

2017

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

**STATUTE LAW AMENDMENT BILL 2017
EXPLANATORY STATEMENT**

**Presented by
Gordon Ramsay MLA
Attorney-General**

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 3 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 *Annual Reports (Government Agencies) Act 2004*, *City Renewal Authority and Suburban Land Agency 2017*, *Residential Tenancies Act 1997* and *Residential Tenancies Regulation 1998*. Each amendment is explained in an explanatory note to the amendment.

Annual Reports (Government Agencies) Act 2004

The *Annual Reports (Government Agencies) Act 2004* (the Annual Reports Act), section 5 provides that the head of service must prepare a state of the service report about the operation of the public service during the reporting year. The Annual Reports Act is amended to insert new section 9A in part 3 to provide that the Chief Minister is the responsible Minister for a state of the service report. The section is consistent with other sections in part 3 of the Act, which state who the responsible Minister is for a director-general annual report, a public sector body annual report and a territory entity annual report. The dictionary definition of **responsible Minister** cross-refers to section 5 for the definition of **responsible Minister** for a state of the service report. However, there is no definition of that term in section 5 or elsewhere in the Annual Reports Act. This amendment corrects that oversight. The Act is also amended to update the cross-reference in the dictionary.

City Renewal Authority and Suburban Land Agency 2017

The *City Renewal Authority and Suburban Land Agency 2017*, section 63 is amended in schedule 1 to replace references to ‘Minister’ with ‘Treasurer’. The effect of the amendment is that the Treasurer will have the function of making directions in relation to land acquisition by the city renewal authority or the suburban land agency instead of the Minister responsible for part 3.

Section 63, as amended, will be relocated to part 4 (Miscellaneous). Part 4 is a more appropriate location because section 63 deals with land acquisition by the city renewal authority or the suburban land agency, whereas the provisions in part 3 (apart from section 63) relate only to the suburban land agency.

The changes to section 63 will ensure transparency and consistency with the broader accountability framework established under the Act and is consistent with the Treasurer’s responsibilities in relation to approving the exercise of the authority’s and agency’s functions through subsidiaries, joint ventures or trusts, or by holding shares in, or other securities of, corporations and responsibilities of the authority and agency under sections 9 and 39 of the Act and the Treasurer’s existing responsibilities under the *Financial Management Act 1996* in relation to approval of statements of intent.

Residential Tenancies Act 1997

The *Residential Tenancies Act 1997* is amended in relation to the installation of smoke alarms. Section 11B provides that a lessor must not enter into a residential tenancy agreement with a tenant in relation to premises unless smoke alarms are installed at the premises and the installation of the smoke alarms complies with the building code, volume 2, part 3.7.2. Section 11B (b) is amended so that requirements in relation to smoke alarms can be prescribed by regulation instead of by reference to the building code.

The intention of section 11B when it was included in the Act was to allow lessors to install a hard-wired or a battery-operated smoke alarm that meets the relevant Australian Standard for smoke alarms (AS 3786 *Smoke alarms using scattered light, transmitted light or ionization*).

However, calling up the requirements of the building code, volume 2, part 3.7.2 has created some uncertainty for two reasons:

- the building code, volume 2 is expressed to apply to class 1 and class 10a buildings only; and
- part 3.7.2 requires a smoke alarm to be connected to the consumer mains power where consumer mains power is supplied to the building.

Referring to the building code, volume 2, part 3.7.2 in section 11B has had the unintended consequence of requiring lessors of existing buildings (to which the building code would not otherwise apply) to install a hard-wired alarm rather than having the choice of installing a hard-wired or a battery-operated alarm. There is also

some uncertainty that the requirements apply to all classes of building that are subject to a residential tenancy agreement.

This amendment revises section 11B to provide for requirements in relation to smoke alarms to be specified by regulation. In addition, the amendment inserts a new subsection (2) so that the regulation may incorporate requirements from AS 3786 as in force from time to time.

The *Residential Tenancies Regulation 1998* is revised by another amendment as a consequence of section 11B being amended. The new regulation will apply to all classes of building that are subject to a residential tenancy agreement.

Amendments are made to the Act, sections 145 and 146 which are transitional provisions for section 11B. Section 145 provides a transitional period of up to 12 months for smoke alarms to be installed for premises that were under an existing residential tenancy agreement at the time section 11B commenced. Section 146 places an obligation on a tenant of an existing residential tenancy agreement to replace a battery in a smoke alarm as necessary so that a tenant will be under the same obligation as a tenant under a new residential agreement entered after section 11B commenced. The amendments to sections 145 and 146 bring the smoke alarm installation requirements in line with amended section 11B by providing for these to be specified by regulation instead of referencing the building code.

Part 14 is a new transitional part which will effectively provide that a smoke alarm installed in compliance with the new prescribed requirements for section 11B (as amended) is taken to have met the requirements of that section as in force immediately before the commencement of the amendment.

Clause 53A of the standard residential tenancy terms set out in schedule 1 of the Act is also amended. Clause 53A was inserted by the *Residential Tenancies Legislation Amendment Act 2016* to reflect the obligation imposed on the lessor by section 11B of the Act to install smoke alarms on premises before entering into a residential tenancy agreement with a tenant in relation to those premises. Clause 53A (2) is amended by omitting references to the building code in relation to the installation of smoke alarms and substituting requirements prescribed by regulation consistent with changes made to section 11B.

Residential Tenancies Regulation 1998

The *Residential Tenancies Regulation 1998* is amended as a consequence of changes made to the *Residential Tenancies Act 1997*, section 11B. Section 1B sets out the types of smoke alarms that may be installed at residential premises that are subject to a residential tenancy agreement and where the smoke alarms must be installed.

Smoke alarms must comply with AS3786 which is incorporated into the regulation as in force from time to time. The *Legislation Act 2001* (the Legislation Act), section 47 (6) provides that an incorporated document, and any amendment or replacement of such a document, are taken to be notifiable instruments. A notifiable instrument must be notified on the legislation register under the Legislation Act. However, the Legislation

Act, section 47 (6) may be displaced by the authorising law (the Act) or the incorporating instrument (this regulation) (see section 47 (7)).

The Legislation Act, section 47 (6) has been displaced by section 1C in relation to AS 3786 so that the standard and any future amendments of the standard will not need to be notified on the legislation register. This is because the incorporated standards are subject to copyright and may be purchased over the Internet. In addition, the regulation provides that a copy of the standard must be made available for inspection by members of the public by the director-general.

Schedule 2 — Structural amendments of Legislation Act

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

Schedule 2 amends the Legislation Act to omit a reference to 'by-law' in the definition of 'subordinate law' in section 8. A subordinate law is defined in section 8 (1) to be 'a regulation, rule or by-law (whether or not legislative in nature) made under an Act, another subordinate law or power given by an Act or subordinate law and also power given otherwise by law'.

In the ACT, regulations are the most common type of subordinate law and generally refer to laws made by the Executive that set out the detail of a legislative scheme. Rules are primarily concerned with matters of procedure, for example, rules of court. By-laws typically operate in a particular geographical area, most often in relation to laws of local government. In the ACT, no by-laws have been made since self-government.

These are matters of usage only. It is often the case, for example, that regulations will deal with matters of procedure.

The reference to 'by-law' in the definition of 'subordinate law' is proposed to be omitted because the term has no ongoing relevance in the ACT.

Schedule 2 also amends the Legislation Act, section 163 to update cross-references to the *Public Sector Management Act 1994*, sections 28 and 30. That Act was extensively amended by the *Public Sector Management Amendment Act 2016*, which replaced sections 28 and 30 with section 31.

The Legislation Act, dictionary, part 1 is amended in schedule 2. The definition of 'by-law' is omitted as a consequence of the omission of that term from the definition of 'subordinate law' in section 8 by another amendment and the definition of 'work safety commissioner' is revised so that it is consistent with the definition of that term in the *Work Health and Safety Act 2011*, dictionary.

The *Legislation Regulation 2003* is amended in schedule 2 to omit section 8 (4) (e) (iii) (which deals with by-laws) as a consequence of the omission of a reference to 'by-law'

from the definition of ‘subordinate law’ in section 8 of the Legislation Act by another amendment.

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.