergency Services Commissioner.

Section 8, which sets out the functions of the ACT Emergency Services Commissioner. The provisions reflect those in previous section 9. Importantly, it is provided in section 8(1) that the commissioner is responsible for the overall strategic direction and management of the emergency services.

Section 9, which gives the responsible Minister under the Act. These functions were previously functions of the emergency services authority and are administrative and structural rather than operational. They include provision of an emergency coordination centre and ensuring common planning, administrative and logistic support for emergency services. These functions will be carried out on behalf of the Government by the Department of Justice and Community Safety.

Section 10, which reflects the provisions of previous section 11 in requiring the Emergency Services Commissioner to take advice from the bushfire council in relation to the exercise of some functions. The ACT Bushfire Council is established by the Act.

Section 11, which gives the Emergency Services Commissioner the power to make guidelines about the strategic operation of the emergency services. Substantively the provisions are the same as those that previously provided for the Emergency Services Authority to make guidelines. Guidelines made under the Act will be called commissioners guidelines. As for the authority guidelines made under previous provisions, the commissioners guidelines will be notifiable instruments, except if there is some part of the guidelines that is not in the public interest to notify, in which case that part will be given to the appropriate Legislative Assembly committee, nominated by the Speaker of the Assembly.

Section 12, which replaces the previous section 13, and allows the Emergency Services Commissioner to delegate his or her functions to a public servant or a member of the emergency services.

The other provisions in the previous Chapter 2 are removed, as most of them relate to the practicalities of establishment of a statutory body. However the provisions about volunteers that were previously in Chapter 2 are included in a new Part 4.5.

#### Amendment 1.4

The previous sections 28(1) and (2) are omitted and new provisions are put in their place. The new provisions give the chief executive of the Department of Justice and Community Safety the power to, in consultation with the Emergency Services Commissioner, appoint a public servant to be the chief officer of the ambulance service. Previously the Emergency Services Authority made appointments to that position. While the Emergency Services Commissioner has operational responsibility for the emergency services, the responsibility for administration rests with the chief executive of the Department of Justice and Community Safety, so that appointments to public service positions under the Act are appropriately made in this way.

#### Amendment 1.5

The previous sections 29(1) and (2) are omitted and new provisions are put in their place. The new provisions give the chief executive of the Department of Justice and Community Safety the power to, in consultation with the Emergency Services Commissioner, appoint a public servant to be the chief officer of the fire brigade. Previously the Emergency Services Authority made appointments to that position. While the Emergency Services Commissioner has operational responsibility for the emergency services, the responsibility for administration rests with the chief executive of the Department of Justice and Community Safety, so that appointments to public service positions under the Act are appropriately made in this way.

#### Amendment 1.6

The previous sections 30(1) and (2) are omitted and new provisions are put in their place. The new provisions give the chief executive of the Department of Justice and Community Safety the power to, in consultation with the Emergency Services Commissioner and the bushfire council, appoint a public servant to be the chief officer of the rural fire service. Previously the Emergency Services Authority made appointments to that position, in consultation with the bushfire council. While the Emergency Services Commissioner has operational responsibility for the emergency services, the responsibility for administration rests with the chief executive of the Department of Justice and Community Safety, so that appointments to public service positions under the Act are appropriately made in this way.

#### Amendment 1.7

The previous sections 31(1) and (2) are omitted and new provisions are put in their place. The new provisions give the chief executive of the Department of Justice and Community Safety the power to, in consultation with the Emergency Services Commissioner, appoint a public servant to be the chief officer of the state emergency service. Previously the Emergency Services Authority made appointments to that position. While the Emergency Services Commissioner has operational responsibility for the emergency services, the responsibility for administration rests with the chief executive of the Department of Justice and Community Safety, so that appointments to public service positions under the Act are appropriately made in this way.

#### Amendment 1.8

The previous sections 32(1) and (2) are omitted and new provisions are put in their place. The new provisions give the chief executive of the Department of Justice and Community Safety the power to, in consultation with the Emergency Services Commissioner, appoint a public servant to be the deputy chief officer of one of the emergency services. Previously the Emergency Services Authority made appointments to those positions. While the Emergency Services Commissioner has operational responsibility for the emergency services, the responsibility for administration rests with the chief executive of the Department of Justice and Community Safety, so that appointments to public service positions under the Act are appropriately made in this way.

#### Amendment 1.9

A new section 32(4) is substituted for the previous provision in order to change the reference to the Emergency Services Authority to a reference to the chief executive of the Department of Justice and Community Safety.

#### Amendment 1.10

A new section 35(3) is substituted for the previous provision in order to change the reference to the Emergency Services Authority to a reference to the Emergency Services Commissioner and to replace a reference to the authority guidelines with a reference to the commissioner's guidelines.

#### Amendment 1.11

A new section 36 is substituted for the previous section 36 in order to change references in the provision from the Emergency Services Authority to the Emergency Services Commissioner.

#### Amendment 1.12

A new Part 4.5 is inserted into the Act. The new Part contains the provisions about volunteers that were previously in Chapter 2. the provisions are substantively the same. The new Part contains:

Section 59B, which provides for appointment of volunteer members of a service by the chief officer. The provisions were previously in section 24.

Section 59C, which provides for appointment of volunteer members of a service to be in accordance with the commissioners guidelines. Section 11 of the Act gives the Emergency Services Commissioner the power to make guidelines about the strategic operation of the emergency services. The provisions about volunteer appointments were previously in section 25.

Section 59D, which provides for situations where people become casual volunteers by being asked to take part in an emergency service operation. The provisions were previously in section 26.

#### Amendment 1.13

Previous Parts 4.5 and 4.6 of the Act are renumbered as Parts 4.6 and 4.7 in order to accommodate the new Part 4.5 containing the provisions about volunteers.

#### Amendment 1.14

A new heading is inserted for section 60 of the Act.

#### Amendment 1.15

A new section 71 is substituted for the previous section 71. The new provision is substantively the same but gives power to the Emergency Services Commissioner, rather than the Emergency Services Authority, to declare a bushfire abatement zone.

#### Amendment 1.16

A new section 82 is substituted for the previous section 82. The new provision is substantively the same but gives power to the Emergency Services Commissioner, rather than the Emergency Services Authority, to give directions to the owner of land to comply with a bushfire management requirement or a bushfire operational plan.

#### Amendment 1.17

A new section 123(4) is substituted for the previous section 123(4). The new provision is substantively the same but gives power to the Emergency Services Commissioner, rather than the Emergency Services Authority, to give oral approval for a fire under certain circumstances.

#### Amendment 1.18

New sections 130 and 131 are substituted for the previous sections 130 and 131. The new section 130 provisions are substantively the same but give the bushfire council the function of advising the Minister, rather than the Emergency Services Authority, about matters relating to bushfires. The Bushfire Council is also able to give advice to the Emergency Services Commissioner if the Commissioner asks for it.

The new section 131 provisions are substantively the same as the previous provisions but require the chief executive of the Department of Justice and Community Safety to provide administrative support and facilities to the bushfire council. The chief executive has the responsibility for administrative matters relating to the Act.

#### Amendment 1.19

A new section 162(1) is substituted for the previous section 162(1). The provision remains substantively the same but a reference to the Emergency Services Authority is removed. The provision allows the territory controller, appointed when a state of emergency is declared, to give directions to the head of an entity. As there will no longer be a separate entity managing emergency services, a special reference is not required.

#### Amendment 1.20

A new section 174 is substituted for the previous section 174. The provision remains substantively the same but references to the Emergency Services Authority are replaced by references to the Emergency Services Commissioner. The provisions places an obligation on the commissioner to support efforts towards recovery from an emergency.



#### Amendment 1.21

Section 176(1) is changed by having everything before paragraph (a) omitted. The new beginning to section 176(1) is substantively the same as the omitted provisions except that it refers only to the Minister being able to enter into written agreements with Commonwealth, State or overseas agencies. Reference to the Emergency Services Authority is removed.

#### Amendment 1.22

New sections 182(2) and (3) are substituted for the previous sections 182(2) and (3). Substantively the new provisions are the same as those that they replace but they provide for the chief executive of the Department of Justice and Community Safety to agree to conditions applying to gifts and donations in relation to emergency services and also for the chief executive to amend conditions that are not able to be carried out. Previously the sections referred to the Emergency Services Authority. While the Emergency Services Commissioner will carry out the operational role previously carried out by the Authority, the chief executive has responsibility for administrative matters, including funding, in relation to emergency services.

#### Amendment 1.23

New section 197(1) is substituted for the previous section 197(1). The provision is substantively the same but has been restructured to provide for the Emergency Services Commissioner to issue identity cards. Since the commissioner and his or her staff are public servants, there is no need to give a power to issue identity cards to staff generally, as that can be done administratively, as for other departmental staff. The provision for identity cards to be issued for people carrying out specific roles under the Act is retained.

#### Amendment 1.24

New section 197(3)(b) is substituted for the previous section 197(3)(b). The provision is substantively the same but has been restructured to provide for the return of identity cards issued by the Emergency Services Commissioner. Since the commissioner and his or her staff are public servants, there is no need to give a power to issue identity cards to staff generally, as that can be done administratively, as for other departmental staff. The provision for return of identity cards issued to people carrying out specific roles under the Act is retained.

#### Amendment 1.25

Section 198(1) is amended to replace paragraphs (d) and (e) with a single paragraph (d) so that the term “official” includes anyone, including public service staff, who exercises a function under the Act.

Amendment 1.26

Section 198(4) is amended to change a reference to section 198(1) to refer to the new section 198(1)(d) rather than section 198(1)(e), which is no longer there.

Amendment 1.27

A new section 198(4)(c) is substituted for the previous section 198(4)(c) in order to update the reference to the section about casual volunteers.

Amendments 1.28, 1.29, 1.30, 1.31, 1.32, 1.33 and 1.34

Definitions in the dictionary for the Act are changed to reflect the new provision numbers.

The definitions of “authority” and “authority guidelines” are omitted from the dictionary for the act, consistent with the abolition of the Emergency Services Authority.

Amendment 1.35

References to “commissioner” are substituted for references to “authority” in specified sections, consistent with the abolition of the Emergency Services Authority.

Amendment 1.36

References to “commissioner’s guidelines” are substituted for references to “authority guidelines” in specified sections, consistent with the abolition of the Emergency Services Authority.

Part 1.3 *Financial Management Act 1996*

The amendments in this Part remove references in the *Financial Management Act 1996* (the Act) to the statutory bodies that are being abolished. Provisions are included in the Act that will assist in the process of transferring business assets and liabilities back to the Territory as part of the restructure of activities previously carried out by statutory bodies.

Amendment 1.37

Reference to the ACT Health Promotion Authority is taken out of section 54(1), consistent with the abolition of that statutory body.

Amendment 1.38

Reference to the ACTION Authority is taken out of section 54(1), consistent with the abolition of that statutory body.

Amendment 1.39

Reference to the Australian Capital Tourism Corporation is taken out of section 54(1), consistent with the abolition of that statutory body. The amendment will take effect on a day set by the Minister.

Amendment 1.40

Reference to the Stadiums Authority is taken out of section 54(1), consistent with the abolition of that statutory body. The amendment will take effect on a day set by the Minister.

Amendment 1.41

Reference to the ACT Health Promotion Authority is taken out of section 76(2), consistent with the abolition of that statutory body.

Amendment 1.42

Reference to the ACTION Authority is taken out of section 76(2), consistent with the abolition of that statutory body.

Amendment 1.43

Reference to the Australian Capital Tourism Corporation is taken out of section 76(2), consistent with the abolition of that statutory body. The amendment will take effect on a day set by the Minister.

Amendment 1.44

Reference to the Stadiums Authority is taken out of section 76(2), consistent with the abolition of that statutory body. The amendment will take effect on a day set by the Minister.

Amendment 1.45

Two new divisions – Division 9.6 and Division 9.7 – are inserted into the act to facilitate restructuring of Territory statutory bodies.

The new Division 9.6 contains:

Section 104, which sets out the purpose of the division.

Section 105, which applies Division 9.6 to territory authorities prescribed by regulation under the Act to be dealt with under the provisions of the division. A territory authority is defined in the dictionary for the Act. It is a body corporate established by an Act, unless it is a body that the Treasurer has declared is not to be treated as such.

Section 106, which gives the Minister responsible for an authority to which the division applies (a division 9.6 authority) the power to direct the authority to sell or otherwise transfer an particular asset and to set conditions on the sale or transfer. If

the Minister gives such a direction the authority must carry it out. The direction is a notifiable instrument. Issuing of a direction ensures that assets can be transferred without raising the question of whether the decision to do so meets general governance requirements.

Section 107, which gives the Minister responsible for the division 9.6 authority the power to transfer ownership of an assets of the authority by way of a declaration. Such a declaration is a notifiable instrument. A declaration under this section will allow the legal ownership of an asset to be transferred without the need for the complex legal documents that might normally be required. Notification of the declaration provides a public record of the change of legal ownership.

Section 108, which gives the Minister responsible for the division 9.6 authority the power to transfer the rights and liabilities that the authority has under a contract by making a declaration. The declaration may say that a contract or some parts of the contract continue to have effect after the transfer and that rights and liabilities under the contract are to belong to another entity as if it was mentioned in the contract instead of the authority. The responsible Minister may also declare that an entity is to be the authority's successor in law in relation to rights and liabilities under the contract. Such a declaration is a notifiable instrument. Notification of the declaration provides a public record of the change of legal position.

Section 109, which gives the Minister responsible for the division 9.6 authority the power to transfer ownership of an liabilities of the authority by way of a declaration. Such a declaration is a notifiable instrument. A declaration under this section will allow the legal ownership of a liability to be transferred without the need for the complex legal documents that might normally be required. Notification of the declaration provides a public record of the change of legal ownership.

Section 110, which allows an authority to give assistance in transferring assets as part of a restructuring process. The provision avoids any concern that the authority is not acting in its own best interests in accordance with general governance requirements. The assistance might include giving of information about assets or business matters, providing facilities or entering an agreement, among other things.

The section also allows the Minister responsible for the division 9.6 authority to ask for assistance from the authority and, if asked, the authority must give that assistance as requested. No civil liability will attach to the authority because it gives assistance as described in the section.

Section 111, which allows the governing board of an authority or a member of the board to give assistance in transferring assets as part of a restructuring process. The provision avoids any concern that the board or board member is not acting in the best interests of the authority in accordance with general governance requirements and legal duties. The assistance might include giving of information about assets or business matters, providing facilities or entering an agreement, among other things.

The section also allows the Minister responsible for the division 9.6 authority to ask for assistance from the governing board of an authority or a member of the board and, if asked, the governing board of an authority or a member of the board must give that

assistance as requested. No civil liability will attach to the governing board of an authority or a member of the board because it gives assistance as described in the section.

Section 112, which allows the Territory or an associated person to use information provided under section 110 or section 111 for purposes related to the transfer of the assets of a division 9.6 authority. “Associated person” is defined to include a range of people who may be involved in the restructuring process. No civil liability is incurred through the use of information in accordance with the section and the person does not breach confidence, ethics or professional rules of conduct by doing so. The provision will allow a free flow of information about assets and obligations to be transferred and will prevent the Territory from suffering disadvantage during the process.

Section 113, which allows the Minister responsible for a division 9.6 authority to enter into an agreement on behalf of the Territory about the protection of information provided under section 110 or 111. This allows that valuable commercial information can be protected to the satisfaction of a party to a contract with the authority during the transfer process.

Section 114, which allows a division 9.6 authority to enter into an agreement on behalf of the Territory about the protection of information provided under section 110 or 111. This allows that valuable commercial information can be protected to the satisfaction of a party to a contract with the authority during the transfer process.

Section 115, which provides for an entity to which assets or liabilities of a division 9.6 authority are transferred to become the party to any legal proceeding already started in relation to the transferred assets or liabilities.

Section 116, which provides for legal actions to be taken against the entity that becomes the successor in law to a division 9.6 authority, even though the cause of action arises from something that happened before the asset or liability of the authority was transferred. Actions covered by the provision include appeals and administrative review.

Section 117, which makes it clear that anything done under division 9.6 does not constitute a breach of confidence or a breach of contract or make a person guilty of any civil wrong. Similarly, it does not fulfill any condition in a contract that would allow the contract to be terminated or require payment of a penalty. The provision makes it clear that there will be a seamless transition of all legal rights and obligations.

Section 118, which provides that if there are assets or liabilities of a division 9.6 authority that have not been dealt with under the provisions of division 9.6 at the time when the authority ceases to exist the provisions of division 9.7 applies to those assets or liabilities. This ensures that there is nothing belonging to a statutory body that cannot be conveniently dealt with after the body ceases to exist.

Section 119, which ensures that full financial and annual reporting is completed for statutory bodies that are abolished. To ensure that a full report is produced for the reporting period in which the body ceases to exist, the provision places responsibility

for annual on the Minister who is responsible for the body immediately before it is abolished. The provisions refers to requirements under the Act to produce financial statements, audit reports and performance reports to ensure that a complete cycle of reporting is produced despite the abolition of the bodies and the consequent termination of all appointments made in relation to them.

The new Division 9.7 contains:

Section 120, which applies Division 9.7 to territory authorities prescribed by regulation under the Act to be dealt with under the provisions of the division (division 9.7 authorities). A territory authority is defined in the dictionary for the Act. It is a body corporate established by an Act, unless it is a body that the Treasurer has declared is not to be treated as such.

Section 121, which defines “handover day” as the day on which a division 9.7 authority ceases to exist. It also provides that in the provisions in the division the term “territory authority” includes a territory authority that has ceased to exist.

Section 122, which transfers ownership of all assets, rights and liabilities of a division 9.7 authority to the Territory on the day that the authority ceases to exist. All the records of the authority become the records of the Territory on that day. Records include applications made to the authority so that there is continuity for people who have applied to the authority in relation to a function that is taken over by the Territory.

Section 123, which ensures continuity of legal actions by providing that the Territory is substituted as a party on the day that the division 9.7 authority ceases to exist. Similarly, any cause of action that arose before the day that the authority ceased to exist can be brought against the Territory in the same way as if it was brought against the authority and the evidence that could have been used in proceedings involving the authority can be used in relation to the Territory. Orders made against a division 9.7 authority before it ceases to exist can be enforced instead by or against the Territory.

Section 124, which ensures that full financial and annual reporting is completed for statutory bodies that are abolished. To ensure that a full report is produced for the reporting period in which the body ceases to exist, the provision places responsibility for annual on the Minister who is responsible for the body immediately before it is abolished. The provisions refers to requirements under the Act to produce financial statements, audit reports and performance reports to ensure that a complete cycle of reporting is produced despite the abolition of the bodies and the consequent termination of all appointments made in relation to them.

Section 125, which provides for a reference to a division 9.7 authority to be read, after the body is abolished, as a reference to the Territory in any agreement of contract. This provision commences three days after the day on which the Act is notified on the legislation register.

#### Amendment 1.46

Sections 104 to 108 of the Act are renumbered as sections 130 to 134.

Amendment 1.47

A new heading is given to Part 11 of the Act and it is renumbered as Part 19. The new heading is:  
“Transitional—Financial Management Legislation Amendment Act 2005”.

Amendment 1.48

Section 109 of the Act is renumbered as section 150. The renumbering distinguishes provisions in different Parts of the Act and facilitates clearer numbering of amendments.

Amendment 1.49

A reference in section 110(4) to section 109 is changed to a reference to section 150, consistent with the renumbering.

Amendment 1.50

Section 110 of the Act is renumbered as section 151.

Amendment 1.51

Section 111 of the Act is renumbered as section 155.

Amendment 1.52

A new Part 20 is inserted into the Act. It contains transitional provisions for the *Administrative Functions Review Amendment Act 2006*. Those transitional provisions are:

Section 220, which provides that the definition given to the term “territory authority” in the Act by virtue of the amendments in the *Administrative Functions Review Amendment Act 2006* is treated as having applied from 1 January 2006. Amendment 1.54 substitutes a new definition of “territory authority” for the previous definition in the dictionary for the Act. The amendment to the definition of the term was necessary to correct a circularity in definitions within the Act which caused confusion. By taking effect from 1 January 2006, the amended definition will ensure that the provisions in the *Administrative Functions Review Amendment Act 2006* designed to facilitate restructuring of certain statutory bodies will operate clearly and effectively. This provision commences three days after the day on which the *Administrative Functions Review Amendment Act 2006* is notified on the legislation register.

Section 221, which provides that section 84 of the *Legislation Act 2001* does not apply to appointments made under an Act that is repealed by the *Administrative Functions Review Amendment Act 2006* or a provision that is taken out of another Act by that Act. This ensures that no right or privilege attaching to such an appointment continues after the Act or provision is repealed.

Section 222, which gives power to make regulations about transitional matters arising from the operation of the *Administrative Functions Review Amendment Act 2006*.

This ensures that minor matters that may have been overlooked can be dealt with in a way that allows for smooth transition to full operation of the new provisions.

Section 223, which provides for the transitional provisions to expire two years after they commence, as they will by then no longer be needed. Section 88 of the *Legislation Act 2001* applies to make the effect of the transitional provisions continue after they expire.

#### Amendment 1.53

A definition of the term “contract” is included in the dictionary for the Act. A reference to “contract” includes reference to an agreement or arrangement so that provisions can cover things that may not, strictly, be contracts.

#### Amendment 1.54

New definitions of the terms “division 9.6 authority” and “division 9.7 authority” are included in the dictionary for the Act.

#### Amendment 1.55

A new definition of the term “handover day” is included in the dictionary for the Act. The term is used in new Division 9.7.

#### Amendment 1.56

A new definition of the term “territory authority” is included in the dictionary for the Act. The new definition replaces a definition that was less clear and incorporates, for the purposes of the transfer provisions in Division 9.7, territory authorities that have ceased to exist. This provision commences three days after the day on which the *Administrative Functions Review Amendment Act 2006* is notified on the legislation register. New section 220 of the Act provides that the new definition takes effect from 1 January 2006.

### Part 1.4 Financial Management Regulation 2005

The provisions in this Part amend the Financial Management Regulation 2005 (the Regulation) consistent with the changes to the *Financial Management Act 1996*.

#### Amendment 1.57

A new section 3 is substituted for the previous section 3 of the Regulation in order to reflect the renumbering of provisions in the *Financial Management Act 1996*. No substantive change is made to the existing provisions.

#### Amendment 1.58

A new section 4 is substituted for the previous section 4 of the Regulation. The new section provides that the new Division 9.6 of the *Financial Management Act 1996* applies to ACTION Authority, the ACT Health Promotion Authority, the Australian Capital Tourism Corporation, the Emergency Services Authority and the Stadiums



Authority. Division 9.6 contains provisions to facilitate restructuring of statutory bodies following the Strategic and Functional Review of the ACT Public Sector and Services. This provision commences three days after the day on which the *Administrative Functions Review Amendment Act 2006* is notified on the legislation register.

#### Amendment 1.59

New section 5 is inserted into the Regulation. The new section provides that the new Division 9.7 of the *Financial Management Act 1996* applies to ACTION Authority, the ACT Health Promotion Authority, the Australian Capital Tourism Corporation, the Emergency Services Authority and the Stadiums Authority. Division 9.7 contains provisions to facilitate restructuring of statutory bodies following the Strategic and Functional Review of the ACT Public Sector and Services. This provision commences three days after the day on which the *Administrative Functions Review Amendment Act 2006* is notified on the legislation register.

#### Amendment 1.60

The heading to Schedule 1 is changed. The new heading is: “Schedule 1 Modification of Act, pt 19 (Transitional—Financial Management Legislation Amendment Act 2005)”.

#### Amendment 1.61

The previous heading for Schedule item 1.1 is replaced by two new headings.

#### Amendment 1.62

A heading from Schedule item 1.1 is removed.

#### Part 1.5 *Fuels Control Act 1979*

Amendments to the *Fuels Control Act 1979* (the Act) are required as a consequence of the abolition of the ACT Emergency Services Authority and the creation of the ACT Emergency Services Commissioner.

#### Amendment 1.63

Previous section 12 and 12A of the Act are replaced with new sections 12 and 12A. the provisions have been redrafted to replace references to the ACT Emergency Services Authority with references to the ACT Emergency Services Commissioner. In addition the language of the provisions has been updated. No substantive change has been made to the provisions.

#### Amendment 1.64

Previous section 17(c) is replaced with a new section 17(c) in order to replace references to the ACT Emergency Services Authority with references to the ACT Emergency Services Commissioner. In addition the language of the provision has been updated. No substantive change has been made to the provision.

Part 1.6 *Land (Planning and Environment) Act 1991*

Amendments are made to the *Land (Planning and Environment) Act 1991* (the Act) to abolish the Planning and Land Council (the Council), which had advisory functions under the Act.

Amendment 1.65

Section 227(1)(k) is redrafted to remove references to the Council. Previously it required a record of comments by the Council in relation to applications under section 229B of the Act to be kept.

Amendment 1.66

Section 229B(6)(d) redrafted to remove the requirement for the Minister to consider comments from the Council.

Amendment 1.67

Section 229B(8), which dealt with comments by the Council in relation to an application is removed, as the Council is being abolished.

Amendment 1.68

A new section 231(1)(g) replaces the previous provision in order to remove reference to the comments of the Council, as the Council will be abolished.

Amendment 1.69

New provisions, sections 300 and 301 are inserted into the Act. Section 300 contains transitional provisions about comments given by the Council before its abolition on 1 July 2006. It requires the Minister, in making a decision about an application where he or she would have had to consider the comments of the Council before 1 July 2006, to consider the comments in making a decision after 1 July 2006. Although the Council will not exist after 1 July 2006, it will have made comments on applications prior to that and the transitional provision ensures that in deciding those outstanding applications the comments already made are taken into account.

Section 301 contains transitional provisions about advice given by the Council before its abolition on 1 July 2006. It requires the Planning and Land Authority, in exercising a function where the Authority would have had to consider the comments of the Council before 1 July 2006, to consider the comments in exercising the function after 1 July 2006. Although the Council will not exist after 1 July 2006, it will have given advice to the Planning and Land Authority prior to that and the transitional provision ensures that when the Authority exercises relevant functions after that date the advice already given is taken into account.

Part 1.7 *Legislation Act 2001*

The *Legislation Act 2001* contains, in the Dictionary, generally applicable definitions of terms used in ACT legislation.

#### Amendment 1.70

The definition of “planning and land council” is removed from the Dictionary, Part 1 in the *Legislation Act 2001*, consistent with the abolition of the Planning and Land Council, previously established under the *Planning and Land Act 2002*.

#### Part 1.8 *Occupational Health and Safety Act 1989*

Amendments are made to the *Occupational Health and Safety Act 1989* (the Act) to facilitate the regulatory functions under the Act being performed within a departmental structure.

#### Amendment 1.71

Sections 32(4) and 32(5) are removed from the Act. The sections provided for the costs of complying with a ministerial direction under the Act to be paid by the Territory to the Occupational Health and Safety Commissioner. Under the Act the Occupational Health and Safety Commissioner has a number of regulatory functions and is independent of Territory government departments. The provisions are not consistent with the policy that those functions are carried out within a Territory department.

#### Amendment 1.72

Section 36, which provided for independent reporting by the Occupational Health and Safety Commissioner under the *Financial Management Act 1996*, is removed from the Act. The section provided for the Commissioner and the Commissioner’s staff to be treated for financial reporting purposes as if they were a department. The provisions are not consistent with the policy that the functions of the Occupational Health and Safety Commissioner are carried out within a Territory department.

#### Part 1.9 *Planning and Land Act 2002*

Amendments are made to the *Planning and Land Act 2002* (the Act) to abolish the Planning and Land Council (the Council). The Council was established under the act to provide advice on planning and land matters to the responsible Minister and to the Planning and Land Authority.

#### Amendment 1.73

Section 9(1)(n) of the Act, which required the Planning and Land Authority (established under the Act) to provide administrative support and facilities for the Council, is removed as it is not necessary when the Council no longer exists.

#### Amendment 1.74

Section 11 is removed from the Act. Section 11 required the Planning and Land Authority to ask the Council for advice in relation to the exercise of certain functions. The provision is not necessary following the abolition of the Council.

#### Amendment 1.75

Section 19(1) of the Act is redrafted to omit the requirement for the Executive to consult with the Council prior to appointing a person to be the Chief Planning Executive. The requirement is inconsistent with the abolition of the Council.

#### Amendment 1.76

All the provisions in chapter 3 of the Act are removed as they provided for the establishment, operation, membership and functions of the Council. Removal of the provisions causes the Council to cease to exist and ends the appointment of all the Council members.

#### Amendment 1.77

Definitions of the terms “council”, “council chairperson”, “council deputy chairperson” and “council member” are removed from the dictionary for the Act as they are no longer required, following the abolition of the Council.

#### Part 1.10 *Road Transport (Public Passenger Services) Act 2001*

Amendments are made to the *Road Transport (Public Passenger Services) Act 2001* (the Act), which regulates the provision of public passenger transport services, including bus services, to facilitate the transfer of the business of the ACTION Authority to the Department of Territory and Municipal Services.

#### Amendment 1.78

New sections 18(2) and 18(3) are inserted in the Act to give the Territory the right to run a bus service. It provides that the Territory does not have to fulfill the requirements that apply under section 18 to other bus operators before they are entitled to run a regular route service in the Territory. Since the Territory will be providing a bus services as a public utility it will not need to be accredited under the regulations or to have a service contract for the bus service. However, section 18(3) provides that it must run the service in accordance with the standards imposed on other operators.

#### Amendment 1.79

New sections 19(2) and 19(3) are inserted into the Act to give the Territory the right to operate a tour and charter service. This allows the Territory to provide this kind of bus service without having to obtain accreditation under the regulations. However, section 19(3) provides that it must run the service in accordance with the standards imposed on other operators.

#### Amendment 1.80

A new section 19A is inserted in the Act to allow the name for the bus service run by the Territory to operate under a name prescribed by regulation. The name “ACTION” is prescribed for the service so that continuity is maintained.

#### Amendment 1.81

A new section 20(3) is inserted in the Act to make it clear that the Territory does not need accreditation under the regulations to the Act in order to be entitled to run either a regular route bus service or a tour and charter bus service. The new section provides that the penalty provisions in sections 20(1) and 20(2) do not apply to the Territory.

#### Amendment 1.82

New section 22(3) is inserted in the Act to make it clear that the Territory does not need to have a contract for a regular route bus service in order to be entitled to run such a service.

#### Amendment 1.83

New section 82A is inserted into the Act to allow the name for a demand responsive bus service run by the Territory to operate under a name prescribed by regulation.

#### Amendment 1.84

New sections 90(2) and 90(3) are inserted into the Act to give the Territory the right to demand responsive service service. This allows the Territory to provide this kind of bus service without having to hold an authorization, hold a service contract or obtain accreditation under the regulations. However, section 90(3) provides that it must run the service in accordance with the standards imposed on other operators.

#### Amendment 1.85

A new section 91(4) is inserted into the Act to make it clear that the Territory does not need to have an authorization or a service contract for a demand responsive bus service or be have an accreditation as a demand responsive service operator in order to be entitled to run such a service.

Part 1.11 Road Transport (Public Passenger Services) Regulation 2002  
Amendments are made to the Road Transport (Public Passenger Services) Regulation 2002 (the Regulation) consistent with the amendments to the *Road Transport (Public Passenger Services) Act 2001*.

#### Amendment 1.86

New section 67A is inserted into Part 3.4 of the Regulation to provide that the Territory bus service can be operated under the name ACTION. New section 19A in the *Road Transport (Public Passenger Services) Act 2001* provides for the Territory to run a bus service under a name prescribed by regulation.

#### Amendment 1.87

New section 301A is inserted into Division 6.2.7 in the Regulation to provide that the Territory can run a demand responsive service under the name ACTION. New section 82A in the *Road Transport (Public Passenger Services) Act 2001* provides for

the Territory to run a demand responsive service under a name prescribed by regulation.

Part 1.12 *Stadiums Authority Act 2000*

Amendments are made to the *Stadiums Authority Act 2000* (the Act) to facilitate abolition of the Stadiums Authority and integration of its functions into the Department of Territory and Municipal Services.

Amendment 1.88

Section 6(4) and 6(5) are omitted as they would prevent the Stadiums Authority from disposing of its business and major assets without approval from the Legislative Assembly. While such a provision is important when a public facility is being run by an independent statutory authority, it would make restructure of the enterprise by the Government unnecessarily difficult. The requirement to have the approval of the Treasurer before entering into large contracts or arrangements for sale, mortgage or disposal of significant assets will remain.

The amendment will take effect three days after the Act is notified on the legislation register in order to facilitate the restructure process.