

2001

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

LEGISLATION (CONSEQUENTIAL AMENDMENTS) BILL 2001

EXPLANATORY MEMORANDUM

**Circulated by the authority of
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Legislation (Consequential Amendments) Bill 2001

Background

Public access to legislation

- 1 The *Legislation Act 2001*, passed recently by the Legislative Assembly, 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.
- 2 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).

ACT legislation register

- 3 The core of the new scheme is an authorised, electronic statute book (the *ACT legislation register*), published on the Internet to provide free public access to authorised versions of ACT legislation and other legislative material. It will ensure a level of access that is not only free, convenient and comprehensive, but also backed by statutory presumptions to support its authoritative status.
- 4 Because of the scale of the project, the register will be developed in stages. From the commencement of the *Legislation Act 2001* (expected to be 1 July 2001), it is proposed that the following core material will be available:
 - a) Acts, subordinate laws, disallowable instruments, commencement notices and other statutory instruments—as enacted or made after the commencement;
 - b) the text of laws and instruments applied, adopted or incorporated by provisions of statutory instruments made after the commencement;
 - c) notifications of the following:

- i) the enactment or making of Acts, subordinate laws, disallowable instruments, approved forms, commencement notices and other statutory instruments after the commencement;
 - ii) amendments of subordinate laws or disallowable instruments made by the Legislative Assembly after the commencement;
- d) the text of statutory forms converted into approved forms by this Bill;
- e) a comprehensive index to ACT legislation.
- 5 Although initial priorities will focus on the material required to be registered after the commencement of the *Legislation Act 2001*, the back capture of current ACT legislation (up-to-date republications) for inclusion on the register has been given the highest priority and is currently underway. The preparation for registration of updated republications will be prioritised on the basis of the usefulness and significance of the legislation. It is estimated that the republication program will take 12 months to complete.
- 6 The register will be developed progressively to contain (or provide links to) legislation enacted or made before the commencement of the *Legislation Act 2001*, and related material such as Bills (and amendments of Bills) presented to the Legislative Assembly, explanatory memoranda for Bills, superseded versions of authorised republications, repealed legislation and other material useful to legislation users. Assistance for users will be provided in the form of user guides, indexes, pointers to the responsible Government agencies, and so on. The back capture and inclusion on the register of legislation enacted or made before the commencement (including disallowable instruments) will be done as resources allow.
- 7 For users without Internet facilities, on-line access to the register will be provided in convenient places, for example, the ACT Government shopfronts and ACT public libraries.
- 8 Although the register will change the emphasis in publishing legislation from printed to electronic form, printed legislation will continue to be available. In fact, the register will facilitate on-demand printing of authorised versions of legislation.

'Machinery of government' legislation

- 9 At present, the provisions dealing with the 'life cycle' of legislation are found across the statute book, particularly in the *Interpretation Act 1967*, the *Evidence Act 1971*, the *Subordinate Laws Act 1989* and the *Legislation (Republication) Act 1996*.
- 10 The second element of the access project involves restructuring, restating and simplifying these provisions, and putting them together in a single Act, to make them more accessible and easier to understand.
- 11 The legislative scheme for the access project is being developed in stages as follows:
 - a) the *Legislation Act 2001* and *Legislation (Consequential Provisions) Act 2001*—established the legislation register and brought many of the core 'life cycle' provisions together in modern form in a single Act;
 - b) the *Legislation (Consequential Amendments) Bill 2001*—will bring most ACT Acts and subordinate laws fully into line with the *Legislation Act 2001*;
 - c) a Bill (for presentation later this year) to bring the remaining 'machinery of government' provisions into the *Legislation Act 2001*.
- 12 The *Legislation Act 2001* will then provide a modern and comprehensive set of provisions dealing with all aspects of the 'life cycle' of ACT legislation.

Legislation (Consequential Amendments) Bill 2001

- 13 The establishment of the legislation register represents a turning point in the way ACT legislation and statutory instruments are notified and published for access by the public.
- 14 Since 1911, ACT legislation and statutory instruments have been notified in the printed Gazette and authorised versions of legislation have been available only in printed form. Under the *Legislation Act 2001*, legislation and statutory instruments will be notified in electronic form on the register together with the authorised version of the full-text of the legislation or instrument. The register will also facilitate the production of authorised, printed versions of legislation and instruments.
- 15 As notification on the legislation register will replace notification in the Gazette almost entirely, the statute book needs considerable revision to bring it into line with the new notification and publication arrangements. Further revision is needed because of the restructuring and simplification of the provisions dealing with the 'life cycle' of legislation.

16 The *Legislation (Consequential Amendments) Bill 2001* makes the consequential amendments needed to most Acts and subordinate laws. Many of the amendments are mechanical and repetitive. The Bill does not include amendments of a policy nature unrelated to the *Legislation Act 2001* and, except as mentioned elsewhere in this explanatory memorandum, the effect of Acts and subordinate laws amended by the Bill has been preserved by the amendments. Given the nature and number of amendments, this memorandum explains the different kinds of amendments generally and includes illustrations of particular amendments.

Notes on clauses

Clause 1

17 This clause provides for the Bill's name.

Clause 2

18 This clause provides for the Bill's commencement. Except as provided in subclause (2), the Bill will commence on the date fixed under the *Legislation Act 2001* for the commencement of section 18 of that Act. Subclause (2) allows for the possible later commencement of amendments for which a specific commencement provision is included in schedule 1. These are amendments of provisions that are also amended by other Acts. The amendments made by the other Acts may not have commenced when the *Legislation Act 2001*, section 18 commences.

Clause 3

19 This clause provides for the amendments and repeals mentioned in schedule 1.

Clause 4

20 This clause provides for the application of the *Legislation Act 2001*, section 88 (Repeal does not end transitional or validating effect etc) to the *Limitation Act 1985*, section 3. Section 3 contains transitional provisions. The section is omitted in schedule 1. This clause removes any doubt about the application of section 88 to section 3 and ensures that any continuing operation that section 3 may have is preserved.

Notes on amendments and repeals

General approach

- 21 As a general approach, the Bill omits provisions in particular Acts or subordinate laws that duplicate provisions of the *Legislation Act 2001* (or, in some cases, remaining provisions of the *Interpretation Act 1967*). For example, the *Legislation Act 2001*, section 46 (1) provides that a power given under an Act to make a statutory instrument includes power to amend and repeal the instrument. Consequently, provisions in other legislation that expressly authorise the amendment or repeal of instruments would generally be omitted.
- 22 Many of the amendments to be made by the Bill are no more than specific applications of this general approach.
- 23 The Bill also provides for the insertion of explanatory notes in particular Acts and subordinate laws to indicate, where relevant, the effect of the *Legislation Act 2001*. These notes should assist users of legislation, particularly until they become more familiar with the operation of the new scheme.

Some more significant amendments

From gazettal to registration

- 24 After 90 years of ACT law making, the statute book has developed a strong Gazette orientation, particularly in relation to the notification of statutory instruments. This is evident not only in the numerous references to the Gazette but also in the way provisions are written. They reflect the background procedures surrounding the publication of a printed Gazette.
- 25 Under the *Legislation Act 2001*, the notification of legislation and statutory instruments will be done electronically by registration on the legislation register. New procedures would replace the old ones surrounding the Gazette. Consequently, the statute book needs considerable revision to bring it into line with the new Act.
- 26 The *Legislation (Consequential Amendments) Bill 2001* provides for these amendments, without changing the basic nature of the instruments to be notified or the substantive effect of the notification provisions. The effect of the Bill on the different kinds of notification is set out below.

27 At this stage, ‘employment notices’ under the *Public Sector Management Act 1994* and the *Fire Brigade (Administration) Act 1974* will not be notified on the legislation register. These notices will continue to be published in the printed Gazette for the time being.

Notice of enactments etc

28 The *Legislation Act 2001* maintains the long-standing requirement for public notice to be given of the passage of laws by the Legislative Assembly and the making of subordinate laws and disallowable instruments.

29 Under the current law (*Interpretation Act 1967*, s 8, *Subordinate Laws Act 1989*, s 6), the notice in the Gazette gives the name of the relevant law or statutory instrument but not the text. Notification under the *Legislation Act 2001* requires the entry in the legislation register of—

- a) a statement that the law or instrument has been passed or made; and
- b) the text of the law or instrument.

(see *Legislation Act 2001*, s 19, s 28 and s 61).

30 Because existing provisions are written on the basis of short-form Gazette notification rather than full-text publication, many provisions currently providing for gazettal (or that are connected to provisions providing for gazettal) need to be restructured to at least some degree (and some extensively) to work appropriately for the full-text publication provided under the *Legislation Act 2001*. In some cases, without restructuring, the wrong instrument would be notified under the *Legislation Act 2001*. For example, application of the general transitional provisions of the *Legislation Act 2001* may result in the instrument approving a code of practice being required to be notified rather than the text of the code itself. In other cases, without restructuring there is no instrument, apart from the Gazette notice itself, that could be notified.

Example 1—Meat Act 1931, s 15

Existing provision

15 Powers of Minister to engage in certain processes

- (1) The Minister shall have the exclusive right to engage in any of the following processes:
 - (a) fat melting or tallow extracting;
 - (b) bone grinding or manure manufacturing;

- (c) blood boiling or drying;
- ...
- (i) any other trade which the Minister declares by notice in the *Gazette* to be a noxious process.

Provision after amendment

15 Powers of Minister to engage in certain processes

- (1) The Minister shall have the exclusive right to engage in any of the following processes:
 - (a) fat melting or tallow extracting;
 - (b) bone grinding or manure manufacturing;
 - (c) blood boiling or drying;
 - ...
 - (i) any other trade which the Minister declares, in writing, to be a noxious process.

- (2) A declaration under subsection (1) (i) is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

(Note The *Meat Act 1931* contains obsolete provisions and is proposed to be repealed in the near future by new food legislation.)

Example 2—Agents Act 1968, s 75A

Existing provision

75A Approval of code of practice

- (1) The Minister may approve a code of practice for employment agents.
- (2) An approval under this section is a disallowable instrument for the *Subordinate Laws Act 1989*.

Provision after amendment

75A Approval of code of practice

- (1) The Minister may, in writing, approve a code of practice for employment agents.
- (2) An approved code of practice is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

Example 3—Agents Act 1968, s 71G

Existing provision

71G Publication of names of licensed travel agents

As soon as practicable after the commencement of the *Agents (Amendment) Act (No. 2) 1988*, and from time to time after that, the Board shall publish in the *Gazette* a notice specifying—

- (a) the name or names under which each person holding a travel agent's licence on the date on which the notice was prepared was authorised to carry on business as a travel agent; and
- (b) the date on which the notice comes into force, being a date not earlier than the date of publication of the notice; and
- (c) the date on which the notice ceases to be in force.

Provision after amendment

71G Publication of names of licensed travel agents

- (1) The board must, from time to time, prepare a written notice stating—
 - (a) the name or names under which each person holding a travel agent’s licence on a stated date was authorised to carry on business as a travel agent; and
 - (b) the date when the notice ceases to be in force
- (2) The notice is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

31 The *Legislation Act 2001* also defines *notification* and *notification day*, linking them to notification under the Act (see s 30, s 63, and dict, def of ***notification day***). This Bill therefore amends Acts and subordinate laws to reflect the new notification requirements and incorporate the concepts of *notification* and *notification day*.

Notice of commencements

32 The commencement of Acts and subordinate laws, or particular provisions, is often postponed, for example to give early notice of impending changes to the application or operation of the law, or for administrative arrangements to be put in place before the changes take effect. Commencement provisions often provide, therefore, that a later commencement date or dates may be fixed by the Minister (or someone else) by notice in the Gazette.

33 The Bill omits commencement provisions that have already commenced the laws or provisions to which they relate. These commencement provisions are spent and their repeal does not affect the continuing operation of the laws and provisions they commenced (*Legislation Act 2001*, s 87). Commencement provisions that have commenced are of limited assistance to readers of legislation and add to clutter in the statute book. Full details of the commencement of original laws and their amendments are provided in republications of ACT laws.

34 Commencement provisions that become spent after the commencement of the *Statute Law Amendment Act 2001* are automatically repealed under the *Interpretation Act 1967*, section 43 (4) (see also *Legislation Act 2001*, s 89 (5)). It will, therefore, be unnecessary to repeal commencement provisions in the future.

35 The *Legislation Act 2001* contains transitional provisions to deal with commencement provisions that are uncommenced when the Act commences (see s 129). If a

commencement provision authorises the fixing of a commencement date by notice in the Gazette, it is sufficient if the commencement date is fixed by an instrument. The instrument is, however, required to be notified under the *Legislation Act 2001*.

36 The Bill makes any necessary consequential amendments to commencement provisions that have commenced some, but not all, of the provisions to which they relate.

Notifying disallowable instruments

37 Under the *Subordinate Laws Act 1989* (repealed by the *Legislation (Consequential Provisions) Act 2001*), Ministerial determinations of fees and charges under legislation were disallowable, as well as a wide range of instruments expressly declared to be disallowable by particular Acts and subordinate laws (see s 6 (19), def of *subordinate law* and s 10). Until recently the definition of *subordinate law* in the *Subordinate Laws Act 1989*, section 6 (19), was relied on and Ministerial determinations of fees and charges were not declared to be disallowable instruments. To assist the users of legislation, current ACT drafting practice is to expressly provide that Ministerial determinations of fees and charges are disallowable instruments.

38 The *Legislation Act 2001* maintains the long-standing requirement for public notice to be given of the making of disallowable instruments, and for the instruments to be presented to the Legislative Assembly, where they can be amended or disallowed. The *Legislation Act 2001* makes the instruments registrable, and therefore unenforceable, unless notified on the legislation register (see s 12 and s 62). In addition, the *Legislation Act 2001* requires a disallowable instrument to be presented to the Legislative Assembly within 6 sitting days after its notification day (s 64). If a disallowable instrument is not presented within this time, it is taken to be repealed.

39 The Bill provides for consequential amendments of provisions that declare statutory instruments to be disallowable, without changing the basic nature of the instruments or the effect of the declaratory provisions. It provides for a shorter, standard form of declaratory provision and the insertion of explanatory notes to indicate that disallowable instruments must be notified, and presented to the Legislative Assembly, under the Act. The Bill also amends all provisions that provide for the determination of fees to expressly provide that the determinations are disallowable and include an explanatory note drawing attention to

the provisions of the *Legislation Act 2001* about the making of determinations and regulations relating to fees.

Example of non-fee disallowable instrument provision

(2) A declaration is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

Example of provision for determination of fees

Determination of fees

(1) The Minister may, in writing, determine fees for this Act.

Note The *Legislation Act 2001* contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

(2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

Notifying non-disallowable statutory instruments

40 Many provisions require miscellaneous, non-disallowable instruments to be notified in the Gazette (eg lists of licensed travel agents under the *Agents Act 1968*, s 71G mentioned above). In these cases, the Bill would generally omit the reference to the Gazette and provide simply that the instrument is a notifiable instrument. The Bill also provides for the amended provisions to include an explanatory note that notifiable instruments must be notified under the *Legislation Act 2001*.

Approved forms

41 In the past, subordinate laws and, to a lesser extent, Acts set out the required format for such things as licences and application forms. The relevant forms were usually set out in a schedule to the Act or subordinate law. One of the problems with this approach, however, was that any change to the form required an amendment of the relevant law. This rigidity hampered innovation and increased the risk that forms would contain out-of-date or unnecessary material. In more recent times, a more flexible approach has developed. Rather than set out the forms in the legislation itself, the Act or regulations have required documents to be in a form ‘approved’ by a particular person, usually the Minister or an official. Until recently the practice was to require the use of the relevant approved form in each provision for which a form was required. Thus, for example, if an application could be made under 5 sections of an Act, each of the 5 sections would have a provision requiring

the use of an approved form. This practice added significantly to clutter in the statute book and to unnecessary rigidity in administration. Over the years the approved form provisions have developed in a way that was not consistent across the statute book, although a standard approach would normally be simpler and just as effective.

42 Sometimes the legislation required the approved form to be published or notified in the Gazette. In most cases, however, there was no obligation to notify or publish the forms currently approved. The result was that people would need to make their way to the relevant agency to pick up a printed form. Even if the form has been published or notified at some stage in the past, people still often have difficulty knowing which form to use when applying for licences or otherwise dealing with the ACT government under statutory schemes.

43 To overcome these difficulties, amendments have been made across the statute book to introduce a standard approval of forms provision. The provision set out below is an example:

68 Approved forms

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

44 Subsection (2) removes the need for provisions providing, for example, that an application must be in the approved form. Accordingly, the Bill omits most of these provisions from the statute book. To assist transition to the new system, in cases where these provisions have been omitted, notes along the following lines have been substituted:

Note If a form is approved under section 68 (Approved forms) for an application, the form must be used.

45 Most importantly, the fact that an approved form is a notifiable instrument means that it may be located in the relevant part of the legislation register and linked to the relevant provision to which it relates. Most forms that are presently set out in an Act or subordinate law will become notifiable forms and will be included in the register by the Parliamentary Counsel's Office without the need for any action on behalf of the administering agency. They may, of course, be amended or replaced under the new provisions such as section 68

above. Other forms that are currently approved may also be remade under the new powers and incorporated in the register.

46 One of the difficulties with any system of forms (whether set out in the legislation or approved) is to ensure that people are not required to provide documents or information not relevant to the purpose of the relevant legislation (eg marital status). The *Interpretation Act 1967*, section 13 (3) will therefore continue to apply so that the document or information must be relevant to the purpose of the legislation.

47 The *Interpretation Act 1967*, section 13 also contains other important provisions about forms. First, the section provides that substantial compliance with an approved form is sufficient (see s 13 (1)). Second, if a form requires various things listed in section 13 (2), the form is not properly completed unless the requirement is complied with. The subsection allows a form to require—

- that it be signed
- that it be prepared in a stated way (eg on paper of a stated size or quality or in a stated electronic form)
- that the form be completed in a stated way (eg in ink)
- that stated information be included in the form, or stated documents be attached to or given with, the form
- the form, or information or documents included in, attached to or given with the form, be verified in a stated way (eg by statutory declaration).

Third, the section allows a single approved form to be approved for multiple purposes (including different provisions of the same Act or provisions of different Acts) and for arrangements to be made for the form to be given to different entities by giving it to 1 of them (see s 13 (4) and (5)). The section allows information to be collected for various government purposes using a single form (eg a single change of address form could be used to notify change of address to a number of departments).

48 The Bill contains amendments to enable full advantage to be taken of the provisions of the *Interpretation Act 1967* about forms. For example, provisions that duplicate the Interpretation Act provisions have been omitted.

49 In a small number of cases Acts or subordinate laws currently provide for approved forms to be disallowable. With 2 exceptions, the Bill preserves the current status of these approved forms (see eg *Land (Planning and Environment) Act 1991*, new s 287A (3)). The 2 exceptions are the *Magistrates Court Act 1930*, section 256 and the *Magistrates Court*

(*Civil Jurisdiction*) Act 1982, section 471. In each case, the sections currently allow the Minister to approve forms that ‘supersede’ (that is, repeal) forms contained in schedules to the relevant Act. The Bill removes these Henry VIII clauses by omitting the schedules of forms and substituting ‘standard’ approval of forms provisions under which the forms are notifiable instruments.

- 50 The Bill inserts a section into the *Taxation Administration Act 1999* (s 139C) that authorises the commissioner for revenue to approve forms for that Act and any other tax law (see *Taxation Administration Act 1999*, s 4). The Bill also inserts a section into the *Gambling and Racing Control Act 1999* (s 53D) that authorises the gambling and racing commission to approve forms for any gaming law (see *Gambling and Racing Control Act 1999*, s 4). A similar provision already exists in the *Road Transport (General) Act 1999*, section 255. Section 225 authorises the road transport authority to approve forms for the road transport legislation.

Determination of fees, charges and other amounts

- 51 For many years, ACT legislation has provided for fees, charges and other amounts to be fixed by determination (generally made by the relevant Minister). The *Subordinate Laws Act 1989*, section 6 defined a ministerial determination setting fees or charges as a subordinate law and subjected it to the same requirements for tabling and disallowance as regulations. At the same time, the Act or regulation giving the power of determination sometimes contained additional provisions relating to the scope of the determinations. These could deal with such things as methods for working out the amount owing, provision for payment by instalments or waiver of fees. Over the years different provisions evolved and have tended to become more elaborate. The *Legislation Act 2001*, part 6.3 contains a standard set of provisions that will apply to the determination of fees. The part will enable the provisions about fees in individual Acts and statutory instruments to be simplified. In particular, it will be unnecessary to mention determined fees in every provision for which fees are to be determined.
- 52 The *Legislation Act 2001*, section 56 clarifies the power to determine fees for an Act or statutory instrument, and makes provision in relation to the determination of fees by disallowable instrument. Subsection (2) sets out how a fee may be determined and provides examples of the different ways in which fees may be determined. Subsection (3) lists the

matters that must and may be provided in a fee determination. Examples are also given for subsection (3). As a result of the section, most fee details can be contained in the fee determination itself rather than the Act under which the determination is made. Accordingly, the Bill simplifies and standardises the provisions in Acts providing for the determination of fees. For most Acts, a section along the following lines is sufficient to allow the determination of fees:

67 Determination of fees

- (1) The Minister may, in writing, determine fees for this Act.
- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

53 The *Legislation Act 2001*, section 57 provides that fees are payable in accordance with the relevant fee determination, that fees are payable before a service is provided (unless the determination states otherwise), and that there is no obligation to provide a service if the required fee has not been paid. The section removes the need to repeat these provisions in each Act under which fees are determined, and, in particular, removes the need to mention determined fees in every provision for which fees are to be determined. The Bill omits provisions made redundant by section 57. For example, the Bill omits most of the specific provisions about fees in the *Liquor Act 1975* and the general provisions about fees in the *Road Transport (General) Act 1999*, section 97 (see also sections 96, 98 and 99).

54 The *Legislation Act 2001*, section 58 authorises regulations to prescribe provisions about the payment, collection and recovery of determined fees, the waiver, postponement or refund of fees, payment of fees by cheque and credit card, and other things covered by the section. The section will allow regulations, rather than individual fee determinations, to deal with certain standard matters about fees if that is more appropriate. The Bill omits provisions made redundant by section 58. For example, the Bill omits the *Domestic Animals Act 2000*, section 146 (which provides a regulation-making power about fees).

General powers to make regulations and other statutory instruments

55 In every Australian jurisdiction, the common practice is that an Act dealing with a particular subject will lay down the basic principles about the subject (eg that people must not drive without a licence) and empower the making of regulations (or other delegated

legislation) to provide for more detailed aspects of the subject (eg the form of a licence, how to obtain a licence or the fee for a licence). It is also common practice for the Act to delegate the regulation-making power to the executive government. In the ACT this means that the Executive usually makes any regulations required for an Act. Because regulations are a kind of law that is not subject to debate in the same way as bills, they must be presented to the Legislative Assembly and are liable to be amended or disallowed (in effect, repealed). None of the amendments provided for by this Bill affect these essential features of regulations. The amendments about regulations are intended to facilitate the inclusion of regulations in the ACT legislation register established by the *Legislation Act 2001* and make a number of minor changes to further standardise and improve existing regulation-making powers.

56 For many years the form of regulation-making power has been standardised in terms very similar to the following:

The Executive may make regulations with respect to any matter that—

- (a) is required or permitted to be prescribed by this Act; or
- (b) is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

57 Expressions such as ‘necessary or convenient’ have often been considered by the courts and it is desirable that this well-known (and, in legal terms, fairly predictable) formula be used consistently. At the same time, however, it is not necessary that every word of the formula be repeated in each Act. Since 1994, *Subordinate Laws Act 1989*, section 2A has authorised the use of the following more concise form of words that has the same legal effect:

The Executive may make regulations for the purposes of this Act.

58 In 1999 the *Subordinate Laws Act 1989* was amended to enable these words to be further shortened by omitting the words ‘the purposes of’. The current basic form of regulation-making power is, therefore, as follows:

The Executive may make regulations for this Act.

59 The *Legislation Act 2001*, section 44 continues the effect of section 2A, but applies it to all statutory instrument-making powers. This means that, for example, it is no longer necessary to expressly include a ‘necessary and convenient’ power in a provision authorising the making of other statutory instruments (eg financial management guidelines

under the *Financial Management Act 1996*). The Bill remakes regulation-making powers (and powers to make other statutory instruments) so that the standard short-hand formula is used consistently across the statute book.

60 To help people become aware of the requirements of the *Legislation Act 2001*, the following note is being included in regulation-making powers:

Note Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

61 When regulation-making powers are provided for an Act that establishes a comprehensive legislative scheme, it is also common for additional or ‘particular’ regulation-making powers to be given. For example, the regulation-making power in the *Fire Brigade (Administration) Act 1974*, section 81 currently ends as follows:

... and, in particular, prescribing matters for and in relation to—

- (a) the appointment and promotion of members;
- (b) the holding of examinations in connection with the appointment and promotion of members;
- (c) the temporary appointment of an officer to a higher rank.

62 In accordance with standard canons of statutory interpretation, care is taken when providing detailed powers to ensure that they are not interpreted (or ‘read’) as limiting the more general ‘necessary or convenient’ regulation-making powers. The *Legislation Act 2001*, section 44 (3) makes it clear that powers to make regulations about particular matters do not limit the general regulation-making power (or a power to make regulations about other particular matters), except so far as the authorising law (the Act that provides the power to make regulations) otherwise expressly provides. The subsection removes the need to expressly provide that the general regulation-making power is not limited by the particular regulation-making powers. Accordingly, the Bill omits provisions of this kind (eg the words ‘in particular’ in the example above taken from the *Fire Brigade (Administration) Act 1974*).

63 The opportunity has also been taken in the Bill to omit other unnecessary provisions from powers to make regulations and other statutory instruments and to standardise the powers as far as practicable. For example, the following standard provision is used to authorise regulations to create offences:

The regulations may prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 00 penalty units for offences against the regulations.

Other amendments

Power to make statutory instruments includes power to amend or repeal

64 The *Legislation Act 2001*, section 46 (1) provides that power given under an Act or statutory instrument to make a statutory instrument includes power to amend and repeal the instrument (see also *Interpretation Act 1967*, s 27D). The power to amend or repeal is exercisable in the same way and subject to the same conditions as the power to make (s 46 (2)). However, this is subject to any provision of the law that authorises the making of the statutory instrument (s 46 (3)). The *Legislation Act 2001*, section 46 (2) includes examples to make it clear that:

- a statutory instrument that amends or repeals a disallowable instrument is itself a disallowable instrument
- a statutory instrument that amends or repeals a notifiable instrument is itself a notifiable instrument
- if notice of the making of the instrument must be published in a newspaper, notice of an amendment or repeal of the instrument must also be published in the newspaper.

65 The Bill omits provisions covered by section 46, but preserves the current effect of those provisions by, for example, keeping any provision that provides for a statutory instrument to be amended or repealed in a different way to the way in which the instrument is made. The Bill includes notes in amended provisions drawing the reader's attention to the *Legislation Act 2001*, section 46 (1) and (2).

66 An example of a section that is revised by the Bill to omit provisions covered by section 46 is the *Boxing Control Act 1993*, section 15. That section, as revised by the Bill, provides as follows:

15 Code of practice

- (1) The Minister may, in writing, approve a code of practice about the conduct of boxing contests.

Note Power given under an Act to make a statutory instrument (including a code of practice) includes power to amend or repeal the instrument (see *Legislation Act 2001*, s 46 (1)).

- (2) A code of practice is a disallowable instrument.

Note 1 A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

Note 2 An amendment or repeal of a code of practice is also a disallowable instrument (see *Legislation Act 2001*, s 46 (2)).

Power to make statutory instruments from time to time

67 The *Legislation Act 2001*, section 42 (2) provides that, if an Act or statutory instrument gives power to make an instrument, the power may be exercised from time to time (see also *Interpretation Act 1967*, s 26 (1)). The Bill omits provisions made redundant by section 42 (2). For example, the Bill omits the words ‘from time to time’ from the *Public Sector Management Act 1994*, section 14 (1).

References to laws and instruments as in force from time to time

68 The *Legislation Act 2001*, section 102 (1) provides that a reference to a law or instrument includes, among other things, a reference to the law or instrument as originally made, and as amended from time to time (see also *Interpretation Act 1967*, s 54). Section 102 (2) makes similar provision for provisions of laws and instruments. The Bill omits provisions covered by section 102 and includes a note drawing the reader’s attention to the section. For example, a definition in the *Bushfire Act 1936*, section 3 currently reads as follows:

Manual means the Rural Fire Control Manual prepared under section 5KA, as varied and in effect from time to time;

The Bill revises the definition as follows:

manual means the rural fire control manual approved under section 5KA (Rural fire control manual).

Note A reference to a disallowable instrument (including the manual) includes a reference to the instrument as originally made and as amended (see *Legislation Act 2001*, s 102).

Statutory instrument may make provision by applying a law or instrument

69 The *Legislation Act 2001*, section 47 deals with a statutory instrument-making provision about a matter by applying, adopting or incorporating a law or instrument, or a provision of a law or instrument, as in force at a particular time or from time to time. The Bill amends provisions to bring them into line with the language of the section, omits provisions made redundant by the section and includes notes drawing the reader’s attention to the effect of section 47. For example, the *Utilities Act 2000*, section 55 (4) currently provides as follows:

- (4) An industry code may deal with a matter by applying, adopting or incorporating matter in a stated document, or a document of a stated kind, in force or existing—
 - (a) when the code is approved or determined under this Part; or
 - (b) from time to time.

The Bill revises the subsection as follows:

- (4) An industry code may apply, adopt or incorporate (with or without change) an instrument, or a provision of an instrument, as in force from time to time.

Note 1 A statutory instrument may also apply, adopt or incorporate (with or without change) a law or instrument (or a provision of a law or instrument) as in force at a particular time (see *Legislation Act 2001*, s 47 (1)).

Note 2 If a statutory instrument applies, adopts or incorporates a law or instrument (or a provision of a law or instrument), the law, instrument or provision may be taken to be a notifiable instrument that must be notified under the *Legislation Act 2001* (see s 47 (2) (6)).

References to laws include references to instruments under laws

70 The *Legislation Act 2001*, section 104 (1) provides that a reference to an Act or statutory instrument, or to a provision of an Act or statutory instrument, includes a reference to the statutory instruments made or in force under the Act, instrument or provision (see also *Interpretation Act 1967*, s 55A). It also includes a reference to any law, instrument or provision applied, adopted or incorporated by those statutory instruments using the *Legislation Act 2001*, section 47 (see s 104 (2)).

71 The Bill omits provisions made redundant by section 104. The amendments made by the Bill are of 3 kinds. First, the Bill omits references to ‘or the regulations’ (and similar references) in phrases such as ‘this Act or the regulations’. Second, the Bill omits definitions such as the following:

this Act includes the regulations.

Third, the Bill omits definitions (and similar provisions) such as the following:

the regulations made under this Act includes any publication applied, adopted or incorporated under the regulations, whether entirely or in part and with or without changes.

In each case, a note along the following lines is generally included to draw the reader’s attention to section 104:

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see *Legislation Act 2001*, s 104).

Power to make instruments includes power to make different provision for different categories etc

72 The *Legislation Act 2001*, section 48 (1) (see also *Interpretation Act 1967*, s 27E) provides that power given to make a statutory instrument includes power—

- to make different provision with respect to different matters or different classes of matters

- to make an instrument that applies differently by reference to stated exceptions or factors.

It is, therefore, unnecessary to include provisions giving such a power. The Bill omits provisions covered by section 48. For example, the Bill omits the following provision from the *Trade Measurement Act 1991*, section 81 (4):

- (4) A provision of a regulation may—
- (a) apply generally or be limited in its application by reference to specified exceptions or factors; or
 - (b) apply differently, according to different factors of a specified kind; or
- ...

Instruments may authorise determination of matter etc

73 The *Legislation Act 2001*, section 52 provides that, if power is given to make provision by statutory instrument about a matter, provision about the matter may be made by authorising or requiring a stated entity to make provision about the matter, or any aspect of the matter, whether or not from time to time (see also *Interpretation Act 1967*, s 27GB). It is, therefore, unnecessary to include provisions giving such a power. The Bill omits provisions covered by section 52. For example, the Bill omits the following provision from the *Trade Measurement Act 1991*, section 81 (4):

- (4) A provision of a regulation may—
- ...
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by the administering authority or the licensing authority.

Instruments may prohibit

74 The *Legislation Act 2001*, section 53 provides that, if power is given to regulate (however described) a matter, the power may be exercised by prohibiting by statutory instrument the matter or any aspect of the matter (see also *Interpretation Act 1967*, s 27GC). It is, therefore, unnecessary to include provisions giving such a power. The Bill omits provisions covered by section 53. For example, the *Adoption Act 1993*, section 121 (c) currently provides as follows:

The Executive may make regulations...making provision in relation to—

- ...
- (c) the prohibition or regulation of access to the register of adoptions;

The Bill simplifies the provision as follows:

- (2) The regulations may make provision in relation to—
 - ...
 - (b) access to the register of adoptions; and

Provisions about commencement of instruments

75 The *Legislation Act 2001*, section 73 contains detailed general rules for the commencement of Acts, subordinate laws, disallowable instruments, notifiable instruments and statutory instruments that are not registrable instruments. The Bill omits provisions made redundant by section 73. For example, the *ACTEW/AGL Partnership Facilitation Act 2000*, section 10 (3) contains provisions about the commencement of declarations that become notifiable instruments under an amendment in the Bill. As section 10 (3) is covered by section 73, the Bill omits section 10 (3).

Commencement of instruments after disallowance period

76 Some provisions provide for the commencement of disallowable instruments no earlier than the end of the disallowance period for the instrument (or a related period eg the period in which a motion of disallowance may be moved). The Bill preserves the effect of these provisions (including any special presentation or disallowance period), but revises them to ensure that they are consistent with the *Legislation Act 2001*. For example, the *Territory Superannuation Provision Protection Act 2000*, section 14 (3) has been revised as follows:

- (3) Unless an authorisation is disallowed by the Legislative Assembly, the authorisation commences—
 - (a) on the day after the last day when it could have been disallowed; or
 - (b) if the authorisation provides for a later date or time of commencement—on that date or at that time.

Similarly, the *Land (Planning and Environment) Act 1991*, section 207 (2) and (3) has been revised as follows:

- (2) The *Legislation Act 2001*, chapter 7 (Presentation, amendment and disallowance of subordinate laws and disallowable instruments) applies to a plan of management as if each reference in that chapter to 6 sitting days were a reference to 5 sitting days.
- (3) Subject to any disallowance under the *Legislation Act 2001*, chapter 7, the plan of management commences—
 - (a) on the day after the 5th sitting day after the day it is presented to the Legislative Assembly under that chapter; or
 - (b) if the plan provides for a later date or time of commencement—on that date or at that time.

Church legislation

77 Some ACT legislation deals with churches or their property. It would not be appropriate to include instruments of a private nature made by churches within the scope of the *Legislation Act 2001*. To make it clear that the *Legislation Act 2001* does not apply to these instruments, the Bill includes provisions in a number of Acts relating to churches. For example, the Bill includes the following section in the *Presbyterian Church Trust Property Act 1971*:

2 Application of Legislation Act

The *Legislation Act 2001* does not apply to instruments made by the general assembly or the trust.

References in statutory provisions to *the Act*

78 The *Legislation Act 2001*, section 105 (1) provides that, in a statutory instrument, a reference to *Act* or *the Act*, without mentioning a particular Act, is a reference to the Act under which the instrument is made or in force (see also *Interpretation Act 1967*, s 55B). Section 105 applies except so far as the contrary intention appears (s 105(2)).

79 The section makes the definition of *the Act* (or *Act*) commonly included in regulations and other subordinate legislation redundant in most cases. The definition is only needed in the rare case where the subordinate legislation makes provision for an Act other than the Act under which it is made or in force. For example, the *Workers' Compensation Rules* are in force under the *Magistrates Court (Civil Jurisdiction) Act 1982*, but make provision for proceedings under the *Workers' Compensation Act 1951*. The Bill omits the definitions made redundant by the *Legislation Act 2001*, section 105.

References to former NSW laws

80 Under the *Legislation Act 2001*, section 98 every Act may be referred to by the word *Act* alone and, in the case of former NSW Acts, it is unnecessary to add words such as 'of the State of New South Wales in its application in the Territory' (see also *Interpretation Act 1967*, s 50 (1)). The Bill amends references to former NSW laws to simplify them relying on section 98.

Other spent provisions

81 The Bill omits amending and repealing provisions that have already commenced. These provisions are spent and their repeal does not revive repealed laws or revive the earlier form

of amended laws (*Legislation Act 2001*, s 86). Full details of repealed and amended laws are given in tables prepared by the Parliamentary Counsel's Office. These tables will be available soon on the Internet.

82 Amending and repealing provisions that commence after the commencement of the *Statute Law Amendment Act 2000* (21 December 2000) are automatically repealed under the *Interpretation Act 1967*, section 43 (2) (see *Legislation Act 2001*, s 89 (3)). It will, therefore, be unnecessary to repeal amending and repealing provisions in the future.

83 The Bill also omits some transitional provisions that are clearly spent. The effect of repealed transitional provisions is saved under the *Legislation Act 2001*, section 88. However, 'out of an abundance of caution', clause 4 of the Bill declares the *Limitation Act 1985*, section 3 to be a law to which the *Legislation Act 2001*, section 88 applies. This declaration will ensure that any continuing effect of section 3 is saved.

Repeal of spent regulations

84 In some cases, the omission of provisions that are spent or no longer needed from regulations leaves the regulations with no operative provisions. In these cases the Bill repeals the regulations. For example, the *Door-to-Door Trading Regulations 1991* merely contains prescribed forms. The omission of the provisions about forms leaves the regulations without operative provisions. The regulations are, therefore, repealed by the Bill.

Updating of references to Interpretation Act and Subordinate Laws Act

85 Wherever necessary, the Bill updates references to provisions of the *Interpretation Act 1967* and the *Subordinate Laws Act 1989*. For example, the Bill changes the reference in the *ACTEW/AGL Partnership Facilitation Act 2000*, section 10 (2) to the *Interpretation Act 1967*, section 27 (currently s 27E) to a reference to the corresponding provision of the *Legislation Act 2001* (s 48).

Amendments of *Legislation Act 2001*

86 The Bill includes several minor amendments of the *Legislation Act 2001* itself. First, the Bill amends the *Legislation Act 2001*, section 125 (1) to add the Bill to the Acts for which transitional regulations may be made under the Legislation Act. Second, the Bill adds a transitional section to deal with the application of section 47 (2) and (3). The effect of the

section is that the new rules about notification of applied laws and instruments will not apply to existing provisions that apply laws or instruments. The transitional section is consistent with the non-retrospective nature of the other transitional provisions in the *Legislation Act 2001*. Third, the Bill omits references to 2 Acts that were repealed by the *Statute Law Amendment Act 2001* (the *Scaffolding and Lifts Act 1957* and the *Dangerous Goods Act 1984*) and makes related consequential amendments.

Other minor changes

87 The Bill makes the following minor changes that are not mentioned elsewhere. First, the Bill clarifies the meaning of the building code defined in the *Building Act 1972*, section 24 and limits notification and disallowance under the *Legislation Act 2001* in relation to the building code to notification and disallowance of the Australian Capital Territory Appendix to the Building Code of Australia. The Bill ensures that the ACT (and the Legislative Assembly) will be able to control the content of the Building Code of Australia as it applies in the ACT through the Australian Capital Territory Appendix. Second, the Bill shortens the period for presentation of a direction or guideline under the *Director of Public Prosecutions Act 1990*, section 20 from 15 to 5 sitting days. The reduced period is similar to the shortened period for presenting disallowable instruments currently applying under the *Subordinate Laws Act 1989* and to apply under the *Legislation Act 2001* (6 sitting days). Similarly, the Bill shortens the period before an exemption under the *Listening Devices Act 1992*, section 14 (2) can commence from 15 to 6 sitting days. Third, the Bill changes the status of a determination under the *Pool Betting Act 1964*, section 13A (2) from a notifiable to a disallowable instrument. A determination under the section sets the rate at which levy is payable by the promoter of a pool betting competition (other than a soccer pool) operating under a State law.

Language changes

88 Wherever appropriate the Bill uses language consistent with the *Legislation Act 2001*. For example, the Bill uses ‘commences’ instead of ‘takes effect’ or ‘comes into operation’, and ‘amend’ instead of ‘vary’.

Consequential amendments

89 The Bill includes a number of amendments that are consequential on other amendments made by the Bill. The consequential amendments include 3 kinds of amendments made under current drafting practice. First, if a section (or regulation) that is not divided into subsections (or subregulations) is amended to insert a subsection or subregulation, the existing section (or regulation) is amended by the insertion of '(1)'. Second, if the last of a series of paragraphs (or subparagraphs) is omitted, any '; and' or '; or' at the end of the penultimate paragraph (or subparagraph) is also omitted. Third, if a section (or regulation) is amended by the insertion or omission of a subsection (or subregulation) or paragraph and after the amendment provisions of the section (regulation) are not numbered in a single uninterrupted sequence (eg (1), (2), (2A), (3) etc or (a), (c) etc), the subsections or paragraphs of the section (or regulation) are either renumbered by the Bill or a direction is included for them to be renumbered in the next republication of the Act or regulations under the *Legislation Act 2001*.