

2008

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

STATUTE LAW AMENDMENT BILL 2008

EXPLANATORY STATEMENT

**Circulated by the authority
of
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Background

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

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

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

The ACT statute book is all ACT legislation taken as a body of law. A statute book that is well maintained significantly enhances access to legislation by making it easier to find in an up-to-date form and easier to read and understand. Statute law amendments under the technical amendments program can greatly assist the process of modernisation of the statute book. Laws need to be kept up to date to reflect ongoing technological and societal change.

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

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

Clause 1 — Name of Act

This clause provides for the bill's name.

Clause 2 — Commencement

This clause provides for the bill's commencement 14 days after the day it is notified under the *Legislation Act 2001*. This will enable the Parliamentary Counsel's Office to have up-to-date republications of the affected legislation ready for the legislation register on the day the amendments commence.

Clause 3 — Purpose

This clause states the bill's purpose.

Clause 4 — Notes

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

Clause 5 — Legislation amended—schs 1-3

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

Schedule 1 — Minor amendments

Schedule 1 provides for minor, non-controversial amendments initiated by government departments and agencies. It contains amendments of the *Animal Diseases Act 2005*, *Cemeteries and Crematoria Act 2003*, *Government Procurement Act 2001* and *Legal Profession Act 2006*. Each amendment is explained in an explanatory note to the amendment.

Animal Diseases Act 2005

Section 21 sets out the matters that must be included in a quarantine declaration under section 19 or section 20. This amendment makes section 21 (e) more precise

by ensuring that if there are no restrictions on sale, the declaration does not need to include anything about restrictions on sale.

Cemeteries and Crematoria Act 2003

The first amendment is of section 9 (3), which establishes a perpetual care trust for the maintenance of cemeteries and crematoria (s 9 (3) (a)) and for any other purpose approved by the Minister (s 9 (3) (b)). The amendment makes it clear that only charitable purposes may be approved by the Minister.

The second amendment inserts a new section 16C, which provides for the distribution of assets on the dissolution of a perpetual care trust. The new section makes clear that if a perpetual care trust is dissolved and another perpetual care trust or another fund is established, the trust or fund must be established for a charitable purpose and endorsed as exempt from income tax under the *Income Tax Assessment Act 1997* (Cwlth).

Government Procurement Act 2001

Section 11 provides for the constitution of the Australian Capital Territory Government Procurement Board. The amendments increase the membership of the board from 7 to 9 part-time members, comprising 5 public employee members (including the chair and deputy chair) and 4 non-public employee members, to facilitate the operation of the board.

Legal Profession Act 2006

Section 249 currently provides that the costs of an external examination of the trust records of a law practice are payable out of the fidelity fund. The amendment clarifies the original intention of section 249, that is, that, if a law practice appoints an external examiner to examine the practice's trust records, the law practice must pay the costs of the examination and if the licensing body (that is, the Law Society) appoints the external examiner to examine the practice's trust records, the costs of the examination are payable out of the fidelity fund. The amount paid out of the fund is a debt owing to the licensing body by the law practice that has been examined.

The *Legal Profession Regulation 2007* was amended on 1 April 2008 to include a modification of the *Legal Profession Act 2006* to achieve the same effect as proposed section 249 (1). The modification will expire on the commencement of the bill, clause 5.

To date, no claims for costs of an examination under section 241 (1) to be paid out of the fidelity fund have been made under section 249 (1).

The amendment also revises subsection 249 (2) to clarify that section 249 (2) applies only to examinations under section 241 (2), that is, examinations undertaken by an external examiner appointed by the licensing body.

Schedule 2 — Structural amendments of Legislation Act

Schedule 2 provides for non-controversial structural amendments of the *Legislation Act 2001* initiated by the Parliamentary Counsel's Office.

The schedule contains an amendment of the dictionary, part 1, definition of ***territory authority***. The definition currently provides that a territory authority is a body established under an Act (except for a body declared by regulation not to be a territory authority). The amendment makes clear that, as well as being established under an Act, the body must be established for a public purpose.

Schedule 3 — Technical amendments

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

The amendments include the correction of minor errors, updating language, improving syntax and other minor changes to update or improve the form of legislation.