

2003

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

STATUTE LAW AMENDMENT BILL 2003

EXPLANATORY STATEMENT

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

Background

- 1 The objective of this bill is to further enhance the ACT's statute book to ensure that it is of the highest standard. The bill does so by amending and repealing Acts and regulations for statute law revision purposes only.
- 2 This bill forms part of the technical amendments program for ACT legislation. Under guidelines for the technical amendments program approved by my Government, the essential criteria for the inclusion of amendments in the bill are that the amendments are minor or technical and non-controversial.
- 3 The development of a technical amendments program for ACT legislation was in response to the need for greater flexibility in the drafting of amendments for statute law revision purposes and to minimise costs associated with keeping ACT legislation up-to-date. Statute law amendment bills are an important part of maintaining and enhancing the standard of ACT law. They provide an opportunity to make amendments and repeals that, taken alone, would 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.
- 4 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.
- 5 The bill contains 4 schedules and has been structured to assist the transparency of the amendments and the repeal made by it.
- 6 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.

Notes on clauses

Clause 1 — Name of Act

This clause provides for the bill's name.

Clause 2 — Commencement

This clause provides for the bill's commencement. With two exceptions, the bill's provisions commence 28 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 laws ready for the legislation register on the day the amendments commence.

The exceptions are the omission of the *Fisheries Act 2000*, part 9 (Infringement notices for certain offences) and section 117 (Regulations prescribing infringement notice penalties) by part 3.11 of the bill. The omission of these provisions is dependant on the commencement of complementary regulations under the *Magistrates Court Act 1930*, part 8 (Infringement notices for certain offences) for the relevant offences against the *Fisheries Act 2000*. Accordingly, these provisions commence 90 days after the day the bill is notified as an Act under the *Legislation Act 2001*. (The commencement of the regulations under the *Magistrates Court Act 1930* will be linked to the commencement of the omission of the *Fisheries Act 2000*, part 9 and section 117.)

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 — Acts and regulations amended—schs 1-3

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

Clause 6 — Act repealed—sch 4

This clause gives effect to the repeal made by schedule 4.

Notes on schedules

Each amendment and the repeal is explained in an explanatory note in the relevant schedule.

Schedule 1 — Minor amendments of *Health Act 1993*

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

The schedule amends the *Health Act 1993*. The present management body at Calvary Hospital is not a board. The amendments update the reference to ‘Board of Management’ in section 12 to bring it into line with the current management structure of Calvary Hospital and also update the name of the hospital.

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. All the amendments in schedule 2 are of the *Legislation Act 2001*.

Structural issues are particularly concerned with making the statute book more coherent and concise, and therefore more accessible. Strategies to achieve these objectives include such things as avoiding unnecessary duplication and the maximum degree of standardisation of legislative provisions consistent with policy requirements and operational needs.

Shortening legislation results in less clutter and increased simplicity. Reliance on the standard provisions achieves simplification by eliminating the need to repeat standard technical definitions and other provisions in every Act. Awareness of standard provisions, particularly in the *Legislation Act 2001*, is being promoted by the inclusion of notes in Acts drawing attention to them.

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

The amendments can be divided into 2 groups.

(a) Amendments of chapter 3 (Authorised versions and evidence of Acts and statutory instruments)

Chapter 3 of the Legislation Act is amended to:

- extend the scope of the chapter to legislative material (eg explanatory statements for bills) to facilitate their use and proof;
- permit authorised electronic copies of legislation and legislative material to be obtained by downloading authorised electronic copies from the legislation register;
- permit authorised written copies of legislation and legislative material to be produced by users directly from authorised electronic copies, which can be obtained from the legislation register.

At present, electronic copies are only authorised when viewed at the approved web site and only copies printed by authority of the Territory government are authorised printed copies.

Authorised electronic copies of legislation and legislative material in the ACT legislation register will continue to be in portable document format (or pdf) files. Pdf is a universal file format that preserves the original fonts, formatting, graphics and colour of a document, regardless of the program used to create it. The software used to view the document, Adobe Acrobat Reader, is available free of charge from the Adobe web site. To assist users of ACT legislation, the legislation register has a link to the Adobe web site.

The legislation register also contains rich text format (or rtf) files of current legislation. The rtf format is a standard file format for text documents that can be used with Microsoft Word. These rtf files are not authorised copies of the legislation but are provided to give users an alternative form of access that, for example, allows for easier copying and the use of screen readers for visually impaired users.

The amendments of chapter 3 will be supported by improvements to the legislation register. In particular, digital signatures will allow users to verify the authenticity and accuracy of pdf files published on the legislation register. They will enable users to ensure that what appears to be an authorised copy of legislation or legislative material is, in fact, an authorised copy. (The rtf files will not be digitally signed because they are not authorised copies.) While the pdf format

already provides a high level of security for documents on the internet, digital signatures provide an even higher level of security.

Digital signatures are a way of encrypting electronic documents by applying a mathematical algorithm with an identification code (commonly called a 'private key') held securely by the Parliamentary Counsel's Office. The user of the legislation can use a certificate (commonly called a 'public key') to confirm that a document was created by the Parliamentary Counsel's Office and whether it has been modified since the document was last signed. The public key can be downloaded from the legislation register which will contain instructions on how to use the key. The user will need to download the public key only once because it will apply to all digitally signed files in the legislation register.

All authorised copies of ACT legislation and legislative material in the legislation register will be progressively digitally signed.

The digital signature technology will complement measures that have already been implemented to make the ACT's electronic legislation secure and reliable. One important measure has been to provide a secure web site for the legislation register using a VeriSign SSL Certificate. Visitors can verify that the web site is legitimate by checking the certificate, which involves clicking on the VeriSign icon on the legislation register's homepage.

To check whether a pdf file of legislation or legislative material that purports to be authorised is in fact authorised, a user can check the certificate to verify the legitimacy of the web site at which the file is accessed and use the pdf file's digital signature to verify whether the file is the same as the authorised version that has been digitally signed by the Parliamentary Counsel's Office.

Any copies that a person prints from an authorised electronic pdf file will be authorised copies of the legislation or legislative material in the file.

Individual pages of printed copies of republished legislation can be easily identified by the republication number and date, which are shown on every page. This information allows a person to establish at a later date which republication was used and whether it is still current by comparing the version with the current republication information in the legislation register. The version that was printed may no longer be current because amendments to the law may

have come into operation since the page was printed. Any such amendments would appear in the legislation register in a new version of the legislation marked as the current version and with the relevant republication number on each page. Older versions of the legislation are listed underneath the current version with their respective effective dates.

(b) Other amendments of Legislation Act

Other amendments of the Legislation Act include the following:

- (i) New section 19 (6) and (7) which make it clear that regulations may be made to ensure that additional material that is entered in the legislation register (eg statutory instruments made before the Legislation Act commenced, the administrative arrangements made under the Self-Government Act and the Australian Road Rules applying in the ACT) are entered and numbered in the register in a similar way to notifiable instruments.
- (ii) The insertion of new division 19.3.2A to deal with standing acting arrangements, that is, where a law itself provides that a person automatically acts in a position in stated circumstances (eg when the position holder is ill).
- (iii) Clarifying the procedures for Gazette notification of the making of a law, or the disallowance or amendment of a statutory instrument by the Legislative Assembly, rather than notification in the legislation register. Such a case has never happened since the register was established. The amendments ensure that the Gazette notification procedures are sufficiently flexible to deal with the exceptional situations in which they may need to be used.

Schedule 3 — Technical amendments

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

The amendments include the correction of minor errors, updating language, improving syntax and other minor changes to update or improve the form of legislation. The schedule also provides for the inclusion of notes for the benefit of users of legislation. This, together with

notes in dictionaries, is part of the overall strategy to raise awareness of the impact of the Legislation Act on other legislation.

Schedule 4 — Repeal of redundant Act

Schedule 4 provides for the repeal of the *Companies (Commonwealth Brickworks (Canberra) Limited) Act 1979*. The Act authorises the company to pass a resolution altering the company's memorandum of association. The resolution was passed and registered in 1979.