

**2019**

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

**STATUTE LAW AMENDMENT BILL 2019  
EXPLANATORY STATEMENT**

**Presented by  
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## **Background**

The object of the 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.

The 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, the 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.

### **Human rights implications**

The bill has no identified human rights implications.

## **Clause 1 — Name of Act**

This clause provides for the bill's name.

## **Clause 2 — Commencement**

This clause provides that the bill (other than schedule 1, part 1.4 and part 1.6 and schedule 3, part 3.19) 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.

Schedule 1, part 1.4 (Motor Accident Injuries Act 2019) and schedule 3, part 3.19 (Motor Accident Injuries Act 2019) will commence on the commencement of the *Motor Accident Injuries Act 2019*, section 3. The amendments in schedule 1, part 1.4 and schedule 3, part 3.19 amend amendments made in the *Motor Accident Injuries Act 2019* and cannot commence until that Act commences. Under *Motor Accident Injuries Act 2019*, section 2 (1), the Act commences on a day fixed by the Minister by written notice. Under the *Motor Accident Injuries Commencement Notice 2019*, the Minister fixed 1 February 2020 as the day the Act commences.

Schedule 1, part 1.6 (Public Sector Workers Compensation Fund Act 2018) commences 124 days after the day the bill is notified under the *Legislation Act 2001*. On 28 November 2018, the Commonwealth Safety, Rehabilitation and Compensation Commission granted the ACT Government a self-insurance licence under the *Safety, Rehabilitation and Compensation Act 1988* (Cwlth), sections 103 and 104. The licence commenced on 1 March 2019, meaning from this date the ACT Government is responsible for all aspects of workers compensation for ACT public servants. Clause 45 of the licence states that the ACT Government 'must inform the Commission in writing of any proposed amendment to ... the PSWC Fund Act ... at least 124 days before any such amendment ... occurs'. The delayed commencement date for schedule 1, part 1.6 of the bill ensures this licence condition may be met.

### **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 *Cemeteries and Crematoria Act 2003*, the *Financial Management Act 1996*, the *Lifetime Care and Support (Catastrophic Injuries) Act 2014*, the *Motor Accident Injuries Act 2019*, the *Public Health Act 1997*, the *Public Sector Workers Compensation Fund Act 2018* and the *Territory Superannuation Provision Protection Act 2000*. Each amendment is explained in an explanatory note to the amendment.

#### Cemeteries and Crematoria Act 2003

Schedule 1 amends the *Cemeteries and Crematoria Act 2003* regulation-making power (section 51) to include express provision about opening a cemetery or crematorium. The Act provides the Executive with a general regulation-making power under section 51 (1) and a more specific regulation-making power under section 51 (2). While subsection (2) (b) specifically mentions 'the conduct of cemeteries and crematoria', it is unclear whether 'conduct' is broad enough to enable a regulation to be made about opening a cemetery or crematorium.

Section 28A is also amended to clarify that the functions of the cemeteries authority include developing and building a cemetery or crematorium. Section 28A (1) states 'the functions of the cemeteries authority are to effectively and efficiently manage public cemeteries and crematoria for which the authority has been appointed as the

operator by the Minister'. It is unclear whether section 28A (1) allows the authority to develop and build a cemetery or crematorium.

Financial Management Act 1996, Lifetime Care and Support (Catastrophic Injuries) Act 2014, Public Sector Workers Compensation Fund Act 2018 and Territory Superannuation Provision Protection Act 2000

Schedule 1 proposes to make a number of amendments to the *Financial Management Act 1996*, the *Lifetime Care and Support (Catastrophic Injuries) Act 2014*, the *Public Sector Workers Compensation Fund Act 2018* and the *Territory Superannuation Provision Protection Act 2000* ('the Acts') to ensure financial investment provisions are drafted consistently across the Acts and accurately reflect the Territory's financial administrative processes.

The *Financial Management Act 1996* (the FMA), section 37 (1) and (2) are amended to replace the current specific exceptions mentioned in subsection (2) with a general exception in subsection (1). Section 37 (1) currently states that 'an amount must not be paid out of the territory banking account except under an appropriation to a banking account of a territory entity'. Section 37 (1) is subject to section 37 (2), which lists a number of provisions that are exceptions to subsection (1). These exceptions are about transfers between the territory banking account and certain directorate banking accounts to facilitate investment and the payment of interest on certain investments of public money, which may be made without further appropriation.

Section 37 (2) has not been kept up-to-date and fails to mention several other provisions that are exceptions to section 37 (1). The amendment updates section 37 (1) and (2) by replacing the specific exceptions in subsection (2) with a general exception in subsection (1). This ensures any future exceptions to section 37 (1) will be covered without the need to amend section 37.

The FMA, section 38 (5) is amended to reflect current administrative practice that an investment of public money may be made or managed for the Territory by any entity, including a directorate or an entity other than a directorate, such as an external fund

manager. The amendment to section 38 (5) also clarifies that fees and expenses reasonably incurred for making or managing an investment may be deducted from the investment as a whole, not just from any interest received for the investment. This is because an entity making or managing an investment for the Territory does not actually receive interest, and in many instances there is no interest actually paid (if, for instance, there is a dividend reinvestment plan in place for the investment). This amendment is replicated in the FMA, section 58 (5), the *Lifetime Care and Support (Catastrophic Injuries) Act 2014*, sections 80 (5) and 82 (3), the *Public Sector Workers Compensation Fund Act 2018*, sections 14 (4) and 15 (3) and the *Territory Superannuation Provision Protection Act 2000*, sections 11 (4) and 12 (3).

The FMA, section 38 (8), is omitted in schedule 1 because it is redundant. Under section 38 (6), the Treasurer may decide the amounts of returns from investments that are to be credited to directorate banking accounts. Under section 38 (7), the amounts decided by the Treasurer may be paid from the territory banking account without further appropriation. Section 38 (8) currently states 'However, the total of the amounts paid under subsection (7) must not exceed the total of the interest received from investments under this section'. Subsection (8) is redundant because the amounts paid under subsection (7) are by necessity already limited to the amounts of returns received from investments under subsection (6).

The FMA is also amended to omit section 38 (9) and (10). Section 38 (9) currently states that the FMA, section 38 does not apply to money held in a superannuation banking account (as defined under section 38 (10), which is a signpost definition to the *Territory Superannuation Provision Protection Act 2000*, section 7) or a PSWC fund banking account (as defined under the *Public Sector Workers Compensation Fund Act 2018*, section 9). However, section 38 applies to money held in 'directorate banking accounts' (see section 38 (1)) and a superannuation banking account and a PSWC fund banking account are both directorate banking accounts.

This anomaly has persisted since the introduction of the *Territory Superannuation Provision Protection Bill 2000* and creates confusion across the Acts. The omission of

section 38 (9) and (10) clarifies the original intention of the FMA, section 38, to apply to directorate banking accounts.

To complement the omission of the FMA, section 38 (9) and (1), the *Lifetime Care and Support (Catastrophic Injuries) Act 2014*, section 80 (1), the *Public Sector Workers Compensation Fund Act 2018*, section 14 (1) and the *Territory Superannuation Provision Protection Act 2000*, section 11 (1) are amended to clarify for each Act that an amount in an LTCS fund banking account, a PSWC fund banking account or a superannuation banking account may be invested by the Treasurer for the relevant account in an investment mentioned in the FMA, section 38 (1) (a) to (e). Any such investment by the Treasurer must be consistent with any prescribed investment guidelines.

Finally, a new definition of **returns** is inserted into the FMA, dictionary to replace the term **interest** in relation to investments. The FMA currently refers to ‘interest’ received from investments of public money. The dictionary defines **interest** to include ‘a dividend and any other financial return on a deposit, loan or other investment’. However, the ordinary meaning of ‘interest’ would not usually include returns on investments such as dividends, capital gains or distributions. The new definition of **returns** includes interest, dividends, capital gains, distributions and any other financial return on an investment. The new definition of **returns** is also inserted into the *Lifetime Care and Support (Catastrophic Injuries) Act 2014*, the *Public Sector Workers Compensation Fund Act 2018* and the *Territory Superannuation Provision Protection Act 2000*, and all relevant occurrences of ‘interest’ in each of the Acts will be replaced with ‘returns’.

#### Motor Accident Injuries Act 2019

Schedule 1 amends the *Motor Accident Injuries Act 2019*, sections 96 and 97, which set out formulas for working out an injured person’s entitlement to income replacement benefits. Section 96 sets out the formula for working out an injured person’s entitlement to income replacement benefits for each week the person is entitled to the benefits during the first payment period. Section 97 sets out the formula for working



out an injured person's entitlement to income replacement benefits for each week the person is entitled to the benefits during the second payment period. The amendments revise the formulas to include a superannuation component for low income earners. The component is based on the superannuation guarantee rate set out in the *Superannuation Guarantee (Administration) Act 1992* (Cwlth).

The amendments of sections 96 and 97, and consequential changes to section 76, are necessary to give effect to the intention behind 3 Assembly amendments of section 76 moved during the debate of the *Motor Accident Injuries Bill 2019*. There are several technical issues with the Assembly amendments which the amendments of sections 96 and 97 resolve. Section 76 is amended to reverse the Assembly amendments.

Schedule 1 also revises the definition of **private medical examiner** in section 145 to require a private medical examiner to have both qualifications and experience, rather than qualifications or experience, that are relevant to the nature of an injured person's injuries.

#### Public Health Act 1997

Under the *Public Health Act 1997*, section 138 (2) (c), the Executive may make regulations in relation to 'cervical cytology'. Schedule 1 proposes to omit section 138 (2) (c) because cervical cytology is now a Commonwealth responsibility.

The *National Cancer Screening Register Act 2016* (Cwlth) established the authority to implement and maintain a National Cancer Screening Register (NCSR). The NCSR replaces the previously separate State and Territory cervical screening registers, including the ACT Cervical Cytology Register.

The *Public Health Amendment Regulation 2017 (No 1)* and the *Public Health Amendment Regulation 2019 (No 1)* amended the *Public Health Regulation 2000* to omit part 3 (Cervical cytology register) and update any references to cervical cytology to facilitate a phased transition from the ACT Cervical Cytology Register to the NCSR. This transition is now complete and the ACT Cervical Cytology Register has been

decommissioned. As such, there is no longer any need for the Executive to be able to make regulations about cervical cytology, meaning section 138 (2) (c) is redundant.

### **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. The bill does not provide for such amendments but the schedule heading is retained to preserve the usual numbering of schedule 3.

### **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.