

**2021**

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

**STATUTE LAW AMENDMENT BILL 2021**

**EXPLANATORY STATEMENT  
and  
HUMAN RIGHTS COMPATIBILITY STATEMENT  
(*Human Rights Act 2004, s 37*)**

**Presented by  
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Attorney-General**

## STATUTE LAW AMENDMENT BILL 2021

**The Bill is not a Significant Bill.** Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

### OVERVIEW AND PURPOSE OF THE BILL

The object of the *Statute Law Amendment Bill 2021* (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.

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 non-controversial, and minor or technical.

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.

## SUMMARY OF AMENDMENTS

The Bill includes amendments to—

- the *Controlled Sports Act 2019*, section 86 (1) and (5) to include the controlled sports registrar as someone who may be informed or advised about controlled sports issues by an advisory committee; and
- the *Mental Health Act 2015*, section 190 (1) (h) to include a **registered affected person** as someone who may appear and give evidence at the hearing of certain proceedings; and
- the *Public Sector Management Act 1994*, section 251 to disapply the *Legislation Act 2001*, section 47 (3) and (6) in relation to a Commonwealth law or an ACT enterprise agreement applied, adopted or incorporated in a management standard; and
- the *Workers Compensation Act 1951*, section 75 (3) to update an outdated cross-reference; and
- the *Legislation Act 2001* to omit redundant examples and notes, correct cross-references and omit redundant schedule items; and
- remove a standard provision about approved forms from a range of legislation; and
- make other amendments to other ACT legislation that are necessary as a consequence of the amendments mentioned above; and
- make other non-controversial and technical amendments of ACT legislation to correct minor errors, update language, add notes, remove redundant provisions and other minor changes to update or improve ACT legislation.

## **CONSULTATION ON THE PROPOSED APPROACH**

As the Bill is an omnibus bill to provide for non-controversial, minor and technical legislative amendments, consultation on the Bill was conducted internally with ACT Government directorates only.

## **CONSISTENCY WITH HUMAN RIGHTS**

The Bill is drafted to be compatible with human rights as set out in the *Human Rights Act 2004* (Human Rights Act).

### **Rights engaged**

The Bill engages the Human Rights Act (HRA), section 12 (Privacy and reputation).

The Bill has no further identified human rights implications.

### **Rights limited**

#### **Right to privacy and reputation (HRA, s 12)**

##### **1. Nature of the right and the limitation (s 28 (a) and (c))**

The Human Rights Act, section 12, states that 'everyone has the right not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily, and not to have his or her reputation unlawfully attacked.

The Bill amends the *Mental Health Act 2015* (Mental Health Act), section 190 (1) (h) to allow a registered affected person to appear and give evidence at the hearing of certain proceedings before the ACT Civil and Administrative Tribunal (ACAT) in relation to a forensic patient. This amendment potentially limits a forensic patient's right to privacy.

##### **2. Legitimate purpose (s 28 (b))**

The purpose of the limitation is to give a registered affected person an opportunity to participate in the justice process in relation to an offence committed, or allegedly committed, against the person by a forensic patient, so as to promote

the personal safety and security of the registered affected person. This purpose is reflected in other ACT legislation, namely the *Victims of Crime Act 1994*, part 3A (Victims rights), particularly section 17E, which gives a victim who is a registered affected person in relation to an offender the right to appear and give evidence at hearings in relation to certain orders.

Personal safety and security is a human right, as expressed through the HRA, section 9 (Right to life), section 10 (Protection from torture and cruel, inhuman or degrading treatment etc), section 12 (Privacy and reputation) and section 18 (Right to liberty and security of person). Allowing a registered affected person to participate in the justice process in relation to a forensic patient is a means of protecting the person's right to safety and security.

### **3. *Rational connection between the limitation and the purpose (s 28 (d))***

It is not possible to achieve the purpose of protecting a registered affected person without limiting, to some extent, the right to privacy of the person who committed an offence against the registered affected person (i.e. a forensic patient).

A registered affected person will have their rights to safety and security protected through this amendment by being able to appear and give evidence in an ACAT proceeding when an order about a forensic patient is being contemplated. This is an extension of the 'registered affected person' scheme which currently exists in the Mental Health Act. The Mental Health Act already provides a registered affected person the right to be given certain information about a forensic patient (see s 134 (2)), including being given written notice about the ACAT's intention to hold certain hearings in relation to forensic patient (see s 188 (1) (a) (viii) (A)). The amendment in the Bill to section 190 (1) (h) furthers the right to safety and security of a registered affected person who is the victim of an offence by giving the person the option to participate in the ACAT process in relation to offence.

### **4. *Proportionality (s 28 (e))***

The amendment in the Bill to section 190 (1) (h) extends the existing right of stated people to appear and give evidence in certain proceedings to include a registered affected person and thus enable their more direct and meaningful

participation in the justice process. This reflects and is consistent with the existing least restrictive measures in place in the Mental Health Act which allow a registered affected person to participate in the justice process in relation to a forensic patient. For instance, in making a forensic mental health order in relation to a person, the ACAT must take into account any statement by a registered affected person (see s 99 (1) (f)).

There are safeguards in place to minimise the limitation on a forensic patient's right to privacy. For instance, if a registered affected person discloses information given to the registered affected person about a forensic patient, the person may be removed from the registered affected person register (see s 133 (2) (b) and s 134 (7)). There are also specific protections for identifying information about a child (see s 134 (4)).

Further, a hearing of a proceeding under the Mental Health Act must generally be held in private (see s 194), and the ACAT may make an order that a hearing be held in private and that certain information given at a hearing must not be published or disclosed (see the *ACT Civil and Administrative Tribunal Act 2008*, s 39).

When balancing a forensic patient's right to privacy with a registered affected person's right to safety and security, the limitation on the right to privacy is reasonable and proportionate.

## Statute Law Amendment Bill 2021

### *Human Rights Act 2004 – Compatibility Statement*

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Statute Law Amendment Bill 2021**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

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Shane Rattenbury MLA  
Attorney-General

## **CLAUSE NOTES**

### **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 3, part 3.45) 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 3, part 3.45 (*Planning Legislation Amendment Act 2020*) will commence on the commencement of the *Planning Legislation Amendment Act 2020*, section 7.

The amendment in schedule 3, part 3.45 amends the *Planning Legislation Amendment Act 2020*, section 7 and the amendment cannot commence until section 7 commences. Under the *Planning Legislation Amendment Act 2020*, section 2 (3), section 7 commences on 1 July 2021.

### **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 [clauses 1.1 – 1.5]**

Schedule 1 provides for minor, non-controversial amendments initiated by government directorates and agencies. It contains amendments of the *Controlled Sports Act 2019*, the *Mental Health Act 2015*, the *Public Sector Management Act*



1994 and the *Workers Compensation Act 1951*. Each amendment is explained in an explanatory note to the amendment.

#### Controlled Sports Act 2019 [clauses 1.1 and 1.2]

The *Controlled Sports Act 2019*, section 86 (1) gives the Minister power to establish an advisory committee to inform or advise the Minister about controlled sports. Currently, only the Minister may be informed or advised. However, it would be useful for an advisory committee to also be able to inform or advise the controlled sports registrar as the registrar is responsible for exercising many of the functions under the Act. The amendments in clauses 1.1 and 1.2 update section 86 (1) and (5) by including the registrar as someone who—

- a. may be informed or advised about controlled sports issues by an advisory committee; and
- b. must consider any relevant information or advice given by an advisory committee in exercising a function under the Act.

#### Mental Health Act 2015 [clause 1.3]

The *Mental Health Act 2015*, section 190 (1) (h) is amended to include a **registered affected person** as someone who may appear and give evidence at the hearing of certain proceedings. Section 190 lists people who may appear and give evidence at the hearing of certain proceedings before the ACT Civil and Administrative Tribunal (ACAT). Section 190 (1) (h) was amended by the *Mental Health Amendment Act 2020* to give the victims of crime commissioner the right to appear and give evidence in proceedings relating to a mental health order, a forensic mental health order, or a review of detention under a court order in respect of which there is a 'registered affected person'. However, the right to appear and give evidence in the same proceedings was not extended to the registered affected person. This was an inadvertent omission from the *Mental Health Amendment Bill 2020* and the amendment in clause 1.3 will correct it.

## Public Sector Management Act 1994 [clause 1.4]

The *Public Sector Management Act 1994*, section 251 is amended to disapply the *Legislation Act 2001* ('the Legislation Act'), section 47 (3) and (6) in relation to a Commonwealth law or an ACT enterprise agreement applied, adopted or incorporated in a management standard.

As a statutory instrument, a management standard may apply, adopt or incorporate a law of another jurisdiction, such as a Commonwealth law, or an external document, such as an ACT enterprise agreement, as in force only at a particular time (see Legislation Act, section 47 (3)). This is generally the time at which the instrument is made. However, by displacing section 47 (3), a management standard may apply a Commonwealth law or an ACT enterprise agreement as in force from time to time (see Legislation Act, section 47 (4) (a)). The management standards under the *Public Sector Management Standards 2016* incorporate the terms of ACT enterprise agreements in relation to superannuation and other entitlements of certain public servants and statutory office-holders. The amendment in clause 1.4 ensures that the enterprise agreements and any relevant Commonwealth laws apply as in force from time to time.

The Legislation Act, section 47 (6) provides that if section 47 (3) is displaced and a law of another jurisdiction or an instrument is applied as in force from time to time, the law or instrument, and any later changes to the law or instrument, are taken to be notifiable instruments. A notifiable instrument must be notified on the Legislation Register under the Legislation Act. However, section 47 (6) may be displaced, meaning the law or instrument would not be required to be notified on the Legislation Register (see Legislation Act, section 47 (7)). In clause 1.4, section 47 (6) is displaced because both Commonwealth laws and ACT enterprise agreements are readily accessible on the internet and the ACT government intranet, and there is therefore no need for them to be published on the Legislation Register.

## Workers Compensation Act 1951 [clause 1.5]

The *Workers Compensation Act 1951*, section 75 (3) is amended to correct an outdated cross-reference. Section 75 sets out how to work out the costs, in relation to compensation payable by an employer, of taking an injured worker by private motor vehicle to and from a place to receive medical treatment or rehabilitation services. Section 75 (2) states that ‘the transport cost is the cost worked out by multiplying the number of kilometres travelled to and from the place by the per kilometre cost for the car’. Section 75 (3) establishes the ‘per kilometre cost for the car’, which currently is ‘the amount mentioned in the *Income Tax Assessment Regulations 1997* (Cwlth), schedule 1, part 2 in relation to the size of the car for the financial year in which the cost was incurred’.

The *Income Tax Assessment Regulations 1997* (Cwlth), schedule 1, part 2 set out the number of cents used for calculating a deduction for car expenses for an income year, using the ‘cents per kilometre’ method for the *Income Tax Assessment Act 1997* (Cwlth), section 28-25. However, section 28-25 was amended in 2016 so that the ‘number of cents’ amount was determined by the commissioner of taxation in a legislative instrument rather than being set out in the Regulations. The amendment in clause 1.5 updates section 75 (3) by replacing the outdated cross-reference to the Regulations with the correct cross-reference to the legislative instrument determined by the commissioner under the *Income Tax Assessment Act 1997* (Cwlth).

## **Schedule 2 — Structural amendments of Legislation Act [clauses 2.1 – 2.34]**

Schedule 2 is reserved for minor, non-controversial amendments of the *Legislation Act 2001* initiated by the Parliamentary Counsel’s Office. Each amendment is explained in an explanatory note in the schedule.

The amendments omit examples and notes that are no longer necessary and, in some cases, that are inconsistent with current drafting practice, correct and update cross-references to a Commonwealth Act, and omit schedule items that are redundant because the Acts mentioned in the items have been repealed or ceased to have effect.

### **Schedule 3 — Technical amendments [clauses 3.1 – 3.183]**

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, omitting redundant provisions and other minor changes to update or improve the form of legislation.

In particular, amendments in schedule 3 will remove the standard 'Approved forms' provision and related notes from some Acts and regulations that have not used, or no longer use, approved forms. The standard provision authorises the Minister or another official to approve forms for an Act and provides that an approved form is a notifiable instrument. While originally the publication of approved forms on the Legislation Register increased their accessibility, this is no longer necessarily the best location for them. Many government agencies now have their own websites and make their forms available directly there. Additionally, forms that are of an interactive 'smart' nature and feed information directly into agency databases cannot be hosted on the Legislation Register.