



Australian Capital Territory

Statute Law Amendment Act 2005 (No 2)

A2005-62

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Australian Capital Territory

Statute Law Amendment Act 2005 (No 2)

A2005-62

An Act to amend certain legislation for the purpose of statute law revision

The Legislative Assembly for the Australian Capital Territory enacts as follows:

J2005-78

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 Name of Act

This Act is the *Statute Law Amendment Act 2005 (No 2)*.

2 Commencement

- (1) This Act commences 21 days after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

- (2) However, a date or time provided by a special commencement provision for an amendment made by this Act has effect, or is taken to have had effect, as the commencement date or time of the amendment.

- (3) In this section:

special commencement provision, for an amendment made by this Act, is a provision, in brackets beginning with the text ‘commencement:’, at the end of the amendment.

Example

An amendment followed by ‘(commencement: the later of the commencement of the *Criminal Code Harmonisation Act 2005* or the day this Act commences)’ means that the amendment is taken to have commenced on the later of the commencement of the *Criminal Code Harmonisation Act 2005* or this Act.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

3 Purpose

The purpose of this Act is to improve the quality of the statute law of the Territory by amending Acts and regulations for the purpose of statute law revision.

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

5 Legislation amended—schs 1–3

This Act amends the legislation mentioned in schedules 1 to 3.

6 Legislation repealed—sch 4

- (1) This Act repeals the legislation mentioned in schedule 4.
- (2) Each Act mentioned in schedule 4 is declared to be a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

Schedule 1 Minor amendments

(see s 5)

Part 1.1 Animal Diseases Act 2005

[1.1] Section 90 (2) (f)

substitute

(f) the artificial breeding of stock;

Explanatory note

Existing section 90 (f) provides for the making of regulations in relation to the use of semen in artificial insemination of stock. This amendment ensures that the regulation-making power covers all artificial breeding procedures for stock and all equipment used in those procedures (compare *Stock Diseases Amendment (Artificial Breeding) Act 2004* (NSW)).

[1.2] Section 90 (2) (n)

omit

stock

Explanatory note

This amendment updates the provision consequent on the amendment of the definition of *tag* by the next amendment. The provision presently provides for the making of regulations in relation to the requirements of stock tags. The next amendment clarifies the meaning of *tag* to mean a tag etc 'designed to be attached or placed on tagable stock to identify stock for this Act'. The reference to 'stock' in this provision, therefore, becomes redundant.

[1.3] Dictionary, definition of *tag*

substitute

tag means a tag, label, mark or electronic device designed to be attached to or placed on tagable stock to identify stock for this Act.

Explanatory note

This amendment clarifies the meaning of the definition of *tag* and links it more clearly to the Act.

Part 1.2 Land (Planning and Environment) Act 1991

[1.4] Section 249 (2) (b)

substitute

- (b) if an objection is made to the relevant application under section 237, but an application is not made to the AAT for review of the decision within 4 weeks after the day the person was notified of the decision—on the day after the end of the 4-week period; or

Explanatory note

Under the *Land (Planning and Environment) Act 1991*, section 276 (3) an objector or third-party may apply to the administrative appeals tribunal (the *AAT*) for review of certain decisions within 4 weeks after the day the person is notified of the decision. By contrast, section 249 (2) (b) presently provides that, if an objection was made to an application for approval to undertake a development (see s 222), but an application to the AAT for the review of that decision is not made ‘within 4 weeks after the day of the decision’, the approval takes effect ‘on the day after the end of the period of 4 weeks’.

Consequently, as the provisions presently stand, an approval can take effect before the end of the period for making an application to the AAT for review of the decision to give the approval. This is because the period after which the approval becomes effective, and the application period for AAT review, can begin on different days. This will be the case if the objector or third-party is not notified of the decision on the day it is made.

This anomaly is removed by bringing the operation of section 249 (2) (b) into line with the time limit in section 276 (3) for applying for AAT review. The amendment gives effect to the suggestion of the AAT in *Tonks and ACT Planning and Land Authority*, [2005] ACTAAT 8, paragraph 12, that the Act should be amended to ensure consistency between the 2 provisions.

Part 1.3 Road Transport (Safety and Traffic Management) Act 1999

[1.5] Section 14 (2)

substitute

- (2) In a proceeding for an offence against this part, it is sufficient to prove a vehicle was loaded unsafely if the prosecution proves the load on the vehicle was not placed, secured or restrained in a way that met the standards prescribed by regulation.

Explanatory note

This amendment omits a reference to an out-of-date publication presently mentioned in the subsection and provides for the applicable standards to be prescribed by regulation.

Part 1.4 Road Transport (Safety and Traffic Management) Regulation 2000

[1.6] New section 115

insert

115 Standards for safe carriage of loads—Act, s 14 (2)

The prescribed standards are the performance standards in the *Load Restraint Guide—Guidelines and Performance Standards for the Safe Carriage of Loads on Road Vehicles*, 2nd ed (2004) published by the National Transport Commission.

Explanatory note

This amendment is consequential on the amendment of the *Road Transport (Safety and Traffic Management) Act 1999* and prescribes the current standards for the safe loading of vehicles.

Part 1.5 Waste Minimisation Act 2001

[1.7] Section 10 heading

substitute

10 Chief executive to give public notice of proposed IWRP

Explanatory note

This amendment changes a reference to ‘EPA’ (the Environment Protection Authority) to ‘chief executive’ and brings the heading more closely into line with the scope of the section.

References within the Act to ‘EPA’ are being changed to ‘chief executive’ to enable administrative responsibility for the Act to be set in the usual way by administrative arrangements under the Self-Government Act and the *Public Sector Management Act 1994*. Under the Legislation Act, section 163, a reference in a provision of an Act or statutory instrument to *the chief executive* is a reference to the chief executive of the administrative unit responsible for the provision (unless different administrative units are responsible for the provision in relation to different matters).

[1.8] Section 11 heading

substitute

11 Industry members may be required to give background information

Explanatory note

This amendment brings the heading more closely into line with the wording of the section and omits a reference to ‘EPA’ consequent on another amendment.

[1.9] Section 11 (1)

omit 1st mention of

EPA

substitute

The chief executive

Explanatory note

This amendment changes a reference to ‘EPA’ to ‘chief executive’.

[1.10] Section 12 (1)

omit

EPA

substitute

The chief executive

Explanatory note

This amendment changes a reference to ‘EPA’ to ‘chief executive’.

[1.11] Section 14 heading

**14 Preparation of IWRP by chief executive without
 negotiation**

Explanatory note

This amendment changes a reference to ‘EPA’ to ‘chief executive’.

[1.12] Section 15 (2)

substitute

- (2) A draft IWRP prepared under this section may be prepared without complying with the following sections:
- section 10 (Chief executive to give public notice of proposed IWRP)
 - section 12 (Report on how IWRP is to be prepared)
 - section 13 (Preparation of IWRP—process of negotiation).

Explanatory note

This amendment changes a reference to ‘EPA’ to ‘chief executive’.

[1.13] Section 15 (3)

omit

submit

substitute

refer

Explanatory note

This amendment brings the language of section 15 (3) into line with the language of section 15 (2).

[1.14] Section 17 (1)

omit

given

substitute

referred

Explanatory note

This amendment brings the language of section 17 (1) into line with the language of section 14 (8) and section 15 (4).

[1.15] Section 17 (5)

substitute

- (5) The chief executive must also—
- (a) give a copy of the IWRP to any industry member or other person who made a submission, or who provided information under section 11 (Industry members may be required to give background information), or who was otherwise involved in the negotiation of the plan, under this division; and
 - (b) make copies of the IWRP available for inspection or purchase by anyone.

Explanatory note

This amendment changes references to ‘EPA’ to ‘chief executive’ and corrects a provision reference.

[1.16] Section 19

substitute

19 Contravention of IWRP—annual report

A report prepared for a financial year under the *Annual Reports (Government Agencies) Act 2004* by the administrative unit responsible for the administration of this Act must include details of each contravention during the year of a requirement of a notice under section 18.

Note **Financial year** has an extended meaning in the *Annual Reports (Government Agencies) Act 2004*.

Explanatory note

This amendment is consequential on the changing of references to ‘EPA’ to ‘chief executive’.

[1.17] Section 47

omit

Explanatory note

This amendment is consequential on the changing of references to ‘EPA’ to ‘chief executive’. Because the EPA responsibilities are being transferred to the chief executive, delegation formerly provided by this section is no longer needed. The *Public Sector Management Act 1994* provides for the making of a delegation by a chief executive.

[1.18] Dictionary, definition of EPA

omit

Explanatory note

This amendment omits the definition of ‘EPA’ from the dictionary because it is no longer needed.

[1.19] Further amendments, mentions of *EPA*

omit

EPA

substitute

the chief executive

in

- section 7 (b) (i)
- section 8 (2) (h)
- section 9 (2) (b)
- section 10 (1) and (2)
- section 11 (1) (other than 1st mention)
- section 11 (3)
- section 12 (2) and (3)
- section 13 (1) (a) and (2)
- section 14 (1), (2), (3), (4) and (5)
- section 15 (1) and (3)
- section 17 (3) and (4)
- section 18 (1) and (4)
- section 20 (2) (d)
- section 44.

Explanatory note

This amendment changes references to ‘EPA’ to ‘the chief executive’.

Schedule 2 Structural amendments

(see s 5)

Part 2.1 Legislation Act 2001

[2.1] Section 28 (2) (b)

substitute

- (b) if it is not practicable to notify the making of the proposed law in the register—notify the making of the law in the gazette.

Explanatory note

This amendment clarifies when the parliamentary counsel is required to notify the making of a proposed law in the gazette. The amendment is consistent with the Legislation Act, section 20 (which requires the parliamentary counsel to ensure that anything the parliamentary counsel is required to do in relation to the register is done promptly) and section 22 (1) (which requires the parliamentary counsel to ensure, as far as practicable, that a copy of the material mentioned in section 19 (1) and (2) is accessible at all times on an approved web site). Uploads from the legislation register to the approved web site are normally made during the night of the day when laws and instruments are notified in the register. Although they are invariably available at the approved web site at the beginning of the next working day, they are not always available before midnight on the day of notification.

[2.2] Section 28 (9)

omit

within

substitute

not later than

Explanatory note

The Legislation Act, section 28 (8) requires the parliamentary counsel to give the Minister a statement if the making of a proposed law is notified in the gazette rather than the legislation register and copies of the proposed law are not available in accordance with the gazette notice. This amendment makes it clear that a copy of the statement may be presented to the Legislative Assembly on the gazette date and need not wait until the following day.

[2.3] Section 34 (5)

omit

within

substitute

not later than

Explanatory note

The Legislation Act, section 34 (4) requires the relevant Minister to arrange for a regulatory impact statement to be prepared for a subordinate law if a RIS exemption for the law is disallowed by the Legislative Assembly. This amendment makes it clear that the regulatory impact statement may be presented to the Legislative Assembly on the disallowance day.

[2.4] Section 61 (2) (b)

substitute

- (b) if it is not practicable to notify the making of the instrument in the register—notify the making of the instrument in the gazette.

Explanatory note

This amendment clarifies when the parliamentary counsel is required to notify the making of a registrable instrument in the gazette. The amendment is consistent with the Legislation Act, section 20 (which requires the parliamentary counsel to ensure that anything the parliamentary counsel is required to do in relation to the register is done promptly) and section 22 (1) (which requires the parliamentary counsel to ensure, as far as practicable, that a copy of the material mentioned in section 19 (1) and (2) is accessible at all times on an approved web site). Uploads from the legislation register to the approved web site are normally made during the night of the day when laws and instruments are notified in the register. Although they are invariably available at the approved web site at the beginning of the next working day, they are not always available before midnight on the day of notification.

[2.5] Section 61 (8)

omit

within

substitute

not later than

Explanatory note

The Legislation Act, section 61 (7) requires the parliamentary counsel to give the Minister a statement if the making of a registrable instrument is notified in the gazette rather than the legislation register and copies of the instrument are not available in accordance with the gazette notice. This amendment makes it clear that a copy of the statement may be presented to the Legislative Assembly on the gazette date and need not wait until the following day.

[2.6] Section 64 (1)

omit

within

substitute

not later than

Explanatory note

This amendment makes it clear that a subordinate law or disallowable instrument can be presented to the Legislative Assembly on the day it is notified.

[2.7] Section 65 (1)

omit

within

substitute

not later than

Explanatory note

This amendment makes it clear that notice of a motion to disallow a subordinate law or disallowable instrument can be given in the Legislative Assembly on the day the law or instrument is presented to the Assembly.

[2.8] Section 65A (2) (b)

substitute

- (b) if it is not practicable to notify the disallowance in the register—notify the disallowance in the gazette.

Explanatory note

This amendment clarifies when the parliamentary counsel is required to notify the disallowance of a subordinate law or disallowable instrument in the gazette. The amendment is consistent with the Legislation Act, section 20 (which requires the parliamentary counsel to ensure that anything the parliamentary counsel is required to do in relation to the register is done promptly) and section 22 (1) (which requires the parliamentary counsel to ensure, as far as practicable, that a copy of the material mentioned in section 19 (1) and (2) is accessible at all times on an approved web site). Uploads from the legislation register to the approved web site are normally made during the night of the day when laws and instruments are notified in the register. Although they are invariably available at the approved web site at the beginning of the next working day, they are not always available before midnight on the day of notification.

[2.9] Section 67 (2)

omit

after

substitute

beginning on

Explanatory note

This amendment makes it clear that section 67 prevents an instrument the same in substance as a disallowed subordinate law or disallowable instrument being made on the day of the disallowance.

[2.10] Section 68 (2)

omit

within

substitute

not later than

Explanatory note

This amendment makes it clear that notice of a motion to amend a subordinate law or disallowable instrument can be given in the Legislative Assembly on the day the law or instrument is presented to the Assembly.

[2.11] Section 69 (2) (b)

substitute

- (b) if it is not practicable to notify the amendment in the register—
notify the amendment in the gazette.

Explanatory note

This amendment clarifies when the parliamentary counsel is required to notify in the gazette the amendment by the Legislative Assembly of a subordinate law or disallowable instrument. The amendment is consistent with the Legislation Act, section 20 (which requires the parliamentary counsel to ensure that anything the parliamentary counsel is required to do in relation to the register is done promptly) and section 22 (1) (which requires the parliamentary counsel to ensure, as far as practicable, that a copy of the material mentioned in section 19 (1) and (2) is accessible at all times on an approved web site). Uploads from the legislation register to the approved web site are normally made during the night of the day when laws and instruments are notified in the register. Although they are invariably available at the approved web site at the beginning of the next working day, they are not always available before midnight on the day of notification.

[2.12] Section 70 (2)

omit

after

substitute

beginning on

Explanatory note

This amendment makes it clear that section 70 prevents an instrument the same in substance as a subordinate law or disallowable instrument amended by the Legislative Assembly being made on the day the amendment was made.

[2.13] Section 71 (1) (a) and (b)

omit

within

substitute

not later than

Explanatory note

The amendment of section 71 (a) is consequential on an identical amendment made to section 65 (1) and section 68 (2).

The amendment of section 71 (1) (b) makes it clear that section 71 applies if the Legislative Assembly is dissolved or expires on the day a notice of motion to disallow or amend a subordinate law or disallowable instrument is given in the Assembly.

[2.14] Section 151

substitute

151 Working out periods of time generally

- (1) This section applies in working out periods of 1 day or longer for an Act or statutory instrument, whether the period is a period in the future or the past.

Note 1 The following definitions in the dictionary, pt 1 are also relevant to periods of time:

- *business day*
- *calendar month*
- *calendar year*
- *financial year*
- *midnight*
- *month*
- *named month*
- *quarter*
- *working day*
- *year*.

Note 2 The *Standard Time and Summer Time Act 1972* deals with the meaning of a reference to a time.

- (2) A period of time described as beginning at, on or with a stated day, act or event includes the stated day or the day of the stated act or event.
- (3) A period of time described as beginning from or after a stated day, act or event does not include the stated day or the day of the stated act or event.
- (4) A period of time described as ending at, by, on or with, or as continuing until, a stated day, act or event includes the stated day or the day of the stated act or event.

- (5) A period of time described as ending before a stated day, act or event does not include the stated day or the day of the stated act or event.
- (6) A reference to a number of days between 2 events does not include the days when the events happen.

Example

A court rule requires a notice of motion to be served 2 days before the return date for the application. If the return date is Friday, that day and the day the application is served are not counted in working out the 2 days. For service to be valid, the application must be served on or before the Tuesday before the return date.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (7) This section is a determinative provision so far as it applies to an applicable law or applicable provision.

Note See s 5 for the meaning of determinative provisions, and s 6 for their displacement.

- (8) In this section:

applicable law means an Act enacted, or statutory instrument made, after 1 January 2006.

applicable provision means a provision inserted after 1 January 2006 into an Act or statutory instrument that is not an applicable law.

inserted, for a provision, includes inserted in substitution for another provision.

- (9) This section does not apply to a period beginning before the commencement of this section.
- (10) Subsection (9) and this subsection are declared to be laws to which the Legislation Act, section 88 (Repeal does not end effect of transitional law etc) applies.

- (11) Subsections (9) and (10) and this subsection expire 1 year after the day this section commences.

151A Periods of time ending on non-working days

- (1) This section applies if—
- (a) under an Act or statutory instrument, something must or may be done on a particular day or within a particular period of time; and
 - (b) the day, or the last day of the period, is not a working day.
- (2) The thing must or may be done on the next day that is a working day.
- (3) This section is a determinative provision so far as it applies to an applicable law or applicable provision.

Note See s 5 for the meaning of determinative provisions, and s 6 for their displacement.

- (4) In this section:

applicable law means an Act enacted, or statutory instrument made, after 1 January 2006.

applicable provision means a provision inserted after 1 January 2006 into an Act or statutory instrument that is not an applicable law.

inserted, for a provision, includes inserted in substitution for another provision.

public entity means—

- (a) a court or tribunal; or
- (b) an administrative unit; or
- (c) a statutory-office holder; or
- (d) any other entity established for a public purpose under a law.

working day means—

- (a) for doing something at an office (however described) of a public entity where the thing must or may be done—a day when the office is open; and
- (b) for doing anything else—a day that is not—
 - (i) a Saturday or Sunday; or
 - (ii) a public holiday at the place where the thing must or may be done.

Example for par (a)

filing a document at a court registry

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (5) This section does not apply to something that must or may be done within a period beginning before the commencement of this section.
- (6) Subsection (5) and this subsection are declared to be laws to which the Legislation Act, section 88 (Repeal does not end effect of transitional law etc) applies.
- (7) Subsections (5) and (6) and this subsection expire 1 year after the day this section commences.

151B Doing things for which no time is fixed

- (1) This section applies if—
 - (a) under an Act or statutory instrument, something must or may be done; but
 - (b) no time is provided for doing the thing.
- (2) The thing must or may be done as soon as possible and as often as needed.

151C Power to extend time

- (1) This section applies if, under an Act or statutory instrument—
 - (a) something must or may be done on a particular day or within a particular period of time; but
 - (b) a court or other entity has power to extend the time (the *relevant time*) for doing the thing.
- (2) A person may apply to the court or other entity for the relevant time to be extended even though the relevant time has ended.
- (3) The court or other entity may extend the relevant time even though the relevant time has ended.
- (4) This section is a determinative provision.

Note See s 5 for the meaning of determinative provisions, and s 6 for their displacement.

- (5) This section applies only to an applicable law or applicable provision.
- (6) In this section:

applicable law means an Act enacted, or statutory instrument made, after 1 January 2006.

applicable provision means a provision inserted after 1 January 2006 into an Act or statutory instrument that is not an applicable law.

inserted, for a provision, includes inserted in substitution for another provision.

Explanatory note

General

This amendment remakes section 151 to provide comprehensively for working out the time for doing something required or allowed to be done under an Act or statutory instrument.

The sections substituted by this amendment do not significantly change the law presently applying under section 151, but rather deal with a range of cases not dealt with by the existing

section. Because the days on which periods begin and end are usually expressly dealt with under current ACT drafting practice and the substituted sections largely reflect the position at common law (see Pearce and Geddes, *Statutory Interpretation in Australia* (5th ed), pars 6.45-6.50), this amendment will not have a significant impact on the interpretation of the existing ACT statute book. The impact has, in any event, been minimised by application provisions in the substituted sections. Nevertheless, the substituted sections should produce greater clarity in the operation of the statute book and lead to a better understanding of how time is worked out for statutory provisions. Over time existing provisions of the ACT statute book will be reviewed for consistency with the substituted sections and revised as necessary.

Section 151

New section 151 deals with working out periods of time generally. Like existing section 151 the new section applies in working out periods of 1 day or longer for an Act or statutory instrument (see section 151 (1)). The new section applies in working out periods in the past (backwards) as well as in the future (forwards).

New section 151 is modelled on the *Interpretation Act 1999* (NZ), section 35. The new section is also consistent with the *Interpretation Act 1984* (WA), section 61 (1) (a) to (h) with 1 exception discussed below in relation to new section 151 (6).

New section 151 (2) and (3) provide how the beginning of a period of time is worked out. New section 151 (4) and (5) provide how the end of a period of time is worked out. Under the subsections the relevant day at the beginning or end of the period is excluded or included depending on how the period is described.

Although new section 151 (2) is fully consistent with the equivalent New Zealand and Western Australian provisions mentioned above, the application of the subsection to a period described as beginning ‘on’ a day, act or event is different to the outcome achieved under equivalent Victorian and Queensland provisions (see *Interpretation of Legislation Act 1984* (Vic), s 44 (1) and *Acts Interpretation Act 1954* (Qld), s 38 (1)). However, new section 151 (2) is consistent with existing provisions of the Legislation Act (see eg s 74 (Time of commencement)).

By contrast, new section 151 (3) is consistent with the equivalent provision of most other Australian jurisdictions in relation to a period described as beginning ‘from’ a day, act or event (see existing s 151 (3) (a) and *Acts Interpretation Act 1901* (Cwlth), s 36 (1); *Interpretation Act 1987* (NSW), s 36 (1); *Interpretation of Legislation Act 1984* (Vic), s 44 (1); *Interpretation Act 1984* (WA), s 61 (1) (b); *Acts Interpretation Act 1931* (Tas), s 29 (1); *Interpretation Act* (NT), s 28 (1)).

New section 151 (6) provides that a reference to a number of days between events does not include the days when the events happen. The subsection follows the *Interpretation Act 1999* (NZ), section 35 (5). By contrast, the equivalent Western Australian provisions (*Interpretation Act 1984*, s 61 (1) (f) and (g)) provide for the same outcome but only if the reference includes the expression ‘clear’ days, ‘at least’ or ‘not less than’. If the reference does not include one of

these expressions, the day when the first event happens is included, but the day when the second event happens is excluded. Queensland (see *Acts Interpretation Act 1954*, s 38 (1)) and Tasmania (see *Acts Interpretation Act 1931*, s 29 (2)) have interpretation provisions similar to the Western Australian provisions. The New Zealand approach has been followed because of its simplicity. The Western Australian, Queensland and Tasmanian provisions require the use of a particular expression to achieve the outcome that would usually be wanted in provisions for working out periods of time, namely, allowing a specified period in full. In the unusual case where this is not the outcome wanted, this can be achieved in the drafting of the relevant provisions (eg by reducing the allowed period by 1 day).

New section 151 (7) provides that new section 151 is a determinative provision so far as it applies to an applicable law or applicable provision. The terms *applicable law* and *applicable provision* are defined in new section 151 (8). New section 151 (7) affects the application of new section 151 and, in particular, its displacement. Laws and provisions enacted after 1 January 2006 will have been drafted in the light of the new section and the section will, therefore, need to be displaced expressly or by manifest ‘contrary intention’ (see Legislation Act, s 6 (2)). Laws and provisions enacted on or before 1 January 2006 will not have been drafted in the light of the new section and the section will, therefore, be able to be displaced fairly readily by a ‘contrary intention’ (see Legislation Act, s 6 (3)).

New section 151 (9) ensures that new section 151 does not have retrospective effect. The subsection is a transitional provision and is expired by subsection (11). However, to remove any doubt about its continuing effect after the expiry, subsection (9) is declared by subsection (10) to be a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional law etc) applies.

Section 151A

New section 151A deals with extending the time for something to be done if the day or the last day of the period for the thing to be done is not a working day (see new s 151A (1)). New section 151A (2) provides for the thing to be done on the next day that is a working day. Although new section 151A (2) is fully consistent with existing section 151 (4), the definition of **working day** (see new s 151A (4), def **working day**) has been changed for this section to specifically deal with the time for doing something at an office of a public entity where the thing must or may be done (see also new s 151A (4), def **public entity**). Under the new definition, a working day for doing something at the office of a public entity is a day when the entity’s office is open. In any other case, a ‘working day’ is a day that is not a Saturday, Sunday or a public holiday at the place where the thing must or may be done.

Queensland (see *Acts Interpretation Act 1954*, s 38 (2) and (5)) and Tasmania (see *Acts Interpretation Act 1931*, s 29 (4)) achieve the same outcome in relation to the filing or registration of documents (and, for Tasmania, instruments). In those jurisdictions, if the time or period of time for the filing or registration of a document ends on a day when the office where the filing or registration is to happen is closed, the time is extended to the next day when the

office is open. In all other cases, if the time or last day of the period falls on a Saturday, Sunday or public holiday in the place where the thing is to be done the time is extended to the next day that is not a Saturday, Sunday or public holiday.

By contrast, other jurisdictions (see *Acts Interpretation Act 1901* (Cwlth), s 36 (2); *Interpretation Act 1987* (NSW), s 36 (2); *Interpretation of Legislation Act 1984* (Vic), s 44 (3); *Interpretation Act 1984* (WA), s 61 (1) (h) and (2); *Acts Interpretation Act 1915* (SA), s 27 (2); *Interpretation Act* (NT), s 28 (2); *Interpretation Act 1999* (NZ), s 35 (6)) provide for time to be extended only if the last day of a prescribed period falls on a weekend or public holiday at the place where the thing is to be done (or bank holiday in the Commonwealth or New South Wales and bank holiday or public service holiday in Western Australia).

New section 151A (3) and (5) operate in a corresponding way to new section 151 (7) and (9). The operation of new section 151 (7) and (9) is explained above. Section 151A (5) is a transitional provision and is expired by subsection (7). However, to remove any doubt about its continuing effect after the expiry, subsection (5) is declared by subsection (6) to be a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional law etc) applies.

Section 151B

If something must or may be done under an Act or statutory instrument, and no time is provided for doing the thing, new section 151B provides that the thing must be done as soon as possible and as often as needed (see new s 151B (2)). New section 151B follows the approach taken in Queensland which requires the thing to be done ‘as soon as possible, and as often as the relevant occasion happens’ (see *Acts Interpretation Act 1954*, s 38 (4)). South Australia and Western Australia have similar provisions, requiring the thing to be done ‘with all convenient speed and as often as the prescribed occasion arises’ (see *Acts Interpretation Act 1915* (SA), s 27 (3)) or ‘with all convenient speed and as often as occasion arises’ (see *Interpretation Act 1984* (WA), s 63).

Section 151C

New section 151C provides that, if something must or may be done under an Act or statutory instrument on a particular day, or within a particular period of time, and a court or other entity has power to extend the time within which the thing must or may be done, an application may be made for an extension of time, and the court or other entity may extend the time for doing the thing, even though the time for doing the thing has ended before the extension of time is given. This provision follows the approach taken in New South Wales (see *Interpretation Act 1987*, s 36 (3)) and Western Australia (see *Interpretation Act 1984*, s 64). The new section will remove the need for provisions of this kind to be included in legislation.

New section 151C (4) provides that new section 151C is a determinative provision. New section 151C (4) affects the application of section 151C and, in particular, its displacement. Because new section 151C may (in some cases at least) represent a change in the law, the

section will apply only to laws and provisions enacted after 1 January 2006 (see section 151C (5) and (6)). Laws and provisions enacted after 1 January 2006 will have been drafted in the light of the new section and the section will, therefore, need to be displaced expressly or by manifest ‘contrary intention’ (see Legislation Act, s 6 (2)).

[2.15] Section 192 (2)

omit

may be begun only within

substitute

must be begun not later than

Explanatory note

This amendment makes it clear that a prosecution for an offence to which section 192 (2) applies may be begun on the day the offence is committed. The amendment also brings the language of the subsection into line with current drafting practice (see Legislation Act, s 146).

[2.16] Section 192 (3)

omit

within

substitute

not later than

Explanatory note

This amendment makes it clear that a prosecution for an offence to which section 192 (2) applies may be begun on the day the relevant report is made or given.

[2.17] New Section 253 (6)

insert

(6) In this section:

Act includes an Act of the Commonwealth.

statutory instrument includes an instrument (whether or not legislative in nature) made under—

- (a) an Act of the Commonwealth; or
- (b) another statutory instrument of the Commonwealth ; or
- (c) power given by an Act or statutory instrument of the Commonwealth and also power given otherwise by law.

Explanatory note

This amendment extends the operation of section 253 to functions given to the Executive by or under Commonwealth laws. The Self-Government Act, section 38A provides that an enactment (that is, a law made by the Legislative Assembly) may provide for the exercise by a member or members of the Executive of powers vested in the Executive by or under a Commonwealth Act.

[2.18] Dictionary, part 1, new definition of *territory law*

insert

territory law—see *law*, of the Territory.

Explanatory note

This amendment inserts a signpost definition of *territory law* to assist readers of the Legislation Act.

Schedule 3 Technical amendments

(see s 5)

Part 3.1 Administrative Decisions (Judicial Review) Act 1989

[3.1] Section 3 (1), definition of *enactment*

substitute

enactment means—

- (a) an Act or subordinate law; or
- (b) the *Canberra Water Supply (Googong Dam) Act 1974* (Cwlth).

Note A reference to an Act or subordinate law includes a reference to a provision of an Act or subordinate law (see Legislation Act, s 7 and s 8).

Explanatory note

This amendment updates the definition.

The existing reference in the definition to a part of an Act or subordinate law has been omitted. The Legislation Act, section 7 (3) provides that a reference to an Act includes a reference to a provision of an Act. The Legislation Act, section 8 (2) provides that a reference to a subordinate law includes a reference to a provision of a subordinate law.

The existing reference in the definition to the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth), part 10, division 5 has been omitted because that division was a transitional provision that ceased to have effect 2 years after self-government day.

[3.2] Section 3 (1), definitions of *failure* and *judge*

omit

Explanatory note

This amendment omits redundant definitions. The Legislation Act, dictionary, part 1 now contains definitions of *fail* and *judge*.

[3.3] Section 3 (1), definition of *order of review*

omit

in respect of

substitute

in relation to

Explanatory note

This amendment brings a connecting phrase into line with current drafting practice.

[3.4] Section 3 (1), definitions (as amended)

relocate to dictionary

Explanatory note

This amendment relocates the unomitted definitions, as amended, to a new dictionary that is inserted by another amendment.

[3.5] Section 3, remainder

substitute

2 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*person aggrieved*—see section 3B.’ means that the term ‘person aggrieved’ is defined that section.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

3 **Notes**

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

Explanatory note

This amendment adds standard dictionary and notes provisions. The definitions in existing section 3 (1) (other than those omitted by another amendment) are included in the new dictionary that is inserted by a later amendment. The remaining subsections of section 3 that are still required are remade by the amendment below.

[3.6] New sections 3A, 3B and 3C

insert

3A Meaning of *making* and *failure to make* a decision

- (1) For this Act, a reference to the ***making*** of a decision includes a reference to—
 - (a) making, suspending, revoking or refusing to make an order, award or determination; or
 - (b) giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission; or
 - (c) issuing, suspending, revoking or refusing to issue a licence, authority or other instrument; or
 - (d) imposing a condition or restriction; or
 - (e) making a declaration, demand or requirement; or
 - (f) keeping, or refusing to give up, an article; or
 - (g) doing or refusing to do anything else;
- (2) If provision is made by an enactment for the making of a report or recommendation before a decision is made, the making of the report or recommendation is itself taken, for this Act, to be the ***making*** of a decision.

- (3) A reference to a *failure to make* a decision includes a reference to a failure to make—
- (a) a decision mentioned in subsection (1) (a) to (g); or
 - (b) a report or recommendation mentioned in subsection (2).

Note *Fail* is defined in the Legislation Act, dict, pt 1, to include refuse.

3B Meaning of *person aggrieved*

- (1) For this Act, a reference to a *person aggrieved* by a decision includes a reference to—
- (a) a person whose interests are adversely affected by the decision; and
 - (b) for a decision by way of the making of a report or recommendation—a person whose interests would be adversely affected if a decision were, or were not, made in accordance with the report or recommendation.
- (2) For this Act, a reference to a *person aggrieved* by conduct that has been, is being, or is proposed to be engaged in for the purpose of making a decision, includes a reference to a person whose interests are, or would be, adversely affected by the conduct.
- (3) For this Act, a reference to a *person aggrieved* by a failure to make a decision includes a reference to a person whose interests are, or would be, adversely affected by the failure.

3C Meaning of *conduct engaged in* for purpose of making decision

For this Act, a reference to *conduct engaged in* for the purpose of making a decision includes a reference to the doing of anything preparatory to the making of the decision, including—

- (a) the taking of evidence; or
- (b) the holding of an inquiry or investigation.

Explanatory note

This amendment creates separate sections for key concepts of the Act that are presently located in existing section 3 (2), (3) and (4). The separate sections will make it easier for readers to find the key concepts. The language of the new sections has been brought more closely into line with current drafting practice and new section 3A (3) has been revised to make it clear that a *failure to make* a decision, includes a failure to make a report or recommendation before a decision is made under an enactment.

Existing section 3 (5) (which is about decisions by delegates etc) has not been re-enacted because the subsection is covered by provisions of the Legislation Act (see s 184A, s 185, s 220, s 225B and s 239).

Existing section 3 (6) has not been re-enacted because the *Supreme Court Rules 1937* make comprehensive provision for service at an address for service.

[3.7] Section 4

omit

notwithstanding

substitute

despite

Explanatory note

This amendment updates language.

[3.8] Section 5 (1)

omit

who is

Explanatory note

This amendment omits unnecessary words.

[3.9] Section 5 (1)

omit

that is made after the commencement of this Act

Explanatory note

This amendment omits a transitional provision that is no longer needed.

[3.10] Section 5 (1)

omit

in respect of

substitute

in relation to

Explanatory note

This amendment brings a connecting phrase into line with current drafting practice.

[3.11] Section 5 (1) (a)

omit

occurred in connection with

substitute

happened in relation to

Explanatory note

This amendment updates language and brings a connecting phrase into line with current drafting practice.

[3.12] Section 5 (1) (b)

omit

in connection with

substitute

in relation to

Explanatory note

This amendment brings a connecting phrase into line with current drafting practice.

[3.13] Section 5 (1) (e) and (2) (c)

omit

conferred

substitute

given

Explanatory note

This amendment updates language.

[3.14] Section 5 (2) (i)

omit

constitutes

substitute

is

Explanatory note

This amendment updates language.

[3.15] Section 5 (3)

omit

shall not be

substitute

is not

Explanatory note

This amendment updates language.

[3.16] Section 6 (1)

omit

who is

Explanatory note

This amendment omits unnecessary words.

[3.17] Section 6 (1)

omit

in respect of

substitute

in relation to

Explanatory note

This amendment brings a connecting phrase into line with current drafting practice.

[3.18] Section 6 (1) (a)

substitute

- (a) that a breach of the rules of natural justice has happened, is happening, or is likely to happen, in relation to the conduct;

Explanatory note

This amendment updates language and brings a connecting phrase into line with current drafting practice.

[3.19] Section 6 (1) (e)

omit

conferred

substitute

given

Explanatory note

This amendment updates language.

[3.20] Section 6 (1) (f)

substitute

- (f) that an error of law—
- (i) has been, is being, or is likely to be, committed in the course of the conduct in the making of the proposed decision; or
 - (ii) is likely to be committed in the making of the proposed decision.

Explanatory note

This amendment breaks up a paragraph into subparagraphs to assist its readability.

[3.21] Section 6 (2) (c)

omit

conferred

substitute

given

Explanatory note

This amendment updates language.

[3.22] Section 6 (2) (i)

omit

constitutes

substitute

is

Explanatory note

This amendment updates language.

[3.23] Section 6 (3)

omit

shall not be

substitute

is not

Explanatory note

This amendment updates language.

[3.24] Section 7 heading

substitute

7 Applications for failures to make decisions

Explanatory note

This amendment updates language.

[3.25] Section 7 (1)

omit

who is

Explanatory note

This amendment omits unnecessary words.

[3.26] Section 7 (1)

omit

of the first mentioned person

Explanatory note

This amendment omits unnecessary words.

[3.27] Section 7 (1)

omit

in respect of

substitute

in relation to

Explanatory note

This amendment brings a connecting phrase into line with current drafting practice.

[3.28] Section 7 (2)

omit

who is

Explanatory note

This amendment omits unnecessary words.

[3.29] Section 7 (2)

omit

in respect of

substitute

in relation to

Explanatory note

This amendment brings a connecting phrase into line with current drafting practice.

[3.30] Section 7 (2)

omit everything after

ground

substitute

that the person has a duty to make the decision even though the period has ended.

Explanatory note

This amendment updates language.

[3.31] Section 8

omit

Explanatory note

This amendment omits a section that is made redundant by the Legislation Act, section 176 (Jurisdiction of courts and tribunals).

[3.32] Section 9 (1)

substitute

- (1) The rights given by section 5, section 6 and section 7 to a person to seek an order for review—
- (a) are additional to the rights of the person to seek a review in another way; and
 - (b) must be disregarded for the *Ombudsman Act 1989*, section 6 (6).

Explanatory note

This amendment updates language.

[3.33] Section 9 (2)

omit

Notwithstanding subsection (1)—

substitute

However—

Explanatory note

This amendment updates language.

[3.34] Section 9 (2) (a)

omit

instituted

substitute

brought

Explanatory note

This amendment updates language.

[3.35] Section 9 (as amended)

renumber as section 8

Explanatory note

This amendment is consequential on the splitting of existing section 11 into 2 new sections by another amendment.

[3.36] Section 10 heading

substitute

10 Applications for order of review must set out grounds

Explanatory note

This amendment updates language and indicates more clearly the scope of the section as amended by other amendments.

[3.37] Section 10 (1)

substitute

An application to the Supreme Court for an order of review must set out the grounds of the application.

Explanatory note

This amendment omits details that are covered by the *Supreme Court Rules 1937* (see o 87).

[3.38] Section 10 (2) to (5)

omit

Explanatory note

This amendment omits these provisions consequentially on their remaking by the next amendment.

[3.39] Section 10 (as amended)

renumber as section 9

Explanatory note

This amendment is consequential on the splitting of existing section 11 into 2 new sections by another amendment.

[3.40] Section 11

substitute

10 Period in which application for order of review must be made

- (1) An application to the Supreme Court for an order of review in relation to a decision that has been made (including a decision made after the end of the period within which it was required to be made) must be made within the period required by subsection (2) (or any further time allowed by the court) if the terms of the decision were—
- (a) recorded in writing; and
 - (b) set out in a document that was given to the applicant.

Note The court may allow further time after the end of the period required by s (2) (see Legislation Act, s 151C).

- (2) For subsection (1), the period within which an application for an order of review is required to be made is the period beginning on the day the decision is made and ending 28 days after the relevant day.
- (3) If there is no period prescribed for making an application for an order for review in relation to a particular decision, the Supreme Court may refuse to consider an application for an order for review in relation to the decision if it is of the opinion that the application was not made within a reasonable time after the decision was made.
- (4) If there is no period prescribed for making an application by a particular person for an order for review in relation to a particular decision, the Supreme Court may refuse to consider an application by the person for an order for review in relation to the decision if it is of the opinion that the application was not made within a reasonable time after the decision was made.
- (5) In forming an opinion for subsection (3) or (4), the court—
- (a) must have regard to—

- (i) the time when the applicant became aware of the decision; and
 - (ii) if subsection (4) applies—the period prescribed for the making of an application by anyone else for an order of review in relation to the decision; and
- (b) may have regard to anything else it considers relevant.
- (6) In subsection (2):

relevant day means—

- (a) if the decision includes, or is accompanied by, a written statement of reasons for the decision—the day a document setting out the terms of the decision is given to the applicant; or
- Note* For the meaning of ***statement of reasons***, see the dict.
- (b) if paragraph (a) does not apply and a written statement of reasons for the decision is given to the applicant (otherwise than because of a request under section 13 (1)) not later than 28 days after the day a document setting out the terms of the decision is given to the applicant—the day the statement is given to the applicant; or
 - (c) if paragraph (a) does not apply and the applicant requests the person who made the decision to give a statement under section 13 (1)—
 - (i) the day the statement is given to the applicant; or
 - (ii) the day the applicant is told under section 13 (3) that the applicant was not entitled to make the request; or
 - (iii) the day the Supreme Court makes an order under section 13 (6) declaring that the applicant was not entitled to make the request; or

- (iv) the day the applicant is told under section 14 (3) or section 15 (3) that the statement will not be given to the applicant.
- (d) in any other case—the day a document setting out the terms of the decision.

11 Application for order of review not limited to grounds in application

The applicant for an order of review is not limited to the grounds set out in the application but, if the applicant wishes to rely on a ground not set out in the application, the Supreme Court may direct the application be amended to state the ground.

Explanatory note

New section 10 remakes existing section 10 (2) to (4) to bring the language and structure more closely into line with current drafting practice. New section 11 remakes existing section 10 (5) to bring the language of the provision more closely into line with current drafting practice.

Existing section 11 deals with a subject (amendment of documents filed in the Supreme Court) more appropriately dealt with in rules of court.

[3.41] Section 13 (1)

substitute

- (1) If a person (the *decision-maker*) makes a decision to which this section applies, a person (the *requester*) who is entitled to make an application to the Supreme Court under section 5 in relation to the decision may, in writing, request the decision-maker to provide a written statement of reasons in relation to the decision.

Note For the meaning of *statement of reasons*, see the dict.

Explanatory note

This amendment simplifies the provision using the definition of *statement of reasons* included in the new dictionary that is being inserted by another amendment and brings the provision more closely into line with current drafting practice.

[3.42] Section 13 (2) to (8)

substitute

- (2) The decision-maker must, as soon as practicable and in any event not later than 28 days after the day the decision-maker receives the request (the *request day*), prepare the statement and give it to the requester.
- (3) If the decision-maker is of the opinion that the requester was not entitled to make the request, the decision-maker may, not later than 28 days after the request day—
 - (a) give to the requester written notice of the decision-maker's opinion; or
 - (b) apply to the Supreme Court under subsection (6) for an order declaring that the requester was not entitled to make the request.
- (4) Despite subsection (2), if the decision-maker gives notice under subsection (3) or applies to the Supreme Court under subsection (6), the decision-maker is not required to comply with the request unless—
 - (a) the court, on an application under subsection (6), orders the decision-maker to give the statement; or
 - (b) the decision-maker has applied to the court under subsection (6) for an order declaring that the requester was not entitled to make the request and the court refuses the application.
- (5) If subsection (4) (a) or (b) applies, the decision-maker must prepare the statement and give it to the requester not later than 28 days after the day of the Supreme Court's decision.
- (6) On the application of either the decision-maker or requester under this subsection, the Supreme Court may make an order declaring that the requester was, or was not, entitled to make the request.

- (7) Despite subsection (2), the decision-maker may refuse to prepare and give the statement to the requester if—
- (a) for a decision the terms of which were recorded in writing and set out in a document that was given to the requester—the request was made later than 28 days after the day the document was given to the requester; or
 - (b) in any other case—the relevant request was not made within a reasonable time after the decision was made.
- (8) If subsection (7) (a) or (b) applies, the decision maker must give to the requester, not later than 14 days after the request day, written notice stating—
- (a) that the statement will not be given to the requestor; and
 - (b) the reasons why it will not be given.
- (9) For subsection (7) (b), a request for a statement in relation to a decision is taken to have been made within a reasonable time after the decision was made if the Supreme Court, on application by the requester, declares that the request was made within a reasonable time after the decision was made.
- (10) On application by the requester under this subsection, the Supreme Court may order the decision-maker to give the requester, within a stated period, an additional statement containing better particulars in relation to stated matters if the court considers that the statement given to the requester does not contain adequate particulars, in relation to the decision.

Explanatory note

This amendment brings the language and structure of the provisions more closely into line with current drafting practice.

[3.43] Section 13 (9)

renumber as section 13 (11)

Explanatory note

This amendment provides for the consequential renumbering of a provision.

[3.44] Section 13 (10)

omit

Explanatory note

This amendment omits a provision that is no longer needed. The Legislation Act, section 48 provides that power to make an instrument includes power to make (or not make) different provisions in relation to different matters or different classes of matters.

[3.45] Section 13 (11)

omit

subsection (9)

substitute

subsection (11)

Explanatory note

This amendment provides for the consequential updating of a cross-reference.

[3.46] Section 13 (11) (as amended)

renumber as section 13 (12)

Explanatory note

This amendment provides for the consequential renumbering of a provision.

[3.47] Section 13 (12)

substitute

(13) In this section:

decision to which this section applies means a decision to which this Act applies, other than—

- (a) a decision to which the *Administrative Appeals Tribunal Act 1989*, section 26 (Person affected by decision may obtain reasons for decision) applies; or
- (b) a decision that includes, or is accompanied by, a statement of reasons; or
- (c) a decision mentioned in schedule 2.

Explanatory note

This amendment provides for the consequential renumbering of a provision and simplifies the definition using the definition of *statement of reasons* included in the new dictionary that is inserted by another amendment.

[3.48] Section 14 (1)

omit

, being information that

substitute

if the information

Explanatory note

This amendment brings language more closely into line with current drafting practice.

[3.49] Section 14 (1) (b) (iv)

substitute

- (iv) the giving of which in accordance with the request would be in contravention of an enactment that expressly imposes on the person to whom the request is made a duty not to divulge or communicate information of that kind—
 - (A) to anyone; or
 - (B) to anyone, other than a particular person; or
 - (C) except in particular circumstances.

Explanatory note

This amendment brings the language and structure of the provision more closely into line with current drafting practice and breaks up the subparagraph to improve readability.

[3.50] Section 14 (2)

substitute

- (2) If a person has been requested under section 13 (1) to give a statement to a person—
 - (a) the person to whom the request is made is not required to include in the statement any information in relation to which this section applies; and
 - (b) if the statement would be false or misleading if it did not include the information—the person is not required to give the statement.

Explanatory note

This amendment brings the language of the provision more closely into line with current drafting practice.

[3.51] Section 14 (3)

omit

shall

substitute

must

Explanatory note

This amendment updates language.

[3.52] Section 15 heading

substitute

15 Ministerial certificate about disclosure of information

Explanatory note

This amendment brings the heading more closely into line with current drafting practice.

[3.53] Section 15 (1) to (3)

substitute

- (1) This section applies to information relating to a matter if the Minister certifies, in writing, that the disclosure of information relating to the matter would be contrary to the public interest—
 - (a) because it would involve the disclosure of deliberations or a decision of the Executive or of a committee of the Executive; or
 - (b) for any other stated reason that could form the basis for a claim in a judicial proceeding that the information should not be disclosed.
- (2) If a person has been requested under section 13 to give a statement to a person—

- (a) the person to whom the request is made is not required to include in the statement any information in relation to which this section applies; and
- (b) if the statement would be false or misleading if it did not include the information—the person is not required to give the statement.

Explanatory note

This amendment brings the language and structure of existing section 15 (1) and (3) more closely into line with current drafting practice.

This amendment also omits existing subsection 15 (2) that is no longer needed. Responsibility relating to the ACT was transferred to the Territory in stages after self-government. Since the completion of the transfer, it is not appropriate for the Commonwealth to have rights analogous to those of the Territory under the Act.

[3.54] Section 15 (4)

omit

subsection (3)

substitute

subsection (2)

Explanatory note

This amendment updates a cross-reference.

[3.55] Section 15 (4)

omit

shall provide a notice in writing

substitute

must give a written notice

Explanatory note

This amendment updates language.

[3.56] Section 15 (4) and (5) (as amended)

renumber as section (3) and (4)

Explanatory note

This amendment provides for the consequential renumbering of provisions.

[3.57] Section 16 (1)

omit

determines

substitute

decides

Explanatory note

This amendment updates language.

[3.58] Section 16 (2)

omit

motion

substitute

initiative

Explanatory note

This amendment updates language.

[3.59] Section 17 heading

substitute

**17 Powers of Supreme Court in relation to applications for
 order of review**

Explanatory note

This amendment brings the heading more closely into line with current drafting practice.

[3.60] Section 17 (1) to (3)

omit

in respect of

substitute

in relation to

Explanatory note

This amendment brings a connecting phrase into line with current drafting practice.

[3.61] Section 17 (1) to (3)

omit

any act or thing in order

substitute

anything

Explanatory note

This amendment updates language.

[3.62] Section 17 (4)

omit

motion

substitute

initiative

Explanatory note

This amendment updates language.

[3.63] Section 18 (a)

omit

in respect of

substitute

in relation to

Explanatory note

This amendment updates language.

[3.64] Section 19

substitute

19 Intervention by Minister

- (1) The Minister may, on behalf of the Territory, intervene in a proceeding before the Supreme Court under this Act.
- (2) If the Minister intervenes in a proceeding—
 - (a) the Minister is taken to be a party to the proceeding; and
 - (b) the Supreme Court may, in the proceeding, make orders about costs against the Territory that the court considers appropriate.

Explanatory note

This amendment brings the language of the section more closely into line with current drafting practice and remove rights of intervention by the Commonwealth Attorney-General that are no longer appropriate.

[3.65] Section 20 (3)

omit

Explanatory note

This amendment omits a provision that is no longer needed. The Legislation Act, section 48 provides that power to make an instrument includes power to make (or not make) different provision in relation to different matters or different classes of matters.

[3.66] Section 20 (4)

renumber as section 20 (3)

Explanatory note

This amendment provides for the consequential renumbering of a provision.

[3.67] Schedule 1

substitute

Schedule 1 Decisions to which this Act does not apply

(see dict, def *decision to which this Act applies*)

column 1 item	column 2 enactment	column 3 decision under enactment
1	<i>Building Act 2004</i>	<ul style="list-style-type: none"> a decision under section 96 (Approval of fidelity fund schemes) a decision under section 107 (Suspension or cancellation of approval of approved scheme)
2	<i>Confiscation of Criminal Assets Act 2003</i>	<ul style="list-style-type: none"> any decision
3	<i>Crimes (Restorative Justice) Act 2004</i>	<ul style="list-style-type: none"> any decision
4	<i>Duties Act 1999</i>	<ul style="list-style-type: none"> a decision making or forming part of the process of making, or leading up to the making of, an assessment a decision disallowing, completely or partly, an objection to an assessment a decision refusing to amend, completely or partly, an assessment
5	<i>Electoral Act 1992</i>	<ul style="list-style-type: none"> a decision under part 4 (Electoralates)

Schedule 3
Part 3.1

Technical amendments
Administrative Decisions (Judicial Review) Act 1989

Amendment [3.67]

column 1 item	column 2 enactment	column 3 decision under enactment
6	<i>Financial Institutions Duty Act 1987</i> (which has been repealed)	<ul style="list-style-type: none"> • a decision making or forming part of the process of making, or leading up to the making, of an assessment • a decision disallowing, completely or partly, an objection to an assessment • a decision refusing to amend, completely or partly, an assessment
7	<i>Gene Technology (GM Crop Moratorium) Act 2004</i>	<ul style="list-style-type: none"> • a decision of the Minister under section 7 (Moratorium orders) • a decision of the Minister under section 8 (Exemptions)
8	<i>Gunghalin Drive Extension Authorisation Act 2004</i>	<ul style="list-style-type: none"> • any decision
9	<i>Inquiries Act 1991</i>	<ul style="list-style-type: none"> • any decision
10	<i>Judicial Commissions Act 1994</i>	<ul style="list-style-type: none"> • a decision of the Executive under section 5 (1), section 16 (3) or section 18 • a decision of a member of the Legislative Assembly to propose a motion in accordance with section 14 (3) (a) or to give notice of the motion to the Attorney-General in accordance with section 14 (3) (b) • a decision of the Attorney-General under section 16 (1), section 17 (1) or section 23 (3) • a resolution passed by the Legislative Assembly for the examination by a judicial commission of a complaint in relation to a judicial officer • a decision of a judicial commission
11	<i>Legislation Act 2001</i>	<ul style="list-style-type: none"> • a decision under chapter 5 (Regulatory impact statements for subordinate laws and disallowable instruments)

column 1 item	column 2 enactment	column 3 decision under enactment
12	<i>Payroll Tax Act 1987</i>	<ul style="list-style-type: none"> • a decision making or forming part of the process of making, or leading up to the making, of an assessment • a decision disallowing, completely or partly, an objection to an assessment • a decision refusing to amend, completely or partly, an assessment
13	<i>Plant Diseases Act 2002</i>	<ul style="list-style-type: none"> • a decision of the Minister under part 3 (Measures for the control of diseases and pests)
14	<i>Royal Commissions Act 1991</i>	<ul style="list-style-type: none"> • any decision
15	<i>Stamp Duties and Taxes Act 1987</i> (which has been repealed)	<ul style="list-style-type: none"> • a decision making or forming part of the process of making, or leading up to the making, of an assessment • a decision disallowing, completely or partly, an objection to an assessment • a decision refusing to amend, completely or partly, an assessment
16	<i>Taxation Administration Act 1999</i>	<ul style="list-style-type: none"> • a decision making or forming part of the process of making, or leading up to the making, of an assessment • a decision disallowing, completely or partly, an objection to an assessment • a decision refusing to amend, completely or partly, an assessment
17	<i>Water Resources Act 1998</i>	<ul style="list-style-type: none"> • a decision under section 63A (Moratorium on granting licences etc)

Explanatory note

This amendment updates the language and brings the structure of the schedule into line with current drafting practice. The decisions mentioned in the schedule have been placed in tabular form, in alphabetical order, to assist readers to find them more easily. There are no changes of substance.

[3.68] Schedule 2

substitute

Schedule 2 Decisions to which s 13 does not apply

(see s 13 (13))

2.1 Administration of criminal justice

A decision relating to the administration of criminal justice and, in particular—

- (a) a decision in relation to the investigation or prosecution of a person for an offence against a law in force in the ACT; and
- (b) a decision in relation to the appointment of an investigator or inspector for the purposes of such an investigation; and
- (c) a decision in relation to the issue of a search warrant under a law in force in the ACT; and
- (d) a decision under a law in force in the ACT requiring the production of a document, the giving of information or the issue of a subpoena or summons to a person as a witness.

2.2 Civil proceedings

A decision relating to the bringing or conduct of a civil proceeding, including a decision relating to, or that may result, in the bringing of a civil proceeding for the recovery of a financial penalty arising from a contravention of an enactment and, in particular—

- (a) a decision in relation to the investigation of a person for such a contravention; and
- (b) a decision in relation to the appointment of an investigator or inspector for the purposes of such an investigation; and

- (c) a decision in relation to the issue of a search warrant under an enactment; and
- (d) a decision under an enactment requiring the production of a document, the giving of information or the issue of a subpoena or summons to a person as a witness.

2.3 Decisions relating to territory finance

The following decisions:

- (a) a decision authorised by an Act to issue an amount out of the public money of the Territory;
- (b) a decision of the Treasurer under the *Financial Management Act 1996*, section 18 (Treasurer's advance);
- (c) a decision in relation to the enforcement of a judgment or order for the recovery of an amount by—
 - (i) the Territory; or
 - (ii) a public servant in an official capacity;

2.4 Decisions relating to administration of the public service

A decision relating to—

- (a) personnel management (including recruitment, training, promotion and organisation) in relation to the public service, other than a decision relating to, and having regard to the particular characteristics of, or other circumstances relating to, a particular person; or
- (b) the promotion, transfer, temporary performance of duties, of or by an individual officer of the public service; or
- (c) the making of an appointment to the public service; or
- (d) the engagement of a person as an employee under the *Public Sector Management Act 1994*; or

- (e) the prevention or settlement of an industrial dispute, or otherwise relating to industrial matters, in relation to the public service; or
- (f) the appointment, or ending of the appointment, of a chief executive under the *Public Sector Management Act 1994*.

2.5 Certain other appointment decisions

A decision relating to—

- (a) the making of an appointment under an enactment or to an office established under an enactment; or
- (b) the appointment, or the ending of the appointment, of the commissioner for public administration; or
- (c) the employment, or the ending of employment, of staff under the *Legislative Assembly (Members' Staff) Act 1989*.

Explanatory note

This amendment updates language and brings the structure of the schedule into line with current drafting practice. The decisions mentioned in the schedule have been grouped into subject-matter clauses to assist readers to find them more easily. There are no changes of substance.

[3.69] New dictionary

insert

Dictionary

(see s 2)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1 defines the following terms:

- fail
- judge
- Minister (see s 162)

- regulation
- Supreme Court
- the Territory.

conduct engaged in for the purpose of making a decision—see section 3C.

failure to make a decision—see section 3A.

making a decision—see section 3A.

person aggrieved—see section 3B.

statement of reasons, for a decision, means a statement—

- (a) of the findings on material questions of fact; and
- (b) referring to the evidence or other material on which the findings were based; and
- (c) giving the reasons for the decision.

Explanatory note

This amendment inserts a new dictionary and standard dictionary notes. The new dictionary includes signpost definitions for terms defined elsewhere in the Act and a new definition of *statement of reasons* to simplify provisions of the Act.

Part 3.2 Building Regulation 2004

[3.70] Section 16A (3) (h)

omit first mention of

volume 1

substitute

volume 2

Explanatory note

This amendment corrects a typographical error.

Part 3.3 Business Names Act 1963

[3.71] Section 1

substitute

1 Name of Act

This Act is the *Business Names Act 1963*.

2 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*carrying on business*—see section 4A.’ means that the term ‘carrying on business’ is defined in that section for the Act.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

Explanatory note

This amendment brings the naming section into line with current drafting practice and adds a standard dictionary provision. A new dictionary is inserted by another amendment.

[3.72] New sections 4A and 4B

insert

4A Meaning of *carrying on business*

In this Act:

carrying on business includes establishing a place of business and soliciting orders for goods or services, but does not include—

- (a) taking or defending a legal proceeding; or

- (b) establishing or keeping an account with an authorised deposit-taking institution; or
- (c) making a purchase or sale through an independent contractor; or
- (d) creating evidence of a debt or a charge on property; or
- (e) collecting a debt, securing a debt or enforcing a security in relation to a debt; or
- (f) conducting an isolated transaction over not longer than 31 days; or
- (g) investing funds or holding property.

4B When business name taken to be registered in relation to person

For this Act, a business name is taken to be registered in relation to a person if it appears from the register that that person either alone or together with other people is carrying on business under that name.

Explanatory note

This amendment omits the existing interpretation section for the Act and replaces it with a section (new section 4A) that defines *carrying on business* for the Act and another section (new section 4B) replacing existing section 4 (3).

The definition in new section 4A is consistent with the existing definition in section 4 (1) as amplified by existing section 4 (2). The terminology of the definition has been updated in line with the definition of the term in the *Business Names Act 2002* (NSW), section 3 (2).

The other definitions in existing section 4 (1) that are still needed are included in a new dictionary which is inserted by another amendment.

[3.73] Sections 4A and 4B (as inserted by the *Criminal Code Harmonisation Act 2005*)

relocate as sections 3 and 4

(commencement: the later of the commencement of the *Criminal Code Harmonisation Act 2005* or the day this Act commences)

Explanatory note

This amendment provides for the consequential renumbering and relocation of sections proposed to be inserted by the *Criminal Code Harmonisation Bill 2005*.

[3.74] Section 5 (4) to (7)

substitute

- (4) This section does not apply to a person if the person is carrying on business—
 - (a) under the proper name of the person and of each other person (if any) with whom the person is carrying on the business; or
 - (b) under a registered business name, or under a name mentioned in paragraph (a), to which are added words indicating that the business is being carried on in succession to a former owner of the business; or
 - (c) under an unregistered business name that contains foreign language characters and is also carrying on the business under a registered business name that is an English language equivalent of the unregistered business name.
- (5) For this section, a business carried on by a receiver, manager, administrator or trustee of a person is taken to be carried on by the person.
- (6) If a statement is lodged with the registrar-general under section 12 (5) (Notification of changes in particulars relating to registered business names etc) because a person starts carrying on business under a registered business name, neither the person nor anyone else commits an offence against this section only because

the person carried on business under that business name before the statement was lodged.

- (7) Contravention of this section does not avoid any agreement, transaction, act or matter.

(commencement: the later of the commencement of the *Criminal Code Harmonisation Act 2005* or the day this Act commences)

Explanatory note

This amendment updates existing section 5 (2) to (5) which is proposed to be renumbered as section 5 (4) to (7) by the *Criminal Code Harmonisation Bill 2005*. The substituted provisions use the modern concepts of ‘proper name’ and ‘foreign language character’ (compare *Business Names Act 2002* (NSW), section 4 (2) and (3)). Definitions of the terms **foreign language character** and **proper name** are included in the new dictionary which is inserted by another amendment.

New section 5 (4) (c) allows the use of an unregistered business name that contains foreign language characters if the business is also carried on under a registered business name that is an English language equivalent.

The amendment also remakes existing section 12 (11) in an updated form as new section 5 (6). The provision is more appropriately located in section 5 because it relates to the operation of the offence in the section. Another amendment consequently omits section 12 (11). Existing section 12 (12) is proposed to be renumbered by the *Criminal Code Harmonisation Bill 2005*.

[3.75] Section 6 (2)

omit

shall, for this Act, be deemed

substitute

is, for this Act, taken

Explanatory note

This amendment updates language.

[3.76] Section 6 (3)

omit

Explanatory note

This amendment omits a provision that is transitional in effect and no longer needed.

[3.77] Section 7 (1) (d)

substitute

- (d) the proper name, and any former proper name and the proper address of each applicant; and

Explanatory note

This amendment simplifies and updates the language of the provision using the definitions of the terms *proper name* and *proper address* that are included in the new dictionary inserted by another amendment.

[3.78] Section 7 (2)

substitute

- (2) If an applicant is a child, the application must state—
- (a) that the applicant is a child; and
- (b) the applicant's date of birth.

Explanatory note

This amendment brings the language of the provision more closely into line with current drafting practice.

[3.79] Section 8 (2)

omit

shall, for the purpose of serving any notice or process on the person or persons under this Act, be deemed

substitute

is, for the purpose of serving any notice or process, is taken

Explanatory note

This amendment updates language.

[3.80] Section 10 (2)

substitute

- (2) The registrar-general must not, except with the Minister's approval, exercise a power under subsection (1) in relation to a business name that was taken to be registered under this Act on its commencement.

Explanatory note

This amendment brings the language of the provision more closely into line with current drafting practice and replaces a reference to an omitted provision with a description of the provision's operation.

[3.81] Section 11 (5)

omit

Explanatory note

This amendment omits a provision that is transitional in effect and no longer needed.

[3.82] Section 12 (2)

substitute

- (2) If the proper name or proper address of a person in relation to whom a business name is registered under this Act changes, a statement must be lodged with the registrar-general, not later than 14 days after the day the change happens (or any longer period that the registrar-general allows before the end of the 14-day period), that—

- (a) is signed by the person; and
- (b) tells the registrar-general the changed name or address and the date it changed.

Explanatory note

This amendment brings the language of the provision more closely into line with current drafting practice.

[3.83] Section 12 (5)

omit everything after

required to sign the statement

substitute

, the person's proper name and proper address and, if the person is a child, a statement to that effect and the person's date of birth.

Explanatory note

This amendment simplifies and updates the language of the provision using the definitions of the terms *proper name* and *proper address* that are included in the new dictionary inserted by another amendment.

[3.84] Section 12 (11) and (12)

omit

(commencement: the later of the commencement of the *Criminal Code Harmonisation Act 2005* or the day this Act commences)

Explanatory note

This amendment omits provisions that are no longer needed. Existing section 12 (12) and (13) are proposed to be renumbered as section 12 (11) and (12) by the *Criminal Code Harmonisation Act 2005*. Renumbered section 12 (11) is covered by a provision being inserted into section 5 by another amendment. Renumbered section 12 (12) has been made redundant by the Legislation Act, section 49 (Single instrument may exercise several powers or satisfy several requirements).

[3.85] Section 14

omit

Explanatory note

This amendment omits the section. The section is remade as part of section 27 by another amendment.

[3.86] Sections 15 (1) and 19 (2) and (5)

omit

shall be deemed

substitute

is taken

Explanatory note

This amendment updates language.

[3.87] Section 19 (5)

omit

office copy

substitute

sealed or stamped copy

Explanatory note

This amendment updates a reference to a court order.

[3.88] Section 21 (2) and (3)

substitute

- (2) In correcting an error under subsection (1), the registrar-general—
- (a) must not erase the original words or make them illegible; and
 - (b) must initial and date the correction.
- (3) An entry or certificate corrected under this section is as valid as if the error had not been made.

Explanatory note

This amendment brings the language of the provisions more closely into line with current drafting practice.

[3.89] Section 21 (4)

omit everything after

this subsection

substitute

are to be read as one and both form part of the register.

Explanatory note

This amendment updates and simplifies language.

[3.90] Section 22

omit

or filed under the repealed Act or any corresponding previous law of the Territory, which has not been destroyed in pursuance of

substitute

that has not been destroyed under

Explanatory note

This amendment updates language and omits words that are transitional in effect and no longer needed.

[3.91] Section 23 (1) (b)

substitute

- (b) a certificate under the registrar-general's official seal stating whether a business name was, on a day or during a period mentioned in the certificate, registered under this Act in relation to a person.

Explanatory note

This amendment remakes the paragraph to update language and to omit words that are transitional in effect and no longer needed.

[3.92] Section 23 (2)

omit

or notice

Explanatory note

This amendment omits words that are redundant.

[3.93] Section 25

substitute

25 Registrar-general may destroy etc certain old documents

The registrar-general may destroy or dispose of any document relating to a business name that has not been registered for at least 12 years.

Explanatory note

This amendment simplifies language and omits words that are transitional in effect and no longer needed.

[3.94] Section 26 (1) (b) (i)

omit

, or the firm,

(commencement: the later of the commencement of the *Criminal Code Harmonisation Act 2005* or the day this Act commences)

Explanatory note

This amendment omits a reference to a term no longer used in this Act

[3.95] Section 27

substitute

27 Effect of certain contraventions of Act on legal proceedings

- (1) This section applies to a business name under which business is being carried on by a person in contravention of this Act if—
 - (a) the business name is an unregistered business name; or
 - (b) the business name is a registered business name, but is not registered in relation to the person; or
 - (c) the business name is registered in relation to the person but the person has not complied with section 12 (Notification of changes in particulars relating to registered business names etc) in relation to the business name.
- (2) If a legal proceeding is started in a court by the person under the business name, the proceeding is not invalid only because of the contravention, but the court—
 - (a) may adjourn the proceeding until the contravention is remedied; or
 - (b) may continue to hear and decide the proceeding on an undertaking by the person to remedy the contravention within the time directed by the court.

- (3) If a legal proceeding is started against the person under the business name, the following provisions apply:
- (a) the proceeding is not invalid only because of the contravention;
 - (b) the business name is a sufficient designation of the person in any process in or in relation to the proceeding;
 - (c) any judgment or order given in the proceeding may be enforced against the person.

Explanatory note

This amendment updates existing section 14 and section 27 to reflect the more modern concepts in the *Business Names Act 2002* (NSW), section 23.

[3.96] Section 30

omit

shall, in the absence of proof to the contrary, be deemed

substitute

is, in the absence of proof to the contrary, taken

Explanatory note

This amendment updates language.

[3.97] Section 31

substitute

31 Service of documents

- (1) Service of a process or other document on someone (the *proprietor*) who carries on business under a registered business name is taken to be personal service on the proprietor if—
- (a) the document is left at a registered place of business of the proprietor with someone who appears to be at least 16 years old and to be employed at the place; or
 - (b) the document is given to a resident agent of the proprietor; or

- (c) the document is left at the registered address of a resident agent of the proprietor with someone who appears to be at least 16 years old and to be employed at the address; or
 - (d) the document is sent by prepaid post, addressed to the proprietor, to a registered place of business of the proprietor; or
 - (e) the document is sent by prepaid post, addressed to a resident agent of the proprietor, to a registered address of the agent.
- (2) This section does not affect the operation of any other law that allows or requires service of a document otherwise than as provided in this section.

Note For how documents may otherwise be served, see the Legislation Act, pt 19.5.

- (3) This section does not affect the power of a court or tribunal to allow or require service of a document otherwise than as provided in this section.
- (4) In this section:

registered address, for a resident agent of the proprietor, means the place shown in the register as the address of the resident agent in the ACT.

registered place of business, of the proprietor, means—

- (a) the place shown in the register as the place where business is carried on under the business name; or
- (b) if more than 1 place is shown in the register as the place where business is carried on under the business name—
 - (i) the place shown in the register as the principal place where business is carried on under the business name; or
 - (ii) if no place is shown in the register as the principal place—the place that appears 1st in the register as a place where business is carried on under the business name.

resident agent, for the proprietor, means the person (if any) shown in the register as the resident agent of the proprietor.

Explanatory note

This amendment updates language and omits parts of existing section 31 that are now covered by the Legislation Act, part 19.5.

[3.98] New dictionary

insert

Dictionary

(see s 2)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACT
- authorised deposit-taking institution
- function
- individual
- Minister (see s 162)
- proceeding
- property
- registrar-general
- the Territory.

business includes trade and profession.

business name means a name, style, title or designation under which a business is carried on.

carrying on business—see section 4A.

foreign language character includes any character or symbol that is not an English language letter, numeral or punctuation mark.

initial includes a recognised abbreviation of a given name.

process includes any application, pleading, order or document in or relating to any legal proceedings.

proper address means—

- (a) for an individual—the individual’s usual home address; and
- (b) for a corporation—the address of the corporation’s registered office or, if the corporation does not have a registered office, its main place of business.

proper name means—

- (a) for an individual—
 - (i) the individual’s full name; or
 - (ii) the individual’s family name, together with the initials or abbreviations of 1 or more of the individual’s given names; and
- (b) for a corporation—the corporation’s corporate name.

registered business name means a business name registered under this Act.

the register means the register of business names kept under this Act.

unregistered business name means a business name that is not registered under this Act.

Explanatory note

This amendment inserts a dictionary consequential on the omission of the interpretation section (existing section 4) by another amendment. The language of the definitions is updated to bring them into line with current drafting practice and unnecessary definitions are omitted. In particular:

- the definition of *christian name* has been omitted because the Act will no longer use the term;
- the definition of *carrying on business* has been omitted because it is defined in new section 4A;

- the definition of *individual* has been omitted because the term is defined in the Legislation Act, dictionary, part 1.

Part 3.4 Cooperatives Act 2002

[3.99] Section 467 (3)

substitute

- (3) Subsection (2) and this subsection expire on the day after the day guidelines mentioned in subsection (1) (a) are notified under the Legislation Act.

Explanatory note

This amendment corrects a minor drafting error.

Part 3.5 Domestic Animals Act 2000

[3.100] Section 56 heading

substitute

56 Seizure of dogs—general

Explanatory note

This amendment substitutes a more explanatory heading.

[3.101] Section 56 (e)

substitute

- (e) the keeper has contravened a condition under section 70 (4) (Returning seized dog to its keeper).

Explanatory note

This amendment is consequential on the remaking of section 70 by another amendment.

[3.102] Section 60 (1) (c)

substitute

- (c) if the registrar can find out who is the dog's keeper—give oral or written notice to the keeper, in accordance with section 61, about the dog's seizure.

Explanatory note

This amendment brings the paragraph into line with the equivalent provisions for cats proposed to be inserted by the *Domestic Animals (Cat Containment) Amendment Bill 2005* (see s 87 (1) (c)).

[3.103] Sections 61 to 64

substitute

61 Information to be given in notice of dog's seizure

If a dog is seized under this part, the notice of seizure under section 60 (1) (c) must give information about the following:

- (a) when and where the dog was seized;
- (b) the reason the dog was seized;
- (c) where the dog may be claimed;
- (d) if the dog is not registered—registration of the dog, including the cost of registration;
- (e) if the keeper does not hold a dangerous dog licence or multiple dog licence for the dog and the licence is required for the dog—the relevant licence, including the cost of the licence;
- (f) if the dog's keeper holds a dangerous dog licence for the dog—the conditions of the licence and that the conditions may be varied or cancelled;
- (g) the fee payable for the release of the dog;
- (h) that the dog may be sold or destroyed if it is not claimed;

- (i) the period in which the dog may be claimed before it may be sold or destroyed;
- (j) that the keeper may relinquish ownership of the dog.

62 Releasing dogs seized under general seizure power

- (1) This section applies to a dog seized under section 56 (Seizure of dogs—general) unless the dog is declared to be a dangerous dog after it was seized.

Note Section 65 deals with the release of a dog declared to be dangerous after it is seized.

- (2) The registrar must release the dog to a person claiming its release if, but only if, the registrar is satisfied—
- (a) the person claiming its release is the dog’s keeper; and
 - (b) the dog is registered; and
 - (c) if the dog was seized under section 56 (a), (b) or (c) because of an offence against this Act—subsection (3) applies to the offence; and
 - (d) the dog’s keeper has not relinquished ownership under section 69; and
 - (e) any fee payable under section 144 for the release of the dog has been paid.
- (3) This subsection applies to an offence if—
- (a) 28 days have elapsed since the day the offence was committed and—
 - (i) a prosecution has not been started for the offence; and
 - (ii) an infringement notice has not been served for the offence; or

- (b) an infringement notice has been served for the offence and the infringement notice penalty has been paid or the notice withdrawn; or
- (c) a prosecution for the offence was started not later than 28 days after the day the offence was committed and—
 - (i) the prosecution has been discontinued; or
 - (ii) the keeper has been convicted or found guilty of the offence but is not disqualified by an order under section 138A from keeping the dog.

63 Releasing dogs seized under power relating to dangerous dogs or multiple dogs

- (1) This section applies to—
 - (a) a dog seized under section 57 (Seizure—dangerous dogs); or
 - (b) a dog seized under section 58 (Seizure—contravention of multiple dog licence) unless the dog is declared to be a dangerous dog after it was seized.

Note Section 65 deals with the release of a dog declared to be dangerous after it is seized.

- (2) The registrar must release the dog to a person claiming its release if, but only if, the registrar is satisfied—
 - (a) the person claiming its release is the dog's keeper; and
 - (b) the dog is registered; and
 - (c) if the dog was seized under section 57 (b) or (c)—a dangerous dog licence is in force for the dog; and
 - (d) if the dog was seized under section 58—the keeper has any multiple dog licence needed to keep the dog; and
 - (e) if the dog was seized because of an offence against this Act—subsection (3) applies to the offence; and

- (f) the dog's keeper has not relinquished ownership under section 69; and
- (g) any fee payable under section 144 for the release of the dog has been paid.

Note As a condition of the issue of a dangerous dogs licence, the registrar can require the dog's keeper and the dog to complete an approved course in behavioural or socialisation training for the dog.

- (3) This subsection applies to an offence if—
 - (a) 28 days have elapsed since the day the offence was committed and—
 - (i) a prosecution has not been started for the offence; and
 - (ii) an infringement notice has not been served for the offence; or
 - (b) an infringement notice has been served for the offence and the infringement notice penalty has been paid or the notice withdrawn; or
 - (c) a prosecution for the offence was started not later than 28 days after the day the offence was committed and—
 - (i) the prosecution has been discontinued; or
 - (ii) the keeper has been convicted or found guilty of the offence but is not disqualified by an order under section 138A from keeping the dog.

64 Releasing dogs seized under attacking and harassing power

- (1) This section applies to a dog seized under section 59 (Seizure—attacking and harassing dogs) unless the dog is declared to be a dangerous dog after it was seized.

Note Section 65 deals with the release of a dog declared to be dangerous after it is seized.

- (2) The registrar must release the dog to a person claiming its release if, but only if, the registrar is satisfied—
- (a) the person claiming its release is the dog’s keeper; and
 - (b) the dog is registered; and
 - (c) the court has not ordered the destruction of the dog under section 50 (4) (Offences of attacking or harassing); and
 - (d) if the dog was seized under section 59 because of an offence against this Act—subsection (3) applies to the offence; and
 - (e) the dog’s keeper has not relinquished ownership under section 69; and
 - (f) any fee payable under section 144 for the release of the dog has been paid.
- (3) This subsection applies to an offence if—
- (a) 28 days have elapsed since the day the offence was committed and—
 - (i) a prosecution has not been started for the offence; and
 - (ii) an infringement notice has not been served for the offence; or
 - (b) an infringement notice has been served for the offence and the infringement notice penalty has been paid or the notice withdrawn; or
 - (c) a prosecution for the offence was started not later than 28 days after the day the offence was committed and—
 - (i) the prosecution has been discontinued; or
 - (ii) the keeper has been convicted or found guilty of the offence but is not disqualified by an order under section 138A from keeping the dog.

Explanatory note

This amendment brings the sections into line with the equivalent provisions for cats proposed to be inserted by the *Domestic Animals (Cat Containment) Amendment Bill 2005* (see especially s 88 and s 89).

[3.104] Section 65

omit

(Seizure—generally)

substitute

(Seizure of dogs—general)

Explanatory note

This amendment is consequential on the replacement of the heading to section 56 by another amendment.

[3.105] Sections 66 to 71

substitute

66 Selling or destroying dogs (other than dangerous dogs) seized under general or attacking and harassing power

- (1) This section applies to a dog seized under section 56 (Seizure of dogs—general) or section 59 (Seizure—attacking and harassing dogs) unless the dog is a dangerous dog.

Note Section 68 deals with the selling and destruction of dangerous dogs.

- (2) The registrar may sell or destroy the dog if—
 - (a) not later than 7 days after the day of the seizure, the registrar cannot find out who is the dog's keeper after making reasonable inquiries; or
 - (b) the dog's keeper relinquishes ownership of the dog under section 69; or
 - (c) not later than 7 days after the day notice under section 60 (1) (c) was given to the dog's keeper, the keeper

does not tell the registrar, in writing, that the keeper wishes to claim the dog and, if the dog is not registered, apply to the registrar to register the dog.

67 Selling or destroying dogs (other than dangerous dogs) seized under multiple dog licence power

- (1) This section applies to a dog seized under section 58 (Seizure—contravention of multiple dog licence) unless the dog is a dangerous dog.

Note Section 68 deals with the selling and destruction of dangerous dogs.

- (2) The registrar may sell or destroy the dog if—
- (a) not later than 7 days after the day of the seizure, the registrar cannot find out who is the dog’s keeper after making reasonable inquiries; or
 - (b) the dog’s keeper relinquishes ownership of the dog under section 69; or
 - (c) not later than 7 days after the day notice under section 60 (1) (c) was given to the dog’s keeper, the keeper does not tell the registrar, in writing, that the keeper wishes to claim the dog and—
 - (i) if a multiple dog licence is required for the dog and a multiple dog licence is not in force for the dog—apply to the registrar for a multiple dog licence; and
 - (ii) if the dog is not registered—apply to the registrar to register the dog.
- (3) The registrar may sell or destroy a dog mentioned in subsection (2) (c) (i) if—
- (a) the dog’s keeper applies for a multiple dog licence for the dog; and
 - (b) the registrar refuses to issue the licence; and

- (c) the keeper receives notice of the registrar's decision to refuse to issue the licence; and
- (d) either—
 - (i) the keeper does not, not later than 7 days after the day the keeper receives the notice (the *application period*), make an application under section 119 for review of the decision; or
 - (ii) the keeper makes an application under section 119 for review of the decision not later than the application period and the registrar's decision to refuse to issue the licence is confirmed.

68 Selling or destroying dangerous dogs generally

- (1) This section applies to a dog seized under this division that is a dangerous dog, whether the dog was declared to be a dangerous dog before or after it was seized.
- (2) The registrar may sell or destroy the dog if—
 - (a) not later than 7 days after the day of the seizure, the registrar cannot find out who is the dog's keeper after making reasonable inquiries; or
 - (b) the dog's keeper relinquishes ownership of the dog under section 69; or
 - (c) not later than 28 days after the day notice under section 60 (1) (c) was given to the dog's keeper, the keeper does not tell the registrar, in writing, that the keeper wishes to claim the dog and—
 - (i) if a dangerous dog licence is not in force for the dog—apply to the registrar for a dangerous dog licence; and
 - (ii) if the dog is not registered—apply to the registrar to register the dog.

- (3) The registrar may sell or destroy a dog mentioned in subsection (2) (c) (i) if—
- (a) the dog's keeper applies for a dangerous dog licence for the dog; and
 - (b) the registrar refuses to issue the licence; and
 - (c) the keeper receives notice of the registrar's decision to refuse to issue the licence; and
 - (d) either—
 - (i) the keeper does not, not later than 7 days after the day the keeper receives the notice (the *application period*), make an application under section 119 for review of the decision; or
 - (ii) the keeper makes an application under section 119 for review of the decision not later than the application period and the registrar's decision to refuse to issue the licence is confirmed.

69 Relinquishing ownership of dogs

- (1) This section applies to a dog seized under this division.
- (2) The dog's keeper may relinquish ownership of the dog by signed writing given to the registrar.
- (3) An instrument relinquishing ownership of the dog—
 - (a) takes effect at the end of 3 days beginning on the day the signed instrument is given to the registrar; and
 - (b) must contain a statement to the effect of paragraph (a).
- (4) After an instrument relinquishing ownership of the dog takes effect, the registrar—
 - (a) is not obliged to return the dog to its keeper; and

- (b) may sell or destroy the dog.
- (5) To remove any doubt, the registrar must not sell or destroy the dog under this section until the instrument relinquishing ownership of the dog takes effect.

Division 2.8 Miscellaneous

70 Returning seized dog to its keeper

- (1) The registrar may return a dog seized under this part to its keeper under this section if satisfied that it would be in the public interest to return the dog.
- (2) In making a decision under subsection (1), the registrar must consider—
 - (a) the safety of the public; and
 - (b) the cost of keeping the dog impounded; and
 - (c) whether financial or other hardship would be caused to the keeper if the dog were to remain impounded.
- (3) Subsection (2) does not limit the matters the registrar may consider.
- (4) The registrar may return the dog to its keeper on conditions.
- (5) If the registrar returns the dog to its keeper under this part, the registrar may waive all or part of any fee payable by the dog's keeper under this part if satisfied that not to waive the fee would cause the keeper financial hardship.

71 Guidelines about returning impounded dogs

- (1) The Minister may issue guidelines about the exercise of the registrar's functions under section 70.
- (2) The registrar must comply with any guidelines under this section.

- (3) A guideline is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

Explanatory note

This amendment brings the sections into line with the equivalent provisions for cats proposed to be inserted by the *Domestic Animals (Cat Containment) Amendment Act 2005* (see s 90 to 93).

[3.106] Section 118, definition of *reviewable decision*, paragraph (k)

substitute

- (k) imposing a condition on the return of a dog (section 70 (4) (Returning seized dog to its keeper)); or

Explanatory note

This amendment is consequential on the remaking of section 70 by another amendment.

Part 3.6 Electricity (Greenhouse Gas Emissions) Act 2004

[3.107] Section 4, note 1

omit everything after
defined elsewhere.

substitute

For example, the signpost definition ‘*National Electricity (ACT) Law*—see the *Electricity (National Scheme) Act 1997*, section 5 (Application in ACT of National Electricity Law).’ means that the term ‘National Electricity (ACT) Law’ is defined in that section and the definition applies to this Act.

Explanatory note

This amendment is consequential on the omission of the definition of ‘*national electricity code*’, and the insertion of the definition of ‘*National Electricity (ACT) Law*’, by other amendments.

[3.108] Dictionary, definition of *market customer*

substitute

market customer means a customer that—

- (a) has classified any of its electricity loads as a market load under the national electricity rules; and
- (b) is registered with NEMMCO as a market customer under the national electricity rules.

Explanatory note

This amendment is consequential on a change in terminology under the uniform National Electricity Law that applies in the ACT because of the *Electricity (National Scheme) Act 1997*. Under the uniform law, the former national electricity code is now known as the national electricity rules.

[3.109] Dictionary, new definition of *National Electricity (ACT) Law*

insert

National Electricity (ACT) Law—see the *Electricity (National Scheme) Act 1997*, section 5 (Application in ACT of National Electricity Law).

Explanatory note

This amendment is consequential on other amendments in relation to a change in terminology under the uniform National Electricity Law.

[3.110] Dictionary, definition of *national electricity code*

omit

Explanatory note

This amendment is consequential on other amendments in relation to a change in terminology under the uniform National Electricity Law.

renewable power percentage has the same meaning as it has in the *Renewable Energy (Electricity) Act 2000* (Cwlth).

Explanatory note

This amendment is consequential on a change in terminology under the uniform National Electricity Law that applies in the ACT because of the *Electricity (National Scheme) Act 1997*. Under the uniform law, the former national electricity code is now known as the national electricity rules.

[3.113] Dictionary, note 3

omit

- national electricity code

Explanatory note

This amendment is consequential on the amendment of section 15 (5) by another amendment in relation to a change in terminology under the uniform National Electricity Law.

Part 3.8 Electricity (National Scheme) Act 1997

[3.114] Sections 1 and 3

substitute

1 Name of Act

This Act is the *Electricity (National Scheme) Act 1997*.

2 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act.

Note 2 A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

3 **Notes**

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

3A **Terms used in National Electricity (ACT) Law**

A term used in the National Electricity (ACT) Law has the same meaning in this Act.

Explanatory note

This amendment brings the naming section into line with current drafting practice and inserts standard dictionary and notes provisions. The definitions in existing section 3 are included in the new dictionary which is inserted by another amendment. New section 3A includes interpretation provisions that were previously section 3 (2) and (3).

[3.115] Section 7 (1), definition of *Supreme Court*

omit

Explanatory note

This amendment omits a redundant definition.

[3.116] New dictionary

insert

Dictionary

(see s 2)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- Act
- Commonwealth
- Legislative Assembly

- Minister (see s 162)
- provision (see s 16)
- Supreme Court
- the Territory
- under.

National Electricity (ACT) Law means the provisions applying because of section 5.

National Electricity (ACT) Regulations means the provisions applying because of section 6.

Explanatory note

This amendment inserts a dictionary consequential on the omission of the definitions section (existing section 3) by another amendment.

Part 3.9 Environment Protection Act 1997

[3.117] Schedule 1, section 1.1, new definition of *National Electricity (ACT) Law*

insert

National Electricity (ACT) Law—see the *Electricity (National Scheme) Act 1997*, section 5 (Application in ACT of National Electricity Law).

Explanatory note

This amendment is consequential on the amendment of schedule 1, section 1.2 by another amendment in relation to a change in terminology under the uniform National Electricity Law.

Part 3.11 **Holidays Act 1958**

[3.120] Section 1

substitute

1 Name of Act

This Act is the *Holidays Act 1958*.

Explanatory note

This amendment brings the naming section into line with current drafting practice.

[3.121] Section 3 (1) (b)

substitute

- (b) any other day, or a part of any other day, that the Minister declares to be a public holiday in the ACT, or in a part of the ACT stated in the declaration, is a public holiday in the ACT or that part of the ACT.

Explanatory note

This amendment brings the language of the provision more closely into line with current drafting practice.

[3.122] Section 3 (2)

substitute

- (2) If the Minister considers it is appropriate that a day mentioned in subsection (1) (a) should not, in a particular year, be a public holiday in the ACT, the Minister may declare that the day is not, in that year, a public holiday.

Explanatory note

This amendment brings the language of the provision more closely into line with current drafting practice.

[3.123] Section 3 (5)

substitute

- (5) If a person who is entitled under an award to a holiday on a weekday following a substituted public holiday and the weekday is not a public holiday under this Act, the substituted public holiday is not a public holiday for the person under this Act.

Explanatory note

This amendment brings the language of the provision more closely into line with current drafting practice.

[3.124] Section 3 (6), definition of *substituted public holiday*

substitute

substituted public holiday means a day that is a public holiday because another day mentioned in subsection (1) (a) is a Saturday or Sunday.

Explanatory note

This amendment brings the language of the provision more closely into line with current drafting practice.

[3.125] Section 4 (1) (c)

substitute

- (c) any other day, or a part of any other day that the Minister declares to be a bank holiday in the ACT, or in a part of the ACT stated in the declaration, is a bank holiday in the ACT or that part of the ACT.

Explanatory note

This amendment brings the language of the provision more closely into line with current drafting practice.

[3.126] Section 4 (2)

substitute

- (2) If the Minister considers it is appropriate that a day mentioned in subsection (1) (a) or (b) should not, in a particular year, be a bank holiday in the ACT, the Minister may declare that the day is not, in that year, a bank holiday.

Explanatory note

This amendment brings the language of the provision more closely into line with current drafting practice.

Part 3.12 Independent Competition and Regulatory Commission Act 1997

[3.127] Section 4A

omit

national electricity code

substitute

national electricity rules

(commencement: the later of the commencement of the *Financial Management Legislation Amendment Act 2005*, schedule 1, part 1.10 or the day this Act commences)

Explanatory note

This amendment is consequential on other amendments in relation to a change in terminology under the uniform National Electricity Law.

[3.128] Section 4A (4)

omit

the code

substitute

the rules

(commencement: the later of the commencement of the *Financial Management Legislation Amendment Act 2005*, schedule 1, part 1.10 or the day this Act commences)

Explanatory note

This amendment is consequential on other amendments in relation to a change in terminology under the uniform National Electricity Law.

[3.129] Section 8 (1) (g) (iv)

substitute

(iv) the national electricity rules;

(commencement: the later of the commencement of the *Financial Management Legislation Amendment Act 2005*, schedule 1, part 1.10 or the day this Act commences)

Explanatory note

This amendment is consequential on other amendments in relation to a change in terminology under the uniform National Electricity Law.

[3.130] Dictionary, definition of *law of the Territory*, paragraph (c)

substitute

(c) the national electricity rules; and

(commencement: the later of the commencement of the *Financial Management Legislation Amendment Act 2005*, schedule 1, part 1.10 or the day this Act commences)

Explanatory note

This amendment is consequential on a change in terminology under the uniform National Electricity Law that applies in the ACT because of the *Electricity (National Scheme) Act 1997*. Under the uniform law, the former national electricity code is now known as the national electricity rules.

[3.131] Dictionary, definition of *national electricity code*

omit

(commencement: the later of the commencement of the *Financial Management Legislation Amendment Act 2005*, schedule 1, part 1.10 or the day this Act commences)

Explanatory note

This amendment omits a redundant definition.

[3.132] Dictionary, new definition of *national electricity rules*

insert

national electricity rules means the national electricity rules under the National Electricity (ACT) Law.

(commencement: the later of the commencement of the *Financial Management Legislation Amendment Act 2005*, schedule 1, part 1.10 or the day this Act commences)

Explanatory note

This amendment is consequential on other amendments in relation to a change in terminology under the uniform National Electricity Law.

[3.137] Section 6, remainder

substitute

2 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

3 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

Explanatory note

This amendment adds standard dictionary and notes provisions.

[3.138] Section 51A (1) (b)

omit

court

substitute

Supreme Court

Explanatory note

This amendment brings a reference to the Supreme Court into line with current drafting practice.

[3.139] New dictionary

insert

Dictionary

(see s 2)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1 defines the following terms:

- Act
- director of public prosecutions
- lawyer
- police officer.

Explanatory note

This amendment inserts a dictionary and standard dictionary notes in line with current drafting practice. The notes draw to the attention of the reader that the dictionary is not the only source for definitions of terms.

Part 3.14 Land Titles (Unit Titles) Act 1970

[3.140] Sections 2 and 3

substitute

2 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act.

Note 2 A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

3 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

3A Terms used in Unit Titles Act

A term defined in the *Unit Titles Act 2001* has the same meaning in this Act.

Explanatory note

This amendment adds a standard dictionary provision, remakes existing section 3 (2) as new section 3A in accordance with current drafting practice and brings the order of provisions into line with current drafting practice. The definitions in existing section 3 (1) are included in a new dictionary that is inserted by another amendment.

[3.141] Section 23 (1) (b) and (2)

omit

determination

substitute

termination

Explanatory note

This amendment corrects a minor drafting error.

[3.142] Section 32 (1)

omit

determined

substitute

terminated

Explanatory note

This amendment corrects a minor drafting error.

[3.143] New dictionary

insert

Dictionary

(see s 2)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- document
- land
- Magistrates Court
- Minister (see s 162)
- planning and land authority
- registrar-general.

Note 3 Terms defined in the *Unit Titles Act 2001* have the same meaning in this Act (see s 3). For example, the following terms are defined in the *Unit Titles Act 2001*, dict:

- boundary authority (see s 149)
- cancellation authority (see s 160)
- common property (see s 13)
- lease
- mortgage
- owners corporation
- parcel (see s 5)
- registered
- termination
- unit (see s 9).

graphic bar scale means a set of marks on a plan, at measured distances on a line, that indicates the scale to which the plan is drawn.

Land Titles Act means the *Land Titles Act 1925*.

Explanatory note

This amendment inserts a dictionary and standard dictionary notes in line with current drafting practice. The notes draw to the attention of the reader that the dictionary is not the only source for definitions of terms.

Part 3.15 Mercantile Law Act 1962

[3.144] Section 1

substitute

1 Name of Act

This Act is the *Mercantile Law Act 1962*.

2 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition ‘*mercantile agent*, for part 2 (Mercantile agents)—see section 4.’ means that the term ‘mercantile agent’ is defined in that section for part 2.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

3 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

Explanatory note

This amendment brings the naming section into line with current drafting practice and inserts the standard dictionary and notes provisions.

[3.145] Section 4, definition of *document of title*

substitute

document of title—see the *Sale of Goods Act 1954*, dictionary.

Explanatory note

This amendment remakes the definition in accordance with current drafting practice.

[3.146] Section 4, definition of *mercantile agent*

substitute

mercantile agent—see the *Sale of Goods Act 1954*, dictionary.

Explanatory note

This amendment remakes the definition in accordance with current drafting practice.

[3.147] Section 4, definition of *pledge*

omit

pecuniary

substitute

financial

Explanatory note

This amendment updates language.

[3.148] Section 6

substitute

6 Powers of mercantile agent

If a mercantile agent is entrusted as a mercantile agent with the possession of goods or documents of title to goods—

- (a) a sale, pledge or other disposition of the goods made by the mercantile agent in the ordinary course of business of a mercantile agent to a person acting honestly, and without notice that the mercantile agent does not have authority to

make the disposition, is, subject to this part, as valid as if the mercantile agent were expressly authorised by the owner of the goods to make the disposition; and

- (b) a sale, pledge or other disposition of the goods to a person that would have been valid if the entrusting had continued is valid, despite the ending of the entrusting, unless the person had, at the time of the disposition, notice of the ending of the entrusting.

Explanatory note

This amendment brings the language of the section more closely into line with current drafting practice.

[3.149] Section 7

omit

For this part—

substitute

- (1) For this part—

Explanatory note

This amendment is consequential on the insertion of a second subsection by another amendment.

[3.150] Section 7 (a) to (d)

omit

shall be deemed

substitute

is taken

Explanatory note

This amendment updates language.

[3.151] Section 7 (e) and (f)

substitute

(e) a pledge of the documents of title to goods is taken to be a pledge of the goods.

(2) If—

(a) an advance is made honestly to a mercantile agent entrusted as a mercantile agent with the possession of goods, or documents of title to goods, relying on a written agreement to consign, deposit, transfer or deliver the goods or documents; and

(b) the goods or documents are received by the person making the advance without notice that the mercantile agent was not authorised to make the pledge;

the advance is taken, for this part, to be an advance on the security of the goods or documents even though the goods or documents are not received by the person making the advance until after the advance is made.

Explanatory note

This amendment updates language and brings the structure of the provisions more closely into line with current drafting practice.

[3.152] Sections 8 and 9

substitute

8 Pledge by way of exchange

(1) This section applies if—

(a) a mercantile agent pledges goods in consideration of the delivery or transfer of—

(i) other goods; or

(ii) documents of title to other goods; or

(iii) negotiable securities; and

- (b) because of the pledge, the person (the *pledgee*) who delivers or transfers the goods, documents or securities obtains a valid and available lien and security in relation to a previous advance under an agreement made with the mercantile agent; and
 - (c) the pledgee acts honestly and without notice that the mercantile agent did not have authority to make the pledge.
- (2) The pledge is taken to be in consideration of an advance under this part as if there had been an actual advance of money, but the pledgee does not acquire any right or interest in excess of the value of the goods, documents or negotiable securities when they are delivered or transferred.

9 Pledge for existing debt

If a mercantile agent pledges goods as security for a debt or liability that the mercantile agent owes the pledgee before the pledge is made, the pledgee does not acquire any further right to the goods than could have been enforced by the mercantile agent at the time of the pledge.

Explanatory note

This amendment updates language and brings the structure of section 8 more closely into line with current drafting practice.

[3.153] Section 11

substitute

11 Saving for common law powers of mercantile agents

The provisions of this part enlarge and do not diminish the functions a mercantile agent may exercise.

Explanatory note

This amendment brings the language of the section more closely into line with current drafting practice.

[3.154] Section 12

substitute

12 Consideration for guarantee

A special promise by a person (the *guarantor*) to answer for the debt, liability or failure of someone else is not invalid only because the consideration for the promise is not evidenced in writing if the promise is in writing signed by or on behalf of the guarantor.

Explanatory note

This amendment brings the language of the section more closely into line with current drafting practice.

[3.155] Section 14

omit

an action or suit shall

substitute

a proceeding must

Explanatory note

This amendment updates language.

[3.156] Section 15

substitute

15 Debts and contracts of children

- (1) This section applies to—
 - (a) a promise made by a person after becoming an adult to pay a debt contracted by the person when the person was a child; or
 - (b) the ratification by a person after becoming an adult of a promise or simple contract made by the person when the person was a child.

- (2) The promise or ratification is not enforceable by a proceeding against the person unless it was made in writing signed by the person.

Explanatory note

This amendment brings the language of the section more closely into line with current drafting practice.

[3.157] Section 16

substitute

16 Representations of character etc

- (1) This section applies to a representation or assurance made by a person if it is—
- (a) about the character, conduct or credit, ability, trade or dealings of someone else; and
 - (b) made so the other person can obtain credit, money or goods by relying on it.
- (2) The representation or assurance is not enforceable by a proceeding against the person who made it unless it was made in writing signed by the person.

Explanatory note

This amendment brings the language of the section more closely into line with current drafting practice.

[3.158] Section 17, definition of *court*

omit

Explanatory note

This amendment omits a redundant definition.

[3.159] Section 19 (2)

substitute

- (2) If the charges mentioned in subsection (1) (c) are incurred in relation to 2 or more items of goods, the charges in relation to any of the items is the amount worked out as follows:

$$TSC \times \frac{ISP}{TSP}$$

- (3) In subsection (2):

ISP means the sale price of the item.

TSC means total charges for selling all the goods.

TSP means the sale price of all the goods.

Explanatory note

This amendment brings the language of the section closer into line with current drafting practice and clarifies it by expressing the narrative form more clearly through the inclusion of a formula.

[3.160] Section 28

substitute

28 Service of notice by warehouse person

- (1) If a warehouse person does not know a person's address, notice by the warehouse person under this part may be given to the person by 2 advertisements, at least 7 days apart, in a daily newspaper published in the ACT.
- (2) A notice given by advertisement in accordance with subsection (1) is, for this part, taken to have been given on the day the 2nd advertisement is published.

Explanatory note

This amendment updates language and omits provisions that are no longer needed because of the Legislation Act, section 247.

[3.161] Section 30

omit

Explanatory note

This amendment omits a transitional provision that is no longer needed. The operation of this provision does not need to be expressly saved under the Legislation Act, section 88.

[3.162] New dictionary

insert

Dictionary

(see s 2)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACT
- document
- function
- under
- writing.

advance, for part 2 (Mercantile agents)—see section 4.

document of title, for part 2 (Mercantile agents)—see section 4.

lien, for part 6 (Warehouse persons' liens)—see section 17.

mercantile agent, for part 2 (Mercantile agents)—see section 4.

pledge, for part 2 (Mercantile agents)—see section 4.

warehouse person, for part 6 (Warehouse persons' liens)—see section 17.

Explanatory note

This amendment inserts a dictionary that includes signpost definitions to terms defined in the Act.

Part 3.16 Nudity Act 1976

[3.163] New section 1A

insert

1A Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

Explanatory note

This amendment adds a standard note provision.

[3.164] Section 4

substitute

4 Being naked in prescribed area

A person does not commit an offence against a territory law only because the person is naked in an area declared by the Minister under section 2 to be a prescribed area.

Explanatory note

This amendment changes ‘a law in force in the ACT’ to ‘a territory law’ and brings the language of the section more closely into line with current drafting practice. The effect of the amendment is to use the term (‘a territory law’) that is more usual in current drafting practice and reflects the position that an ACT Act cannot affect the operation of Commonwealth laws that apply in the ACT unless it is prescribed under the Self-Government Act. The Nudity Act is not prescribed under the Self-Government Act.

Part 3.17 Oaths and Affirmations Act 1984

[3.165] Section 1

substitute

1 Name of Act

This Act is the *Oaths and Affirmations Act 1984*.

Explanatory note

This amendment brings the naming section into line with current drafting practice.

[3.166] Section 6A

substitute

6A Oaths or affirmations by members of Assembly

- (1) A member of the Legislative Assembly must, before taking his or her seat, make and subscribe either or both of the following:
 - (a) an oath or affirmation in accordance with the form in schedule 1A, part 1A.1;
 - (b) an oath or affirmation in accordance with the form in schedule 1A, part 1A.2.
- (2) This section has effect despite the Self-Government Act, section 9 (1).

Explanatory note

This amendment brings the section into line with current drafting practice, in particular by making it more apparent that a member may take or make either or both of the oaths or affirmations mentioned in paragraphs (a) and (b). The amendment does not alter the legal effect of the section.

[3.167] Section 18

omit

forthwith

Explanatory note

This amendment omits an out-of-date term. Under the Legislation Act, proposed new section 151B (which will be inserted by an amendment in sch 2), if no time is provided for the doing of a thing, the thing must be done as soon as possible.

Part 3.18 Ombudsman Act 1989

[3.168] Section 3 (1), definition of *enactment*

substitute

enactment means an Act or subordinate law, but does not include the National Electricity (ACT) Law or National Electricity (ACT) Regulations.

Explanatory note

This amendment is consequential on other amendments in relation to a change in terminology under the uniform National Electricity Law.

[3.169] Section 3 (1), new definition

insert

National Electricity (ACT) Law—see the *Electricity (National Scheme) Act 1997*, section 5 (Application in ACT of National Electricity Law).

Explanatory note

This amendment is consequential on a change in terminology under the uniform National Electricity Law that applies in the ACT because of the *Electricity (National Scheme) Act 1997*. Under the uniform law, the former national electricity code is now known as the national electricity rules.

[3.170] Section 3A

substitute

3A Application of Act—National Electricity (ACT) Law

(1) This Act does not apply to an agency in relation to functions exercised by it as an agent for AER or NEMMCO under the national electricity rules.

(2) In this section:

AER means the Australian Energy Regulator under the National Electricity (ACT) Law.

national electricity rules means the national electricity rules approved under the National Electricity (ACT) Law, section 6.

NEMMCO—see the National Electricity (ACT) Law.

Explanatory note

This amendment is consequential on other amendments in relation to a change in terminology under the uniform National Electricity Law.

Part 3.19 Sale of Goods Act 1954

[3.171] Section 1

substitute

1 Name of Act

This Act is the *Sale of Goods Act 1954*.

2 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

3 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

4 Key concepts

For this Act—

- (a) a thing is done honestly if it is in fact done honestly, whether or not it is done negligently; and
- (b) what is a reasonable time, a reasonable hour or a reasonable price is a question of fact; and
- (c) a person is insolvent if the person has ceased to pay debts that arise in the ordinary course of business, or cannot pay debts as they become due, whether or not the person has committed an act of bankruptcy and whether or not the person has become a bankrupt; and
- (d) goods are in a deliverable state if they are in a state that the buyer would, under the contract, be bound to take delivery of them.

Explanatory note

This amendment brings the naming section into line with current drafting practice and inserts the standard dictionary and notes provisions. It also inserts a new section 4 which replaces the general interpretation principles in existing section 5 (2).

[3.172] Section 5 (1), definitions

relocate to dictionary

Explanatory note

This amendment relocates the definitions to a new dictionary that is inserted by another amendment.

[3.173] Section 5, remainder

omit

Explanatory note

The provisions of section 5 have been either relocated to the dictionary inserted by another amendment or have been re-made as new section 4. The shell of the section is redundant and can be omitted.

[3.174] Sections 27, 29, 30 (3) and 50 (2)

omit

in good faith

substitute

honestly

Explanatory note

This amendment updates language.

[3.175] New dictionary

insert

Dictionary

(see s 2)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- document

- under
- writing.

Explanatory note

This amendment inserts a new dictionary. The existing definitions in section 5 (1) are relocated to the dictionary by another amendment.

Part 3.20 Utilities Act 2000

[3.176] Section 28 (1)

omit

National Electricity Code

substitute

national electricity rules

Explanatory note

This amendment is consequential on a change in terminology under the uniform National Electricity Law that applies in the ACT because of the *Electricity (National Scheme) Act 1997*. Under the uniform law, the former national electricity code is now known as the national electricity rules.

[3.177] Section 28 (2)

substitute

(2) In this section:

jurisdictional regulator—see the ICRC Act, section 4A (4) (National electricity rules—electricity distribution and transmission pricing).

National Electricity (ACT) Law—see the *Electricity (National Scheme) Act 1997*, section 5 (Application in ACT of National Electricity Law).

national electricity rules means the national electricity rules approved under the National Electricity (ACT) Law, section 6.

Explanatory note

This amendment is consequential on the amendment of section 28 (1) by another amendment in relation to a change in terminology under the uniform National Electricity Law.

Schedule 4 **Repeal of redundant or obsolete Acts**

(see s 6)

Part 4.1 **Banking Acts**

Explanatory note for sch 4

This schedule repeals 4 Acts that are no longer needed.

The *Bank Mergers Act 1997* is no longer needed because the transfer of the business of authorised deposit-taking institutions is now covered by the *Financial Sector (Transfers of Business) Act 1999* (Cwlth).

The remaining Acts provided for particular mergers of banking institutions. They provided a legislative basis for the transfer of assets and liabilities and the novation of contractual arrangements from the terminating bank to the continuing bank. As the processes behind the mergers of these banks is now complete, these Acts are no longer necessary. Section 6 (2) (Legislation repealed—sch 4) makes it clear that the effect of the Acts is saved under the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc).

*Australia and New Zealand Banking Group Limited (NMRB)
Act 1991* A1991-66

Bank Mergers Act 1997 A1997-47

Canberra Advance Bank Limited (Merger) Act 1992 A1992-24

*State Bank of South Australia (Transfer of Undertaking)
Act 1994* A1994-31

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 20 October 2005.

2 Notification

Notified under the Legislation Act on 21 December 2005.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Statute Law Amendment Bill 2005 (No 2), which was passed by the Legislative Assembly on 13 December 2005.

Acting Clerk of the Legislative Assembly

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