

2015

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

STATUTE LAW AMENDMENT BILL 2015 (No 2)

EXPLANATORY STATEMENT

**Presented by
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Background

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

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

The development of a technical amendments program for ACT legislation was in response to the need for greater flexibility in the drafting of amendments for statute law revision purposes and to minimise costs associated with keeping ACT legislation up to date. Statute law amendment bills are an important part of maintaining and enhancing the standard of ACT law. They enable legislative amendments and repeals to be made that, taken alone, would generally be insufficiently important to justify separate legislation. The amendments are also 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 significant 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 greatly enhances access to legislation by making it easier to find in an up-to-date form and easier to read and understand. Statute law amendment bills are an extremely useful vehicle for assisting the ongoing process of modernising the statute book. Laws need to be regularly kept up to date to reflect continuous 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 assist in keeping it up to date.

Clause 1 — Name of Act

This clause provides for the bill's name.

Clause 2 — Commencement

This clause provides that the Bill commences 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 — Notes

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

Clause 4 — Purpose of Act

This clause states the bill's purpose.

Clause 5 — Legislation amended—schs 1-3

This clause gives effect to the amendments made by schedules 1, 2 and 3.

Schedule 1 — Minor amendments

Schedule 1 provides for minor, non-controversial amendments initiated by government directorates and agencies. It contains amendments of the *Auditor-General Act 1996*, the *Medicines, Poisons and Therapeutic Goods Act 2008*, the *Medicines, Poisons and Therapeutic Goods Regulation 2008* and the *Road Transport (Third-Party Insurance) Act 2008*. Each amendment is explained in an explanatory note to the amendment.

Auditor-General Act 1996

The *Auditor-General Act 1996* is amended by omitting section 17 (6) and inserting new section 21. Current section 17 (6) requires the Minister to prepare a response to an auditor-general's report made under section 17, within three months. New section 21 contains the substance of section 17 (6) but gives the Minister more flexibility in how a response may be presented to the Legislative Assembly. It also extends the period for presenting the response from three months to four months.

New section 21 provides that the Minister must either present the response to the Legislative Assembly or give the response and copies for each Assembly member to the Speaker. If the Minister gives the response to the Speaker, the Minister is required to present the response to the Assembly on the next sitting day, or, if the next sitting day is the first meeting of the Legislative Assembly after a general election of Assembly members, then on the second sitting day after the election.

Medicines, Poisons and Therapeutic Goods Act 2008 and Medicines, Poisons and Therapeutic Goods Regulation 2008

The *Medicines, Poisons and Therapeutic Goods Act 2008* (the ACT Act) and the *Medicines, Poisons and Therapeutic Goods Regulation 2008* are amended in schedule 1 to bring them in line with the current Poisons Standard June 2015 made under the *Therapeutic Goods Act 1989* (*Cwlth*). This standard comprises the Standard for the Uniform Scheduling of Medicines and Poisons No 7 (the **Standard**) and is already adopted by reference under the ACT Act. The Standard contains requirements for controlling medicines and poisons, including their packaging, labelling, storage, sale and supply. Cross-references to the Standard in the ACT Act and regulation are updated in line with the current Standard.

Road Transport (Third-Party Insurance) Act 2008

Amendments are made to the *Road Transport (Third-Party Insurance) Act 2008*, sections 102 and 150 and a new transitional chapter (chapter 11) is included. Section 102 defines **required document**, for a motor accident claim, for part 4.3. Paragraphs (b) and (c) of the definition provide that a required document is a report about the claimant's medical condition, prospects of rehabilitation, cognitive, functional or vocational capacity. These matters are required to be disclosed to the respondent prior to a trial. However, it is not clear whether surveillance film created by investigators about these matters comes within paragraphs (b) and (c) of the definition of **required document**. Section 102 is amended to clarify that surveillance film is included within the meaning of **required document**, paragraphs (b) and (c) to ensure that parties have enough information to assess the liability and quantum for motor accident claims.

A new transitional chapter (chapter 11) is inserted to make it clear that the amendment of section 102, definition of *required document* applies only to motor accident claims made after the commencement of the amendment. Section 295 in chapter 11 provides that the chapter expires 12 months after the day the amendments of the *Road Transport (Third-Party Insurance) Act 2008* commence.

Section 150 enables a claimant, with the court's leave, to begin an urgent court proceeding based on a motor accident claim even if certain time limits under the Act, part 4.9 are not complied with. Consequently, other pre-trial requirements set out in the Act, chapter 4 designed to reduce litigation, such as compulsory pre-trial conferences and mandatory final offers of settlement could also be dispensed with under section 150. The amendments to section 150 (1) and (3) replace the word 'part' with 'chapter' and enable the court to stay proceedings and order parties to comply with pre-trial requirements such as compulsory conferences and exchanging final offers before taking further action.

Section 150 (4) currently enables the court to not stay the proceeding if satisfied that the claimant is suffering from a terminal condition and the trial should be expedited for this reason. The amendment to section 150 (5) provides that in these circumstances, part 4.7 (Compulsory conferences before court proceedings), part 4.8 (Mandatory final offers) and part 4.9 (Court proceedings) (other than section 150) do not apply. However, the other parts of Chapter 4, such as part 4.2 (Motor accident claims procedures), will still apply as this sets out the processes by which the claimant for a motor accident brings a court proceeding against a respondent for the claim.

Schedule 2 — Structural amendments of Legislation Act

Schedule 2 is reserved for minor, non-controversial amendments of the *Legislation Act 2001* initiated by the Parliamentary Counsel's Office. These amendments reflect the process of continuous review and improvement of the operation of the Legislation Act.

Schedule 2 amends the *Legislation Act 2001* to provide more flexibility in relation to legislative tabling requirements for documents that must be presented to the Legislative Assembly within a stated period. The amendment allows these documents to be tabled in the Assembly outside the

sitting period. For example, the Minister’s response to an Ombudsman’s report must be presented in the Assembly within three months of the report being tabled. However, if the Ombudsman provided a report to the government immediately before the last sitting day of the year, or on the last sitting day of the Assembly before an election there might be no realistic way for the government of the day to respond to the report within the required three months. Enabling these documents to be tabled out of session will provide more flexibility and increase government efficiency where the government might otherwise be unable to comply with a tabling requirement because of the timing of Assembly sittings. It is not intended that presentation out of session become the usual practice, rather, another option to make it easier to comply with tabling requirements.

The *Legislation Act 2001*, section 104 is amended in schedule 2 to omit a redundant section definition of *statutory instrument*, of another jurisdiction.

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, adding notes, improving syntax, omitting redundant provisions and other minor changes to update or improve the form of legislation. In particular, various pieces of legislation are amended to reflect changes made by the *Customs and Other Legislation Amendment (Australian Border Force) Act 2015 (Cwlth)*. For example, references to the ‘Australian Customs Service’ have been changed to the ‘Department of Immigration and Border Protection (Cwlth)’ and the ‘chief executive officer of Australian Customs and Border Protection Service’ has become the ‘Comptroller-General of Customs’.