



Australian Capital Territory

Statute Law Amendment Act 2001 (No 2)

No 56 of 2001

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Australian Capital Territory

Statute Law Amendment Act 2001 (No 2)

No 56 of 2001

An Act to amend or repeal certain Acts and regulations for the purpose of statute law revision

[Notified in ACT Gazette S65 : 5 September 2001]

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

1 Name of Act

This Act is the *Statute Law Amendment Act 2001 (No 2)*.

2 Commencement

- (1) This Act commences on the day it is notified in the Gazette.
- (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 word ‘Commencement:’, at the end of the amendment.

Examples

An amendment followed by ‘(Commencement: 2 March 2000.)’ means that the amendment is taken to have commenced on 2 March 2000.

3 Purpose

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

4 Explanatory notes

An explanatory note included in this Act is not part of this Act.

Note See *Interpretation Act 1967*, s 12 (1), (4) and (5) for the legal status of notes.

5 Amended Acts and regulations—schs 1-3

Schedules 1 to 3 amend the Acts and regulations mentioned in them.

6 Repealed Acts and regulations—sch 4

Schedule 4 repeals the Acts and regulations mentioned in it.

Schedule 1 Minor amendments

(see s 5)

Part 1.1 Dangerous Goods Act 1975

[1.1] Section 7

omit

an inspector

substitute

an inspector or another public servant

Explanatory note

This amendment authorises the chief inspector of dangerous goods to delegate functions to a public servant who is not an inspector. The amendment will, for example, allow the delegation of non-technical decisions to appropriate shopfront staff.

Part 1.2 Districts Act 1966

[1.2] Section 6 (7) and (8)

omit

paragraph 4 (a) of the *Public Place Names Act 1989*

substitute

the *Public Place Names Act 1989*, section 3 (a)

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment is consequential on amendments of the *Public Place Names Act 1989* made by this schedule.

Part 1.3 Health Act 1993

[1.3] Section 1

substitute

1 Name of Act

This Act is the *Health Act 1993*.

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 words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act.

For example, the signpost definition '*prescribed body*, for part 3A (Private sector quality assurance committees)—see section 13AB,' means that the expression 'prescribed body' is defined in that section and the definition applies to part 3A.

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 *Interpretation Act 1967*, s 11F and s 11G).

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment (new section 1) revises the section providing for the Act's name to bring it into line with current drafting practice.

New section 2 is a standard provision explaining the status of the dictionary. The existing interpretation section (section 3) is replaced by a dictionary by other amendments in this part.

[1.4] Section 3, definition of *approved public sector committee*

substitute

approved public sector committee means a committee established as an approved public sector quality assurance committee under section 7 (Approval of public sector committees) or 9 (Approval of Calvary Hospital committees).

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment is consequential on the amendment of section 7.

[1.5] Section 3, definition of *quality assurance activities*

substitute

quality assurance activity means a process declared by the Minister under section 3A to be a quality assurance activity for section 7 (2) (a).

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment is consequential on amendments of section 7. The definition has been recast to bring it more closely into line with current drafting practice.

[1.6] Section 3, definitions (as amended by this Act)

relocate to dictionary

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment relocates to the dictionary all definitions from the existing interpretation section. The dictionary is inserted by a later amendment in this part.

[1.7] Section 3, remainder

substitute

3 Notes

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

Note See *Interpretation Act 1967*, s 12 (1), (4) and (5) for the legal status of notes.

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

New section 3 is a standard provision explaining the status of notes.

[1.8] New section 3A

insert in part 1

3A Declaration of quality assurance activity

- (1) The Minister may, in writing, declare that a process is a quality assurance activity for section 7 (2) (a).
- (2) A declaration is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment places in a separate section, in line with current drafting practice, substantive matter that was in the existing definition of *quality assurance activities* and makes a declaration a notifiable instrument under the *Legislation Act 2001*.

[1.9] Section 5 (2)

substitute

- (2) A word or expression used in the *Medicare Agreements Act 1992* (Cwlth) has the same meaning in subsection (1).

Explanatory note

This amendment brings the subsection into line with current drafting practice.

[1.10] Section 7

omit everything before paragraph (a), substitute

7 Approval of public sector committees

- (1) The Minister may, in writing, declare that a stated committee is established as an approved public sector quality assurance committee for a health facility or for a stated purpose.
- (2) A committee mentioned in subsection (1) may have all or any of the following functions decided by the Minister:

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

Section 7 presently allows the Minister to appoint the members of public sector quality assurance committees. The committees are constituted by the appointment of their members and do not have an existence separate from their members. This amendment replaces this by giving the Minister the power to establish approved public sector quality assurance committees independently of its members. This is to facilitate the frequent change of membership of these committees.

The amendments of section 7 and new section 7A (inserted by a later amendment in this part) bring the appointment provisions for approved public sector quality assurance committees into line with those for approved private sector quality assurance committees.

[1.11] Section 7 (b)

omit

investigations; or

substitute

investigations;

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment is consequential on the previous amendment of section 7.

[1.12] New section 7 (3)

insert

- (3) A declaration under subsection (1) is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment makes a declaration establishing an approved public sector quality assurance committee a notifiable instrument under the *Legislation Act 2001*. The *Legislation (Consequential Amendments) Bill 2001* makes a corresponding declaration of an approved private sector quality assurance committee a notifiable instrument.

[1.13] New section 7A

insert

7A Appointment of members

- (1) If an approved public sector committee established under section 7 is established for a health facility, the chief executive (however described) of the health facility may appoint members of the committee.
- (2) If an approved public sector committee established under section 7 is established for a stated purpose, the chief executive may appoint members of the committee.

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment provides for appointment of members of approved public sector quality assurance committees.

[1.14] Section 9

omit

by instrument

substitute

, in writing,

Explanatory note

This amendment updates language to bring it more closely into line with current drafting practice.

[1.15] Section 9

omit

paragraph 7 (a), (b) or (c)

substitute

section 7 (2) (a), (b) or (c)

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment is consequential on the previous amendments of section 7.

[1.16] Section 9

omit

The

substitute

(1) The

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment is consequential on the insertion of new subsection 9 (2) by the next amendment.

[1.17] New section 9 (2)

insert

(2) A declaration is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment makes a declaration establishing a Cavalry Hospital committee as an approved public sector quality assurance committee a notifiable instrument under the *Legislation Act 2001*. An earlier amendment of section 7 makes a declaration establishing other approved public sector quality assurance committees a notifiable instrument, and the *Legislation (Consequential Amendments) Bill 2001* makes a corresponding declaration of a private sector quality assurance committee a notifiable instrument.

[1.18] Section 13 (1)

omit

performance or

Explanatory note

This amendment omits unnecessary words. The *Interpretation Act 1967*, dictionary, defines *exercise* a function to include performing the function.

[1.19] Section 13 (1)

omit

or power

Explanatory note

This amendment omits unnecessary words. The *Interpretation Act 1967*, dictionary, defines *function* to include power.

[1.20] Section 13 (2)

omit

the generality of

Explanatory note

This amendment omits unnecessary words.

[1.21] Section 13 (2) (a)

omit

performance or

Explanatory note

This amendment omits unnecessary words. The *Interpretation Act 1967*, dictionary, defines *exercise* a function to include performing the function.

[1.22] Section 13 (2) (a)

omit

or power

Explanatory note

This amendment omits unnecessary words. The *Interpretation Act 1967*, dictionary, defines *function* to include power.

[1.23] Section 13 (3)

omit

performance or

Explanatory note

This amendment omits unnecessary words. The *Interpretation Act 1967*, dictionary, defines *exercise* a function to include performing the function.

[1.24] Section 13 (3)

omit

or power

Explanatory note

This amendment omits unnecessary words. The *Interpretation Act 1967*, dictionary, defines *function* to include power.

[1.25] Section 13AA (2)

omit

the generality of

Explanatory note

This amendment omits unnecessary words.

[1.26] Section 13AB, definition of *prescribed body*, paragraph (a)

substitute

(a) a private hospital; or

Explanatory note

This amendment removes a reference to the *Public Health (Private Hospitals) Regulations*. Those regulations were repealed by the *Public Health Regulations 2000*, SL 2000 No 1.

[1.27] Section 13AI (1)

omit

performance or

Explanatory note

This amendment omits unnecessary words. The *Interpretation Act 1967*, dictionary, defines *exercise* a function to include performing the function.

[1.28] Section 13AI (1)

omit

or power

Explanatory note

This amendment omits unnecessary words. The *Interpretation Act 1967*, dictionary, defines *function* to include power.

[1.29] Section 13AI (2)

omit

the generality of

Explanatory note

This amendment omits unnecessary words.

[1.30] Section 13AI (2) (a)

omit

performance or

Explanatory note

This amendment omits unnecessary words. The *Interpretation Act 1967*, dictionary, defines *exercise* a function to include performing the function.

[1.31] Section 13AI (2) (a)

omit

or power

Explanatory note

This amendment omits unnecessary words. The *Interpretation Act 1967*, dictionary, defines *function* to include power.

[1.32] Section 13AI (3)

omit

performance or

Explanatory note

This amendment omits unnecessary words. The *Interpretation Act 1967*, dictionary, defines *exercise* a function to include performing the function.

[1.33] Section 13AI (3)

omit

or power

Explanatory note

This amendment omits unnecessary words. The *Interpretation Act 1967*, dictionary, defines *function* to include power.

[1.34] Section 13AJ (2)

omit

the generality of

Explanatory note

This amendment omits unnecessary words.

[1.35] New dictionary

insert

Dictionary

(see s 2)

prescribed body, for part 3A (Private sector quality assurance committees)—see section 13AB.

private day hospital facility, for part 3A (Private sector quality assurance committees)—see section 13AB.

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment inserts the dictionary and 2 new signpost definitions.

[1.36] Health Act 1993—renumbering

renumber provisions when Act next republished under Legislation Act 2001

Explanatory note

This amendment provides for the renumbering of the *Health Act 1993* on its next republication.

Part 1.4 Mental Health (Treatment and Care) Act 1994

[1.37] Section 4, definition of *approved health facility*

omit

paragraph 48 (a)

substitute

section 48 (1) (a)

Explanatory note

This amendment corrects a cross-reference.

[1.38] Section 4, definition of *approved mental health facility*

omit

paragraph 48 (b)

substitute

section 48 (1) (b)

Explanatory note

This amendment corrects a cross-reference.

[1.39] Section 48 (1) (b)

after

may be

insert

detained under section 32A or

Explanatory note

This amendment corrects the omission of a reference.

[1.40] Section 139

omit

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment omits a section about the service of documents that is no longer necessary as a result of amendments of the *Legislation Act 2001* (proposed new section 223) contained in schedule 2 to this Act.

Part 1.5 Public Place Names Act 1989

[1.41] Section 1

substitute

1 Name of Act

This Act is the *Public Place Names Act 1989*.

Explanatory note

This amendment revises the section providing for the Act's name to bring it into line with current drafting practice.

[1.42] Section 3

substitute

2 Meaning of *public place*

In this Act:

public place includes an avenue, road, street or place that the public are entitled to use, and any unleased land.

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment omits words that are no longer needed (see *Interpretation Act 1967*, s 11G) and brings the section more closely into line with current drafting practice. The section has been renumbered because section 2 (Commencement) is being omitted by the *Legislation (Consequential Amendments) Bill 2001*.

[1.43] Section 4

renumber as section 3

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

The section has been renumbered because section 2 (Commencement) is being omitted by the *Legislation (Consequential Amendments) Bill 2001* and section 3 is being renumbered as section 2 (Meaning of *public place*) by an earlier amendment in this part.

[1.44] Section 6 (2) (e)

substitute

(e) Aboriginal or Torres Strait Islander vocabulary.

Explanatory note

This amendment has the effect of requiring Torres Strait Islander vocabulary to be considered as well as Aboriginal vocabulary in naming a public place.

[1.45] New section 6 (3)

insert

- (3) Before having regard to Aboriginal or Torres Strait Islander vocabulary under subsection (2) (e), the Minister must consult with each entity prescribed under the regulations as an entity that represents the interests of Aboriginals and Torres Strait Islanders.

Explanatory note

This amendment requires consultation with Aboriginal and Torres Strait Islander representative entities to ensure that cultural sensitivities are respected.

[1.46] Section 6

renumber as section 4

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

The section has been renumbered because section 5 (Disallowable instrument) is being omitted by the *Legislation (Consequential Amendments) Bill 2001* and section 4 (Minister to determine names) is being renumbered as section 3 by an earlier amendment in this part.

[1.47] Section 7

substitute

5 Regulation-making power

The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

Explanatory note

This amendment removes a spent provision and substitutes a standard regulation-making power to allow Aboriginal and Torres Strait Islander representative entities to be prescribed.

Part 1.6 Radiation Act 1983

[1.48] Section 5 (1), definition of *absorbed dose*

substitute

absorbed dose means the energy absorbed per unit mass by matter from ionizing radiation that impinges on it.

Note See the Recommendations for limiting exposure to ionizing radiation (1995) (Guidance note [NOHSC: 3022 (1995)]) (the ***recommendations***), annex B.

NOHSC means the National Occupational Health and Safety Commission established by the *National Occupational Health and Safety Commission Act 1985* (Cwlth), s 6.

The recommendations were developed by an expert committee advising standing committees of both the National Health and Medical Research Council (the ***council***) and the NOHSC. The council adopted the recommendations on 7 June 1995. The NOHSC endorsed the recommendations as a NOHSC guidance note.

(Commencement: on a day fixed by the Minister by notice in the Gazette.)

Explanatory note

This amendment updates the definition to bring it into line with the technical language of the recommendations.

[1.49] Section 5 (1), new definition of *approved code of practice*

insert

approved code of practice means a code of practice approved under section 57 (Code of practice about transport of radioactive material).

(Commencement: on a day fixed by the Minister by notice in the Gazette.)

Explanatory note

This amendment inserts a new definition as a result of new part 5 (inserted by a later amendment in this part).

[1.50] Section 5 (1), definitions of *dose equivalent* and *dose equivalent limit*

omit

(Commencement: on a day fixed by the Minister by notice in the Gazette.)

Explanatory note

This amendment omits definitions that are no longer necessary because of the insertion of the new definitions of *effective dose* and *effective dose limit* by the next amendment. The existing dose limits have been superseded by lower dose limits that are contained in the recommendations, schedule A (Dose limits), and the Act is being brought into line with these national guidelines.

[1.51] Section 5 (1), new definitions of *effective dose*, *effective dose limit*, *equivalent dose* and *equivalent dose limit*

insert

effective dose means a measure of dose that takes into account both the type of radiation involved and the radiological sensitivities of the organs and tissues irradiated.

Note See the recommendations, annex B.

effective dose limit means the limit for an effective dose prescribed under the regulations.

equivalent dose means a measure of dose in organs and tissues that takes into account the type of radiation involved.

Note See the recommendations, annex B.

equivalent dose limit means the limit for an equivalent dose prescribed under the regulations.

(Commencement: on a day fixed by the Minister by notice in the Gazette.)

Explanatory note

This amendment inserts a new definition of *effective dose* to replace the existing definition of *dose equivalent*. An effective dose is the same as dose equivalent and is the sum of equivalent doses.

Dose equivalent limit is replaced by *effective dose limit*. Regulations to be made under the *Radiation Act 1983* will contain the limits.

New definitions of *equivalent dose* and *equivalent dose limit* are included. This is because the recommendations, schedule A (Dose limits) use both effective dose and equivalent dose to set dose limits.

Regulations to be made under the *Radiation Act 1983* will contain the limits.

[1.52] Section 5 (1), new definitions of *exempt material* and *exposure*

insert

exempt material, for part 5 (Transport of radioactive material)—see section 53.

exposure means the circumstances of being exposed to radiation.

(Commencement: on a day fixed by the Minister by notice in the Gazette.)

Explanatory note

This amendment inserts the signpost definition of exempt material as a result of new part 5 (inserted by a later amendment in this part).

A new definition of *exposure* is inserted, as the term is used in the Act.

[1.53] Section 5 (1), definition of *irradiating apparatus*

omit

dose equivalent

substitute

effective dose

(Commencement: on a day fixed by the Minister by notice in the Gazette.)

Explanatory note

This amendment is consequential on definition changes.

[1.54] Section 5 (1), definitions of *package* and *quality factor*

omit

(Commencement: on a day fixed by the Minister by notice in the Gazette.)

Explanatory note

The definition of *package* is being omitted because it is no longer necessary because of the changes to part 5 (made by a later amendment in this part).

The definition of *quality factor* is being omitted because it only relates to the definition of dose equivalent. That definition is being omitted by an earlier amendment in this part.

[1.55] Section 5 (1), definition of *radiation hazard*

omit

or dose equivalent limits

substitute

, effective dose limits or equivalent dose limits

(Commencement: on a day fixed by the Minister by notice in the Gazette.)

Explanatory note

This amendment is consequential on definition changes.

[1.56] Section 5 (1), definition of *radiation worker*, paragraphs (a) and (b)

substitute

(a) in the course of transport; and

(b) in accordance with an approved code of practice.

(Commencement: on a day fixed by the Minister by notice in the Gazette.)

Explanatory note

This amendment is consequential on new part 5 (inserted by a later amendment in this part).

[1.57] Section 5 (1), definition of *transport index*

omit

(Commencement: on a day fixed by the Minister by notice in the Gazette.)

Explanatory note

This definition is being omitted because it is no longer necessary because of the changes to part 5 (made by a later amendment in this part).

[1.58] Section 5 (1)

omit

(1) In

substitute

In

(Commencement: on a day fixed by the Minister by notice in the Gazette.)

Explanatory note

This amendment is consequential on the omission of section 5 (2).

[1.59] Section 5 (2)

omit

(Commencement: on a day fixed by the Minister by notice in the Gazette.)

Explanatory note

This amendment omits definitions of category 1, category 2 and category 3 packages that are no longer necessary because of the changes to part 5 made by a later amendment in this part.

[1.60] Section 25 (2) (c)

omit

transportation of that material in accordance with the provisions of Part V

substitute

transport of that material under part 5

(Commencement: on a day fixed by the Minister by notice in the Gazette.)

Explanatory note

This amendment is consequential on the changes to part 5 made by a later amendment in this part.

[1.61] Section 33 (2) (d)

omit

dose

substitute

effective dose or equivalent dose

(Commencement: on a day fixed by the Minister by notice in the Gazette.)

Explanatory note

This amendment is consequential on definition changes.

[1.62] Section 33 (2) (e)

substitute

(e) all facts known to the licensee or person relating to any accidental exposure of a radiation worker to ionizing radiation.

(Commencement: on a day fixed by the Minister by notice in the Gazette.)

Explanatory note

This amendment clarifies the paragraph by changing a reference to a term that is not defined (dose) to a defined term (exposure).

[1.63] Section 37 (1) (a)

omit

dose equivalent limit

substitute

effective dose limit or equivalent dose limit

(Commencement: on a day fixed by the Minister by notice in the Gazette.)

Explanatory note

This amendment is consequential on definition changes.

[1.64] Section 38 (1)

omit

a dose equivalent

substitute

an effective dose

(Commencement: on a day fixed by the Minister by notice in the Gazette.)

Explanatory note

This amendment is consequential on definition changes.

[1.65] Section 39 (1) (d)

omit

dose equivalent limit

substitute

effective dose limit or equivalent dose limit

(Commencement: on a day fixed by the Minister by notice in the Gazette.)

Explanatory note

This amendment is consequential on definition changes.

[1.66] Section 39 (1) (m)

omit

and dose equivalents

substitute

, effective doses and equivalent doses

(Commencement: on a day fixed by the Minister by notice in the Gazette.)

Explanatory note

This amendment is consequential on definition changes.

[1.67] Sections 39 (1) (n) and 42 (1)

omit

dose equivalent limit

substitute

effective dose limit or equivalent dose limit

(Commencement: on a day fixed by the Minister by notice in the Gazette.)

Explanatory note

This amendment is consequential on definition changes.

[1.68] Section 43, heading

substitute

(Commencement: on a day fixed by the Minister by notice in the Gazette.)

This amendment is consequential on definition changes.

omit

dose equivalent limit

substitute

effective dose limit or equivalent dose limit

(Commencement: on a day fixed by the Minister by notice in the Gazette.)

This amendment is consequential on definition changes.

omit

(Commencement: on a day fixed by the Minister by notice in the Gazette.)

This amendment omits a section that is no longer necessary. Regulations to be made under the *Radiation Act 1983* will deal with the matter contained in section 46.

substitute

Part 5 Transport of radioactive material

53 Meaning of *exempt material*

In this part:

exempt material means radioactive material declared by the council to be exempt material under section 54.

54 Exempt material

- (1) On application by a person with radioactive material, the council may, in writing, declare the material to be exempt material for this part if it is satisfied that—
 - (a) the material will not cause a radiation hazard during transport;
or
 - (b) the material will not cause a radiation hazard during transport if conditions imposed by the council under subsection (2) are complied with.

Note Power given under an Act to make a statutory instrument (including a declaration) includes power to amend or repeal the instrument (see *Legislation Act 2001*, s 46 (1)).

- (2) A declaration may be subject to conditions about the transport of the material that the council considers appropriate.
- (3) A declaration must be signed by the chairperson.

55 Transport of radioactive material must be in accordance with conditions

If a declaration under section 54 about radioactive material is subject to conditions, a person must not transport the radioactive material except in accordance with the conditions.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

56 Transport of radioactive material

A person must not transport radioactive material unless—

- (a) it is transported in accordance with an approved code of practice; or
- (b) it is exempt material.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

57 Code of practice about transport of radioactive material

- (1) The Minister may, in writing, approve a code of practice about the transport of radioactive material.

Note Power given under an Act to make a statutory instrument (including a code of practice) includes power to amend or repeal the instrument (see *Legislation Act 2001*, s 46 (1)).

- (2) An approved code of practice is a disallowable instrument.

Note 1 A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

Note 2 An amendment or repeal of an approved code of practice is also a disallowable instrument (see *Legislation Act 2001*, s 46 (2)).

- (3) An approved code of practice may consist of any code, standard, rule, specification or provision relating to the transport of radioactive material and may apply, adopt or incorporate a law or instrument, or a provision of a law or instrument, as in force from time to time.

Note 1 A statutory instrument may also apply, adopt or incorporate (with or without change) a law or instrument (or a provision of a law or instrument) as in force at a particular time (see *Legislation Act 2001*, s 47 (1)).

Note 2 If a statutory instrument applies, adopts or incorporates a law or instrument (or a provision of a law or instrument), the law, instrument or provision may be taken to be a notifiable instrument that must be notified under the *Legislation Act 2001* (see s 47 (2)-(6)).

(Commencement: on a day fixed by the Minister by notice in the Gazette.)

Explanatory note

This amendment replaces part 5 with a new part 5. These amendments are to bring the ACT into line with the rest of Australia. Existing part 5 sets out in detail how radioactive material must be transported in the ACT. The provisions of the existing part are based on a predecessor to the new Code of Practice for the Safe Transport of Radioactive Substances (Cwlth) (the *Cwlth code*). The predecessor code is out of date. This amendment gives the ACT the flexibility to adopt the Cwlth code, or any other relevant instrument as the approved code, to allow for future developments in this area for the protection of the public.

New section 57 (3) means that the approved code of practice may apply, adopt or incorporate a law or instrument, or a provision of a law or instrument, as in force from time to time. This means that the instrument approved as the approved code of practice can be picked up as it applies from time to time. This will allow the ACT to pick up the latest edition. However, each amendment of the code must be notified under the *Legislation Act 2001*.

New section 54 sets out the radioactive material that is exempt from the application of new part 5, and new section 55 remakes an offence (contained in existing section 54 (3) and (4)) for noncompliance with a condition of an exemption.

New section 56 provides that a person commits an offence if the person transports radioactive material (unless the material is exempt material) other than in accordance with new part 5. This section remakes an offence that was contained in existing section 55.

[1.72] Section 67 (1) (a)

omit

Figure 4 in Schedule 6

substitute

the figure prescribed under the regulations

(Commencement: on a day fixed by the Minister by notice in the Gazette.)

Explanatory note

This amendment is consequential on the relocation of figure 4 to the regulations to be made under the *Radiation Act 1983*.

[1.73] Section 71 (d)

omit

a dose equivalent

substitute

an effective dose or equivalent dose

(Commencement: on a day fixed by the Minister by notice in the Gazette.)

Explanatory note

This amendment is consequential on definition changes.

[1.74] Schedule 2

omit

(Commencement: on a day fixed by the Minister by notice in the Gazette.)

Explanatory note

Schedule 2 is omitted because the definition of *quality factor* (to which schedule 2 relates) is omitted by an earlier amendment.

[1.75] Schedule 3

renumber as schedule 2

(Commencement: on a day fixed by the Minister by notice in the Gazette.)

Explanatory note

This amendment renumbers the schedule.

[1.76] Schedules 4 and 5

omit

(Commencement: on a day fixed by the Minister by notice in the Gazette.)

Explanatory note

Schedules 4 and 5 are omitted because the provisions of part 5 to which they relate are being omitted by an earlier amendment in this part.

[1.77] Schedule 6

omit

(Commencement: on a day fixed by the Minister by notice in the Gazette.)

Explanatory note

This amendment omits schedule 6. Figures 1 to 3 are the labels for category 1 to 3 packages that are no longer needed because of the changes to part 5 made by an earlier amendment in this part, and figure 4 is being relocated to the regulations to be made under the *Radiation Act 1983*.

[1.78] Divisions—renumbering

renumber divisions when Act next republished under Legislation Act 2001

(Commencement: on a day fixed by the Minister by notice in the Gazette.)

Explanatory note

This amendment provides for the renumbering of the divisions of the *Radiation Act 1983* on its next republication.

Part 1.7 Transplantation and Anatomy Act 1978

[1.79] Section 30 (1) (c)

omit

a clinical examination of

substitute

appropriate tests on or in relation to

Explanatory note

This amendment removes the reference to a clinical examination. This is because a clinical examination may not be sufficient in all cases to decide if irreversible cessation of all function of the brain has happened. Examples of appropriate tests include clinical examinations and radiological tests or scans.

[1.80] Section 30 (1) (d)

omit

that examination

substitute

the tests

Explanatory note

This amendment is consequential on the above amendment.

Schedule 2 Structural amendments

(see s 5)

Part 2.1 Interpretation Act 1967

General explanatory note for pt 2.1

The amendments in this part are mainly intended to continue the process of transferring the provisions of the *Interpretation Act 1967* to the *Legislation Act 2001*. When the transfer is completed, the *Interpretation Act 1967* will be repealed.

[2.1] Section 11AA and sections 11BA to 13E

omit

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment is consequential on the remaking of equivalent provisions in the *Legislation Act 2001* by a later amendment in this schedule.

[2.2] Sections 14 to 19

omit

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment is consequential on the remaking of equivalent provisions in the *Legislation Act 2001* by a later amendment in this schedule.

[2.3] Sections 21 to 25A

omit

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment is consequential on the remaking of equivalent provisions in the *Legislation Act 2001* by a later amendment in this schedule.

[2.4] Divisions 3.3, 3.5 and 3.6

omit

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment is consequential on the remaking of equivalent provisions in the *Legislation Act 2001* by a later amendment in this schedule.

[2.5] Division 3.8, heading

substitute

Division 3.8 Criminal proceedings

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment is consequential on the amendment of the division by later amendments in this schedule.

[2.6] Sections 31A to 33A

omit

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment is consequential on the remaking of equivalent provisions in the *Legislation Act 2001* by a later amendment in this schedule.

[2.7] Sections 33D and 33E

omit

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment is consequential on the remaking of equivalent provisions in the *Legislation Act 2001* by a later amendment in this schedule.

[2.8] Section 34

omit

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment is consequential on the remaking of equivalent provisions in the *Legislation Act 2001* by a later amendment in this schedule.

[2.9] Division 3.9, heading

substitute

Division 3.9 Time

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment is consequential on the following amendment.

[2.10] Section 35

omit

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment is consequential on the remaking of equivalent provisions in the *Legislation Act 2001* by a later amendment in this schedule.

[2.11] Part 4

omit

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment omits a part containing provisions about the interpretation of former NSW Acts. The part is no longer needed because all the former NSW Acts that remain in force have been amended to convert NSW-specific references into ACT equivalents.

[2.12] Section 63

omit

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment is consequential on the remaking of an equivalent provision in the *Legislation Act 2001* by a later amendment in this schedule.

[2.13] Schedule 1, items about *Apportionment Act 1905*, *Conveyancing and Law of Property (Supplemental) Act 1901*, *Dedication by User Limitation Act 1902*, *Forfeiture*

***of Leases Act 1901, Inebriates Act 1900, Inebriates
(Amendment) Act 1909 and Partition Act 1900***

omit

Explanatory note

This amendment omits items about Acts that are repealed by this Act.

[2.14] Dictionary, new definition

insert

Corporations Act means the *Corporations Act 2001* (Cwlth).

Explanatory note

This amendment is consequential on the passage of the *Corporations Act 2001* by the Commonwealth Parliament. It is desirable that the definition become part of the law as soon as practicable.

[2.15] Dictionary, definitions of *Act, amend, Attorney-General, chief executive, commencement, definition, disallowable instrument, enactment, entity, former NSW Act, former UK Act, Governor, Governor-General, instrument, may, Minister, must, notifiable instrument, notification, notification day, occupy, omit, passing, penalty unit, person, provision, repeal, see, statutory instrument, statutory office holder, subordinate law, Territory, Territory instrumentality, Treasurer and under*

omit

(Commencement: the commencement of section 2 of this Act or immediately after the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment is consequential on the remaking of equivalent provisions in the *Legislation Act 2001* by a later amendment in this schedule.

[2.16] Dictionary, remaining definitions

relocate to the Legislation Act 2001, dictionary, part 1

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment transfers the bulk of the definitions in the dictionary to the *Legislation Act 2001*.

[2.17] Dictionary, remainder

omit

Explanatory note

This amendment is consequential on the removal of all definitions from the dictionary by other amendments and has the effect of removing the heading.

Part 2.2 Legislation Act 2001

General explanatory note for pt 2.2

The following proposed amendments are mainly intended to continue the process of transferring the provisions of the *Interpretation Act 1967* to the *Legislation Act 2001*. When the transfer is completed, the *Interpretation Act 1967* will be repealed.

[2.18] Section 3, notes 1 and 2

substitute

Note 1 The dictionary at the end of an Act usually defines certain words and expressions used in the Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in the Act. However, in this Act the dictionary is divided into 2 parts.

Note 2 Part 1 defines words and expressions commonly used in Acts (including this Act) and statutory instruments. For example, because of the definition ‘*month* means calendar month.’, the word ‘month’ has the defined meaning wherever the word is used in an Act or statutory instrument unless the Act or instrument provides otherwise or the contrary intention otherwise appears (see s 144 and s 155 of this Act).

Note 3 Part 2 defines certain words and expressions used in this Act. For example, the signpost definition '*administrator*, for part 18.5 (Service of documents)—see section 246.' means that the expression administrator is defined for part 18.5 of this Act in section 246. A definition in part 2 of the dictionary applies to all of this Act unless the definition, or another provision of this Act, provides otherwise or the contrary intention otherwise appears (see s 155 and s 156 of this Act).

Explanatory note

This amendment is to replace the notes for the *Legislation Act 2001*, section 3 because the existing notes are no longer appropriate. The Bill provides for the provisions mentioned in the existing notes to be transferred to the *Legislation Act 2001*. It also provides for the dictionary to be in 2 parts.

[2.19] Section 4 (1), note

substitute

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

Explanatory note

This amendment updates the reference to the provisions mentioned in the note. The provisions are being relocated to the *Legislation Act 2001* by the Bill.

[2.20] Section 14 (1), note

substitute

Note **Writing** is defined in the dictionary, pt 1.

Explanatory note

This amendment updates the reference to the definition mentioned in the note. The definition is being relocated to the *Legislation Act 2001* by the Bill.

[2.21] Section 16, note

substitute

Note See s 126 and s 127 for material that is, or is not, part of an Act or statutory instrument.

Explanatory note

This amendment updates the reference to the provisions mentioned in the note. The provisions are being relocated to the *Legislation Act 2001* by the Bill.

[2.22] Section 18 (2)

substitute

- (2) The register must be kept electronically.

Example of how register may be kept

The register may be kept in the form of, or as part of, 1 or more computer databases, and may include data compiled electronically from the databases.

Explanatory note

This amendment will allow greater flexibility in the operation of the computer systems needed for the legislation register. The amendment will avoid the need for individual documents in all cases and allow material such as tables to be compiled from information associated with registered documents.

[2.23] Section 19

substitute

19 Contents of register

- (1) The ACT legislation register must contain the following:
- (a) authorised republications of laws currently in force;
 - (b) Acts as made;
 - (c) subordinate laws as made;
 - (d) disallowable instruments as made;
 - (e) notifiable instruments as made;
 - (f) commencement notices as made;
 - (g) resolutions passed, or taken to have been passed, by the Legislative Assembly to disallow a subordinate law or disallowable instrument;
 - (h) resolutions passed, or taken to have been passed, by the Legislative Assembly to amend a subordinate law or disallowable instrument;

- (i) Bills presented to the Legislative Assembly.
- (2) The ACT legislation register must also contain the following:
 - (a) notifications of the making of Acts;
 - (b) notifications of the making of subordinate laws;
 - (c) notifications of the making of disallowable instruments;
 - (d) notifications of the making of notifiable instruments;
 - (e) notifications of the making of commencement notices;
 - (f) notifications of the disallowance of subordinate laws or disallowable instruments under section 65 (Disallowance by resolution of Assembly);
 - (g) notifications of the amendment of subordinate laws or disallowable instruments under section 68 (Amendment by resolution of Assembly).
- (3) However, the parliamentary counsel may enter additional material in the register if the parliamentary counsel considers that it is likely to be useful to users of the register.
- (4) Without limiting subsection (3), the additional material may include the following:
 - (a) unauthorised republications of laws currently in force;
 - (b) past versions of unauthorised republications;
 - (c) past versions of authorised republications;
 - (d) statutory instruments that are not registrable instruments;
 - (e) explanatory memoranda for bills, and amendments of bills, presented to the Legislative Assembly;
 - (f) repealed Acts and statutory instruments;
 - (g) Commonwealth laws that apply in or in relation to the Territory.

Note The following sections of the Act deal with the entry of material in the register:

- section 28 (Notification of Acts)
- section 61 (Notification of registrable instruments)
- section 65A (Notification of disallowance by resolution of Assembly)
- section 69 (Notification of amendments made by resolution of Assembly)
- section 108 (Republication in register).

- (5) If the register contains an authorised republication of a law currently in force, and the law is amended, the parliamentary counsel must replace the republication with an authorised republication of the law as amended.
- (6) If the register contains an authorised republication of a law, and the law is repealed, expires or, for a subordinate law or disallowable instrument, is disallowed by the Legislative Assembly, the parliamentary counsel must ensure that the republication is no longer shown as a republication of law currently in force.
- (7) If the parliamentary counsel considers it likely to be useful to users of the register to enter information (in any form) in the register, the parliamentary counsel may enter the information at any time.

Example

Guides and indexes to the register

- (8) If an Act passed by the Legislative Assembly, or a registrable instrument made, before the commencement of this Act need not be notified under this Act, the parliamentary counsel may enter the text of the Act or instrument in the register.
- (9) The parliamentary counsel may correct any mistake, error or omission in the register subject to the requirements (if any) of the regulations.
- (10) In this section:

amended includes modified.

law—see section 107 (Meaning of *law* in ch 11).

Explanatory note

The remaking of section 19 will remove the existing requirement for the register to contain separate parts for the various types of registered material. This requirement would unnecessarily complicate the keeping of the register. The computing system will separate material for user convenience without the need for separate parts to be established legislatively.

The new section would also require Bills presented to the Legislative Assembly to be available on the register. The section also deals comprehensively with notification of the disallowance and amendment of subordinate laws and disallowable instruments by the Legislative Assembly.

[2.24] Section 22 (1)

substitute

- (1) The parliamentary counsel must ensure, as far as practicable, that a copy of the material mentioned in section 19 (1) and (2) (Contents of register) is accessible at all times on an approved web site.

Explanatory note

This amendment is consequential on the remaking of section 19, and removes any reference to separate parts of the legislation register.

[2.25] Section 24 (1) and (2)

substitute

- (1) This section applies to the following:
 - (a) a copy of an Act, statutory instrument or republication accessible at an approved web site;
 - (b) any other electronic copy of an Act, statutory instrument or republication.
- (2) A copy of the Act, statutory instrument or republication is an authorised version only—

- (a) if it is authorised by the parliamentary counsel; and
- (b) in the format in which it is authorised.

Example of authorised version accessible at approved web site

A locked pdf file with a digital signature permitting authentication of the downloaded file

Explanatory note

This amendment makes section 24 more accurate by referring to copies of registered material. Section 22 provides that a copy of the registered material must be accessible at an approved web site. New section 24 (2) is also more precise in identifying the characteristics of an authorised version.

[2.26] Section 24 (3) (b) and (c)

substitute

- (b) that a copy of an Act, statutory instrument or republication accessible at an approved web site and purporting to be authorised by the parliamentary counsel is authorised by the parliamentary counsel under this Act; and
- (c) that any other electronic copy of an Act, statutory instrument or republication purporting to be authorised by the parliamentary counsel is authorised by the parliamentary counsel under this Act; and

Explanatory note

This amendment is consequential on amendment 2.25.

[2.27] Section 28 (2) (b)

substitute

- (b) if it is not practicable to notify the making of the proposed law in the register, or make the text of the proposed law and the notification of its making accessible at 1 or more approved web sites, when the law is to be notified—notify the making of the law in the Gazette.

Explanatory note

This amendment is consequential on amendment 2.23 (in particular, removal of the need for separate parts within the legislation register).

[2.28] Section 28 (4)

substitute

- (4) The making of the proposed law is notified in the register by entering in the register—
 - (a) a statement that the law has been passed by the Legislative Assembly; and
 - (b) the text of the law.

Explanatory note

This amendment is consequential on amendment 2.23 (in particular, removal of the need for separate parts within the legislation register).

[2.29] Section 28 (6) (b)

substitute

- (b) the parliamentary counsel must later enter in the register—
 - (i) a statement that the law has been passed by the Legislative Assembly; and
 - (ii) a statement that the law was notified in the Gazette on the Gazette date; and
 - (iii) the text of the law.

Explanatory note

This amendment is consequential on amendment 2.23 (in particular, removing the need for separate parts within the legislation register). It also clarifies the operation of existing section 28 (6) (b). The existing provision refers to the later notification of the making of the law. If the making is notified first in the Gazette, there would strictly be a later entry in the register about the making but not a second notification.

[2.30] Section 30 (1)

omit

(1)

Explanatory note

This amendment is consequential on amendment 2.31.

[2.31] Section 30 (2)

omit

Explanatory note

This amendment is consequential on amendment 2.29 (in particular, providing for a later entry in the register after the making of a law has first been notified in the Gazette). New section 28 (6) (b) removes the need for existing section 30 (2).

[2.32] Section 41, heading

substitute

41 Making of statutory instruments by Executive (SLA s 3)

Explanatory note

This amendment is consequential on the other amendments of section 41 made by this schedule and revises the heading to reflect the scope of the amended section.

[2.33] Section 41 (1)

omit

regulations

substitute

a statutory instrument

Explanatory note

The amendments of section 41 have the effect of extending the scope of the section to all statutory instruments.

[2.34] Section 41 (1)

omit

regulations are

substitute

instrument is

Explanatory note

The amendments of section 41 have the effect of extending the scope of the section to all statutory instruments.

[2.35] Section 41 (2)

omit

Regulations are

substitute

A statutory instrument made by the Executive is

Explanatory note

The amendments of section 41 have the effect of extending the scope of the section to all statutory instruments.

[2.36] Section 41 (2)

omit

they are

substitute

it is

Explanatory note

The amendments of section 41 have the effect of extending the scope of the section to all statutory instruments.

[2.37] Section 56 (1)

substitute

- (1) This section applies if an Act (the *authorising law*) authorises fees to be determined for 1 of the following (the *relevant law*):
- (a) the authorising law; or
 - (b) another Act or statutory instrument.
- (1A) The authorising law authorises a fee to be determined with respect to any matter under or related to the relevant law.
- (1B) To avoid any doubt, a fee may be determined for a provision of the relevant law even though the provision does not mention a fee.

Example

The X Act, section 15 provides for a person to apply for an approval but makes no mention of a fee for the approval. However, section 79 (1) of the Act provides:

The Minister may, in writing, determine fees for this Act.

Because section 79 (1) permits a fee to be determined ‘for this Act’, section 56 of the *Legislation Act 2001* applies in relation to section 15 and the Minister may determine an application fee for the approval.

Explanatory note

Proposed section 56 (1) recasts the subsection to simplify the language of the subsections that follow. Proposed section 56 (1A) clarifies the scope of the power to determine fees in response to comments of the Scrutiny Committee. Proposed section 56 (1B) makes it clear that a fee may be determined for a provision even though the provision does not mention a fee. The operation of section 56 (1B) is illustrated by an example.

[2.38] Section 56 (2)

omit

The fee may

substitute

A fee may

Explanatory note

This amendment is consequential on amendment 2.37.

[2.39] Section 56

renumber subsections when Act next republished under Legislation Act 2001

Explanatory note

In accordance with current drafting practice, this amendment provides for the subsections in section 56 to be renumbered in ordinary numerical sequence when the Act is next republished.

[2.40] Section 58 (4), (5) and (6)

omit

The regulations

substitute

Regulations or the authorising law

Explanatory note

This amendment makes it clear that the regulations mentioned in the subsections are regulations under the authorising law.

[2.41] Section 59 (1)

substitute

- (1) The registrable instruments registered in each year must be numbered by the parliamentary counsel as nearly as practicable in the order in which they are notified.

Explanatory note

This amendment will ensure that instruments are generally numbered in the order in which they are notified, whether notification is made in the Gazette or the register.

[2.42] Section 60 (1)

omit

This section applies if the name that a registrable instrument gives to itself—

substitute

This section applies if a registrable instrument is unnamed or the name it gives to itself—

Explanatory note

This amendment is to authorise the parliamentary counsel to add a name to an unnamed instrument that is to be registered. This refinement would help legislation users in finding instruments on the register.

[2.43] Section 60 (2) and (3)

substitute

- (2) The parliamentary counsel is authorised, before notifying the registrable instrument under this Act—
 - (a) to add a name to an unnamed instrument; or
 - (b) to amend the instrument's name to bring it into line with current drafting practice.
- (3) If the name of a registrable instrument is added or amended under this section, the instrument has effect for all purposes as if the instrument were made with the name as added or amended.

Explanatory note

This amendment is consequential on amendment 2.42.

[2.44] Section 61

substitute

61 Notification of registrable instruments (SLA s 6 (1) (a), (2)-(5))

- (1) If a registrable instrument is made, the maker of, or the appropriate person for, the instrument may ask the parliamentary counsel to notify the making of the instrument.
- (2) If the maker of, or appropriate person for, a registrable instrument asks the parliamentary counsel to notify the making of the

instrument and complies with the requirements (if any) prescribed under the regulations, the parliamentary counsel must—

- (a) notify the making of the instrument in the register; or
 - (b) if it is not practicable to notify the making of the instrument in the register, or make the text of the instrument and the notification of its making accessible at 1 or more approved web sites, when the instrument is to be notified—notify the making of the instrument in the Gazette.
- (3) The making of the registrable instrument is notified in the register by entering in the register—
- (a) a statement that the instrument has been made; and
 - (b) the text of the instrument.
- (4) The making of the registrable instrument is notified in the Gazette by—
- (a) publishing the text of the instrument in the Gazette; or
 - (b) publishing in the Gazette a statement—
 - (i) that the instrument has been made; and
 - (ii) of the place or places where copies of the instrument can be purchased.
- (5) If the making of the registrable instrument is notified in the Gazette, the parliamentary counsel must later enter in the register—
- (a) a statement that the instrument has been made; and
 - (b) a statement that the instrument was notified in the Gazette on a stated date; and
 - (c) the text of the instrument.
- (6) If the registrable instrument is notified in the Gazette by publishing the statement mentioned in paragraph (4) (b), copies of the instrument must be available for purchase on the day of the

publication (the *Gazette date*), or as soon as practicable after the Gazette date, at the place, or each of the places, stated in the Gazette.

- (7) If on the Gazette date no copies of the registrable instrument are available for purchase at the place, or any of the places, stated in the Gazette, the parliamentary counsel must give the Minister a statement—
- (a) that copies of the law were not available; and
 - (b) explaining why they were not available.
- (8) The Minister must present the statement to the Legislative Assembly within 6 sitting days after the Gazette date.
- (9) In this section:

appropriate person, for a registrable instrument, means—

- (a) for a registrable instrument made or approved (however described) by the Executive—a Minister; and
- (b) for rules of a court or tribunal—the registrar of the court or tribunal; and
- (c) for a registrable instrument prescribed under the regulations—a person prescribed under the regulations as the appropriate person for the instrument.

Explanatory note

The remaking of section 19 by amendment 2.23 (particularly the removal of the need for separate parts of the register) requires a number of minor, consequential changes to existing section 61. This amendment remakes the section entirely to avoid a lengthy set of amendments to individual provisions. The remade section also provides for later entry into the register (rather than a later notification) if the making of an instrument has first been notified in the Gazette.

[2.45] Section 63 (1)

omit

(1)

Explanatory note

This amendment is consequential on amendment 2.46.

[2.46] Section 63 (2)

omit

Explanatory note

This amendment is consequential on amendment 2.44 (in particular, providing for a later entry in the register after the making of an instrument has first been notified in the Gazette). New section 61 (5) removes the need for existing section 63 (2).

[2.47] Section 65, heading

substitute

65 Disallowance by resolution of Assembly etc (SLA s 6 (7), (7A), (8) and s 10)

Explanatory note

This amendment makes the heading more informative.

[2.48] Section 65 (2)

substitute

- (2) If the Legislative Assembly passes a resolution to disallow the subordinate law or disallowable instrument, it is taken to be repealed—
- (a) on the day the disallowance is notified; or
 - (b) if the resolution provides that it takes effect on the day the resolution is passed—that day.

Explanatory note

This amendment spells out more clearly when the repeal made by a disallowance takes effect and is consequential on amendment 2.50. It preserves the Legislative Assembly's control over the timing of the effect of a disallowance by allowing it to fix the day of disallowance as the date of effect, even though the disallowance may be notified later.

[2.49] New section 65 (4)

insert

- (4) If subsection (3) applies, the resolution is taken to be the resolution set out in the motion for the resolution.

Explanatory note

This amendment spells out more clearly what the ‘resolution’ is if a disallowance motion is not actually passed by the Legislative Assembly, but is taken to have been passed. The resolution set out in the disallowance motion is the resolution notified under proposed new section 65A (inserted by amendment 2.50).

[2.50] New section 65A

insert

**65A Notification of disallowance by resolution of Assembly
(SLA s 6 (8) and s 10)**

- (1) If a subordinate law or disallowable instrument is disallowed, or taken to have been disallowed, under section 65 (Disallowance by resolution of Assembly), the Speaker must ask the parliamentary counsel to notify the disallowance.
- (2) If the Speaker asks the parliamentary counsel to notify the disallowance, the parliamentary counsel must—
- (a) notify the disallowance in the register; or
 - (b) if it is not practicable to notify the disallowance in the register, or make the text of the resolution and the notification of its making accessible at 1 or more approved web sites, when the disallowance is to be notified—notify the disallowance in the Gazette.
- (3) If the Speaker asks the parliamentary counsel to notify the disallowance on a particular day, the parliamentary counsel must notify the disallowance on that day unless it is impracticable to do so.

- (4) The disallowance is notified in the register by entering in the register—
- (a) a statement that the subordinate law or disallowable instrument has been disallowed under section 65; and
 - (b) the text of the resolution passed, or taken to have been passed, by the Legislative Assembly under section 65; and
 - (c) the day when the resolution was passed or taken to have been passed; and
 - (d) the day when the subordinate law or disallowable instrument is taken to be repealed because of the resolution.
- (5) The disallowance is notified in the Gazette by publishing in the Gazette—
- (a) a statement that the subordinate law or disallowable instrument has been disallowed under section 65; and
 - (b) the text of the resolution passed, or taken to have been passed, by the Legislative Assembly under section 65; and
 - (c) the day when the resolution was passed or taken to have been passed; and
 - (d) the day when the subordinate law or disallowable instrument is taken to be repealed because of the resolution.
- (6) If the disallowance is notified in the Gazette, the parliamentary counsel must later enter in the register—
- (a) a statement that the subordinate law or disallowable instrument has been disallowed under section 65; and
 - (b) a statement that the disallowance was notified in the Gazette on a stated date; and
 - (c) the text of the resolution passed, or taken to have been passed, under section 65; and

- (d) the day when the resolution was passed or taken to have been passed; and
- (e) the day when the subordinate law or disallowable instrument is taken to be repealed because of the resolution.

Explanatory note

This amendment overcomes a gap in the existing law by providing a mechanism for the notification of a disallowance of a subordinate law or disallowable instrument by the Legislative Assembly. The mechanism provided is similar to that already provided in the *Legislation Act 2001* for Acts (s 28), registrable instruments (s 61) and amendments of subordinate laws and disallowable instruments made by resolution of the Legislative Assembly (s 68).

[2.51] Section 68 (3)

substitute

- (3) If the Legislative Assembly passes a resolution to amend the subordinate law or disallowable instrument, it is amended accordingly—
 - (a) on the day the amendment is notified; or
 - (b) if the resolution provides that it takes effect on the day the resolution is passed—that day.

Explanatory note

This amendment spells out more clearly when an amendment of a subordinate law or disallowable instrument made by resolution of the Legislative Assembly takes effect. It ensures the Legislative Assembly's control over the timing of the amendment by allowing it to fix the day the resolution is passed as the date of effect, even though the amendment may be notified later.

[2.52] New section 68 (4A)

insert

- (4A) If subsection (4) applies, the resolution is taken to be the resolution set out in the motion for the resolution.

Explanatory note

This amendment spells out more clearly what the ‘resolution’ is if an amendment motion for a subordinate law or disallowable instrument is not actually passed by the Legislative Assembly, but is taken to have been passed. The resolution set out in the amendment motion is the resolution notified under section 68.

[2.53] Section 68 (6)

substitute

- (6) Without limiting subsection (5), section 83 (Consequences of amendment of statutory instrument by Act) applies to the amendment as if it had been made by an Act.

Explanatory note

This amendment is consequential on amendment 2.51 (which deals with when an amendment resolution passed (or taken to have been passed) by the Legislative Assembly takes effect).

[2.54] Section 68

renumber subsections when Act next republished under the Legislation Act 2001.

Explanatory note

In accordance with current drafting practice, this amendment provides for the subsections in section 56 to be renumbered in ordinary numerical sequence when the Act is next republished.

[2.55] Section 69 (2) (b)

substitute

- (b) if it is not practicable to notify the amendment in the register, or make the text of the resolution and the notification of its making accessible at 1 or more approved web sites, when the amendment is to be notified—notify the amendment in the Gazette.

Explanatory note

This amendment is consequential on amendment 2.23 (in particular, removal of the need for separate parts within the legislation register).

[2.56] Section 69 (4) to (7)

substitute

- (4) The amendment is notified in the register by entering in the register—
 - (a) a statement that the amendment of the amended law has been made under section 68 (Amendment by resolution of Assembly); and
 - (b) the text of the resolution passed, or taken to have been passed, by the Legislative Assembly under section 68; and
 - (c) the day when the resolution was passed or taken to have been passed; and
 - (d) the day when the subordinate law or disallowable instrument is taken to be amended because of the resolution.
- (5) The amendment is notified in the Gazette by publishing in the Gazette—
 - (a) a statement that the amendment of the amended law has been made under section 68; and
 - (b) the text of the resolution passed, or taken to have been passed, by the Legislative Assembly under section 68; and
 - (c) the day when the resolution was passed or taken to have been passed; and
 - (d) the day when the subordinate law or disallowable instrument is taken to be amended because of the resolution.
- (6) If the amendment is notified in the Gazette, the parliamentary counsel must later enter in the register—

- (a) a statement that the amendment of the amended law has been made under section 68; and
- (b) a statement that the amendment was notified in the Gazette on a date stated; and
- (c) the text of the resolution passed, or taken to have been passed, by the Legislative Assembly under section 68; and
- (d) the day when the resolution was passed or taken to have been passed; and
- (e) the day when the subordinate law or disallowable instrument is taken to be amended because of the resolution.

Explanatory note

This amendment is consequential on amendment 2.23 (in particular, removal of the need for separate parts within the legislation register) and amendments 2.51 and 2.52 (in particular, the more detailed provisions dealing with resolutions of the Legislative Assembly to amend a subordinate law or instrument).

[2.57] New section 84A

insert in part 9.1

84A Creation of offences and changes in penalties (IA s 33A)

- (1) If a law makes an act or omission an offence, the act or omission is only an offence if done or not done after the law commences.
- (2) If a law increases the maximum or minimum penalty, or the penalty, for an offence, the increase applies only to an offence committed after the law commences.
- (3) If a law reduces the maximum or minimum penalty, or the penalty, for an offence, the reduction applies to an offence committed before or after the law commences, but does not affect any penalty imposed before the law commences.

- (4) This section applies to a law unless the law expressly provides that this section does not apply.

Explanatory note

This amendment transfers the provisions of the *Interpretation Act 1967*, section 33A to the *Legislation Act 2001*. Section 84A (1) makes it clear that an offence cannot be created retrospectively. In other words, for an act or omission to be a criminal offence, it must be done, or not done, after the commencement of the law that makes it an offence. This part of the section is an extension of the principles of section 33A. Section 84A also continues the effect of section 33A in relation to increases and reductions in penalties. If a person commits an offence and, before the person comes to trial, the penalty for the offence is increased, the penalty that applied at the time of the offence is the penalty that the court may impose. On the other hand, if a penalty is reduced between the time the offence is committed and the trial, the court may only impose the lower penalty. Section 84A (4) makes it clear that another law can only displace the operation of this section by express words.

[2.58] Section 91 (8)

omit

an equivalent

substitute

a corresponding

Explanatory note

This amendment will bring the language of section 91 (8) into line with the terminology in proposed sections 126 (7), 127 (6), 134 (7), 135 (6) and 156 (5).

[2.59] Section 93 (5), note

substitute

Note Section 127 (Material that is not part of an Act or statutory instrument) deals with the status of notes.

Explanatory note

This amendment updates the reference to the provision mentioned in the note. The provision is being relocated to the *Legislation Act 2001* by the Bill.

[2.60] Section 93 (10)

omit

an equivalent

substitute

a corresponding

Explanatory note

This amendment is intended to bring the language of section 93 (10) into line with the terminology in proposed sections 126 (7), 127 (6), 134 (7), 135 (6) and 156 (5).

[2.61] Section 97, heading

substitute

97 References to a law or instrument include law or instrument containing reference (IA s 50 (2))

Explanatory note

This amendment broadens the scope of the heading to the section consequentially on the next amendment.

[2.62] Section 97 (2)

substitute

- (2) In an instrument, a reference in general terms to an instrument of the same kind includes a reference to the instrument itself.

- (3) In this section:

instrument means an instrument (other than a law) made or in force under a law.

law means an Act, subordinate law or disallowable instrument.

Explanatory note

This amendment extends the application of section 97 to statutory instruments that are not subordinate laws or disallowable instruments. Because of the amendment, a general reference in a kind of instrument (eg a code of practice) to an instrument of the same kind

will include the instrument itself (ie the code of practice). It is not, therefore, necessary to include words such as ‘(including this code)’ to make it clear that the reference included the instrument itself.

[2.63] New sections 101A and 101B

insert

101A Reference to provisions of a law or instrument is inclusive (IA s 14)

- (1) In an Act or statutory instrument, a reference to any part of a law or instrument is a reference to the following:
 - (a) the provision of the law or instrument that forms the beginning of the part;
 - (b) the provision of the law or instrument that forms the end of the part;
 - (c) any provision of the law or instrument between the beginning and end of the part.

Examples

- 1 A reference to ‘sections 5 to 9’ includes both section 5 and section 9.
- 2 A reference to ‘sections 260 to 264’ includes a provision such as a part heading between section 260 and 261.
- 3 A reference to ‘*from child to adult*’ includes both the word ‘child’ and the word ‘adult’.

- (2) In this section:

instrument means an instrument (other than a law) made or in force under a law.

law means—

- (a) an Act, subordinate law or disallowable instrument; or
- (b) a law of the Commonwealth, a State or another Territory.

101B References to paragraphs etc (IA s 12A)

- (1) In an Act or statutory instrument, a reference to a paragraph of a provision of an Act or statutory instrument includes any words in the provision before or after the paragraph that are necessary or desirable to make the reference meaningful.

Example

A section or subsection (or corresponding provisions in regulations) may be divided into paragraphs as follows:

‘(2) An application must be—

(a) in writing; and

(b) accompanied by a copy of the advertisement of the applicant’s intention to apply.’

Paragraphs form part of the sentence in which they are contained. A reference to paragraph (a) in this example that did not include the preceding words ‘An application must be’ would be meaningless. Section 101B therefore allows the paragraph to be read with those words so that it makes sense.

Note Although this section contains 2 references to an Act or statutory instrument, s 97 makes it clear that they may be the same Act or statutory instrument.

- (2) In this section:

paragraph includes a subparagraph and a sub-subparagraph.

Explanatory note

Section 101A reproduces the effect of *Interpretation Act 1967*, section 14. Like related provisions of chapter 10, section 101A would also apply to references to instruments.

Section 101B reproduces the effect of *Interpretation Act 1967*, section 12A. Like related provisions of chapter 10, section 101B would also apply to references to instruments. The language of proposed section 101B has been simplified and an example added to illustrate its intended operation.

[2.64] Section 104 (4)

omit

(2)

substitute

(3)

Explanatory note

This amendment corrects a cross-reference.

[2.65] Section 108 (1)

substitute

- (1) The parliamentary counsel may republish a law by entering the text of the law in the register.

Explanatory note

This amendment is consequential on amendment 2.23 (in particular, removal of the need for separate parts within the legislation register).

[2.66] Chapters 12 and 13

renumber as chapters 19 and 20

Explanatory note

This amendment is consequential on the insertion of new chapters 12 to 18 into the *Legislation Act 2001*.

[2.67] Sections 119 to 130

renumber as sections 260 to 272

(Commencement: the commencement of section 2 of this Act or immediately after the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment is consequential on the insertion of new chapters 12 to 18 in the *Legislation Act 2001*.

[2.68] New chapters 12 to 18

insert

Chapter 12 Scope of Acts and statutory instruments

120 Act to be interpreted not to exceed legislative powers of Assembly (IA s 11AA)

- (1) An Act is to be interpreted as operating to the full extent of, but not to exceed, the legislative power of the Legislative Assembly.
- (2) Without limiting subsection (1), if a provision of an Act would, apart from this section, be interpreted as exceeding the legislative power of the Legislative Assembly—
 - (a) the provision is valid to the extent to which it does not exceed power; and
 - (b) the remainder of the Act is not affected.
- (3) Without limiting subsection (1), if the application of a provision of an Act to a matter would, apart from this section, be interpreted as exceeding power, the provision's application to other matters is not affected.
- (4) This section is in addition to any provision of the Act itself.

Note For statutory instruments, see s 43.

122 Application to Territory (IA s 23A)

- (1) In an Act or statutory instrument, except so far as the contrary intention appears—
 - (c) a reference to an entity or position by name or description is a reference to the entity or position of that name or description in or for the Territory; and
 - (d) a reference to a place, jurisdiction or anything else by name or description is a reference to the place, jurisdiction or thing of that name or description in or for the Territory.
- (2) If the name of an entity or position established under an Act or statutory instrument includes the words 'of the Australian Capital Territory', 'for the Australian Capital Territory', '(ACT)', or words

having a similar effect, a reference in an Act or statutory instrument to the entity or position need not include the words.

Chapter 13 Structure of Acts and statutory instruments

Part 13.1 General

125 Meaning of *law* in ch 13

In this chapter:

law means an Act, subordinate law or disallowable instrument, and includes a provision of a law.

126 Material that is part of an Act or statutory instrument (IA s 11H)

- (1) A heading to a chapter, part, division, subdivision, schedule, or another provision (other than a section or subsection), of or to an Act or statutory instrument is part of the Act or instrument.
- (2) A heading to a section or subsection of an Act or statutory instrument is part of the Act or instrument if—
 - (a) the Act was enacted, or the instrument was made, after 1 January 2000; or
 - (b) the heading was amended or inserted into another Act or instrument after 1 January 2000.
- (3) An example or diagram in an Act or statutory instrument is part of the Act or instrument.
- (4) A schedule, dictionary or appendix to an Act or statutory instrument is part of the Act or instrument.

- (5) Punctuation in an Act or statutory instrument is part of the Act or instrument.
- (6) A provision number in an Act or statutory instrument is part of the Act or instrument.
- (7) In applying this section to a statutory instrument or to a provision of a schedule to an Act, a reference to a section or subsection is a reference to a corresponding provision of the instrument or schedule.

127 Material that is not part of an Act or statutory instrument
(IA s 12)

- (1) A footnote, endnote, or other note, in or to an Act or statutory instrument is not part of the Act or instrument.
- (2) A table of contents (however described), or reader's guide or index, in or to an Act or statutory instrument is not part of the Act or instrument.
- (3) A heading to a section or subsection of an Act or statutory instrument is not part of the Act or instrument if section 126 (2) (Material that is part of an Act or statutory instrument) does not apply to the heading.
- (4) This section does not prevent the amendment of a note, table, guide, index or heading mentioned in subsection (1), (2) or (3).
- (5) However, such a note, table, guide or index does not become part of the Act or statutory instrument because it is amended or inserted by an Act or instrument.
- (6) In applying this section to a statutory instrument or to a provision of a schedule to an Act, a reference to a section or subsection is a reference to a corresponding provision of the instrument or schedule.

Part 13.2 Particular kinds of provisions

130 What is a definition? (IA dictionary, **definition**)

A **definition** is a provision (however expressed) of an Act or statutory instrument that—

- (a) gives a meaning to a word or expression; or
- (b) limits or extends the meaning of a word or expression.

Examples of definitions

- 1 *X* means *Y*.
- 2 *X* includes *Y*.
- 3 *X* means *Y*, and includes *Z*.
- 4 A reference to *X* is a reference to *Y*.
- 5 *X*—see section *Y*.
- 6 *X*—see the *XYZ Act 1999*, section *Y*.
- 7 In a proceeding against a person (the **retailer**), it is a defence if the retailer establishes that the goods were bought honestly.
- 8 **excluded**—a claim is **excluded** if the claim is not brought within 1 year after the claimant becomes aware of the failure to account to which the claim relates.
- 9 Words and expressions used in the *XYZ Act 1999* have the same respective meanings in this Act.

Note 1 Examples 5 and 6 illustrate signpost definitions, that is, definitions that do not themselves define the word or expression but point the reader to the place where the word or expression is defined (see s 131).

Note 2 Example 7 illustrates a tagged-term definition (**retailer**) that takes its meaning from the context of the provision where the defined term is found.

Note 3 Example 8 illustrates a definition that does not begin with the defined term.

Note 4 For other provisions about definitions, see pt 15.2.

131 Signpost definitions (IA, dict, def of **see**)

- (1) In an Act or statutory instrument, a definition of a word or expression that includes the word ‘see’ followed by a reference to a

law or instrument means the word or expression has the same meaning as it has in the law or instrument, as in force from time to time.

Examples

- 1 A signpost definition '*food*—see section 10.' in the dictionary to an Act means that the word 'food' when used in the Act, has the same meaning as it has in section 10, as in force from time to time.
- 2 A signpost definition '*injury*—see the *XYZ Act 2001*, dictionary' in the dictionary to another Act means that the word 'injury', when used in the other Act, has the same meaning as it has in the definition of *injury*, *XYZ Act 2001*, dictionary, as in force from time to time.

(2) In this section:

instrument includes a provision of an instrument.

law includes a law, or a provision of a law, of the Commonwealth, a State or another Territory.

Note For other provisions, see pt 15.2.

132 Examples (IA s 11D)

(1) An example in an Act or statutory instrument—

- (a) is not exhaustive; and
- (b) may extend, but does not limit, the meaning of the Act or instrument, or the particular provision to which it relates.

Examples

- 1 A specific case (which may be fictional) that helps to give meaning to the more abstract language of a provision. See the examples in s 43 (3).
- 2 An example (which may be fictional) that clarifies the scope of a provision by illustrating cases that fall within the provision or cases that fall outside the provision, or both. See the examples in s 86 (1).

Note These examples may overlap.

(2) An example may take either of the following forms:

- (a) a statement at the end of the provision it illustrates (or at the end of a provision containing the provision it illustrates);
- (b) a statement forming part of the text of a provision that illustrates the operation of the provision, whether or not the words ‘for example’ are used.

Examples for par (a)

The examples in s 130 or subsection (1) above.

Example for par (b)

The statement beginning ‘for example’ in s 36 (1) (a).

- (3) Subsection (2) does not limit the forms that an example may take.
- (4) This section applies to an example in an Act or statutory instrument unless the Act or instrument expressly provides that this section does not apply.

133 Penalty units (IA s 33AA)

- (1) In a law, if a penalty for an offence is expressed as a number (whether whole or fractional) of penalty units—
 - (a) the penalty is a fine of that number of penalty units; and
 - (b) the value of the penalty unit for the offence is—
 - (i) if the person charged is an individual—\$100; or
 - (ii) if the person charged is a corporation—\$500.

Example

‘Maximum penalty: 10 penalty units.’ means that a person who is convicted of the relevant offence is liable to a maximum fine of 10 penalty units.

- If the person is an individual, the maximum fine is, therefore, \$1 000 (\$100x10).
- If the person is a corporation, the maximum fine is, therefore, \$5 000 (\$500x10).

Note Par (b) is subject to s 273 (Transitional provisions about penalties).

- (2) This section applies to a penalty in a law unless the law expressly provides that this section does not apply.

134 Penalties at end of sections and subsections (IA s 32A)

- (1) This section applies if a penalty (however expressed) is stated in a law—
- (a) at the end of a section (whether or not the section is divided into subsections) and not expressed in a way that indicates that it applies only to a provision of the section; or
 - (b) at the end of a subsection (but not at the end of a section) and not expressed in a way that indicates that it applies only to a provision of the subsection; or
 - (c) at the end of a section or subsection and expressed in a way that indicates that it applies only to a provision of the section or subsection (the *relevant provision*).

Example for par (a)

The following penalty at the end of a section:

‘Maximum penalty: 20 penalty units.’.

Example for par (b)

The following penalty at the end of a subsection, but not at the end of a section:

‘Maximum penalty: 20 penalty units.’.

Examples for par (c)

1 The following penalty at the end of a section divided into subsections:

‘Maximum penalty (subsection (3)): 20 penalty units.’.

2 The following penalty at the end of a subsection, but not at the end of a section:

‘Maximum penalty:

(a) for paragraph (b)—20 penalty units; or

(b) for another paragraph—50 penalty units, imprisonment for 6 months or both.’.

- (2) If an offence is not expressly mentioned in the section, subsection or relevant provision, the penalty indicates that contravention of the

section, subsection or relevant provision is an offence punishable on conviction as provided by subsection (4).

Example of a penalty applying to the whole of a section or subsection

A person must not contravene a notice.

Maximum penalty: 20 penalty units.

Example of a penalty applying to a stated provision (par (b))

(2) The register of transactions—

(a) may be kept in electronic form; and

(b) must contain the particulars mentioned in section 91C.

Maximum penalty (paragraph (b)): 20 penalty units.

- (3) If an offence is expressly mentioned in the section, subsection or relevant provision, the penalty indicates that the offence is punishable on conviction as provided by subsection (4).

Example of a penalty applying to the whole of a section or subsection

A person who contravenes a notice commits an offence.

Maximum penalty: 20 penalty units.

Example of a penalty applying to a stated provision (par (a))

(2) If a person retains possession of the person's identity card after ceasing to be an officer—

(a) the person commits an offence; and

(b) the identity card is forfeited to the Territory.

Maximum penalty (paragraph (a)): 20 penalty units.

- (4) The penalty that may be imposed for the offence is—
- (a) if only a single penalty is stated (whether as a maximum penalty or a penalty)—not more than the stated penalty; or
- (b) if a minimum as well as a maximum penalty is stated—not less than the minimum and not more than the maximum.
- (5) If—
- (a) a penalty (however expressed) is stated in a law at the end of a section divided into subsections; and

- (b) another penalty (however expressed) is stated at the end of another subsection of the section; and
- (c) the first penalty is not expressed in a way that indicates that it applies only to a particular provision of the last subsection;

the first penalty is taken, for this section, to be expressed in a way that indicates that it applies only to the last subsection.

Example for s (5)

In the following example, subsection (4) is the last subsection and the penalty stated at the end applies only to that subsection:

‘(2) A permit holder must record all transactions under this Act.

Maximum penalty: 20 penalty units.

(3) If a permit holder is convicted of an offence against subsection (2), the registrar must cancel the permit.

(4) A permit holder must not sell a declared substance in contravention of this Act.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.’.

- (6) In working out for this section whether a penalty is at the end of a section or subsection, the position of any example or note is to be disregarded.
- (7) In applying this section to a subordinate law or disallowable instrument or to a provision of a schedule to an Act, a reference to a section or subsection is a reference to a corresponding provision of the law, instrument or schedule.

135 Penalties not at end of sections and subsections (IA s 33)

- (1) This section applies if a penalty (however expressed) is stated in a provision of a law other than at the end of a section or subsection.
- (2) If an offence is expressly mentioned in the provision, the penalty indicates that the offence is punishable on conviction as provided by subsection (4).

Example

A person who contravenes subsection (3) commits an offence punishable by a fine not exceeding 20 penalty units.

- (3) If an offence is not expressly mentioned in the provision, the penalty indicates that contravention of the provision (or a stated part of the provision) is an offence punishable on conviction as provided by subsection (4).

Example

A person who contravenes subsection (3) must pay a fine not exceeding 20 penalty units.

- (4) The penalty that may be imposed for the offence is—
- (a) if only a single penalty is stated (whether as a maximum penalty or a penalty)—not more than the stated penalty; or
 - (b) if a minimum as well as a maximum penalty is stated—not less than the minimum and not more than the maximum.
- (5) In working out for this section whether a penalty is at the end of a section or subsection, the position of any example or note is to be disregarded.
- (6) In applying this section to a subordinate law or disallowable instrument or to a provision of a schedule to an Act, a reference to a section or subsection is a reference to a corresponding provision of the law, instrument or schedule.

136 Indictable and summary offences (IA s 33D and 33E)

- (1) An offence is an *indictable offence* if—
- (a) it is punishable by imprisonment for longer than 1 year; or
 - (b) it is declared by a law to be an indictable offence.
- (2) Any other offence is a *summary offence* and is punishable on summary conviction.

Chapter 15 Aids to interpretation

Note for ch 15 See also *Interpretation Act 1967*, s 7, s 11A and s 11B.

Part 15.1 General

144 Meaning of commonly-used words and expressions (IA s 11F (1))

A definition in the dictionary, part 1 applies to all Acts and statutory instruments.

Note See s 130 for the definition of **definition** and s 131 for provisions about signpost definitions.

145 Gender and number (IA s 19)

In an Act or statutory instrument, except so far as the contrary intention appears—

- (a) words indicating a gender include every other gender; and
- (b) words in the singular number include the plural and words in the plural number include the singular.

146 Meaning of **may** and **must** (IA s 16)

- (1) In an Act or statutory instrument, the word **may**, or a similar word or expression, used in relation to a function indicates that the function may be exercised or not exercised, at discretion.

Note **Function** is defined in the dict, pt 1 to include authority, duty and power.

- (2) In an Act or statutory instrument, the word **must**, or a similar word or expression, used in relation to a function indicates that the function is required to be exercised.
- (3) This section applies to an applicable law or applicable provision despite any presumption or rule of interpretation.

- (4) However, this section does not apply to an applicable law or applicable provision if the applicable law, or the law containing the applicable provision, expressly provides that this section does not apply.
- (5) This section applies to any other Act, statutory instrument, or provision of an Act or statutory instrument, except so far as the contrary intention appears.
- (6) In this section:

applicable law means an Act enacted, or a subordinate law or disallowable instrument made, after 1 January 2000.

applicable provision means a provision inserted after 1 January 2000 into an Act, or a subordinate law or disallowable instrument, that is not an applicable law.

147 Changes of drafting practice not to affect meaning (IA s 11C)

- (1) The purpose of this section is to encourage the making of progressive improvements in the form of the statute book without inadvertently changing the substantive effect of the law.

Note See also s 96 (Relocated provisions).

- (2) This is to be achieved particularly by updating the language and structure of Acts and statutory instruments to replace older forms of legislative expression with forms reflecting current legislative drafting practice.
- (3) If an Act or statutory instrument is amended so that it contains an older form of legislative expression in one provision and a newer form in another, the ideas in the 2 provisions must not be regarded as different only because different words are used or the provisions are structured in different ways.
- (4) Subsection (3) also applies if the provisions are in different Acts or statutory instruments.

- (5) Also, if an Act or statutory instrument is amended so that a provision containing an older form of legislative expression is replaced (whether or not in the same position) by a provision in a newer form, the ideas in the 2 provisions must not be regarded as different only because different words are used or the provisions are structured in different ways.
- (6) In deciding whether the ideas are different, regard must be had to the context and history of the 2 provisions.
- (7) Subsection (6) does not limit the matters to which regard may be had.

148 Terms used in instruments have same meanings as in authorising laws (IA s 11BA)

Except so far as the contrary intention appears, words and expressions used in a statutory instrument have the same meanings as they have, from time to time, in the Act or statutory instrument (the *authorising law*), or the relevant provisions of the authorising law, under which the instrument is made or in force.

149 Age in years (IA s 13D)

For an Act or statutory instrument, a person is an age in years at the beginning of the person's birthday for the age, except so far as the contrary intention appears.

150 Measurement of distance (IA s 35)

In applying an Act or statutory instrument, distance is to be measured in a straight line on a horizontal plane, except so far as the contrary intention appears.

Part 15.2 Definitions

Note to pt 15.2 See also s 130 (What is a definition?), s 131 (Signpost definitions) and s 148 (Terms used in instruments have same meanings as in authorising laws).

155 Definitions apply subject to contrary intention (IA s 11G)

A definition in an Act or statutory instrument applies except so far as the contrary intention appears.

156 Application of definitions in dictionaries and sections (IA s 11F (2))

- (1) A definition in the dictionary to an Act or statutory instrument applies to the entire Act or instrument unless the Act or instrument provides for the definition to have a more limited application.

Examples

- 1 The dictionary to the *ABC Act 1999* includes the signpost definition '*x*—see the *XYZ Act 1998*, section 3.'. There is nothing in the *ABC Act 1999* indicating the intended application of the definition of *x*. The definition of *x* in the *XYZ Act 1998*, section 3, therefore, applies to the entire *ABC Act 1999*.
- 2 In an Act, the word *z* is defined in the dictionary. The definition provides, in part, that '*z*, in part 4 (Registration of vehicles), means ...'. The definition of *z* applies only to part 4.

Note See s 144 (Meaning of commonly-used words and expressions) for the application of the definitions in the dict, pt 1 to this Act.

- (2) A definition in a section of an Act or statutory instrument applies only to the section unless the Act or instrument provides for the definition to have a broader application.

Examples

- 1 Section 255 (4) of this Act (Forms) contains definitions of **form 1** and **form 2** as tagged terms. There is nothing in this Act indicating that the definitions apply outside section 255. The definitions apply only to section 255.
- 2 In part 6 of an Act, the word **a** is defined in a section, which is not divided into subsections but contains a number of definitions. The section begins with the words 'In this part:'. The definition of **a** applies to all of part 6.
- 3 In an Act, the word **b** is defined in a section, which is not divided into subsections but contains a number of definitions. The section begins with the words 'In this Act:'. The definition of **b** applies to the entire Act.

- (3) A definition in a section of an Act or statutory instrument applies to the entire section unless the Act or instrument provides for the definition to have a more limited application.

Example

In a subsection of a section of an Act, the word *c* is defined. The subsection begins with the words ‘In subsection (3):’. The definition of *c* applies only to subsection (3) of that section.

- (4) In applying this section to a statutory instrument or to a provision of a schedule to an Act, a reference to a section is a reference to a corresponding provision of the instrument or schedule.

157 Defined terms—other parts of speech and grammatical forms (IA s 11E)

If an Act or statutory instrument defines a word or expression, other parts of speech and grammatical forms of the word or expression have corresponding meanings, except so far as the contrary intention appears.

Part 15.3 References to various entities and things

Note to pt 15.3 See also ch 10 (Referring to laws).

160 References to people generally (IA s 15)

- (1) In an Act or statutory instrument, a reference to a person generally includes a reference to a corporation as well as an individual, except so far as the contrary intention appears.
- (2) Subsection (1) is not displaced only because there is an express reference to either an individual or a corporation elsewhere in the Act or statutory instrument.

Examples of references to a person generally

- 1 another person
- 2 anyone else

- 3 party
- 4 someone else
- 5 employer

Examples of express references to a corporation

- 1 body corporate
- 2 company

Examples of express references to an individual

- 1 adult
- 2 child
- 3 spouse
- 4 driver

161 Corporations liable to offences (IA s 32)

- (1) A provision of a law that creates an offence (whether indictable or summary) applies to corporations as well as to individuals, except so far as the contrary intention appears.
- (2) A provision of a law that creates an offence can apply to a corporation even though contravention of the provision is punishable by imprisonment (with or without another penalty).

Example

A provision of an Act contains the following penalty:

‘Maximum penalty: 2,000 penalty units, imprisonment for 1 year or both.’

The provision can apply to a corporation.

- (3) If a corporation is convicted of an offence and, apart from this subsection, the penalty for the offence is a period of imprisonment only, the court may impose a maximum penalty of—
 - (a) if the period of imprisonment is not longer than 6 months—50 penalty units; and
 - (b) if the period of imprisonment is longer than 6 months but not longer than 1 year—100 penalty units; and

- (c) if the period of imprisonment is longer than 1 year but not longer than 2 years—200 penalty units; and
- (d) if the period of imprisonment is longer than 2 years but not longer than 5 years—500 penalty units; and
- (e) if the period of imprisonment is longer than 5 years—1,000 penalty units.

Note Section 133 explains the meaning and value of penalty units.

- (4) In this section:

law means an Act, subordinate law or disallowable instrument.

162 References to a *Minister* or the *Minister* (IA s 24)

- (1) In an Act or statutory instrument, a reference to *a Minister* is a reference to the Chief Minister or a Minister appointed under the Self-Government Act, section 41.

Note See the definition of *Chief Minister* in the dict, pt 1.

- (2) In a provision of an Act or statutory instrument, a reference to *the Minister* without identifying the Minister's title or portfolio is a reference to—

- (a) the Minister for the time being administering the provision; or
- (b) if, for the time being, different Ministers administer the provision in relation to different matters—
 - (i) if only 1 Minister administers the provision in relation to the relevant matter—the Minister; or
 - (ii) if 2 or more Ministers administer the provision in relation to the relevant matter—any of the Ministers; or
- (c) if paragraph (b) does not apply and, for the time being, 2 or more Ministers administer the provision—any of the Ministers.

- (3) In subsection (2):

Minister includes a Minister for the time being acting on behalf of the Minister or 2 or more Ministers.

- (4) If an Act or statutory instrument mentions a Minister and identifies the Minister by reference to the fact that the Minister administers a stated Act, statutory instrument or provision, subsection (2) applies as if references in paragraphs (a) to (c) to the provision were references to the stated Act, instrument or provision.

Note See also the definitions of *Attorney-General* and *Treasurer* in the dict, pt 1.

163 References to a *chief executive* or *the chief executive* (IA s 24A)

- (1) In an Act or statutory instrument, a reference to **a *chief executive*** is a reference to a person employed under the Public Sector Management Act, section 28 (Engagement) or 30 (Temporary performance of duties) to perform the duties of an office of chief executive.
- (2) In a provision of an Act or statutory instrument, a reference to **the *chief executive*** without identifying the chief executive's title is a reference to—
- (a) the chief executive of the administrative unit responsible for the provision; or
 - (b) if, for the time being, different administrative units are responsible for the provision in relation to different matters—
 - (i) if only 1 administrative unit is responsible for the provision in relation to the relevant matter—the chief executive of the administrative unit; or
 - (ii) if 2 or more administrative units are responsible for the provision in relation to the relevant matter—the chief executive of any of the administrative units; or

- (c) if paragraph (b) does not apply and, for the time being, 2 or more administrative units are responsible for the provision—the chief executive of any of the administrative units.

Note See the definition of **administrative unit** in the dict, pt 1.

- (3) If an Act or statutory instrument mentions a chief executive and identifies the chief executive by reference to the fact that the chief executive is the chief executive of the administrative unit responsible for a stated Act, statutory instrument or provision, subsection (2) applies as if references in paragraphs (a) to (c) to the provision were references to the stated Act, instrument or provision.
- (4) In this section:

chief executive, of an administrative unit, means the person who is employed under the Public Sector Management Act, section 28 or 30 to perform the duties of the office of chief executive in the administrative unit.

Public Sector Management Act means the *Public Sector Management Act 1994*.

responsible, for a provision, means allocated responsibility for the provision under the Public Sector Management Act, section 14 (b).

164 References to Australian Standards (IA s 25AB)

In an Act or statutory instrument, a reference consisting of the words ‘Australian Standard’ followed by a number is a reference to the standard so numbered published by or on behalf of Standards Australia.

165 References to Assembly committees that no longer exist (IA s 25AA)

In an Act or statutory instrument, a reference (whether by name or description) to a committee of the Legislative Assembly that no longer exists is a reference to the committee of the Assembly

nominated by the Speaker either generally or for the provision containing the reference.

168 References to person with interest in land include personal representative etc

In an Act or statutory instrument, a reference to a person with an interest in land or other property includes a reference to the person's personal representatives, successors and assigns, except so far as the contrary intention appears.

Examples of references to persons with interests in land

- 1 proprietor
- 2 transferor or transferee
- 3 mortgagor or mortgagee
- 4 lessor or lessee
- 5 sublessor or sublessee
- 6 trustee

Chapter 16 Courts, tribunals and other decision-makers

175 Meaning of *law* in ch 16

In this chapter:

law means an Act, subordinate law or disallowable instrument, and includes a provision of a law.

176 Jurisdiction of courts and tribunals (IA s 31A)

- (1) This section applies if a law, whether expressly or by implication, authorises a proceeding (whether civil or criminal) to be brought in a particular court or tribunal in relation to a matter.
- (2) The law vests the court or tribunal with jurisdiction in the matter.

- (3) The jurisdiction so vested is not limited by any limits to which any other jurisdiction of the court or tribunal may be subject, except so far as the contrary intention appears.

177 Recovery of amounts owing under laws (IA s 34)

- (1) If an amount is owing under a law by a person to another person, the first person may recover the amount as a debt owing to the first person by the other person in a court of competent jurisdiction.
- (2) This section applies to a law except so far as the contrary intention appears.

178 Power to decide includes authority to administer oath etc (IA s 13E)

- (1) A court, tribunal or other entity authorised by a law to hear and decide a matter has authority—
- (a) to receive evidence; and
 - (b) to examine witnesses and, for that purpose, to administer oaths.
- (2) This section applies to a law except so far as the contrary intention appears.

179 Content of statements of reasons for decisions (IA s 13C)

- (1) This section applies if a law requires a tribunal or other entity making a decision to give written reasons for the decision, whether the expression ‘reasons’, ‘grounds’ or any other expression is used.
- (2) The document giving the reasons must also set out the findings on material questions of fact and refer to the evidence or other material on which the findings were based.
- (3) This section applies to a law unless the law expressly provides that this section does not apply.

180 Power to make decision includes power to reverse or change (IA s 27)

- (1) Power given by a law to make a decision includes power to reverse or change the decision.
- (2) The power to reverse or change the decision is exercisable in the same way, and subject to the same conditions, as the power to make the decision.

Example

If the power to include land in a special reserve is exercisable only on the resolution of the Legislative Assembly, the power to excise land from a special reserve is exercisable only on the resolution of the Assembly.

- (3) This section applies to a law except so far as the contrary intention appears.

Chapter 17 Entities and positions

185 Meaning of *law* in ch 17

In this chapter:

law means an Act, subordinate law or disallowable instrument, and includes a provision of a law.

186 Application of ch 17

This chapter applies to a law except so far as the contrary intention appears.

187 Change of name of entity (IA s 13B)

- (1) This section applies if a law changes the name of an entity established under a law.

Note See the definition of *entity* in the dict, pt 1.

- (2) The entity continues in existence under the new name and its identity is not affected by the change.

- (3) A reference in a law or instrument to the entity by its previous name is taken, after the change, to be a reference to the entity by its new name.

188 Change in constitution of entity (IA s 13BA)

- (1) This section applies if a law changes how an entity established under a law is constituted.
- (2) The entity continues in existence as newly constituted and its identity is not affected by the change.
- (3) Without limiting subsection (2), the change does not affect—
- (a) any function, right, privilege, liability or property of the entity; or
 - (b) the bringing of a proceeding, or the continuation of a proceeding, by or against the entity; or
 - (c) the carrying out of an investigation or inquiry, or the continuation of an investigation or inquiry, in relation to anything done or not done by or in relation to the entity.

Note **Function** is defined in the dict, pt 1 to include authority, duty and power.

189 References to occupant of position (IA s 25)

In an Act or statutory instrument, a reference to the occupant of a position (however expressed) includes a reference to anyone for the time being occupying the position.

Note See s 200 (1) (Functions of occupants of positions) and the definitions of *occupy* and *position* in the dict, pt 1.

190 Change of name of position (IA s 13B)

- (1) This section applies if a law changes the name of a position established under a law.

- (2) The position continues in existence under the new name and its identity is not affected by the change.
- (3) A reference in a law or instrument to the position by its previous name is taken, after the change, to be a reference to the position by its new name.

191 Chairperson and deputy chairperson (IA s 25A)

- (1) If a law establishes a position of chairperson of an entity, the chairperson may be referred to as chairman, chairwoman or chair.
- (2) If a law establishes a position of deputy chairperson of an entity, the deputy chairperson may be referred to as deputy chairman, deputy chairwoman or deputy chair.

Chapter 18 Administrative and machinery provisions

Part 18.1 Introductory

195 Meaning of *law* in ch 18

In this chapter:

law means an Act, subordinate law or disallowable instrument, and includes a provision of a law.

Part 18.2 Functions

Note for pt 18.2 **Function** is defined in the dict, pt 1 to include authority, duty and power.

**196 Provision giving function gives power to exercise
function (IA s 25B)**

- (1) A provision of a law that gives a function to an entity also gives the entity the powers necessary and convenient to exercise the function.

Note See the definition of **entity**, in the dict, pt 1.

- (2) The powers given to the entity under subsection (1) are additional to any other powers of the entity under the law.

197 Statutory functions may be exercised from time to time
(IA s 26 (1))

- (1) If a law gives a function to an entity, the function may be exercised from time to time.
- (2) This section applies to a law except so far as the contrary intention appears.

199 Functions of bodies (IA s 13BB)

- (1) If a law authorises or requires a body to exercise a function, it may do so by resolution.

Note See the definition of **body**, in the dict, pt 1.

- (2) If a law authorises or requires a signature by a person and the person is a body, the signature of a person authorised by the body for the purpose is taken to be the signature of the body.
- (3) If a law gives a function to a body, the function may be exercised by the body as constituted for the time being.
- (4) The exercise of the function is not affected only because of vacancies in the body's membership.
- (5) If a body as constituted for the time being does something in exercise of a function given to the body under a law, the thing done by the body does not end only because the membership of the body changes.

Note See also s 211 (Appointment not affected by appointer changes), s 224 (Acting appointment not affected by appointer changes), and s 241 (Delegation not affected by appointer changes).

- (6) Subsection (5) does not prevent the thing done by the body being ended or changed by the body as subsequently constituted for the time being.

200 Functions of occupants of positions (IA s 26 (2), s 30AA)

- (1) If a law gives a function to the occupant of a position, the function may be exercised by the person for the time being occupying the position.

Note See s 189 (References to occupant of position) and the definitions of *occupy* and *position* in the dict, pt 1.

- (2) If the person for the time being occupying a position does something in exercise of a function given to the occupant of the position under a law, the thing done by the person does not end only because the person ceases to be the occupant of the position.

Note See also s 211 (Appointment not affected by appointer changes), s 224 (Acting appointment not affected by appointer changes), and s 241 (Delegation not affected by appointer changes).

- (3) Subsection (2) does not prevent the thing done by the person being ended or changed by any person subsequently occupying the position for the time being.

Part 18.3 Appointments

Division 18.3.1 Appointments—other than acting appointments

205 Application of div 18.3.1 (IA s 28 (1))

- (1) This division applies if a law authorises or requires an entity (the *appointer*) to appoint a person—
- (a) to a position under a law; or
 - (b) to exercise a function or do anything else under a law.

Note **Function** is defined in the dict, pt 1 to include authority, duty and power.

- (2) This division applies to a law except so far as the contrary intention appears.

206 Appointment must be in writing etc (IA s 28 (7))

An appointment must be made, or evidenced, by writing signed by the appointer.

207 Appointment may be by name or position (IA s 28 (2))

- (1) The appointer may make an appointment by—
- (a) naming the person appointed; or
 - (b) nominating the occupant of a position (however described), at a particular time or from time to time.
- (2) For this division, the person named, or the occupant of the position nominated, is the *appointee*.

208 Power of appointment includes power to suspend etc (IA s 28 (3) to (5))

- (1) The appointer's power to make the appointment includes the power—
- (a) to suspend the appointee, and end the suspension; or
 - (b) to end the appointment, and appoint someone else or reappoint the appointee if the appointee is eligible to be appointed to the position; or
 - (c) to reappoint the appointee if the appointee is eligible to be appointed to the position.
- (2) The power to suspend the appointee, or end the appointment, is exercisable in the same way, and subject to the same conditions, as the power to make the appointment.

Example

If the appointment power is exercisable only on the recommendation of a body, the power to suspend, or end the appointment, is exercisable only on the recommendation of the body.

209 Power of appointment includes power to make acting appointment (IA s 28 (4) to (6))

- (1) If the appointer's power is the power to make an appointment to a position, the power to make the appointment also includes power to appoint a person, or 2 or more people, to act in the position—
- (a) during any vacancy, or all vacancies, in the position, whether or not an appointment has previously been made to the position; or
 - (b) during any period, or all periods, when the appointee cannot for any reason exercise functions of the position.

Examples for par (b)

- 1 The appointee is ill or on leave.
- 2 The appointee is acting in another position.
- 3 The appointee is outside the ACT or Australia.

Note **Function** is defined in the dict, pt 1 to include authority, duty and power.

- (2) The power to appoint a person to act is exercisable in the same way, and subject to the same conditions, as the power to make the appointment.

Example

If the appointment power is exercisable only on the recommendation of a body, the power to appoint a person to act is exercisable only on the recommendation of the body.

- (3) Without limiting subsection (2), if the law (or another law) requires—
- (a) the appointee to hold a qualification; or

- (b) the appointer (or someone else) to be satisfied about the appointee's suitability (whether in terms of knowledge, experience, character or any other personal quality) before appointing the appointee to the position;

a person may only be appointed to act in the position if the person holds the qualification or the appointer (or other person) is satisfied about the person's suitability.

Examples

- 1 If an Act requires the appointee to be a magistrate, a person can be appointed to act in the position only if the person is a magistrate.
- 2 If a regulation requires the appointee to be a lawyer of at least 5 years standing, a person can be appointed to act in the position only if the person is a lawyer of at least 5 years standing.
- 3 If an Act requires the appointee to have, in the Executive's opinion, appropriate expertise, training or experience in relation to the needs of a particular group of people, a person can be appointed to act in the position only if the person has, in the Executive's opinion, that expertise, training or experience.

210 Resignation of appointment (IA s 28 (8), (9))

- (1) An appointment ends if the appointee resigns by signed notice of resignation given to the appointer.
- (2) However, if the appointer is the Executive, the notice of resignation may be given to a Minister.

211 Appointment not affected by appointer changes

- (1) If the appointer is a body, an appointment made by the body does not end only because the membership of the body changes.
- (2) If the appointer is the person for the time being occupying a position, an appointment made by the person does not end only because the person ceases to be the occupant of the position.
- (3) This section does not limit the following sections:
 - section 199 (Functions of bodies)

- section 200 (Functions of occupants of positions).

212 Appointment not affected by defect etc (IA s 28 (10))

An appointment, or anything done under an appointment, is not invalid only because of a defect or irregularity in or in relation to the appointment.

Division 18.3.2 Acting appointments

215 Application of div 18.3.2 (IA s 28A (1))

- (1) This division applies if a law gives an entity (the *appointer*) power to appoint a person to act in a position under a law.

Note A power to make an appointment includes power to make an acting appointment (see s 209).

- (2) This division applies to a law except so far as the contrary intention appears.

216 Acting appointment must be in writing etc (IA s 28 (7), (11))

An acting appointment must be made, or evidenced, by writing signed by the appointer.

217 Acting appointment may be made by name or position

- (1) The appointer may make an acting appointment by—
- (a) naming the person appointed; or
 - (b) nominating the occupant of a position (however described), at a particular time or from time to time.
- (2) For this division, the person named, or the occupant of the position nominated, is the *appointee*.

218 Instrument may provide when acting appointment has effect etc (IA s 28A (2))

The instrument making or evidencing the acting appointment may provide that the appointment has effect only in stated circumstances or subject to stated conditions or limitations.

Examples

- [1.19] The instrument relating to a standing (or dormant) acting appointment for a position provides that when the substantive occupant of the position (Y) is overseas X may act in the position, but may exercise stated powers of the position only with Y's approval.
- [1.20] X is appointed to act in Y's position if Y is out of the ACT and a declaration of acute fire danger is published under the *ABC Act 2000*.

219 Appointer may decide terms of acting appointment etc (IA s 28A (3))

- (1) The appointer may—
- (a) decide the terms of the acting appointment, including any remuneration and allowances; and
 - (b) end the appointment at any time.

Note See also s 221 (How long does an acting appointment operate?)

- (2) The power to end the acting appointment is exercisable in the same way, and subject to the same conditions, as the power to make the acting appointment.

Example

If the power to make the acting appointment is exercisable only on the recommendation of a body, the power to end the appointment is exercisable only on the recommendation of the body.

220 Appointee may exercise functions under acting appointment etc (IA s 28A (8))

While the appointee is acting in the position—

- (a) the appointee has, subject to the instrument making or evidencing the appointment, all the functions of the occupant of the position; and

- (b) all Territory laws apply in relation to the appointee as if the appointee were the occupant of the position.

Note **Function** is defined in the dict, pt 1 to include authority, duty and power.

221 How long does an acting appointment operate? (IA s 28A (4) to (6))

- (1) If the appointee acts in the position because it is vacant, the appointee may not act for more than 1 year after the position became vacant.

Note See also s 219 (Appointer may decide terms of acting appointment etc)

- (2) If the appointee is acting in a position that becomes vacant while the appointee is acting, the appointee may continue to act until the first of the following happens:

- (a) the appointer ends the appointment;
- (b) the vacancy is filled;
- (c) 1 year after the position became vacant.

- (3) If the appointee acts in the position because the occupant of the position cannot exercise functions and the occupant resumes the exercise of the functions, the appointment no longer authorises the appointee to act on that occasion.

Note **Function** is defined in the dict, pt 1 to include authority, duty and power.

222 Resignation of acting appointment (IA s 28 (8) to (11))

- (1) An acting appointment ends if the appointee resigns by signed notice of resignation given to the appointer.
- (2) However, if the appointer is the Executive, the notice of resignation may be given to a Minister.

223 Effect of acting appointment on substantive appointment etc (IA s 28A (7))

- (1) If the appointee is the occupant of another position under a law (the *substantive position*), the appointee does not cease to occupy the substantive position only because of the appointee's appointment or because the appointee acts under the appointment.
- (2) This section does not prevent an acting appointment being made to the substantive position.

224 Acting appointment not affected by appointer changes

- (1) If the appointer is a body, an acting appointment made by the body does not end only because the membership of the body changes.
- (2) If the appointer is the person for the time being occupying a position, an acting appointment made by the person does not end only because the person ceases to be the occupant of the position.
- (3) This section does not limit the following sections:
 - section 199 (Functions of bodies)
 - section 200 (Functions of occupants of positions).

225 Acting appointment not affected by defect etc (IA s 28 (10), (11), 28A (9))

- (1) An acting appointment, or anything done under an acting appointment, is not invalid only because of a defect or irregularity in or in relation to the appointment.
- (2) Anything done by or in relation to the appointee while the appointee purports to act in the position is not invalid only because—
 - (a) the occasion for the appointment had not arisen or had ended; or
 - (b) the appointment had ended; or

- (c) the occasion for the appointee to act had not arisen or had ended.

Part 18.4 Delegations

230 Application of pt 18.4 generally

- (1) This part applies if a law authorises or requires an entity (the *appointer*) to delegate (or subdelegate) a function.

Note **Function** is defined in the dict, pt 1 to include authority, duty and power.

- (2) For subsection (1), if a law gives a function to an entity, the law may be taken to authorise the delegation of the function even if the law provides for another way in which the function may be exercised.
- (3) This part applies to a law except so far as the contrary intention appears.

231 Application of pt 18.4 to subdelegations (IA s 30AB)

- (1) This part applies to the subdelegation of a function in the same way as it applies to the delegation of the function.
- (2) However, if a law authorises or requires an entity to delegate a function, the function may be subdelegated by the delegate only if the law (or another law) expressly authorises or requires the function to the subdelegated.

Note Section 231 (2) envisages a law that would allow the appointer (Y) to delegate Y's functions to X with authority for X to further delegate those functions (see, for example, *Public Sector Management Act 1994*, s 36). However, X's authority to subdelegate those functions would not in itself give X the authority to delegate Y's power of delegation. X could only exercise this power if the law also gave this authority. See s 236 which recognises that a law may expressly authorise a person to exercise another's power of delegation.

232 Delegation must be in writing etc

A delegation must be made, or evidenced, by writing signed by the appointer.

233 Delegation may be made by name or position (IA s 29A)

- (1) The appointer may delegate by—
 - (a) naming the person to whom the delegation is made; or
 - (b) nominating the occupant of a position (however described), at a particular time or from time to time.
- (2) For this part, the person named, or the occupant of the position nominated, is the *delegate*.

234 Instrument may provide when delegation has effect etc (IA s 29B (a))

The instrument making or evidencing a delegation may provide—

- (a) that the delegation has effect only in stated circumstances or subject to stated conditions, limitations or directions; or
- (b) that all of the function, or a stated part of the function, is delegated.

Examples

- 1 The delegation provides that, when the appointer (Y) is outside Australia, the delegate (X) may exercise her functions except that stated functions may only be exercised with Y's approval.
- 2 The delegation provides that X may enter into a contract for the purchase of property of not more than \$50 000 in value.
- 3 The delegation provides that X may grant licences under a stated Act but that, in considering applications, X must take account of the policy of the agency (authorised by the Act) that there should not be more than 100 licences current at any time.

235 Delegation may be made to 2 or more delegates

The appointer may delegate the appointer's function, or any part of the function, to 2 or more delegates.

236 Power to delegate may not be delegated (IA s 29B (b))

- (1) The appointer may not delegate the appointer's power to delegate.
- (2) A power to delegate may be delegated by the appointer only if a law expressly authorises or requires the power to be delegated.

Note Section 236 (2) envisages a law that would allow the delegate (X) to exercise the power of delegation of the appointer (Y). However, X's authority to exercise Y's power of delegation would not in itself give X the authority to exercise any of the functions to which Y's power of delegation applies. X could only exercise these functions if the law also gave this authority or Y delegated those functions to X. See s 231 which recognises that the law giving the appointer's power to delegate (or another law) may expressly authorise a subdelegation.

237 Delegation may be amended or revoked

- (1) The appointer may amend a delegation or revoke it in whole or part.
- (2) The power to amend or revoke a delegation is exercisable in the same way, and subject to the same conditions, as the power to delegate.

Example

If the power to delegate is exercisable only with the Minister's approval, the power to revoke the delegation is exercisable only with the Minister's approval.

238 Appointer responsible for delegated function

The delegation of a function, or a part of a function, does not relieve the appointer of the appointer's obligation to ensure that the function is properly exercised.

239 Exercise of delegation by delegate (IA s 29B (c), (e), s 30)

- (1) A delegate must exercise the delegation subject to any conditions, limitations or directions in the instrument making or evidencing the delegation.
- (2) All Territory laws apply to the delegate in the exercise of the delegation as if the delegate were the appointer.
- (3) Without limiting subsection (2), if the exercise of a function by the appointer is dependent on the appointer's opinion, belief or state of mind and the function is delegated, the function may be exercised by the delegate on the delegate's opinion, belief or state of mind.
- (4) Anything done by the delegate in the exercise of the delegation is taken to have been done by the appointer.

Note 1 Section 94 provides that a delegation under a law that is in force immediately before an amendment of the law continues to have effect as if made under the amended law.

Note 2 Section 196 gives a delegate the powers necessary or convenient to exercise a delegated function.

240 Appointer may exercise delegated function (IA s 29B (d))

A function that has been delegated may, despite the delegation, be exercised by the appointer.

241 Delegation not affected by appointer changes (IA s 30AA)

- (1) If the appointer is a body, a delegation made by the body does not end only because the membership of the body changes.
- (2) If the appointer is the person for the time being occupying a position, a delegation made by the person does not end only because the person ceases to be the occupant of the position.
- (3) This section does not limit the following sections:
 - section 199 (Functions of bodies)
 - section 200 (Functions of occupants of positions).

242 Delegation not affected by defect etc

- (1) A delegation, or anything done under a delegation, is not invalid only because of a defect or irregularity in or in relation to the delegation.
- (2) Anything done by or in relation to the delegate while the delegate purports to exercise the delegation is not invalid only because—
 - (a) the delegation had been amended or revoked; or
 - (b) the occasion for the delegate to exercise the delegation had not arisen or had ended.

Part 18.5 Service of documents

245 Application of pt 18.5 (IA s 17A (1))

This part applies to a document that is authorised or required under a law to be served (whether the word ‘serve’, ‘give’, ‘notify’, ‘send’ or ‘tell’ or any other word is used).

246 Definitions for pt 18.5

In this part:

administrator, of a law, means the entity administering or responsible for the law.

agency means—

- (a) an administrative unit; or
 - (b) a statutory office holder; or
 - (c) any other entity established for a public purpose under a law;
- and includes a member of, or a member of the staff of, the agency.

business address, of an individual, corporation or agency in relation to anything done or to be done under a law, includes the latest

business address, or address for service of notices (however described), of the individual, corporation or agency (if any) recorded in a register or other records kept by the administrator of the law.

corporation does not include an agency.

document includes a notice, an article that may be sent by post or anything else.

email address, of an individual, corporation or agency in relation to anything done or to be done under a law, includes the latest email address of the individual, corporation or agency (if any) recorded in a register or other records kept by the administrator of the law.

executive officer means—

- (a) for a corporation—a person (however described and whether or not the person is a director of the corporation) who is concerned with, or takes part in, the corporation's management; or
- (b) for an agency that is an administrative unit—the chief executive of the administrative unit; or
- (c) for an agency that is a statutory office holder—the occupant of the position; or
- (d) for an agency constituted by 2 or more people—the person who is entitled, because of the position occupied by the person, to preside at any meeting of the agency at which the person is present; or
- (e) for any other agency—the chief executive officer (however described) of the agency; or
- (f) for any agency—a person (however described) who is concerned with, or takes part in, the agency's management.

fax number, of an individual, corporation or agency in relation to anything done or to be done under a law, includes the latest fax

number of the individual, corporation or agency (if any) recorded in a register or other records kept by the administrator of the law.

home address, of an individual in relation to anything done or to be done under the law, includes the latest home address, or address for service of notices (however described), of the person (if any) recorded in a register or other records kept by the administrator of the law.

responsible, for a law, means allocated responsibility for the law under the *Public Sector Management Act 1994*, section 14 (b).

247 Service of documents on individuals (IA s 17A (1), 18)

A document may be served on an individual—

- (a) by giving it to the individual; or
- (b) by sending it by prepaid post, addressed to the individual, to a home or business address of the individual; or
- (c) by faxing it to a fax number of the individual; or
- (d) by emailing it to an email address of the individual; or
- (e) by leaving it, addressed to the individual, at a home or business address of the individual with someone who appears to be at least 16 years old and to live or be employed at the address.

Note See s 251 for service of documents under other laws.

248 Service of documents on corporations (IA s 17A (1), 18)

A document may be served on a corporation—

- (a) by giving it to an executive officer of the corporation; or
- (b) by sending it by prepaid post, addressed to the corporation (or an executive officer of the corporation), to the address of any of its registered offices or any other business address of the corporation; or

- (c) by faxing it to a fax number of the corporation; or
- (d) by emailing it to an email address of the corporation; or
- (e) by leaving it, addressed to the corporation (or an executive officer of the corporation), at the address of any of the corporation's registered offices, or any other business address of the corporation, with someone who appears to be at least 16 years old and to be employed at the address.

Note See s 251 for service of documents under other laws.

249 Service of documents on agencies (IA s 17A (1), 18)

A document may be served on an agency—

- (a) by giving it to an executive officer of the agency; or
- (b) by sending it by prepaid post, addressed to the agency (or an executive officer of the agency), to the address of any office of the agency or any other business address of the agency; or
- (c) by faxing it to a fax number of the agency; or
- (d) by emailing it to an email address of the agency; or
- (e) by leaving it, addressed to the agency (or an executive officer of the agency), at the address of any of the agency's offices or any other business address of the agency with someone who appears to be employed at the agency.

Note See s 251 for service of documents under other laws.

250 When service taken to be effected (IA s 18)

- (1) A document served by post under this part is taken to be served when the document would have been delivered in the ordinary course of post.
- (2) However, subsection (1) does not affect the operation of the *Evidence Act 1995* (Cwlth), section 160.

Note The *Evidence Act 1995* (Cwlth), s 160 provides a rebuttable presumption that a postal article sent by prepaid post addressed to a person at an address in Australia or an external Territory was received on the 4th working day after posting.

- (3) If the sender has no reason to suspect that a document served by fax or email under this part was not received by the recipient when sent, the document is presumed to be served when sent unless evidence sufficient to raise doubt about the presumption is adduced.
- (4) For subsection (3), the sender has reason to suspect that a document served by fax or email under this part was not received by the recipient when sent only if, on the day the document was sent or on the next working day, the equipment the sender used to send the document indicated by way of a signal or other message that—
 - (a) the equipment did not send the document when the equipment was used to send the document; or
 - (b) for a fax—the number to which the fax was sent to the recipient was not a fax number of the recipient; or
 - (c) for an email—the address to which the email was sent was not an email address of the recipient.
- (5) A document addressed to the recipient, and left for the recipient as mentioned in section 247 (e), 248 (e) or 249 (e), is taken to be served when it was left.
- (6) In this section:

recipient, for a document, means the individual, corporation or agency on whom the document is intended to be served.

sender, for a document served, or to be served, by fax or email, means the person sending, or seeking to send, the document.

251 Other laws not affected etc (IA s 17A (2) (a))

- (1) This part does not affect the operation of any other law that authorises or requires service of a document otherwise than as provided under this part.
- (2) Despite this part, a law (or, if the law is an Act, regulations under the Act) may provide—
 - (a) that a document of a particular kind may or must be served (however described) only in a particular way or to a particular address or number; or
 - (b) provide for the date (or date and time) when service (however described) of a document is taken to have been made.

252 Powers of courts and tribunals not affected (IA s 17A (2) (b))

This part does not affect the power of a court or tribunal to authorise or require service of a document otherwise than as provided under this part.

Part 18.6 Other provisions

255 Forms (IA s 13)

- (1) This section applies if an Act (the *authorising law*) authorises a form to be approved or prescribed under 1 of the following (the *relevant law*):
 - (a) the authorising law; or
 - (b) another Act or statutory instrument.
- (2) The authorising law authorises a form to be approved or prescribed with respect to any matter under or related to the relevant law.
- (3) To avoid any doubt, a form may be approved or prescribed for a provision of the relevant law even though the provision does not mention a form.

Example

The X Act, section 23 provides for a person to apply for registration but makes no mention of a form for the application. However, section 80 (1) of the Act provides:

The Minister may, in writing, approve forms for this Act.

Because section 80 (1) permits a form to be approved ‘for this Act’, section 255 of the *Legislation Act 2001* applies in relation to section 23 and the Minister may approve a form for the application.

- (4) Substantial compliance with a form is sufficient.
- (5) However, if a form requires—
 - (a) the form to be signed; or
 - (b) the form to be prepared in a particular way (for example, on paper of a particular size or quality or in a particular electronic form); or
 - (c) the form to be completed in a particular way; or
 - (d) particular information to be included in the form, or a particular document to be attached to or given with the form; or
 - (e) the form, information in the form, or a document attached to or given with the form, to be verified in a particular way (for example, by statutory declaration);the form is properly completed only if the requirement is complied with.
- (6) Despite subsection (5), the person need not comply with the requirement mentioned in subsection (5) (d) (and the form is taken to be properly completed despite the noncompliance) if—
 - (a) the form is approved or prescribed for a purpose; and
 - (b) the information or document is not reasonably necessary for the purpose.

Examples

- 1 A person need not comply with a requirement of an approved form to include personal information (eg marital status) irrelevant to a purpose for which the form is required.
 - 2 A person need not comply with a requirement of an approved form that has some relevance to a purpose for which the form is required, but intrudes to an unreasonable extent on personal privacy.
- (7) If—
- (a) a form (*form 1*) may be approved or prescribed for a purpose; and
 - (b) another form (*form 2*) may be approved or prescribed for the same or another purpose; and
 - (c) separate forms 1 and 2 are approved or prescribed;
- a combination form, consisting of forms 1 and 2, may be approved or prescribed and used for the purpose or purposes.
- (8) If, under a law, a form is authorised or required to be filed with (however described), or served on (however described), a person, the form may be filed with, or served on, someone else under arrangements made between them.
- (9) This section applies in relation to a law except so far as the contrary intention appears.

256 Production of records kept in computers etc (IA s 13A)

- (1) This section applies if—
- (a) a person uses an electronic or other device to keep a record of information; and
 - (b) a law requires the person (however the law is expressed) to give the information, or a document containing the information, to an authority.

(2) The requirement obliges the person to give to the authority a document that accurately reproduces or contains the information in a form that can be understood by the authority.

(3) In this section:

authority means a court, tribunal or other entity.

Explanatory notes

General explanatory note for ch 12 to ch 18

The amendments of the *Legislation Act 2001* relocate to that Act the bulk of the provisions in the *Interpretation Act 1967*. Most of these provisions will be located in new chapters 12 to 18. As with earlier revisions of these kinds of provisions, the opportunity has been taken, wherever practicable, to restate, restructure and rearrange provisions to improve their clarity and accessibility.

Most of the provisions of the *Interpretation Act 1967* are expressed to apply to ‘an Act’ but they apply also to subordinate laws, disallowable instruments and instruments of an administrative nature because of the *Subordinate Laws Act 1989*, sections 9 and 10 (which will be repealed when the *Legislation Act 2001* commences). The provisions of the *Legislation Act 2001*, on the other hand, indicate on their face their application to laws and instruments. Most of the provisions in Parts 12 to 18 are expressed to apply to a ‘law’. This term is used in parts 16 to 18 and is defined in each of those parts to mean an Act, a subordinate law (defined in the *Legislation Act 2001*, s 8), a disallowable instrument (defined in the *Legislation Act 2001*, s 9) or a provision of Act, a subordinate law or a disallowable instrument. The term ‘law’ is also used with the same meaning in proposed sections 133 to 135 (see the def of *law* in s 125). The effect is that the provisions of the *Legislation Act 2001* that are expressed to apply to a ‘law’ will apply to a slightly narrower range of instruments than the corresponding provision of the *Interpretation Act 1967*. A smaller number of provisions of the *Legislation Act 2001* (see s 126 to 132 and ch 15) are expressed to apply to Acts and ‘statutory instruments’ (a term defined in the *Legislation Act 2001*, s 13). The effect of the definition of statutory instrument is that these provisions of the *Legislation Act 2001* will have substantially the same application as the corresponding provision of the *Interpretation Act 1967*.

Chapter 12 Scope of Acts and statutory instruments

For s 120 Act to be interpreted not to exceed legislative powers of Assembly

Proposed section 120 reproduces the effect of the *Interpretation Act 1967*, section 11AA in more up-to-date language. The section is a response to questions that arise from time to time about the validity or constitutionality of Acts. The Legislative Assembly does not have unfettered law-making powers, so what should a court or tribunal do if an Act

appears to exceed the Assembly's law-making powers? The section is intended to guide courts and others to read the laws as intended to operate within the scope of the Assembly's law-making powers. Because of section 120, an Act may be interpreted and applied more narrowly than the language of the Act suggests at first view.

For s 121

There is no section 121 at this stage.

For s 122 Application to Territory

Bearing in mind that laws of the Territory are usually dealing with people and situations connected with the Territory, it would be tedious to be always inserting descriptive words indicating this fact. Proposed section 122 recognises this and lays down a general rule that references to persons and situations are to be understood as referring to people and situations in or of the Territory. At the same time, the words 'except so far as the contrary intention appears' allow for provisions in laws or instruments that may need to refer to something not belonging to the Territory (for example, the NSW Fire Brigade or the Commonwealth Ombudsman) to use the necessary descriptive words (such as 'NSW' or 'of the Commonwealth'). Section 122 reproduces the effect of *Interpretation Act 1967*, section 23A and is expressed to apply to an Act or a statutory instrument (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch 12 to ch 18.

For s 123-124

There are no sections 123 and 124 at this stage.

Chapter 13 Structure of Acts and statutory instruments

Part 13.1 General

For s 125 Meaning of law in ch 13

This section defines law for chapter 13.

For s 126 Material that is part of an Act or statutory instrument

This section identifies the provisions that are to be regarded from the point of view of the law as forming part of an Act or statutory instrument. Traditionally, the law considered that certain parts of the text of a law (for example, punctuation) were not to be regarded as forming part of the law. This of course had implications when a court came to interpret the law. Broadly speaking, section 126 may be regarded as bringing the technical or legal view of what forms part of a law largely into line with what could be described as a common sense view of what the law consists of. Section 126 reproduces the effect of *Interpretation Act 1967*, section 11H and is expressed to apply to an Act or a statutory instrument (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch 12 to ch 18. Section 126 (7) makes it clear that in the application of this

section to a statutory instrument or a schedule to an Act, the term ‘section’ includes provisions such as ‘regulation’ or ‘clause’.

For s 127 Material that is not part of an Act or statutory instrument

Section 127 complements section 126 by identifying provisions that from a legal point of view do *not* form part of the law. Essentially, the provisions mentioned in section 127 are explanatory in nature and the section is intended to avoid any doubt about the cut-off between the two kinds of provisions. The section reproduces the effect of *Interpretation Act 1967*, section 12 and is expressed to apply to an Act or a statutory instrument (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch 12 to ch 18. Section 127 (6) makes it clear that in the application of this section to a statutory instrument or a schedule to an Act, the term ‘section’ includes provisions such as ‘regulation’ or ‘clause’.

For s 128-129

There are no sections 128 and 129 at this stage.

Part 13.2 Particular kinds of provisions

General explanatory note for pt 13.2

Part 13.2 deals with various kinds of provisions that affect the structure and operation of legislation.

For s 130 What is a definition?

Definitions are useful tools to improve the precision of terms in legislation and instruments. Section 130 seeks to explain the nature of definitions. The examples and notes to the section provide illustrations of various kinds of definitions. Section 130 is adapted from the *Interpretation Act 1967*, dictionary, def of **definition** and is expressed to apply to an Act or a statutory instrument (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch 12 to ch 18.

For s 131 Signpost definitions

Section 131 defines a particular kind of definition and should be read in conjunction with section 130. Signpost definitions are a convenient form of definition. Section 131 is adapted from the *Interpretation Act 1967*, dictionary, def of **see** and is expressed to apply to an Act or a statutory instrument (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch 12 to ch 18.

For s 132 Examples

Examples are a useful tool to improve the clarity of legislation and instruments. Laws and instruments are generally addressed to a wide range of situations. One result of this is that their language tends to be quite abstract (particularly to anyone who is unfamiliar with the subject matter of the law or instrument). Examples provide a concrete way of showing

how a law or instrument is intended to operate. Section 132 reproduces the effect of *Interpretation Act 1967*, section 11D and is expressed to apply to an Act or a statutory instrument (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch 12 to ch 18.

For s 133 Penalty units

Penalty units provide a convenient way of specifying a penalty for an offence. Rather than specifying an amount of dollars, laws may indicate a number of penalty units as the penalty. Section 133 (1) defines the value for each penalty unit. One advantage of this approach is that changes to the level of penalties to reflect the impact of inflation need only be made to section 133 (1). The increased value for a penalty unit will therefore apply to each existing offence without the need to amend hundreds of statutory provisions. As the note to section 133 (1) indicates, the operation of paragraph (b) is qualified by section 273 (see the explanatory note for that section). Section 133 (2) indicates that another law may exclude the operation of section 133. The section reproduces the effect of *Interpretation Act 1967*, section 33AA and is expressed to apply to a ‘law’ (a term defined in the *Legislation Act 2001*, s 125)—see the General explanatory note for ch 12 to ch 18.

For s 134 Penalties at the end of sections and subsections

Section 134 is concerned with creating offences in the simplest possible way. In doing so the section takes account of the fact that provisions such as sections may be divided into subsections and paragraphs. Fundamentally, the section relies on the use of a penalty (eg, ‘Maximum penalty: 20 penalty units’—see s 133 which deals with penalty units) and the position the penalty occupies in a provision. (See section 134 (1) which distinguishes between—

- whether a penalty appears at the end of a section or subsection; and
- whether the penalty applies only to a *provision* of the section or subsection or to the *whole* of the section or subsection.)

As the first example to section 134 (2) illustrates, it is possible to create an offence against a provision simply by stating a duty (‘A person must not contravene a notice.’) and attaching a penalty to the provision (eg, ‘Maximum penalty: 20 penalty units’). On the other hand, the context or subject matter of the legislation may require a different approach, as illustrated by the first example to section 134 (3). In this case the provision indicates that an offence is involved (‘A person who contravenes a notice commits an offence.’) and, once again, a penalty is attached. In each case, it should be noted, the imposition of the penalty will not happen unless the person is convicted. In other words, the traditional role of the courts is preserved by these provisions. Section 134 (4) introduces a further options, if required: the penalty stated may simply be a maximum penalty or it may state a minimum and a maximum penalty. If only a maximum penalty is stated, the penalty that the court may impose may not be more than the penalty indicated. If a minimum and a maximum penalty are stated, the penalty that the court may impose

must be not less than the minimum nor more than the maximum. Section 134 (5) is a new provision which enables a penalty to be set out at the end of the last subsection in a section without the need to expressly label the penalty as applying only to that subsection. In the absence of section 134 (5) or a specially limited penalty, a penalty set out at the end of the section would apply to an offence against earlier subsections because such an offence would be an offence against the section (see section 134 (2) and (3)). Section 134 (5) is a particular example of a contrary intention limiting the otherwise general application of a penalty at the end of a section divided into subsections. Section 134 (7) makes it clear that in the application of this section to a subordinate law (see the *Legislation Act 2001*, s 8) or disallowable instrument (see the *Legislation Act 2001*, s 9) or to a schedule to an Act, the term ‘section’ includes provisions such as ‘regulation’ or ‘clause’. The section reproduces the effect of *Interpretation Act 1967*, section 32A and applies to a ‘law’ (a term defined in the *Legislation Act 2001*, s 125)—see the General explanatory note for ch 12 to ch 18.

For s 135 Penalties not at the end of sections and subsections

This section deals with cases where the penalties are stated within the body of a section or subsection rather than at the end (see s 134). Section 134 (2) provides for a case where the section or subsection mentions that an offence is created and section 134 (3) deals with a case where no offence is mentioned. In each case, however, the mention of a penalty indicates that an offence has been created punishable on conviction. As in section 134 (4), the penalty may be a maximum penalty or a penalty fixed between the limits of a minimum and a maximum (see s 135 (4)). Section 135 (6) makes it clear that in the application of this section to a subordinate law (see the *Legislation Act 2001*, s 8) or disallowable instrument (see the *Legislation Act 2001*, s 9) or to a schedule to an Act, the term ‘section’ includes provisions such as ‘regulation’ or ‘clause’. Section 135 reproduces the effect of *Interpretation Act 1967*, section 33 and is expressed to apply to a ‘law’ (a term defined in the *Legislation Act 2001*, s 125)—see the General explanatory note for ch 12 to ch 18.

For s 136 Indictable and summary offences

The legal system of the ACT recognises two kinds of offences: indictable offences (generally, serious offences that are heard before a judge and jury) and summary offences (generally, less serious offences that are heard before a magistrate). Subsection (1) defines an indictable offence as either an offence punishable by imprisonment for longer than 1 year (compare *Interpretation Act 1967*, s 33D) or declared by law to be indictable. The provision for an offence to be declared to be indictable is taken from the *Interpretation Act 1967*, section 33E. It reflects the fact that some serious offences may provide for fines of such magnitude that it is appropriate that they be dealt with before a judge and jury. In the absence of this provision, such an offence would be a summary offence. Subsection (2) defines a summary offence as any other offence. In other words, an offence punishable by imprisonment for not longer than 1 year or not declared by law to be indictable. The terms *indictable offence* and *summary offence* are provided for as signpost definitions in the dictionary, part 1. The *Subordinate Laws Act 1989*, section 9 (which will be repealed when

the *Legislation Act 2001* commences), applies sections 33D and 33E to subordinate laws and instruments of an administrative nature.

Chapter 14

There is no chapter 14 at this stage.

For s 137 to 143

There are no sections 137 to 143 at this stage.

Chapter 15 Aids to interpretation

General explanatory note for pt 15

Part 15 draws together a number of basic provisions that assist in the process of statutory interpretation. Note that for the time being the *Interpretation Act 1967*, sections 7, 11A and 11B continue to be relevant.

Part 15.1 General

For s 144 Meaning of commonly-used words and expressions

Legislation and instruments tend to make frequent use of certain terms and expressions, for example, ‘Minister’, ‘AAT’, ‘chief executive’, ‘contravene’. Rather than define these in each Act or instrument (which would be burdensome and lead to inconsistencies), they are gathered together in a ‘dictionary’ which applies to the whole statute book. Once a term is defined in the dictionary it does not need to be defined again in Territory legislation. Section 144 reproduces the effect of *Interpretation Act 1967*, section 11F (1) and is expressed to apply to all Acts and statutory instruments (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch 12 to ch 18.

For s 145 Gender and number

Paragraph (a) of this section makes it clear that a reference to gender (eg ‘he’) includes other genders (ie ‘she’ and ‘it’). The need for this provision is not as obvious as in the past because legislation and instruments now make greater use of gender-neutral language (‘the person’). At the same time, however, this provision enables neuter gender entities (such as corporations) to be conveniently included because legislation and instruments, if they refer at all to genders, usually only refer to male and female genders. Paragraph (b) simplifies the text of legislation and instruments by allowing them to deal with single situations (for example ‘A person must not’) and avoid the unnecessarily complex and lengthy provisions that result from dealing with single and multiple situations (‘A person *or persons* must not’). Section 145 reproduces the effect of *Interpretation Act 1967*, section 19 and is expressed to apply to an Act or a statutory instrument (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch 12 to ch 18.

For s 146 Meaning of *may* and *must*

This section is intended to give more certainty to the use of the terms ‘may’ and ‘must’. These have sometimes been interpreted by courts in ways that depart from their ordinary meaning. The section, however, allows for another law to exclude its operation as provided in the section. Section 146 reproduces the effect of *Interpretation Act 1967*, section 16 and is expressed to apply to an Act or a statutory instrument (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch 12 to ch 18.

For s 147 Changes in drafting practice not to affect meaning

Ideally, the language of the statute book should be consistent so that whenever an idea is expressed it is always be expressed in a consistent way. At the same time, however, changes in drafting practice, as it evolves over the years, can result in a number of different forms of expression—all meaning the same thing—appearing in legislation depending on the time it was passed. The problem is more acute if the same law is successively amended (perhaps in minor ways) over a period of years. In theory, the law could be remade each time but there are not usually enough resources to permit this. It will often be the case, therefore, that a law will contain provisions in different parts that seem to be saying the same thing though expressed in different words. Section 147 seeks to prevent any inference being drawn from differences in expression in different provisions. The same problem can arise where the law on a topic is found in a number of related Acts (for example, taxation and gambling). The problem can also arise where a provision is rewritten using new legislative drafting practice. Section 147 reproduces the effect of *Interpretation Act 1967*, section 11C and is expressed to apply to an Act or a statutory instrument (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch 12 to ch 18.

For s 148 Terms used in instruments have the same meaning as in authorising laws

If a statutory instrument (a term defined in the *Legislation Act 2001*, s 13) such as regulations is made under the authority given by an Act, words and expressions in the regulations will have the same meaning as in the Act or statutory instrument. The section therefore simplifies the drafting of regulations and other instruments and ensures that terms in the instrument and the authorising Act or statutory instrument are used consistently. The operation of the section will be displaced, however, if the instrument indicates (usually by way of definitions) that a particular term is not intended to have the same meaning as in the empowering Act or statutory instrument. The section reproduces the effect of *Interpretation Act 1967*, section 11BA and is expressed to apply to an Act or a statutory instrument (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch 12 to ch 18.

For s 149 Age in years

At one time the law about when a person attained a particular age was technical and artificial. This section ensures that the ordinary understanding about when a person attains an age also applies as a matter of law. The section reproduces the effect of the *Interpretation Act 1967*, section 13D and is expressed to apply to an Act or a statutory

instrument (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch 12 to ch 18. The operation of the section will be displaced, however, if the Act or statutory instrument that contains the reference to age indicates that a different rule is to apply.

For s 150 Measurement of distance

There are various ways in which distance can be calculated for the purposes of the law (for example, by way of the nearest road). Section 150 reproduces the effect of the longstanding rule in the *Interpretation Act 1967*, section 35 and is expressed to apply to an Act or a statutory instrument (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch 12 to ch 18. The operation of the section will be displaced, however, if the Act or statutory instrument that contains the reference to distance indicates that a different rule is to apply.

For s 151-154

There are no sections 151 to 154 at this stage.

Part 15.2 Definitions

For s 155 Definitions apply subject to contrary intention

The effect of this section is that the meaning given to a word or expression in an Act or statutory instrument (a term defined in the *Legislation Act 2001*, s 13) will apply unless there is an indication in a particular context that the given meaning does not apply in that context. One example would be if the term or expression was given a meaning in a part (ie for a group of sections) that differed from the meaning it was given by another definition elsewhere in the Act or statutory instrument. But a contrary intention might be indicated in other ways. Mining legislation, for example, might define *bank* to refer to the surface around a shaft but in a group of financial provisions use the word ‘bank’ to refer to a financial institution. In that case, the context provided by the financial provisions would be sufficient to indicate that ‘bank’ was being used in a different sense without the need for a further definition for that context. Section 155 reproduces the effect of the *Interpretation Act 1967*, section 11G and is expressed to apply to an Act or a statutory instrument—see the General explanatory note for ch 12 to ch 18.

For s 156 Application of definitions in dictionaries and sections

In recent years the practice has developed of locating definitions of general application to an Act or statutory instrument (a term defined in the *Legislation Act 2001*, s 13) in a dictionary at the end of the Act or instrument. Section 156 (1) supports this practice by providing that a definition in a dictionary will apply to the entire Act or instrument unless a more limited application is provided in the Act or instrument. The examples that follow illustrate this in detail. Section 156 (2) and (3) complement this rule by laying down a similar rule about definitions in sections; a definition in a section only applies in the section unless the relevant Act or a statutory instrument provides for the definition to have

a wider operation. Once again, examples illustrate in detail how this rule operates. As previously noted, the section is expressed to apply to an Act or a statutory instrument (see the General explanatory note for ch 12 to ch 18). Section 156 (4) makes it clear that in the application of this section to a statutory instrument or a schedule to an Act, the term ‘section’ includes provisions such as ‘regulation’ or ‘clause’. Section 156 (2) and (3) reproduce the effect of *Interpretation Act 1967*, section 11F (2) and (3). Section 156 is expressed to apply to an Act or a statutory instrument—see the General explanatory note for ch 12 to ch 18.

For s 157 Defined terms—other parts of speech and grammatical forms

Although a particular word or expression (for example, ‘publish’) may be given a defined meaning, the legislation in which it appears may use a number of forms of the same word or expression (for example, ‘publisher’, ‘publishes’, ‘published’, ‘publishing’, ‘publication’). It would be inconvenient and cumbersome to have to define each of these related terms. Section 157 provides that if other forms of the same word or expression are to be used, they will have a meaning that corresponds to the defined meaning. The section also provides that the operation of the section may be displaced if a contrary intention appears in the relevant Act or statutory instrument (a term defined in the *Legislation Act 2001*, s 13). For example, the word ‘publisher’ may be included in a definition of another term (‘government publisher’) and therefore not apply to members of the public. This section reproduces the effect of *Interpretation Act 1967*, section 11E and is expressed to apply to an Act or a statutory instrument—see the General explanatory note for ch 12 to ch 18.

For s 158-159

There are no sections 158 to 159 at this stage.

Part 15.3 References to various entities and things

For s 160 References to people generally

The law recognises not only human beings, but also ‘artificial people’ such as companies, as having the capacity to enter into legal relations (for example, being a party to a contract, bringing or defending legal proceedings and owning property). Artificial persons are generally referred to in Territory laws as ‘corporations’ (see *Legislation Act 2001*, dict, pt 1, def of **corporation**). Laws are usually made with the intention that they will apply equally to corporations and to individuals (also defined in the *Legislation Act 2001*, dict, pt 1, def of **individual**). Section 160 provides a legal basis for this common supposition. Section 160 (1) does recognise that in some cases a law may only apply to individuals (for example, registration as a doctor) or to corporations (the requirement to have a common seal). In these cases the relevant law would indicate a contrary intention so that it only applied to one kind of person. Section 160 (2) also makes it clear that simply by referring to a particular kind of person (say a corporation), does not in itself indicate that the law only applies to corporations. Section 160 reproduces the effect of *Interpretation Act 1967*,

section 15 and is expressed to apply to an Act or a statutory instrument (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch 12 to ch 18.

For s 161 Corporations liable to offences

Section 161 is essentially a particular instance of the general principle expressed in section 160: offences that apply to individuals also apply to corporations. Section 161 (1) indicates that this general rule may be displaced by a contrary intention (for example, a corporation could not commit bigamy). Section 161 (2) also makes it clear that an offence that is expressed to be punishable by imprisonment only can apply to corporations even though a corporation cannot be imprisoned. Section 161 (3) enables this to work in practice by setting out a table that equates various terms of imprisonment with corresponding fines. Section 161 reproduces the effect of the *Interpretation Act 1967*, section 32 and is expressed to apply to a ‘law’ (a term defined in s (4)). See also the General explanatory note for ch 12 to ch 18.

For s 162 References to a Minister or the Minister

The term ‘Minister’ is commonly used in Territory law. Section 162 defines the term in 2 senses. First, in general terms, as a position occupied by a person because of election as Chief Minister under the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), section 40 or an appointment as a Minister made under the Self-Government Act, section 41 (see s (1)). Second, as referring to the person occupying a particular portfolio (s (2)). Section 162 assumes that legislation will not often refer to a Minister by reference to his or her title or portfolio. The practical reason for this is that titles and portfolios usually change with each change of government or may happen at other times following a ministerial reshuffle. If the titles and portfolios were mentioned in every law or instrument, an enormous amount of work would be required to continually amend the relevant laws and instruments. For this reason, laws and instruments usually refer to the administering Minister as ‘the Minister’. (In some limited cases, laws and instruments use the terms ‘Attorney-General’ or ‘Treasurer’, but in most cases legislation administered by these Ministers simply uses the term ‘the Minister.’) Section 162 (2) to (4) therefore lays down a number of rules to enable the relevant title or portfolio to be identified. Section 162 (2) (a) lays down the general rule: ‘the Minister’ means the Minister administering the law or statutory instrument (a term defined in the *Legislation Act 2001*, s 13) in which the reference occurs. And the identity of the person who is administering a law or statutory instrument at any particular time will be indicated in an ‘Administrative Arrangements’ instrument that is published in the Special Gazette issue of the ACT Gazette from time to time (this may be accessed at www.act.gov.au/gazettes). Section 162 reproduces the effect of *Interpretation Act 1967*, section 24 and, as previously indicated, is expressed to apply to an Act or a statutory instrument—see the General explanatory note for ch 12 to ch 18.

For s 163 References to a chief executive or the chief executive

Section 163, which applies to ‘chief executives’, the heads of Territory government departments, is analogous to section 162. The factors that have given rise to section 162

also explain the need for section 163. The section reproduces the effect of *Interpretation Act 1967*, section 24A and is also expressed to apply to an Act or a statutory instrument (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch 12 to ch 18.

For s 164 References to Australian Standards

The standards prepared by Standards Australia (formerly the Standards Association of Australia) on technical matters of all kinds (eg ways of measuring the flammability of garments) may provide a convenient basis for, or an element of, legislation. Each standard is issued under a distinctive number. Section 164 provides a convenient way of describing standards for the purpose of Acts or statutory instruments (a term defined in the *Legislation Act 2001*, s 13). The section reproduces the effect of *Interpretation Act 1967*, section 25AB and, as indicated, is expressed to apply to an Act or a statutory instrument (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch 12 to ch 18.

For s 165 References to Assembly Committees that no longer exist

Legislation sometimes refers to committees of the Legislative Assembly. If one committee is replaced by another, section 165 provides a convenient way of linking references in the legislation from the old to the new committee (in the short term, it may not be practicable to amend the legislation). This section reproduces the effect of *Interpretation Act 1967*, section 25AA and is also expressed to apply to an Act or a statutory instrument (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch 12 to ch 18.

For s 166-167

There are no sections 166 and 167 at this stage.

For s 168 References to person with interest in land include personal representatives etc

This is a new provision modelled on provisions frequently found in agreements. The section lays down a general rule in the context of land and other property to make it clear that rights and obligations affecting a person also extend to the personal representatives, successors or assigns of the person. Examples of personal representatives include executors or administrators of a dead person or the guardian of a person under a legal disability. The rule may be displaced by a contrary intention in another law. This section is expressed to apply to an Act or a statutory instrument (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch 12 to ch 18.

For s 169-174

There are no sections 169 to 174 at this stage.

Chapter 16 Courts, tribunals and other decision-makers

General explanatory note for pt 16

Sections 176 to 179 are provisions of particular relevance to courts and other authorities required by law to make a decision. The sections make provision for various matters to supplement legislation setting up courts and similar entities.

For s 175 Meaning of *law* in ch 16

This section defines law for chapter 16.

For s 176 Jurisdiction of courts and tribunals

To avoid arguments about jurisdiction, legislation giving powers to courts formerly gave an additional express vesting of jurisdiction to the court to deal with the new powers. To overcome the need for a separate vesting provision whenever powers were given to a court, the *Interpretation Act 1967*, section 31A provides that if power is given to a court, the court automatically has jurisdiction to deal with the matter. Section 176 reproduces the effect of the *Interpretation Act 1967*, section 31A and extends it to include proceedings before a tribunal. The section is expressed to apply to a ‘law’ (a term defined in the *Legislation Act 2001*, s 175)—see the General explanatory note for ch 12 to ch 18.

For s 177 Recovery of amounts owing under laws

Section 177 is another provision that enables legislation to be simplified. It applies if a law creates an obligation for a person to pay an amount. In that case, the section enables proceedings to be brought to recover the amount as a debt without the need for special provision in the law that created the obligation. If, however, the law makes provision for recovery of the amount, the operation of section 177 will be displaced. The section reproduces the effect of *Interpretation Act 1967*, section 34 and, as indicated, is expressed to apply to a ‘law’ (a term defined in the *Legislation Act 2001*, s 175)—see the General explanatory note for ch 12 to ch 18.

For s 178 Power to decide includes authority to administer oath etc

The effect of section 178 is that the power to hear and decide a matter automatically carries with it the power to receive evidence and examine witnesses. However, if a law providing for a hearing makes special provision for receiving evidence and examining witnesses, the operation of section 178 will be displaced. The section reproduces the effect of *Interpretation Act 1967*, section 13E and, as indicated, is expressed to apply to a ‘law’ (a term defined in the *Legislation Act 2001*, s 175)—see the General explanatory note for ch 12 to ch 18.

For s 179 Content of statements of reasons for decisions

If a tribunal or other entity (see the *Legislation Act 2001*, dict, pt 1, def of *entity*) is required to give reasons for its decision, section 179 requires that the findings of fact and evidence that underpin its decision must also be set out with the reasons. Section 179 (3) provides that the section will apply unless another law expressly excludes it. The section

reproduces the effect of *Interpretation Act 1967*, section 13C and is expressed to apply to a ‘law’ (a term defined in the *Legislation Act 2001*, s 175)—see the General explanatory note for ch 12 to ch 18.

For s 180 Power to make decision includes power to reverse or change

The effect of section 180 is that the power to make a decision carries with it the power to reverse or change the decision. There are, however, 2 qualifications on the power to reverse or change. First, any procedural requirements or substantive grounds that needed to be satisfied in making the decision also need to be complied with before the decision may be reversed or changed. Second, the law which gives the power to make the decision may indicate that the decision cannot be changed or reversed. This indication may follow from the nature of the decision itself. The section reproduces the effect of *Interpretation Act 1967*, section 27 and is expressed to apply to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see the General explanatory note for ch 12 to ch 18.

For s 181 to 184

There are no sections 181 to 184 at this stage.

Chapter 17 Entities and positions

For s 185 Meaning of law in ch 17

This section defines law for chapter 17.

For s 186 Application of ch 17

This section provides that the chapter applies to a law except so far as the contrary intention appears.

For s 187 Change of name of entity

This section applies to an ‘entity’. This term has a wide meaning (see the *Legislation Act 2001*, dict, pt 1, def of *entity*) but in this context would be mainly relevant to a corporation or committee established under a law. Section 187 applies if an entity has its name changed by a law. Section 187 (2) makes it clear that the change of name does not affect the identity of the entity; in other words, despite the change of name, the law regards it as the same entity. Section 187 (3) avoids any inconvenience that might arise if older laws refer to the entity under its previous name; until the laws are brought up-to-date, these references are to be read as if they mentioned the new name of the entity. This section should be compared with section 190 which applies to positions. The section reproduces the effect of the *Interpretation Act 1967*, section 13B so far as it relates to entities. The section is expressed to apply to a ‘law’ (a term defined in the *Legislation Act 2001*, section 185)—see the General explanatory note for ch 12 to ch 18.

For s 188 Change in constitution of entity

This section applies to an ‘entity’. This term has a wide meaning (see the *Legislation Act 2001*, dict, pt 1, def of *entity*) but in this context would be mainly relevant to a corporation or committee established under a law. Section 188 applies where an entity has its constitution changed by a law. In this context, ‘constitution’ comprehends the widest possible range of changes to the way an entity is established. A change might involve, for example, changing the entity so that it ceases to be a corporation constituted by 1 person and becomes a corporation constituted another way (or vice versa), or perhaps becomes a statutory body that is not a corporation (or vice versa). Other possible changes could be increasing or reducing the number of members of a statutory body or changing some or all of the members to full-time members or part-time members. Whatever the nature of the change, section 188 (2) provides that the change does not affect the identity of the entity; in other words, despite the change to its constitution, the law regards it as the same entity. Section 188 (3) illustrates some aspects or activities of the entity that are not affected by the change. This section reproduces the effect of the *Interpretation Act 1967*, section 13BA. The section is expressed to apply to a ‘law’ (a term defined in the *Legislation Act 2001*, section 185)—see the General explanatory note for ch 12 to ch 18.

For s 189 References to occupant of position

The idea behind section 189 is that if an Act refers to a particular position as, for example, ‘the registrar’, the reference is not limited to the person who occupied the position (ie the person who was registrar) when the Act came into operation but includes whichever person is occupying the position whenever the question arises. This section reproduces the effect of the *Interpretation Act 1967*, section 25 and is expressed to apply to an Act or a statutory instrument (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch 12 to ch 18.

For s 190 Change of name of position

This section applies if a position has its name changed by a law. A position might be created directly by a law or as a result of action taken under a law (see the *Legislation Act 2001*, dict, pt 1, defs of *statutory office holder* and *under*). Section 190 (2) makes it clear that the change of name does not affect the identity of the position; in other words, despite the change of name, the law regards it as the same position. Section 187 (3) avoids any inconvenience that might arise if older laws refer to the position under its previous name; until the laws are brought up-to-date, these references are to be read as if they mentioned the new name of the position. This section should be compared with section 187 which applies to entities. This section reproduces the effect of the *Interpretation Act 1967*, section 13B so far as it relates to positions. The section is expressed to apply to a ‘law’ (a term defined in the *Legislation Act 2001*, section 185)—see the General explanatory note for ch 12 to ch 18.

For s 191 Chairperson and deputy chairperson

Section 191 (1) gives wide flexibility to the way the person presiding at meetings of entities may be addressed (as to the meaning of ‘entity’, see the *Legislation Act 2001*, dict,

pt 1, def of *entity*). Section 191 (1) provides that the person presiding may be addressed as ‘chairman’, ‘chairwoman’ or ‘chair’. Section 191 (2) makes similar provision for the deputy of the person presiding. The section reproduces the effect of the *Interpretation Act 1967*, section 25A and is expressed to apply to a ‘law’ (a term defined in the *Legislation Act 2001*, s 185)—see the General explanatory note for ch 12 to ch 18.

For s 192 to 194

There are no sections 192 to 194 at this stage.

Chapter 18 Administrative and machinery provisions

Part 18.1 Introductory

For s 195 Meaning of law in ch 18

This section defines law for chapter 18.

Part 18.2 Functions

For s 196 Provision giving function gives power to exercise function

This section applies to an ‘entity’. This term has a wide meaning (see the *Legislation Act 2001*, dict, pt 1, def of *entity*) but in this context would be mainly relevant to a corporation or committee established under a law, or the occupant of a position. Section 196 applies if an entity is given a function by law (the note at the beginning of the part indicates that a ‘function’ includes an authority, duty or power). Section 196 (1) provides that the giving of a function also gives the powers necessary and convenient to exercise the function. The subsection removes the need to include in the law creating the entity an additional power to do all things ‘necessary and convenient’ to exercise the function. Section 196 (2) makes it clear that the powers given to the entity under subsection 25B (1) are additional to other powers that it or the person has under law. The section reproduces the effect of the *Interpretation Act 1967*, section 25B and, as indicated, is expressed to apply to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see the General explanatory note for ch 12 to ch 18.

For s 197 Statutory functions may be exercised from time to time

This section applies to an ‘entity’. This term has a wide meaning (see the *Legislation Act 2001*, dict, pt 1, def of *entity*) but in this context would be mainly relevant to a corporation or committee established under a law, or the occupant of a position. Section 197 applies if an entity is given a function by law (the note at the beginning of the part indicates that a ‘function’ includes an authority, duty or power). Section 197 (1) makes it clear, that as a general rule, a function may be exercised again and again. In the absence of this section, it might be arguable that a single exercise of a power exhausts the power. Section 197 (2) indicates that the operation of the section may be displaced by a ‘contrary intention’; certain kinds of powers, for example, to commence the operation of an Act, may only be exercised once. The section reproduces the effect of *Interpretation Act 1967*, section 26

(1) and, as indicated, is expressed to apply to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see the General Explanatory Note to chs 12 to 18 (above).

For s 198

There is no section 198 at this stage.

For s 199 Functions of bodies

This section applies to a ‘body’ (for example, a corporation or committee established under a law—see the *Legislation Act 2001*, dict, pt 1, def of *body*). The section lays down a number of rules about how the functions of bodies may be exercised (the note at the beginning of the part indicates that a ‘function’ includes an authority, duty or power). Section 199 (1) makes it clear that a body may exercise its functions by resolution. Section 199 (2) provides for a signature of the body. Section 199 (3) provides, in effect, that changes in the constitution of a body do not affect the exercise of its functions. Section 199 (4) is related to section 199 (3) in that it allows the functions of the body to be exercised even though there may be vacancies in its membership. The subsection is, of course, subject to any special quorum requirements for the exercise of the functions. Section 199 (5) provides that changes in the membership of a body do not affect an earlier exercise of functions when the body was differently constituted. Similarly, section 199 (6) enables a body to end or change something done at an earlier time when the body was differently constituted. The section reproduces the effect of the *Interpretation Act 1967*, section 13BB and is expressed to apply to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see the General explanatory note for ch 12 to ch 18.

For s 200 Functions of occupants of positions

Section 200 (1) makes it clear that if an Act gives a function to the holder of a particular position, any person who occupies the position may exercise the function. Section 200 (1) complements section 189 and reproduces the effect of the *Interpretation Act 1967*, section 26 (2). Section 200 (2) provides that, if the person holding a position changes, the change does not affect an earlier exercise of functions by the person. Similarly, section 200 (3) enables the holder of a position to end or change something done at an earlier time when the position was occupied by a different person. Section 200 (2) and (3) is an adaptation of the *Interpretation Act 1967*, section 30AA that applied to delegations. Section 200 is expressed to apply to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see the General explanatory note for ch 12 to ch 18.

For s 201 to 204

There are no sections 201 to 204 at this stage.

Part 18.3 Appointments

Division 18.3.1 Appointments—other than acting appointments

For s 205 Application of div 18.3.1

This section provides for the division (sections 205 to 211) to apply if an entity has power to appoint a person to a position (an ‘entity’ includes a person such as an individual or a corporation and a body such as an unincorporated statutory committee, see *Legislation Act 2001*, dict, pt 1, def of *entity*). The part applies to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see the General explanatory note for ch 12 to ch 18.

For s 206 Appointment must be in writing etc

Section 206 requires that an appointment must be made, or evidenced, by writing. No particular form of writing is required. Apart from a formal document of appointment, an Executive notification or a letter to the person who is to be appointed, advising that the person is appointed, would be sufficient. The section reproduces the effect of the *Interpretation Act 1967*, section 28 (7) and applies to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see the General explanatory note for ch 12 to ch 18.

For s 207 Appointment may be by name or position

This section is concerned with the description that is required of the person who is to be appointed (the *appointee*). Section 207 indicates that the appointee may be described by mentioning the name of the appointee or mentioning a position held by the appointee. It is not uncommon for administrative arrangements to require that the person who occupies a particular public service position should occupy a particular position established by an Act (the *statutory position*). To give effect to these arrangements, it would be possible to name the occupant of the public service position in the appointment to the statutory position. However, if the appointee ceased for any reason to occupy the public service position, a further appointment would be necessary. To avoid unnecessary paperwork, it is simpler to name the public service position in the appointment rather than a named person. The section reproduces the effect of the *Interpretation Act 1967*, section 28 (2) and applies to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see section 205 and the General explanatory note for ch 12 to ch 18.

For s 208 Power of appointment includes power to suspend etc

The effect of section 208 is that the power to make an appointment carries with it a number of related powers. These are, at the end of the appointment, reappoint the person (the *appointee*); during the term of the appointment, suspend the appointee (and later lift the suspension) or end the appointment and reappoint the appointee or someone else. There is, however, a qualification on the power to suspend the appointee or end of the appointment: any procedural requirements or substantive grounds that needed to be satisfied in making the appointment also need to be complied with before suspending the appointee or ending of the appointment. For another power included in a power of appointment, see also section 209. The section reproduces the effect of the *Interpretation Act 1967*, section 28 (3) to (5) and applies to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see section 205 and the General explanatory note for ch 12 to ch 18.

For s 209 Power of appointment includes power to make acting appointment

The effect of section 209 (1) is that the power to make an appointment to a position carries with it the power to appoint someone to act in the position. Section 209 (2) qualifies the power to make an acting appointment: any procedural requirements or substantive grounds that needed to be satisfied in making the appointment also need to be complied with before making the acting appointment. Section 209 (3) also provides that if a qualification or other special requirement must be complied with in making a substantive appointment to the position, the requirement must also be satisfied in making an acting appointment. For another power included in a power of appointment, see also section 208. Section 209 reproduces the effect of the *Interpretation Act 1967*, section 28 (4) to (6) and applies to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see section 205 and the General explanatory note for ch 12 to ch 18.

For s 210 Resignation of appointment

Section 210 provides for a person to resign an appointment by giving a written notice of resignation to the person who made the appointment. In the case of appointments by the Executive, the notice of resignation may be given to a Minister. The section reproduces the effect of the *Interpretation Act 1967*, section 28 (8) and (9) and applies to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see section 205 and the General explanatory note for ch 12 to ch 18.

For s 211 Appointment not affected by appointer changes

This section is an adaptation for appointments of the *Interpretation Act 1967*, section 30AA (1) and (2) which applied to delegations. Section 211 (1) makes it clear that an appointment made by a body is not affected by the fact that the membership of the body later changes. Section 211 (2) provides that an appointment made by a person in a particular position, is not affected by the fact that the person later ceases to hold that position. The section applies to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see section 205 and the General explanatory note for ch 12 to ch 18.

For s 212 Appointment not affected by defect etc

This section is intended to protect the validity of an appointment and also things done by a person under an appointment if it later appears that the appointment was ineffective. The section reproduces the effect of the *Interpretation Act 1967*, section 28 (10) and applies to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see section 205 and the General explanatory note for ch 12 to ch 18.

For s 213 and 214

There are no sections 213 and 214 at this stage.

Division 18.3.2 Acting appointments

For s 215 Application

This section provides for the division (sections 215 to 225) to apply if an entity has power to appoint a person to act in a position (an ‘entity’ includes a person such as an individual or a corporation and a body such as an unincorporated statutory committee, see *Legislation Act 2001*, dict, pt 1, def of *entity*). The part applies to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see the General explanatory note for ch 12 to ch 18.

For s 216 Acting appointment must be in writing etc

Section 216 requires that an acting appointment must be made, or evidenced, by writing. No particular form of writing is required. Apart from a formal document of appointment, an Executive notification or a letter to the person who is to be appointed to act, advising that the person is appointed, would be sufficient. The section reproduces the effect of the *Interpretation Act 1967*, section 28 (7) and (11) and applies to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see section 215 and the General explanatory note for ch 12 to ch 18.

For s 217 Acting appointment may be by name or position

This section is concerned with the description that is required of the person who is to be appointed to act in a position (the *appointee*). Section 217 indicates that the appointee may be described by mentioning the name of the appointee or mentioning a position held by the appointee. It is not uncommon for administrative arrangements to require that a subordinate should perform the duties of a senior person in the absence of the senior person (see also section 218). To give effect to these arrangements, it would be possible to name the subordinate in the acting appointment. However, if the subordinate ceased for any reason to be the subordinate, a further acting appointment would be necessary. To avoid unnecessary paperwork, it is simpler for the acting appointment to name the position occupied by the subordinate rather than the subordinate’s name. The section mirrors the effect of the *Interpretation Act 1967*, section 28 (2) and section 29A. It applies to a ‘law’ (a term defined in the *Legislation Act 2001*, section 195)—see section 215 and the General explanatory note for ch 12 to ch 18.

For s 218 Instrument may provide when acting appointment has effect etc

As indicated in the explanatory note for section 217, it is not uncommon for acting appointments to be expressed to operate in specified circumstances (see also the examples set out in section). An acting appointment that has been made to operate in a specified circumstance will lie dormant (hence the term ‘dormant appointment’) until the circumstance it specifies happens. At that time the acting appointment takes effect. Section 218 provides authority for these arrangements. The section reproduces the effect of the *Interpretation Act 1967*, section 28A (2) and applies to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see section 215 and the General explanatory note for ch 12 to ch 18.

For s 219 Appointer may decide terms etc of acting appointment

Section 219 (1) makes it clear that the person making the appointment can decide the terms on which a person acts in a position. These terms may include the payment of remuneration (salary, wages or commission) and allowances. Section 219 (1) also makes it clear that an acting appointment may be brought to an end at any time (see also s 221). There is, however, a qualification on the power to end of an acting appointment: any procedural requirements or substantive grounds that needed to be satisfied in making the acting appointment also need to be complied with before ending of the appointment. The section reproduces the effect of the *Interpretation Act 1967*, section 28A (3) and applies to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see section 215 and the General explanatory note for ch 12 to ch 18.

For s 220 Appointee may exercise functions under acting appointment etc

Section 220 is intended to assimilate an acting appointee as closely as possible to the person who occupies the position substantively. First, section 220 (a) gives a person acting in a position all the functions of the substantive occupant. (The note to the section indicates that a ‘function’ includes an authority, duty or power). Second, section 220 (b) applies all Territory laws to the person acting (including the common law) as if the person acting occupied the position substantively. Section 220 reproduces the effect of the *Interpretation Act 1967*, section 28A (8) and applies to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see section 215 and the General explanatory note for ch 12 to ch 18.

For s 221 How long does an acting appointment operate?

Section 221 (1) and (2) limits the period during which a person may act in a position that is vacant. If the position was vacant before the person began to act in it, the acting appointment ends 1 year after the position became vacant. If the vacancy happens while a person is acting in it, the acting appointment will end on the happening of the first of the following: the ending of the appointment under section 219, the filling of the vacancy or the end of the period of 1 year since the vacancy began. Section 221 (3) makes it clear that if the substantive occupant of the position cannot exercise his functions, a person acting in the position ceases to act on that occasion only. (The note to section 221 (3) indicates that a ‘function’ includes an authority, duty or power). The section reproduces the effect of the *Interpretation Act 1967*, section 28A (4) to (7) and applies to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see section 215 and the General explanatory note for ch 12 to ch 18.

For s 222 Resignation of acting appointment

Section 222 provides for a person to resign an acting appointment by giving a written notice of resignation to the person who made the appointment. In the case of acting appointments by the Executive, the notice of resignation may be given to a Minister. The section reproduces the effect of the *Interpretation Act 1967*, section 28 (8) to (11) and applies to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see section 215 and the General explanatory note for ch 12 to ch 18.

For s 223 Effect of acting appointment on substantive appointment

Section 223 is intended to avoid any inference that a substantive position a person occupies is vacated if the person acts in another position. The section reproduces the effect of the *Interpretation Act 1967*, section 28A (7) and applies to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see section 215 and the General explanatory note for ch 12 to ch 18.

For s 224 Acting appointment not affected by appointer changes

This section is an adaptation for acting appointments of the *Interpretation Act 1967*, section 30AA (1) and (2) that applied to delegations. Section 211 (1) makes it clear that an acting appointment made by a body is not affected by the fact that the membership of the body later changes. Section 211 (2) provides that an acting appointment made by a person in a particular position is not affected by the fact that the person later ceases to hold that position. The section applies to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see section 215 and the General explanatory note for ch 12 to ch 18.

For s 225 Acting appointment not affected by defect etc

This section is intended to protect the validity of an acting appointment and also things done by a person under an acting appointment if it later appears that the appointment was ineffective. The section reproduces the effect of the *Interpretation Act 1967*, section 28 (10) and (11) and section 28A (9) and applies to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see section 215 and the General explanatory note for ch 12 to ch 18.

For s 226 to 229

There are no sections 226 to 229 at this stage.

Part 18.4 Delegations

General explanatory note for pt 18.4

Delegations are an essential element of the administration of legislation in the Territory. Many Acts of the Legislative Assembly, and subordinate laws, give functions to various persons such as Ministers or officials. (The note to s 230 (1) draws attention to the fact that ‘function’ is defined in the dictionary to include authority, duty and power.) The number and scope of these functions is such that the relevant Minister or official cannot possibly exercise them personally. The practice, therefore, is for subordinate officers to exercise the relevant functions under an instrument of delegation. In the past, laws giving powers of delegation repeated on each occasion a number of the provisions contained in this part. The provisions in this part therefore save unnecessary repetition in the statute book by spelling out the rules relating to delegations in one place and applying them to delegations under all laws.

For s 230 Application of pt 18.4 generally

This section provides for the part (s 230 to 242) to apply if an entity has power to delegate or subdelegate a function (an ‘entity’ includes a person such as an individual or a corporation and a body such as an unincorporated statutory committee, see *Legislation Act 2001*, dict, pt 1, def of *entity*). The note to section 230 (1) draws attention to the fact that ‘function’ is defined in the dictionary to include authority, duty and power. Section 230 (2) is a new provision intended to avoid arguments that a particular provision is not capable of delegation because the relevant law provides a means other than delegation for the power to be exercised. Section 230 (3) provides that the law containing the provision may displace the operation any of the provisions of the part. The part applies to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see section 230 and the General explanatory note for ch 12 to ch 18.

For s 231 Application of pt 18.4 to subdelegations

In some cases legislation authorises a delegate to further delegate the powers the delegate may exercise under a delegation. Such an additional passing on of powers is known as a subdelegation. Section 231 has the effect of extending to subdelegations the rules laid down in this part about delegations. Section 231 (2) makes it clear, however, that a power of subdelegation will only exist if a law makes provision for subdelegation. The section reproduces the effect of the *Interpretation Act 1967*, section 30AB and applies to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see section 230 and the General explanatory note for ch 12 to ch 18.

For s 232 Delegation must be in writing etc

Section 232 is a new provision that extends to delegations a rule similar to the requirement for appointments and acting appointments provided in the *Interpretation Act 1967*, section 28 (7) and (11). Section 232 applies to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see section 230 and the General explanatory note for ch 12 to ch 18.

For s 233 Delegation may be by name or position

This section removes doubt that used to exist about whether it was possible to delegate to (say) ‘the Director’ or whether it was necessary to name the person who held the position of Director; either form of delegation is permissible. It will often be convenient to delegate to the person who holds a position so that if another person is appointed to the position it will not be necessary to remake the instrument of delegation. The section refers to the delegation of a ‘function’ and the note to section 230 (1) draws attention to the fact that ‘function’ is defined in the dictionary to include authority, duty and power. The section reproduces the effect of the *Interpretation Act 1967*, s 29A, but has been recast to simplify its language. Section 233 applies to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see section 230 and the General explanatory note for ch 12 to ch 18.

For s 234 Instrument may provide when acting delegation has effect etc

This section enables a delegation to be expressed in general terms or for a particular case. The provision to state directions is a new provision. The examples for section 234

illustrate in detail some possible conditions, limitations or directions. The section broadly reproduces the effect of the *Interpretation Act 1967*, section 29B (a) and applies to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see section 230 and the General explanatory note for ch 12 to ch 18.

For s 235 Delegation may be made to 2 or more delegates

Section 235 is a new provision intended to make it clear that a delegation may be made to 2 or more people at the one time. The section applies to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see section 230 and the General explanatory note for ch 12 to ch 18.

For s 236 Power to delegate may not be delegated

This section prevents the person delegating a function to delegate the power of delegation. In effect, the person with a power of delegation must exercise it personally. The section reproduces the effect of the *Interpretation Act 1967*, section 29B (b) and applies to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see section 230 and the General explanatory note for ch 12 to ch 18.

For s 237 Delegation may be amended or revoked

This is a new provision that, for convenience, expressly applies to delegations the general rule about amending and revoking instruments (see the *Legislation Act 2001*, s 46). The section, therefore, does not change the law. The section applies to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see section 230 and the General explanatory note for ch 12 to ch 18.

For s 238 Appointer responsible for delegated function

This section is a new provision intended to make it clear that the ability to delegate a function in the sense of a duty or responsibility does not relieve the person giving the delegation of his or her obligation to ensure that the function is properly exercised. The section applies to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see section 230 and the General explanatory note for ch 12 to ch 18.

For s 239 Exercise of delegation by delegate

Section 239 (1) complements section 234 (a). Section 239 (2) is intended to impose on the delegate in exercising the delegated power the same powers, obligations and procedures (including those arising at common law) as if it had been exercised by the person who gave the delegation. Section 239 (3) takes account of the fact that laws frequently provide that an official may do something if the official forms a view about the thing. The law may provide, for example, that a power cannot be exercised unless the official ‘is of the opinion’ or ‘is satisfied’ or ‘believes on reasonable grounds’ that something has happened or is likely to happen. Section 239 (3) therefore makes it clear that, if the power is delegated, the task of forming the opinion (etc) may be undertaken by the delegate. Section 239 (4) is intended to give any exercise of the delegated function the same character in law

as if it had been done by the person who gave the delegation. Under section 239 (4), anything done under a delegation is taken to have been done by the appointer. The section reproduces the effect of the *Interpretation Act 1967*, section 29B (c) and (e) and s 30 and applies to a ‘law’ (a term defined in the *Legislation Act 2001*, section 195)—see section 230 and the General Explanatory Note to chs 12 to 18 (above).

For s 240 Appointer may exercise delegated function

The section makes it clear that, although a power given to a person by statute is delegated, the person does not lose the power because of the delegation. This section reproduces the effect of the *Interpretation Act 1967*, section 29B (d) and applies to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see section 230 and the General explanatory note for ch 12 to ch 18.

For s 241 Delegation not affected by appointer changes

Section 241 (1) makes it clear that a delegation made by a body is not affected by the fact that the membership of the body later changes. Section 241 (2) provides that a delegation made by a person in a particular position, is not affected by the fact that the person later ceases to hold that position. The section applies to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see section 230 and the General explanatory note for ch 12 to ch 18.

For s 242 Delegation not affected by defect etc

This section is intended to protect the validity of things done under a delegation if it later appears that the delegation was ineffective. The section applies to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see section 230 and the General explanatory note for ch 12 to ch 18.

For s 243 and 244

There are no sections 243 and 244 at this stage.

Part 18.5 Service of documents

General explanatory note for pt 18.5

This part elaborates the provisions of the *Interpretation Act 1967*, sections 17A and 18. These sections provided for service in person and by post. The new provisions also provide for these methods of service and take account of developments in technology such as transmission of documents by fax and email. The part contains a comprehensive set of provisions providing for service of documents on individuals, corporations and government agencies. It is intended that these provisions, like other provisions of the *Legislation Act 2001*, will enable legislative provisions to be shortened and standardised. The part applies to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see section 245 and the General explanatory note for ch 12 to ch 18.

For s 245 Application

This section applies the new provisions for service to other laws irrespective of the language used in the other law. In part this section reproduces the effect of the *Interpretation Act 1967*, section 17A (1).

For s 246 Definitions for pt 18.5

This section defines a number of terms that appear in part 18.5. The term ‘agency’ includes government departments, statutory office holders such as the Public Trustee, statutory corporations such as the Agents Board and unincorporated statutory bodies such as the Vocational Education and Training Authority. The term ‘corporation’ is defined so as not to include a government agency that is a corporation. The definitions of business address and email address take account of addresses recorded in registers by entities administering or responsible for a law.

For s 247 Service of documents on individuals

Apart from service in person, by prepaid post or by leaving a document at the home or business address of the individual which are provided for under the *Interpretation Act 1967*, provision is also made for service by fax and email. In part this section reproduces the effect of the *Interpretation Act 1967*, section 17A (1) (a).

For s 248 Service of documents on corporations

A document may be served on a corporation by giving the document to an executive officer of the corporation (see s 246, def *executive officer*). Service may also be effected, as provided under the *Interpretation Act 1967*, section 17A (1) (b), by prepaid post or by leaving a document at a registered office or business address of the corporation. The section also provides for service on the corporation by fax and email.

For s 249 Service of documents on agencies

A document may be served on an agency in ways that correspond to service on a corporation (see s 248).

For s 250 When service taken to be effected

For legal and administrative purposes it is necessary to know that a document required to be given to a person has in fact been given or served, and the time of service. A person who gives a document to another is able to verify the date and time of service. If a document is served by post, however, the date and time of delivery cannot be known with the same precision. Because of this, the rule that has applied for many years is that the document is taken to have been served when the document would have been delivered ‘in the ordinary course of post’ (meaning the time that would ordinarily be taken to deliver an article through the post to the particular address). This rule is reflected in section 250 (1) which reproduces the effect of the *Interpretation Act 1967*, section 18. However, section 160 of the *Evidence Act 1995* (Cwlth) affects the calculation of the date of service and its

effect is noted to section 250 (2). Sections 250 (3) and (4) lay down analogous rules for determining when a fax or email is to be regarded as served. Section 250 (3) creates a rebuttable presumption that a fax or email is received when it is sent. Section 250 (4) is intended to allow for the fact that at the time of sending a fax or email, the fax machine or computer may signal that transmission failed. In the case of an email, a message may also be received on the sending computer soon after the time of sending indicating that the email was not sent. (This message may not be received until the next day, depending when the email was sent or when the computer was turned off for the day.) The effect of section 250 (3) and (4) is that unless the person sending the message receives such a signal or message, the fax or email is taken to have been sent at the time of sending at the fax machine or computer. To provide greater certainty where the fax or email is sent by someone in an organisation, section 250 (4) is intended to exclude the sender having constructive notice through someone else in the organisation knowing or believing that the fax or email system was not, or may not have been operational, or fully operational, at the time of sending. However, the injustice that might arise from the operation of section 250 (4) is balanced, as previously indicated, by the fact that the presumption under section 250 (3) is rebuttable. Section 250 (5) also creates a presumption that a document left for an individual, corporation or agency at an address was received on the day it was left.

For s 251 Other laws not affected etc

Section 251 (1) indicates that the provisions of this part do not exclude the operation of other laws providing for service of documents. Section 251 (2) makes it clear that other laws may make special provision about service of particular documents. This section reproduces the effect of the *Interpretation Act 1967*, section 17A (2) (a) and applies to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see the General explanatory note for ch 12 to ch 18.

For s 252 Powers of courts or tribunals not affected

Section 252 does not limit the power of a court or tribunal to order that a particular document be served in a particular way. This section reproduces the effect of the *Interpretation Act 1967*, section 17A (2) (b).

For s 253 and 254

There are no sections 253 or 254 at this stage.

Part 18.6 Other provisions

For s 255 Forms

Section 255 (1) provides that substantial compliance with a form is sufficient. In other words, a document that is prepared for the purposes of a law does not need to be set out in exactly the same format, typeface etc as are used in the law. Section 255 (2) provides for compliance with requirements in forms. For example, if a requirement for a form is that it must be signed, the form is not properly completed unless it is signed. Section 255 (3)

overrides the obligation to comply with a requirement about information if the information is not reasonably necessary. Section 255 (4) makes it clear that forms made for particular laws may be combined. Section 255 (5) provides for arrangements to be made so that a form required by law to be given to one person may be given to another. Section 255 (6) indicates that section 255 applies to all forms approved or prescribed under a law unless the law displaces the operation of the section, or part of the section, by a provision indicating that another rule applies. This section reproduces the effect of the *Interpretation Act 1967*, section 13 and applies to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see the General explanatory note for ch 12 to ch 18.

For s 256 Production of records kept in computers etc

Legislation frequently requires information or documents to be provided for various purposes. When all information was recorded on paper, the requirement would have been complied with by producing a book or document. Section 256 is concerned with applying such an obligation when the information or document is recorded in a computer or similar device. In other words, gaining access to information or documents that do not exist on paper. In that situation the obligation is complied with by the provision of a document (which would usually be printed out from the computer or device) that accurately reproduces or contains the information in a form that can be understood by the person who requires it. The section reproduces the effect of the *Interpretation Act 1967*, section 13A and applies to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see the General explanatory note for ch 12 to ch 18.

For s 257 to 259

There are no sections 257 to 259 at this stage.

[2.69] Section 125 (1)

omit

or the *Legislation (Consequential Amendments) Act 2001*

substitute

, the *Legislation (Consequential Amendments) Act 2001* or the *Statute Law Amendment Act 2001 (No 2)*, schedule 2

(Commencement: the commencement of section 2 of this Act or immediately after the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment extends the scope of section 125 (which authorises the making of transitional regulations) to the amendments made by this schedule.

[2.70] Section 125 (2) (b)

substitute

- (b) the provisions of the *Interpretation Act 1967* in force immediately before the commencement of the *Legislation (Consequential Provisions) Act 2001* or the *Statute Law Amendment Act 2001 (No 2)*, part 2.1.

Explanatory note

This amendment is consequential on the amendment of section 125 (1).

[2.71] Section 125 (4)

substitute

- (4) This section does not limit section 268 (Modification of ch 20's operation).

Explanatory note

This amendment is consequential on the insertion of new chapters 12 to 18 and the renumbering of chapter 13 as chapter 20.

[2.72] Section 126, heading

substitute

268 Modification of ch 20's operation

Explanatory note

This amendment is consequential on the renumbering of chapter 13 as chapter 20.

[2.73] Section 129 (3)

omit

128

substitute

270

Explanatory note

This amendment is consequential on the renumbering of the sections of chapter 13.

[2.74] New sections 273 and 274

before schedule 1, insert

273 Transitional provisions about penalties (IA s 63)

- (1) This section applies to—
 - (a) a law as enacted or made that was notified in the Gazette before 10 November 1999; or
 - (b) a republication of a law republished as in force on a date (however expressed) before 10 November 1999.
- (2) In a law, if a penalty for an offence is expressed to apply to a body corporate or corporation—
 - (a) the penalty applies to any corporation; and
 - (b) the value of a penalty unit for the offence is \$100, even though the person charged is a body corporate or another corporation.
- (3) Section 133 (1) (b) is subject to this section.
- (4) In this section:

law means an Act or subordinate law.

republication, of a law, means a republication of a law to which the *Legislation (Republication) Act 1996* applied.
- (5) This section expires 2 years after it commences.

274 Status of certain determinations

- (1) This section applies to a determination of fees in force immediately before the commencement of part 6.3 (Making of certain statutory instruments about fees).
- (2) To the extent that—
 - (a) the determination was in force under a provision of an Act (the **authorising law**) amended by the *Legislation (Consequential Amendments) Act 2001*; and
 - (b) apart from this section, the authorising law would no longer authorise the determination, in whole or part;the determination is taken to be made under the authorising law as if it had not been amended by that Act.
- (3) Section 56 (3) (a) and (b) do not apply to the determination.
- (4) Section 57 applies to the determination as if a reference to the service mentioned in the determination included a reference to the service mentioned in the authorising law as in force before it was amended by the *Legislation (Consequential Amendments) Act 2001*.
- (5) In this section:
fee—see section 55.
- (6) This section expires 2 years after it commences.

Explanatory note

This amendment inserts new sections 273 and 274 into the *Legislation Act 2001*. Section 273 will continue the effect of the *Interpretation Act 1967*, section 63. The section takes account of the fact that before 10 November 1999, the same rate of penalty unit applied to corporations as applied to individuals (see now *Legislation Act 2001*, s 133). Section 274 takes account of various amendments of provisions that authorise the determination of fees. The amendment is intended to ensure that amendments made by the *Legislation (Consequential Amendments) Act 2001* do not affect determinations of fees that were in force before *Legislation Act 2001*, part 6.3 came into operation.

[2.75] Schedule 1, part 1, heading

substitute

Part 1.1 Former NSW and UK Acts in force before establishment of Territory

Note to pt 1.1 The former NSW and UK Acts mentioned in this part are in
force in the ACT as Acts of the Legislative Assembly

Explanatory note

This amendment renumbers the part, updates the part heading to reflect more accurately the Acts listed in the part, and includes an explanatory note.

**[2.76] Schedule 1, items about *Apportionment Act 1905*,
Conveyancing and Law of Property (Supplemental) Act
1901, *Dedication by User Limitation Act 1902*, *Forfeiture*
of Leases Act 1901, *Inebriates Act 1900*, *Inebriates*
(Amendment) Act 1909 and *Partition Act 1900***

omit

Explanatory note

This amendment omits items about Acts that are repealed by this Act.

[2.77] Schedule 1, part 1, new item

insert

35A	<i>Crimes Act 1900</i>	1900 No 40 (NSW)
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Explanatory note

This amendment adds the *Crimes Act 1900* to the list of former NSW Act that have become Acts of the Legislative Assembly. The *Crimes Act 1900* became an Act of the Legislative Assembly because of the *Crimes Legislation (Status and Citation) Act 1992*.

[2.78] Schedule 1, part 1, items 59 and 60

omit

(Commencement: the commencement of section 2 of this Act or immediately after the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment is consequential on the new headings to the parts of the schedule inserted by this Act.

[2.79] Schedule 1, part 1

renumber items when Act next republished under Legislation Act 2001

Explanatory note

This amendment provides for the consequential renumbering of items on the next republication of the *Legislation Act 2001*.

[2.80] Schedule 1, part 2, heading

substitute

Part 1.2 Former NSW Acts applied after establishment of Territory

[2.81] Schedule 1, part 2 (but not note)

substitute

Note to pt 1.2 The former NSW Acts mentioned in this part are in force in the ACT as Acts of the Legislative Assembly

column 1 item	column 2 name of NSW Act	column 3 applying Territory Act
1	<i>Scaffolding and Lifts Act 1912</i>	<i>Scaffolding and Lifts Act 1957</i> (repealed)
2	<i>Anglican Church of Australia Trust Property Act 1917</i>	<i>Anglican Church of Australia Trust Property Act 1928</i>
3	<i>Conveyancing Act 1919</i>	(a) <i>Conveyancing Act 1951</i> (repealed) (b) <i>Law of Property (Miscellaneous Provisions)</i>

		<i>Act 1958</i> (repealed)
		(c) <i>Trustee Act 1957</i> (repealed)
4	<i>Trustee Act 1925</i>	<i>Trustee Act 1957</i> (repealed)
5	<i>Anglican Church of Australia Constitution Act 1961</i>	<i>Anglican Church of Australia Trust Property Act 1928</i>
6	<i>Dangerous Goods Act 1975</i>	<i>Dangerous Goods Act 1984</i> (repealed)

(Commencement: the commencement of section 2 of this Act or immediately after the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment renumbers the part, updates the part heading to reflect more accurately the Acts listed in the part, includes an explanatory note, and updates the list of Acts in column 3 of the part to indicate the Acts repealed by the *Statute Law Amendment Act 2001* and this Act.

[2.82] Dictionary

substitute

Dictionary

(see s 3)

Part 1 Meaning of commonly-used words and expressions

(see s 144)

Note Words and expressions that are defined only for the *Legislation Act 2001* are set out in pt 2.

Act—see the following sections:

- (a) section 7 (Meaning of *Act* generally);
- (b) section 17 (References to Acts include references to former Cwlth enactments etc).

Note See also s 102 (Meaning of references to a law or instrument generally) and s 104 (References to laws include references to instruments under laws).

amend includes—

- (a) for an Act or statutory instrument—omit, insert, substitute, renumber or relocate a provision of the Act or instrument; and
- (b) for an Act or statutory instrument (or a provision of it)—amend by implication; and
- (c) for a provision of an Act or statutory instrument—omit the provision (or a part of it), substitute another provision for the provision (or a part of it), renumber the provision (or a part of it) or relocate the provision (or a part of it); and
- (d) for any other instrument, a provision of an instrument or a decision—change or alter; and
- (e) for chapter 9 (Repeal and amendment of laws)—see section 82 (Definitions for ch 9).

Attorney-General means the Minister designated Attorney-General by the Chief Minister, and includes a Minister authorised by the Chief Minister to act on behalf of the Attorney-General.

chief executive—see section 163.

chief fire control officer means the Chief Fire Control Officer under the *Bushfire Act 1936*.

commencement, of an Act or statutory instrument—see section 80 (References to *commencement* of law).

commencement notice—see section 11 (Meaning of *commencement notice*).

commissioner for the environment means the Commissioner for the Environment under the *Commissioner for the Environment Act 1993*.

commissioner for health complaints means the Community and Health Services Complaints Commissioner under the *Community and Health Services Complaints Act 1993*.

definition—see section 130.

disallowable instrument—see section 9 (Meaning of *disallowable instrument*).

enactment, of an Act—see section 29 (References to *enactment* or *passing* of Acts).

entity includes an unincorporated body and a person (including a person occupying a position).

former NSW Act means a NSW Act mentioned in schedule 1.

former UK Act means a UK Act mentioned in schedule 1.

Governor means—

- (a) for a State (other than the Northern Territory)—the Governor of the State, and includes a person administering the Government of the State; or
- (b) for the Northern Territory—the Administrator of the Territory, and includes a person administering the Government of the Territory.

Governor-General means the Governor-General of the Commonwealth, and includes a person administering the Government of the Commonwealth.

indictable offence—see section 136 (1).

instrument—see section 14 (Meaning of *instrument*).

legal aid commission means the Legal Aid Commission (A.C.T.) established by the *Legal Aid Act 1977*.

making, of a statutory instrument, means the signing, sealing, approval or other endorsement of the instrument by the entity authorised or required to make it.

may—see section 146.

medical practitioner means a doctor.

Minister—see section 162.

must—see section 146.

notifiable instrument—see section 10 (Meaning of *notifiable instrument*).

notification—

- (a) of an Act—see section 30 (References to *notification* of Acts);
and
- (b) of a statutory instrument—see section 63 (References to *notification* of registrable instruments).

notification day, for an Act or statutory instrument, means the day the Act or instrument is notified.

occupy a position includes hold the position or exercise functions of the position.

omit, in relation to a provision of an Act or statutory instrument, includes repeal.

parliamentary counsel means the person performing the duties of Parliamentary Counsel in the public service.

passing, of an Act—see section 29 (References to *enactment* and *passing* of Acts).

penalty unit—see section 133.

person includes an individual and a corporation.

Note Section 160 deals with references to a person generally.

provision—see section 16 (Meaning of *provision*).

registrable instrument—see section 12 (Meaning of *registrable instrument*).

repeal includes—

- (a) for an Act or statutory instrument—omit a provision of the Act or instrument; and
- (b) for an Act or statutory instrument (or a provision of it)—abrogate or limit its effect, or exclude from its application, any circumstance, matter, person, place or purpose; and
- (c) for a provision of an Act or statutory instrument—omit the provision (or a part of it); and
- (d) for a decision—revoke it or cancel it; and
- (e) for chapter 9 (Repeal and amendment of laws)—see section 82 (Definitions for ch 9).

see, in a definition—see section 131 (Signpost definitions).

statutory instrument—see section 13 (Meaning of *statutory instrument*).

subordinate law—see section 8 (Meaning of *subordinate law*).

statutory office holder means the person occupying a position under an Act or statutory instrument.

summary offence—see section 136 (2).

the Territory means—

- (a) when used in a geographical sense—the Australian Capital Territory; or
- (b) in any other case—the body politic established by the Self-Government Act, section 7.

Territory instrumentality means a corporation that—

- (a) is established under an Act or statutory instrument, or under the Corporations Act; and
- (b) is a Territory instrumentality under the *Public Sector Management Act 1994*.

Note Territory instrumentality is defined in the *Public Sector Management Act 1994*, s 3 (1).

Treasurer means the Minister designated Treasurer by the Chief Minister, and includes a Minister authorised by the Chief Minister to act on behalf of the Treasurer.

tribunal includes any entity that is authorised to hear, receive and examine evidence.

under, in relation to an Act or statutory instrument or a provision of an Act or statutory instrument, includes all of the following:

- (a) by;
- (b) for or for the purposes of;
- (c) in accordance with;
- (d) within the meaning of.

will includes a codicil.

Part 2 **Words and expressions for the Legislation Act 2001 only**

Note Words and expressions that apply to all Acts and statutory instruments are set out in pt 1.

administrator, for part 18.5 (Service of documents)—see section 246.

agency, for part 18.5 (Service of documents)—see section 246.

appointee—

- (a) for division 18.3.1 (Appointments—other than acting appointments)—see section 207; and
- (b) for division 18.3.2 (Acting appointments)—see section 217.

appointer—

- (a) for division 18.3.1 (Appointments—other than acting appointments)—see section 205; and
- (b) for division 18.3.2 (Acting appointments)—see section 215; and
- (c) for part 18.4 (Delegations)—see section 230.

approved web site means an Internet site approved under section 21 (Approved web site).

authorised republication—see section 15 (Meaning of *authorised republication*).

authorising law, for chapter 5 (Regulatory impact statements for subordinate laws and disallowable instruments)—see section 31 (Definitions for ch 5).

benefits, for chapter 5 (Regulatory impact statements for subordinate laws and disallowable instruments)—see section 31 (Definitions for ch 5).

business address, for part 18.5 (Service of documents)—see section 246.

corporation, for part 18.5 (Service of documents)—see section 246.

costs, for chapter 5 (Regulatory impact statements for subordinate laws and disallowable instruments)—see section 31 (Definitions for ch 5).

current legislative drafting practice means the legislative drafting practices from time to time used in the Parliamentary Counsel's Office.

delegate, for part 18.4 (Delegations)—see section 233.

document, for part 18.5 (Service of documents)—see section 246.

editorial amendment, of a law—see section 116 (Ambit of editorial amendments).

email address, for part 18.5 (Service of documents)—see section 246.

executive officer, for part 18.5 (Service of documents)—see section 246.

fax number, for part 18.5 (Service of documents)—see section 246.

fee, for part 6.3 (Making of certain statutory instruments about fees)—see section 55 (Definitions for pt 6.3).

home address, for part 18.5 (Service of documents)—see section 246.

law—

- (a) for chapter 5 (Regulatory impact statements for subordinate laws and disallowable instruments)—see section 31 (Definitions for ch 5); and
- (b) for chapter 8 (Commencement and exercise of powers before commencement)—see section 72 (Meaning of *law* in ch 8); and
- (c) for chapter 9 (Repeal and amendment of laws)—see section 82 (Definitions for ch 9); and
- (d) for chapter 11 (Republication of Acts and statutory instruments)—see section 107 (Meaning of *law* in ch 11); and
- (e) for chapter 13 (Structure of Acts and statutory instruments)—see section 125 (Meaning of *law* in ch 13); and
- (f) for chapter 16 (Courts, tribunals and other decision-makers)—see section 175 (Meaning of *law* in ch 16); and

(g) for chapter 17 (Entities and positions)—see section 185 (Meaning of *law* in ch 17); and

(h) for chapter 18 (Administrative and machinery provisions)—see section 195 (Meaning of *law* in ch 18).

provide, for part 6.3 (Making of certain statutory instruments about fees)—see section 55 (Definitions for pt 6.3).

referential words means words that identify a provision as a provision, or part of a provision, of the Act, statutory instrument or provision in which they appear.

Examples

- 1 of this Act
- 2 of this section
- 3 hereof
- 4 said

register means the ACT legislation register.

republication means a republication of a law with the meaning of section 107 (Meaning of *law* in ch 11).

republication date, for an authorised republication, means the date stated in the republication as the republication date.

responsible, for part 18.5 (Service of documents)—see section 246.

scrutiny committee principles, for chapter 5 (Regulatory impact statements for subordinate laws and disallowable instruments)—see section 31 (Definitions for ch 5).

service, for part 6.3 (Making of certain statutory instruments about fees)—see section 55 (Definitions for pt 6.3).

General explanatory note

As mentioned in the explanatory note for proposed section 144, the dictionary is the place where terms and expressions commonly used in ACT legislation are gathered together. The transfer of provisions from the *Interpretation Act 1967* to the *Legislation Act 2001* also involves transferring the bulk of the existing definitions in the dictionary to the

Interpretation Act 1967 to the *Legislation Act 2001*. (This is provided for in an earlier amendment.) Some of the existing definitions in the *Legislation Act 2001* are relevant only to that Act, while the definitions mentioned in section 144 are relevant to all laws and instruments. For this reason, the dictionary to the *Legislation Act 2001* is to be remade in 2 parts. Part 1 consists of definitions of general application and part 2 is relevant only to the *Legislation Act 2001* itself. Apart from relocating definitions from the *Interpretation Act 1967*, a number of consequential amendments of definitions are also required. For example, some of the definitions in the dictionary to the *Interpretation Act 1967* define terms by reference to provisions of the *Interpretation Act 1967*. Because those provisions will now be replaced by provisions in the *Legislation Act 2001*, it is necessary to remake the relevant definitions with a reference to the appropriate provision of the *Legislation Act 2001*. In other cases, the opportunity has been taken (in line with recent practice) to add new definitions to the dictionary to make minor improvements to definitions. The impact of the *Subordinate Laws Act 1989*, section 9 (which will be repealed when the *Legislation Act 2001* commences) has also been taken into account. Section 9 applies the *Interpretation Act 1967* to subordinate laws and instruments of an administrative nature. In some cases, as remade, definitions are expressed to apply in relation to subordinate laws and disallowable instruments; in other cases to statutory instruments, which is the wider category of instruments now provided for in the *Legislation Act 2001*.

Explanatory note for part 1

The definition of **Act** replaces the existing definition in the *Legislation Act 2001*.

The definition of **amend**, paragraphs (a) to (d) correspond to similar provisions in the *Interpretation Act 1967*, dictionary, definition of **amend**. Paragraph (e) corresponds to the existing definition of **amend** in the *Legislation Act 2001*.

The definition of **Attorney-General** replaces a similar definition in the *Interpretation Act 1967* but would include a Minister acting on behalf of the Attorney-General.

The definition of **chief executive** replaces a similar definition in the *Interpretation Act 1967*.

The definitions of **chief fire control officer**, **commissioner for the environment** and **commissioner for health complaints** are new definitions.

The definitions of **commencement** and **commencement notice** replace the existing definitions in the *Legislation Act 2001*.

The definition of **definition** replaces a similar definition in the *Interpretation Act 1967*. The new definition does, however, take a different form as it consists of a signpost definition (see the *Legislation Act 2001*, s130 n1) that mentions the *Legislation Act 2001*, section 130 (inserted by an earlier amendment in this Act).

The definitions of *disallowable instrument* and *enactment* replace the existing definitions in the *Legislation Act 2001*.

The definition of *entity* replaces a similar definition in the *Interpretation Act 1967*.

The definitions of *former NSW Act* and *former UK Act* replace the existing definitions in the *Legislation Act 2001*.

The definitions of *Governor* and *Governor-General* replace similar definitions in the *Interpretation Act 1967* (see s 21 and 22) but in a more up-to-date form.

The definition of *indictable offence* is a new definition and is explained in the explanatory note for section 136.

The definition of *instrument* replaces the existing definition in the *Legislation Act 2001*.

The definition of *legal aid commission* is new definition.

The definition of *making* replaces the existing definition in the *Legislation Act 2001*.

The definition of *may* replaces a similar definition in the *Interpretation Act 1967*.

The definition of *medical practitioner* is new definition.

The definitions of *Minister* and *must* replace similar definitions in the *Interpretation Act 1967*.

The definitions of *notifiable instrument*, *notification* and *notification day* replace the existing definitions in the *Legislation Act 2001*.

The definitions of *occupy* and *omit* replace similar definitions in the *Interpretation Act 1967*.

The definitions of *parliamentary counsel* and *passing* replace the existing definitions in the *Legislation Act 2001*.

The definitions of *penalty unit* and *person* replace similar definitions in the *Interpretation Act 1967*.

The definitions of *provision* and *registrable instrument* replace the existing definitions in the *Legislation Act 2001*.

The definition of *repeal*, paragraphs (a) to (d) correspond to similar provisions in the *Interpretation Act 1967*, dictionary, definition of *repeal*. Paragraph (e) corresponds to the existing definition of *amend* in the *Legislation Act 2001*.

The definition of *see*, a signpost definition, replaces a similar definition in the *Interpretation Act 1967*.

The definitions of *statutory instrument* and *subordinate law* replace the existing definitions in the *Legislation Act 2001*.

The definition of *statutory office holder* replaces a similar definition in the *Interpretation Act 1967*.

The definition of *summary offence* is a new definition, which is explained in the explanatory note for section 136.

The definitions of *the Territory* and *Territory instrumentality* replace similar definitions in the *Interpretation Act 1967*.

The definition of *Treasurer* replaces a similar definition in the *Interpretation Act 1967* but would include a Minister acting on behalf of the Treasurer.

The definition of *under* replaces a similar definition in the *Interpretation Act 1967*.

The definition of *will* is a new definition.

Explanatory note for part 2

The definitions of *administrator*, *agency*, *appointee*, *appointer*, *business address*, *corporation*, *document*, *email address*, *executive officer*, *fax number*, *home address* and *responsible* are new signpost definitions.

The definition of *law* is an existing definition of the *Legislation Act 2001*, but has been revised consequentially on the insertion of new chapters 13, 16, 17 and 18 into the *Legislation Act 2001*. The amendment therefore indicates (for example) that for chapter 13 the word *law* is defined in the *Legislation Act 2001*, section 125.

The other definitions in part 2 replace similar definitions in the *Legislation Act 2001*, dictionary.

Schedule 3 Technical amendments

(see s 5)

Part 3.1 Administration and Probate Act 1929

[3.1] Section 49G (1)

omit

, of the State of New South Wales, in its application in the Territory,

Explanatory note

This amendment removes a redundant reference to the former status of the *Trustee Act 1925* as an applied New South Wales Act (see *Interpretation Act 1967*, s 65).

Part 3.2 Anglican Church of Australia Constitutions Act, 1902

[3.2] Section 1

substitute

1 Name of Act

This Act is the *Anglican Church of Australia Constitutions Act 1902*.

Explanatory note

This amendment revises the section providing for the Act's name to bring it into line with current drafting practice. The Act is a former NSW Act that now applies as an ACT Act.

Part 3.3 Animal Diseases (Bees) Regulations 2000

[3.3] Regulation 2

substitute

2 Commencement

These regulations commence on the day they are notified in the Gazette.

(Commencement: 2 March 2000.)

Explanatory note

The commencement provision of these regulations provided that the regulations ‘commence on the commencement of the *Animal Diseases (Amendment) Act 1999*’. The *Animal Diseases Amendment Act 1999* commenced on 10 November 1999 (that is, the day that Act was notified in the Gazette). However, the regulations were not notified in the Gazette until 2 March 2000.

The amendment makes it clear that the regulations validly commenced on the day they were notified in the Gazette. This result is consistent with the provision now made by the *Legislation Act 2001*, section 73 (3). The amendment is backdated to the day the regulations were notified in the Gazette to ensure that they validly commenced on that day.

Part 3.4 Animal Welfare Act 1992

[3.4] Dictionary, definition of *Ethics Committee*

omit

the Animal Experimentation Ethics Committee

substitute

an animal experimentation ethics committee

Explanatory note

This amendment corrects a minor error in a definition. The *Animal Welfare Act 1992* provides for the establishment of more than 1 committee.

Part 3.5 Arrest on Mesne Process Act 1902

[3.5] Section 1

substitute

1 Name of Act

This Act is the *Arrest on Mesne Process Act 1902*.

Explanatory note

This amendment revises the section providing for the Act's name to bring it into line with current drafting practice. The Act is a former NSW Act that now applies as an ACT Act.

Part 3.6 Bushfire Act 1936

[3.6] Section 11A (1), definition of *agency*, paragraphs (c) and (d)

substitute

- (c) the Australian Capital Territory Public Cemeteries Board; or
- (d) an entity prescribed under the regulations.

(Commencement: the commencement of section 2 of this Act or the commencement of the *Cemeteries and Crematoria Act 2001*, part 3, whichever is later.)

Explanatory note

This amendment is consequential on the *Cemeteries and Crematoria Bill 2001*. The amendment also brings the language of a paragraph into line with current drafting practice.

[3.7] Section 11A (1), definition of *fuel management plan*

substitute

fuel management plan means a fuel management plan in force under this part.

Note A reference to an instrument (including the fuel management plan) includes a reference to the instrument as originally made and as amended (see *Legislation Act 2001*, s 102).

Explanatory note

This amendment is consequential on the *Legislation Act 2001*. The amendment also simplifies the definition by removing an unnecessary word ('bushfire').

[3.8] Section 11D, heading

substitute

11D Fuel management plans

Explanatory note

This amendment removes an unnecessary word ('bushfire'). *Fuel management plan* is the defined term (see the *Bushfire Act 1936*, section 11A (1)).

[3.9] Section 11H (a) and (b)

omit

bushfire

Explanatory note

This amendment removes an unnecessary word ('bushfire'). *Fuel management plan* is the defined term (see the *Bushfire Act 1936*, section 11A (1)).

**Part 3.7 Children and Young People
Act 1999**

[3.10] Section 290 (d)

substitute

- (d) if a party is not represented by a lawyer and has, before the date of the order, filed a notice of address for service—the party.

Explanatory note

This amendment improves the syntax of the paragraph.

Part 3.8 Common Boundaries Act 1981

[3.11] Section 2 (1)

omit

(1) In

substitute

In

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment is consequential on the next amendment.

[3.12] Section 2 (2) to (5)

substitute

2A When land is a *parcel of land*

For this division, land is a *parcel of land* if—

- (a) the land is held by a person under a lease, other than a weekly or fortnightly tenancy, from the Territory; or
- (b) the land is a block within the meaning of the *Districts Act 1966* on which there is a building other than—
 - (i) a bus shelter; or
 - (ii) a building consisting only of a public toilet.

2B When land is not a *parcel of land*

For this division, land is not a *parcel of land* if—

- (a) the land is a public park; or

- (b) the land is a reserved area under the *Nature Conservation Act 1980*; or
- (c) the land is a sports ground.

2C Cost of erecting new fence includes cost of removing existing fence

For this division, if a new fence is to be erected in place of an existing fence, the cost of removing the existing fence is taken to be part of the cost of erecting the new fence.

2D Cost of erecting fence includes fee payable to surveyor

For this division, a fee payable to a surveyor to survey the boundary or line along which a fence is to be erected is taken to be included in the cost of erecting the fence or erecting a new fence in place of an existing fence.

Explanatory note

This amendment replaces section 2 (2) to (5) with 4 new sections, in line with current drafting practice.

New section 2A includes updated language and a reference to an estate in fee simple that was in section 2 (2) has been omitted. Freehold estates do not exist in the ACT.

New section 2B includes updated language and omits a reference to the *Public Parks Act 1928*, which has been repealed.

New sections 2C and 2D include updated language.

Part 3.9 Conveyancing Act 1919

General explanatory note for pt 3.9

This part brings together some of the law about property and conveyancing applying in the ACT.

Under amendments of the *Interpretation Act 1967* made by the *Law Reform (Miscellaneous Provisions) Act 1999*, former New South Wales Acts in force in the Territory immediately before 10 November 1999 became, for all purposes, laws made by the Legislative Assembly (see *Interpretation Act 1967*, s 65).

Provisions of the *Conveyancing Act 1919* (NSW) were formerly applied as Territory law by 3 ACT Acts: the *Conveyancing Act 1951* (the **1951 Act**), the *Trustee Act 1957* (the **1957 Act**) and the *Law of Property (Miscellaneous Provisions) Act 1958* (the **1958 Act**). Because of the *Interpretation Act 1967* amendments, the provisions of the *Conveyancing Act 1919* (NSW) in force in the ACT immediately before 10 November 1999 became a single ACT law (the **consolidated 1919 Act**). The amendments in this part update provisions of the consolidated 1919 Act and will enable that Act to be republished as an ACT Act.

The provisions of the *Partition Act 1900*, the *Apportionment Act 1905* and the *Dedication by User Limitation Act 1902* are also remade by this part as provisions of the consolidated 1919 Act. These Acts have been repealed in NSW and their provisions included (in a remade form) in the *Conveyancing Act 1919* (NSW).

The 1951 Act, the 1957 Act, the 1958 Act, the *Partition Act 1900*, the *Apportionment Act 1905* and the *Dedication by User Limitation Act 1902* are all repealed by this Act (see schedule 4).

To assist users of the consolidated 1919 Act, the numbering of parts, divisions and sections inserted by amendments in this Act have, as far as possible, been kept consistent with the current NSW Act, the *Conveyancing Act 1919* (NSW).

[3.13] Title

insert

An Act about the law of property and the practice of conveyancing

Explanatory note

This note inserts a long title along the lines of the long title to the *Conveyancing Act 1919* (NSW).

[3.14] Section 6 and part 1

substitute

Part 1 Preliminary

1 Name of Act

This Act is the *Conveyancing Act 1919*.

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 words and expressions used in this Act, and includes references (***signpost definitions***) to other words and expressions defined elsewhere in this Act.

For example, the signpost definition '***trustee company***—see the *Trustee Companies Act 1947*, section 3.' means that the expression 'trustee company' is defined in that section and the definition applies to 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 *Interpretation Act 1967*, s 11F and s 11G).

3 Notes

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

Note See *Interpretation Act 1967*, s 12 (1), (4) and (5) for the legal status of notes.

6 Application of Act

- (1) Subject to this Act, this Act does not apply to leasehold land under the *Land Titles Act 1925*, if there is an inconsistency with that Act.
- (2) If a provision of this Act is stated to apply to land under the *Land Titles Act 1925* or an instrument under that Act, the provision is not taken (unless the contrary intention appears) to apply exclusively to land or instruments of that kind.

7 What is a settlement?

- (1) A ***settlement*** is an instrument, or a number of instruments, under which land is for the time being—
 - (a) limited to or in trust for people by way of succession; or

- (b) vested in or limited in trust for a child in possession.
- (2) If a child is beneficially entitled to land, and because of an intestacy or otherwise there is no instrument under which the interest of the child arises or is acquired, a *settlement* is taken to have been made by the intestate or the person whose interest the child has acquired.
- (3) An estate or interest not disposed of by a settlement, and remaining in or reverting to the settlor (or someone deriving title through the settlor), is an estate or interest included in the settlement and coming to the settlor (or other person) under the settlement.

Explanatory note

This amendment inserts a part heading, 3 new sections and 2 remade sections.

This amendment (new section 1) revises the section providing for the Act's name to bring it into line with current drafting practice.

New section 2 is a standard provision explaining the status of the dictionary. The existing interpretation section (section 7) is replaced by a dictionary by other amendments in this part.

New section 3 is a standard provision explaining the status of notes.

Section 6 is remade to update language and omit a redundant reference to freehold land.

Section 7 remakes, in an updated form, section 8 (as formerly applied by the *Conveyancing Act 1951* and the *Trustee Act 1957*) and section 7 (2) (as formerly applied by the *Law of Property (Miscellaneous Provisions) Act 1958*).

[3.15] Part 1 (as formerly applied by the *Conveyancing Act 1951*, the *Trustee Act 1957* and the *Law of Property (Miscellaneous Provisions) Act 1958*)

omit

Explanatory note

This amendment omits provisions of the *Conveyancing Act 1919* (NSW) about interpretation that, in slightly different terms, were formerly applied by the *Conveyancing Act 1951*, the *Trustee Act 1957* and the *Law of Property (Miscellaneous Provisions) Act 1958*. The provisions are remade, in an updated form, by other amendments in this part.

[3.16] Part 2, heading

omit

Explanatory note

There is presently some doubt whether some of the relevant part and division headings of the *Conveyancing Act 1919* (NSW) became part of ACT law. This amendment and the next amendment puts the issue beyond doubt in relation to the heading to part 2.

[3.17] New part 2, heading

insert

Part 2 **General rules about property**

Explanatory note

This amendment inserts a part heading in line with current drafting practice.

[3.18] Part 2, division 1, heading

omit

Explanatory note

There is presently some doubt whether some of the relevant part and division headings of the *Conveyancing Act 1919* (NSW) became part of ACT law. This amendment and the next amendment puts the issue beyond doubt in relation to the heading to part 2, division 1.

[3.19] New part 2, division 1, heading

insert

Division 2.1 **Rules of law on certain points**

Explanatory note

This amendment renumbers a division and inserts a division heading in line with current drafting practice.

[3.20] Section 9

substitute

9 Equitable waste

An estate for life without impeachment of waste does not give the tenant for life a legal right to commit equitable waste, unless an intention to give the tenant for life that right expressly appears in the instrument creating the estate.

Explanatory note

This amendment updates the language of the section.

[3.21] Section 10

substitute

10 Merger

An estate in land is merged in another estate by operation of law only if the beneficial interest in the estate is merged or extinguished in equity.

Explanatory note

This amendment omits unnecessary transitional provisions, updates language and brings the drafting of the section more closely into line with current drafting practice.

[3.22] Section 11

omit

Explanatory note

Section 11 applies only to old system title land and is, therefore, redundant in the ACT.

[3.23] Section 12

substitute

12 Assignment of debts and things in action

- (1) An absolute assignment, by instrument signed by the assignor, of a debt or thing in action (other than an assignment expressed to be by way of charge only) is effective at law to transfer the right to the debt or thing in action if written notice of the assignment is given to

the debtor, trustee, or other person, (the *liable person*) from whom the assignor would have been entitled to receive or claim the debt or thing in action.

- (2) The transfer takes effect on the day the notice is given.
- (3) Without limiting subsection (1), the assignee may recover or otherwise enforce the debt or thing in action, and give a good discharge for it, without involving the assignor.
- (4) However, the transfer is subject to all equities that would have been entitled to priority over the right of the assignee apart from this section.
- (5) If the liable person has notice that the assignment is disputed, or of any conflicting or disputed claims to the debt or thing in action, the liable person may—
 - (a) call on anyone claiming the debt or thing in action to interplead; or
 - (b) pay any amount in dispute into court.

Explanatory note

This amendment updates language, removes a provision and an unnecessary restriction on payment of money into court, and otherwise brings the drafting of the section more closely into line with current drafting practice.

[3.24] Part 2, division 4

renumber as division 2.4

Explanatory note

This amendment brings the numbering of a division into line with current drafting practice.

[3.25] Section 24

substitute

24 Person may assure property to self or to self and others

A person may assure property to—

- (a) himself or herself; or
- (b) himself or herself and anyone else.

Explanatory note

This amendment removes gender-specific language and brings the section more closely into line with current drafting practice.

[3.26] Section 25

substitute

25 Power for corporations to hold property as joint tenants

- (1) A corporation may acquire and hold property in joint tenancy in the same way as if it were an individual.
- (2) Without limiting subsection (1), if a corporation and an individual become entitled to property under circumstances or an instrument that would have created a joint tenancy if the corporation were an individual, the corporation and individual are entitled to the property as joint tenants.
- (3) However, the acquisition and holding of property by a corporation in joint tenancy is subject to the conditions and restrictions that apply to the acquisition and holding of property by a corporation in severalty.
- (4) If a corporation that is a joint tenant of property is dissolved, the property devolves on the other joint tenant.

Explanatory note

This amendment updates language, removes a proviso, extends the application of the section to corporations that are not bodies corporate, and brings the drafting of the section more closely into line with current drafting practice.

[3.27] Section 26

substitute

26 Interpretation of conveyance etc of property to 2 or more people together

- (1) A disposition of the beneficial interest in property (whether or not with the legal estate) to or for 2 or more people together beneficially is taken to be made to or for them as tenants in common, and not as joint tenants.
- (2) This section applies to the interpretation of an instrument commencing after 8 May 1958.
- (3) However, this section does not apply—
 - (a) to people who, by the terms or tenor of the instrument, are executors, administrators, trustees or mortgagees; or
 - (b) if the instrument expressly provides that they are to take as joint tenants.

Explanatory note

This amendment updates language, removes an obsolete reference to tenancy by entireties, and brings the drafting of the section more closely into line with current drafting practice.

[3.28] Section 27

substitute

27 Tenants in common of equitable estate acquiring legal estate

- (1) This section applies if—
 - (a) 2 or more people are beneficially entitled as tenants in common to an equitable estate in property; and
 - (b) they are or become entitled in their own right (whether as joint tenants or tenants in common) to the legal estate in the property; and
 - (c) their legal estate in the property is equal to, and coextensive with, their equitable estate in the property.

- (2) If this section applies, the legal and equitable estates in the property are both to be held by them as tenants in common unless they otherwise agree.

Explanatory note

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

[3.29] New sections 36C and 36D

insert

36C People taking who are not parties

- (1) A person may take an immediate or other interest in land or other property, or the benefit of a condition, right of entry, covenant or agreement over or in relation to land or other property, even though the person is not named as party to the assurance or other instrument.
- (2) The person may sue, and is entitled to all rights and remedies, in relation to the land or other property as if the person had been named as a party to the assurance or other instrument.

36D Provisions about supplemental instruments

- (1) An instrument (the *supplemental instrument*) expressed to be supplemental to a previous instrument is, as far as practicable, to be read, and has effect, as if the supplemental instrument contained a full recital of the previous instrument.
- (2) This section does not operate to give a right to an abstract or production of the previous instrument.
- (3) A purchaser may accept the same evidence that the previous instrument does not affect the title as the purchaser could have accepted if it had only been mentioned in the supplemental instrument.

Explanatory note

The *Conveyancing Act 1919* (NSW), sections 48 and 49 were repealed in NSW by the *Conveyancing (Amendment) Act 1930* and were replaced by existing sections 36C and 36D of that Act. At the time of the enactment of the *Conveyancing Act 1951*, which applied (and modified) various provisions of the *Conveyancing Act 1919* (NSW), sections 48 and 49 were not part of the law of NSW and sections 36C and 36D were not contained in provisions of the *Conveyancing Act 1919* (NSW) applied by the *Conveyancing Act 1951*. It would, therefore, appear that sections 48 and 49 could not have formed part of the law of the ACT.

The amendments in this part put the matter beyond doubt by enacting, in an updated form, provisions based on sections 36C and 36D and omitting the part (part 3) in which sections 48 and 49 were located.

[3.30] Part 3, heading

omit

Explanatory note

There is presently some doubt whether some of the relevant part and division headings of the *Conveyancing Act 1919* (NSW) became part of ACT law. This amendment and the next amendment puts the issue beyond doubt in relation to the heading to part 3.

[3.31] New part 3, heading

insert

Part 3 General rules about deeds

Explanatory note

This amendment inserts a part heading in line with current drafting practice.

[3.32] Part 3, divisions 1 and 3

substitute

Division 3.1 Deeds and their effect

38 Signature and attestation

- (1) A deed (whether or not it affects property) must be—

- (a) signed and sealed; and
 - (b) attested by at least 1 witness who is not a party to the deed, using any form of words.
- (2) Indenting is not necessary.
- (3) An instrument executed after 1 July 1920 that is signed and attested in accordance with this section is taken to be sealed if the instrument is expressed to be an indenture or deed or to be sealed.
- (4) A deed executed and attested in accordance with this section may be proved in the same way that a deed not required by law to be attested might have been proved before 1 November 1951.
- (5) This section does not affect—
 - (a) the execution of a deed by a corporation; or
 - (b) a deed executed before 1 November 1951.

39 Receipt in deed sufficient

A receipt for consideration money or securities in the body of a deed is discharge for the money or securities to the person paying the money or delivering the securities, even though a receipt is not endorsed on the deed.

40 Receipt in deed or endorsed evidence for subsequent purchaser

A receipt for consideration money or other consideration in the body of a deed (or endorsed on it) is, for a subsequent purchaser without notice that all or part of the money or other consideration has not been paid or given, is evidence of the payment or giving of all of the money or other consideration.

41 How powers of appointment are to be exercised

- (1) This section applies if a power of appointment by an instrument other than a will is exercised by—

- (a) a deed executed and attested in accordance with this Act; or
 - (b) an instrument under the *Land Titles Act 1925* executed and attested in accordance with that Act.
- (2) The deed or instrument is, in relation to the execution and attestation, a valid exercise of the power, even though the instrument that creates the power requires an additional or another form of execution, attestation or solemnity.

Division 3.3 Operation of deeds

44 Limitations may be made by direct conveyance without uses

A limitation that may be made by use operating under the Statute of Uses or this Act may be made by direct conveyance without the intervention of uses.

46 In conveyance use of word grant unnecessary

- (1) In a conveyance it is not necessary to use the word grant to convey land.
- (2) Any words that indicate an intention to convey the land are sufficient.

50 Rights of entry etc

- (1) The following interests in property may be conveyed by deed:
 - (a) a right of entry;
 - (b) a contingent remainder;
 - (c) a contingent, executory, or future estate, right or interest;
 - (d) a possibility coupled with an interest.
- (2) The following are void as against the person in possession of land (the *first person*) or those claiming under that person unless the

person (the *second person*) conveying (or covenanting, agreeing, or promising to convey), or the person through whom the second person claims, has been in possession of the land within 1 year from the date of the conveyance (or covenant, agreement or promise):

- (a) a conveyance of a present right of entry in the land (other than to the first person); or
- (b) a covenant or agreement for, or promise of, a conveyance (other than to the first person).

Explanatory notes

This amendment omits, and replaces in an updated form, part 3, divisions 1 and 3 that were formerly applied as Territory law by the *Conveyancing Act 1951* (the **1951 Act**). The amendment also removes doubt about the status of the headings to the divisions and rennumbers the divisions in line with current drafting practice. Explanatory notes for the sections of the divisions formerly applied by the 1951 Act are set out below.

For s 38 (formerly applied by 1951 Act)

Section 38 is remade in a more modern form. It replaces reference to ‘formally’ in existing section 38 (4) with the date of commencement of the *Conveyancing Act 1951*. It also omits an inoperative provision, existing section 38 (5) (b), that refers to the *Registration of Deeds Act 1897* (NSW). That Act has not applied in the ACT.

For s 39 (formerly applied by 1951 Act)

Section 39 (1) is remade in a more modern form. Section 39 (2) is omitted as it is no longer necessary.

For s 40 (formerly applied by 1951 Act)

Section 40 (1) is remade in a more modern form. Section 40 (2) is omitted because it is no longer necessary.

For s 41 and s 43 (formerly applied by 1951 Act)

Section 41 (1) is remade in a more modern form. Section 41 (2) is omitted as it is no longer necessary.

Section 43 is being omitted by the *Legislation (Consequential Amendments) Bill 2001*.

For s 44 and s 45 (formerly applied by 1951 Act)

Section 44 (2) is remade in a more modern form. Section 44 (1) is omitted because it no longer has a practical effect. In practice conveyancers in the ACT have long ceased to

declare uses in limitations. They rely instead on section 44 (2) to create limitations by direct conveyance without the intervention of uses. Section 44 (3) is omitted as it is no longer necessary.

Section 45 is omitted because it has no ongoing operation in the ACT. This is because it relates to freehold land, is inoperative in the ACT Torrens leasehold system with its centralised system of town planning, and is unnecessary following the repeal of 27 Hen. 8 c. 10.

For s 46 and s 47 (formerly applied by 1951 Act)

Section 46 is remade in a more modern form.

Section 47 is omitted because it relates to an estate in fee simple. Freehold estates do not exist in the ACT.

For s 48 and s 49 (formerly applied by 1951 Act)

See the earlier amendment in this part that inserts new sections 36C and 36D.

For s 50 and s 51 (formerly applied by 1951 Act)

Section 50 (1) and (2) are remade in a more modern form. Section 50 (3) is omitted because it is a spent repealing provision.

Section 51 is omitted because it is an administrative procedural provision that is now covered by administrative procedures involving delegation of power.

[3.33] Part 3, division 4, heading

omit

Explanatory note

There is presently some doubt whether some of the relevant part and division headings of the *Conveyancing Act 1919* (NSW) became part of ACT law. This amendment and the next amendment puts the issue beyond doubt in relation to the heading to part 3, division 4.

[3.34] New part 3, division 4, heading

insert

Division 3.4

Corporation instruments

Explanatory note

This amendment renumbers a division and inserts a division heading in line with current drafting practice.

[3.35] Section 51A (1) (a)

omit

thereto

substitute

to the deed

Explanatory note

This amendment updates archaic language.

[3.36] Section 51A (1) (a)

omit

his

substitute

his or her

Explanatory note

This amendment removes gender-specific language.

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

omit

such offices as aforesaid,

substitute

offices mentioned in paragraph (a)—

Explanatory note

This amendment updates archaic language.

[3.38] Section 51A (3)

omit 1st mention of

he

substitute

the person

Explanatory note

This amendment removes gender-specific language.

[3.39] Section 51A (3)

omit

his

substitute

his or her

Explanatory note

This amendment removes gender-specific language.

[3.40] Section 51A (3)

omit 2nd mention of

he

substitute

he or she

Explanatory note

This amendment removes gender-specific language.

[3.41] Section 51A (3)

omit

of this Act in its application in the Territory

Explanatory note

This amendment omits unnecessary words because section 38 (that is mentioned in the subsection) is now part of an ACT Act.

[3.42] Section 51A (4)

omit everything after

assurance in the name of

substitute

the other person.

- (5) If an instrument is executed by an officer who purports to be appointed as mentioned in subsection (4), the instrument is taken, in favour of an honest purchaser, to have been executed by a properly authorised officer.

Explanatory note

This amendment updates language and breaks the existing subsection into 2 subsections.

[3.43] Section 51A (5)

substitute

- (6) This section only applies to deeds and other instruments executed after 8 May 1958.

Explanatory note

This amendment renumbers a subsection and removes unnecessary transitional provisions.

[3.44] Section 51A (6)

renumber as section 51A (7)

Explanatory note

This amendment provides for the consequential renumbering of a subsection.

[3.45] Part 4, heading

omit

Explanatory note

There is presently some doubt whether some of the relevant part and division headings of the *Conveyancing Act 1919* (NSW) became part of ACT law. This amendment and the next amendment puts the issue beyond doubt in relation to the heading to part 4.

[3.46] New part 4, heading

insert

Part 4 Sales and other transactions

Explanatory note

This amendment inserts a part heading in line with current drafting practice.

[3.47] Part 4, division 5, heading

omit

Explanatory note

There is presently some doubt whether some of the relevant part and division headings of the *Conveyancing Act 1919* (NSW) became part of ACT law. This amendment and the next amendment puts the issue beyond doubt in relation to the heading to part 4, division 5.

[3.48] New part 4, division 5, heading and section 66

insert

Division 4.5 Dispositions on trust for sale or with power of sale

66 Meaning of *purchaser* for div 4.5

In this division:

purchaser means a person who acquires an interest in or charge on property for money or money's worth.

Explanatory note

This amendment renumbers a division and brings its heading more closely into line with current drafting practice. It also inserts a new section to include a definition for the division that is currently only in existing section 7 of the *Conveyancing Act 1919* as applied by the *Trustee Act 1957*.

[3.49] Section 66A (2)

omit

not sui juris or is subject to disability

substitute

a person with a legal disability

Explanatory note

This amendment updates language.

[3.50] Section 66A (2)

omit

an infant

substitute

the child

Explanatory note

This amendment updates language.

[3.51] Section 66A (2)

omit

court

substitute

Supreme Court

Explanatory note

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

[3.52] Section 66A (3)

omit

Explanatory note

This amendment omits an unnecessary application provision.

[3.53] Section 66C (2)

substitute

- (2) This section applies only to instruments commencing after 1 December 1957.

Explanatory note

This amendment is consequential on the repeal of the *Trustee Act 1957* by this Act (see schedule 4).

[3.54] Section 66D (1)

omit

a minority

substitute

childhood

Explanatory note

This amendment updates language.

[3.55] Section 66D (3)

omit

same

substitute

sale

Explanatory note

This amendment updates language.

[3.56] Section 66D (3)

omit

persons, if any, of full age, not being annuitants,

substitute

people (if any) who are adults and not annuitants and who are

Explanatory note

This amendment updates language.

[3.57] Section 66D (3) (a)

omit

thereof

substitute

of it

Explanatory note

This amendment updates language.

[3.58] Section 66D (4) (b)

omit

court

substitute

Supreme Court

Explanatory note

This amendment revises a reference to the Supreme Court in line with current drafting practice.

[3.59] Section 66D (4A) and (5)

renumber as section 66D (5) and (6)

Explanatory note

This amendment renumbers subsections.

[3.60] Section 66D (5)

omit

an infant

substitute

a child

Explanatory note

This amendment updates language.

[3.61] Section 66D (5)

omit

the infant

substitute

the child

Explanatory note

This amendment updates language.

[3.62] Section 66D (6)

omit

Explanatory note

This amendment omits an unnecessary application provision.

[3.63] Section 66E

substitute

66E Powers of Supreme Court if trustees for sale refuse to exercise powers

- (1) If trustees for sale refuse to sell or exercise any of the powers given by section 66D, or any necessary consent cannot be obtained, any interested person may apply to the Supreme Court for—
 - (a) a vesting or other order to give effect to the proposed transaction; or
 - (b) an order directing the trustees for sale to exercise any of their powers.
- (2) The court may make any order it considers appropriate.

Explanatory note

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

[3.64] New division 4.6

insert

Division 4.6 Partition

66F Meaning of *interested person* in div 4.6

In this division:

interested person, in relation to a property, means a person with an interest in the property.

66G Power of Supreme Court to order sale instead of partition

- (1) In an action for partition of property, instead of ordering partition—
 - (a) the Supreme Court may, on the application of an interested person, order the sale of the property if the court considers that sale (and a distribution of the proceeds) would be more beneficial than partition because of—

- (i) the nature of the property; or
 - (ii) the number of interested people; or
 - (iii) the absence or disability of an interested person; or
 - (iv) any other circumstances; and
 - (b) the court must (unless it sees good reason not to), on the application of interested people with a collective interest in the property of at least a half share in the property, order the sale of the property; and
 - (c) the court may, on the application of an interested person, order the sale of the property unless other interested people agree to buy the share of the applying person.
- (2) The power of the Supreme Court to order the sale of property includes the power to order the sale of a part of the property and the partition of the rest of the property.
- (3) If the Supreme Court orders the sale of property, it may—
- (a) appoint trustees to receive and apply proceeds of the sale; or
 - (b) give any consequential directions it considers appropriate, including, for example, directions about—
 - (i) the valuation of an interested person's share in the property; and
 - (ii) the application, investment and distribution of proceeds of sale.
- (4) For this division, an action for partition of property includes an action for sale of the property and distribution of the proceeds.
- (5) In an action for partition of property, it is sufficient to claim sale and distribution of the proceeds and it is not necessary to claim a partition.

66H Authority for interested person to bid

- (1) The Supreme Court may allow an interested person in relation to property to bid at the sale of the property under this division on the conditions that the court considers appropriate, including, for example, conditions about—
 - (a) nonpayment of deposit; or
 - (b) setting off or accounting for the purchase money or any part instead of paying it; or
 - (c) anything else.
- (2) This section does not limit section 66G (3).

66I Parties to partition actions

- (1) A person who, apart from this division, might have brought an action for partition may bring the action against any interested person without serving any other interested person.
- (2) A defendant in an action cannot object for want of parties.

66J Several sales in same partition action

- (1) This section applies if, in an action for partition—
 - (a) 2 or more sales are made; and
 - (b) a person (the *excluded person*) is excluded from participation in the proceeds of any of the sales (the *excluded sale*).
- (2) If the excluded person establishes the person's claim to take part in the proceeds of another of those sales, the shares of the other people interested in the proceeds of that sale must be reduced to the extent that their share of the proceeds of the excluded sale were increased by the exclusion of the excluded person from the proceeds of that sale.
- (3) The amount mentioned in subsection (2) must be put towards payment to the excluded person of the share of the proceeds of the

excluded sale that the person would have been entitled to if the person had not been excluded.

Explanatory note

This amendment remakes, in an updated form, the provisions of the *Partition Act 1900*. That Act is repealed by this Act (see schedule 4).

Section 66G remakes sections 4, 7, 16 and 17. Section 4 is remade as section 66G (1), section 7 as part of section 66G (3) and sections 16 and 17 as section 66G (2), (4) and (5). Unnecessary provisions about the Supreme Court's powers (including unnecessary restrictions on the power of the Supreme Court to give directions about the application of the proceeds of sale) that were contained in section 7 have been omitted.

Section 66H remakes section 5.

Section 66I remakes section 10 (1).

Section 66J remakes section 13.

Sections 8, 9, 10 (2), 11, 12 and 14 deal with procedural matters that do not need to be included in an Act. The matters dealt with in the provisions are covered by the Supreme Court's general powers, its powers under the *Trustee Act 1925* and the powers given by new section 66G (3). Section 9 (2) is also unnecessary because it makes an archaic distinction between the rules relating to real and personal property. Omission of the provisions will allow the Supreme Court to make any necessary procedural provisions in the *Supreme Court Rules*.

[3.65] Part 6, heading

omit

Explanatory note

There is presently some doubt whether some of the relevant part and division headings of the *Conveyancing Act 1919* (NSW) became part of ACT law. This amendment and the next amendment puts the issue beyond doubt in relation to the heading to part 6.

[3.66] New part 6, heading

insert

Part 6

Covenants and powers

Explanatory note

This amendment inserts a part heading in line with current drafting practice.

[3.67] Part 6, division 2, heading

omit

Explanatory note

There is presently some doubt whether some of the relevant part and division headings of the *Conveyancing Act 1919* (NSW) became part of ACT law. This amendment and the next amendment puts the issue beyond doubt in relation to the heading to part 6, division 2.

[3.68] Part 6, division 2, heading

insert

Division 6.2 Covenants for title

Explanatory note

This amendment renumbers a division and inserts a division heading in line with current drafting practice.

[3.69] Section 78 (1)

substitute

78AA Meaning of *conveyance* in div 6.2

In this division:

conveyance does not include a demise by way of lease at a rent.

78 Covenants for title to be implied on conveyances

- (1) If a conveyance mentioned in another section of this division is made, the covenant mentioned in the section is taken to be implied.
- (2) The covenant is a covenant by the person or each of the people who convey the property.

-
- (3) The covenant is a covenant in relation to the property or the share in the property expressed to be conveyed by the person.
- (4) The covenant is a covenant with—
- (a) the person to whom the conveyance is made; or
 - (b) if the conveyance is made to 2 or more people jointly—they jointly; or
 - (c) if the conveyance is made to 2 or more people as tenants in common—each of them.
- (5) However, this division does not imply a covenant in a conveyance by a person in which the person is not expressed in the conveyance to be conveying—
- (a) as beneficial owner, settlor, trustee or mortgagee; or
 - (b) as the executor or administrator of a dead person; or
 - (c) as a manager under the *Guardianship and Management of Property Act 1991*; or
 - (d) under an order of the Supreme Court; or
 - (e) by direction of a person as beneficial owner.

Explanatory note

This amendment remakes, in an updated form, existing section 78 (1), (9) and (10).

[3.70] Section 78 (2) to (7)

omit

, namely

Explanatory note

This amendment omits an unnecessary word.

[3.71] Section 78 (2)

renumber as section 78A

Explanatory note

This amendment renumbers a subsection as a section.

[3.72] Section 78 (3)

omit

(3) In

substitute

(1) In

Explanatory note

This amendment is consequential on the next amendment of section 78 (3).

[3.73] Section 78 (3)

omit everything after

up to the time of

substitute

conveyance.

(2) In this section:

purchase for value does not include a conveyance in consideration of marriage.

Explanatory note

This amendment restructures a provision in line with current drafting practice.

[3.74] Section 78 (7)

omit

Court

substitute

Supreme Court

Explanatory note

This amendment changes a reference to Court to Supreme Court in line with current drafting practice.

[3.75] Section 78 (3) to (7)

renumber as section 78B to 78F

Explanatory note

This amendment renumbers subsections as sections.

[3.76] Section 78 (7), 1st sentence

omit

, which covenant shall be deemed to extend to his or her own acts only

Explanatory note

This amendment omits words that are remade by a later amendment as section 78F (2).

[3.77] Section 78 (7), 1st sentence

renumber as section 78F (1)

Explanatory note

This amendment renumbers a sentence as a subsection in line with current drafting practice.

[3.78] New section 78F (2)

after 1st sentence, insert

(2) The covenant extends only to the acts of the person who conveys.

Explanatory note

This amendment recasts part of a sentence as a separate subsection.

[3.79] Section 78 (7), 2nd sentence

renumber as section 78F (3)

Explanatory note

This amendment renumbers a sentence as a subsection in line with current drafting practice.

[3.80] Section 78 (8)

substitute

78G Covenant implied on conveyance by direction of beneficial owner

- (1) If a conveyance is expressed to be made at the direction of the beneficial owner, a covenant by the beneficial owner is taken to be implied in the conveyance.
- (2) The covenant is the covenant that would have been implied if—
 - (a) the conveyance had been made by the beneficial owner; and
 - (b) the beneficial owner had expressed to convey as beneficial owner.

Explanatory note

This amendment remakes section 78 (8) in an updated form.

[3.81] Section 78 (9) and (10)

omit

Explanatory note

This amendment omits subsections that are remade as new sections 78AA and 78 (5).

[3.82] Section 78 (11)

omit

Explanatory note

This amendment omits a subsection that is no longer necessary.

[3.83] New part 11

insert

Part 11 Apportionment

142 Definitions for pt 11

In this part:

annuity includes salary and pension.

dividend includes—

- (a) a payment made by the name of dividend or bonus; or
- (b) a payment otherwise made out of the revenue of a trading or other public company that is divisible between members of the company, whether or not a payment of that kind is usually made or declared at fixed times;

but does not include a payment in the nature of a return or reimbursement of capital.

rent includes—

- (a) rent charge, rent seck and rent service; and
- (b) a periodical payment or rendering instead of, or in the nature of, rent.

143 Application of pt 11 to dividends of companies

For this part, revenue mentioned in section 142, definition of *dividend*, paragraph (b) is taken to have accrued by equal daily increments during the period in relation to which the payment of the revenue is declared or expressed to be made.

144 Rents and periodical payments

- (1) All rents, annuities, dividends, and other periodical payments in the nature of income (whether reserved or made payable under an instrument or otherwise) are, like interest on an amount lent, taken to accrue from day-to-day, and must be apportioned in relation to time accordingly.

- (2) The apportioned part of the rent, annuity, dividend or other periodical payment is payable or recoverable—
 - (a) for a continuing payment—when the entire payment of which the apportioned part forms part becomes payable, and not before; and
 - (b) for a payment determined by re-entry, death or otherwise—when the next entire payment would have been payable if it had not been determined, and not before.
- (3) A person has, and the executors, administrators and assigns of a person (including a person whose interest ends on the person's death) have, the same rights, at law and in equity, for recovering the apportioned parts of periodical payments when payable (allowing proportionate parts of all just allowances) as they would have had for recovering the entire payments if they were entitled to them.
- (4) However, if a person is liable to pay rent in relation to an interest in land, the person and the interest must not be resorted to specifically for any apportioned part of an entire or continuing rent.
- (5) The entire or continuing rent, including any apportioned part, may instead be recovered by the person who, if the rent had not been apportionable under this section or otherwise, would have been entitled to the entire or continuing rent.
- (6) The apportioned part of the entire or continuing rent is then recoverable from the person mentioned in subsection (5) by a person entitled to it under this section.
- (7) This section does not make apportionable an annual amount payable under a policy of assurance.
- (8) This section does not apply to any case in which it is expressly stipulated that apportionment is not to take place.

Explanatory note

This amendment remakes, in an updated form, the provisions of the *Apportionment Act 1905*. That Act is repealed by this Act (see schedule 4).

[3.84] Part 14A, heading

omit

Explanatory note

There is presently some doubt whether some of the relevant part and division headings of the *Conveyancing Act 1919* (NSW) became part of ACT law. This amendment and the next amendment puts the issue beyond doubt in relation to the heading to part 14A.

[3.85] New part 14A, heading

insert

Part 14A Children and children's property

Explanatory note

This amendment inserts a part heading in line with current drafting practice.

[3.86] Section 151A

substitute

151A Children not to be appointed trustees

- (1) The appointment of a child as trustee is void.
- (2) This section does not affect the power to appoint a new trustee to fill the vacancy.

Explanatory note

This amendment updates language and removes a redundant transitional provision.

[3.87] Section 151B

substitute

151B Receipts by married children

A married child has power to give valid receipts for all income (including statutory accumulations of income made during

childhood) to which the child may be entitled as if the child were an adult.

Explanatory note

This amendment updates language and removes a redundant transitional provision.

[3.88] Section 151C, heading

substitute

151C Management of land during childhood

Explanatory note

This amendment updates the language of a section heading.

[3.89] Section 151C (1)

omit

an infant

substitute

a child

Explanatory note

This amendment updates language.

[3.90] Section 151C (1)

omit

court whereby

substitute

Supreme Court by which

Explanatory note

This amendment updates language.

[3.91] Section 151C (1)

omit

the infant

substitute

the child

Explanatory note

This amendment updates language.

[3.92] Section 151C (1)

omit

, and in every such case the subsequent provisions of this section shall apply

Explanatory note

This amendment omits unnecessary words.

[3.93] Section 151C (2) (d)

omit

thereof

substitute

of it

Explanatory note

This amendment updates archaic language.

[3.94] Section 151C (2)

omit

infant

substitute

child

Explanatory note

This amendment updates language.

[3.95] Section 151C (2)

omit

of full age

substitute

an adult

Explanatory note

This amendment updates language.

[3.96] Section 151C (4)

substitute

- (4) This section applies in relation to a child except so far as the contrary intention appears in the instrument (if any) under which the child's interest arises.

Explanatory note

This amendment updates the language of a subsection and brings it more closely into line with current drafting practice.

[3.97] Section 151D, heading

substitute

151D Power to appoint trustees of child's property

Explanatory note

This amendment updates the language of a heading.

[3.98] Section 151D (1) (a)

omit

an infant

substitute

a child

Explanatory note

This amendment updates language.

[3.99] Section 151D (1) (a)

omit

dying before or after the commencement of the *Conveyancing (Amendment) Act 1930* of New South Wales

Explanatory note

This amendment omits redundant words about the application of the section.

[3.100] Section 151D (1) (a)

omit

in this section called

Explanatory note

This amendment omits unnecessary words.

[3.101] Section 151D (1) (a)

omit

therein

substitute

in the estate

Explanatory note

This amendment updates archaic language.

[3.102] Section 151D (1) (a), (b) and (d) (ii)

omit

the infant

substitute

the child

Explanatory note

This amendment updates language.

[3.103] Section 151D (1) (a), (c) and (d) (i) and (ii)

omit

such devise

substitute

the devise

Explanatory note

This amendment updates language.

[3.104] Section 151D (1) (a)

omit

such residue

substitute

the residue

Explanatory note

This amendment updates language.

[3.105] Section 151D (1) (c) and (d)

omit

such appointment

substitute

the appointment

Explanatory note

This amendment updates language.

[3.106] Section 151D (1) (c) and (d) (ii)

omit

section 9 of the *Trustee Act 1925* of New South Wales

substitute

the *Trustee Act 1925*, section 9 (Vesting on appointment and retirement)

Explanatory note

This amendment updates a cross-reference. The *Trustee Act 1925* is now an ACT Act.

[3.107] Section 151D (1) (d) (i)

omit

share;

substitute

share; and

Explanatory note

This amendment inserts a conjunction at the end of a paragraph in line with current drafting practice.

[3.108] Section 151D (1) (d) (ii)

omit

property;

substitute

property; and

Explanatory note

This amendment inserts a conjunction at the end of a paragraph in line with current drafting practice.

[3.109] Section 151D (1) (d) (iii)

omit

such money

substitute

the money

Explanatory note

This amendment updates language.

[3.110] Section 151D (1) (a) to (d)

renumber as section 151D (1) to (4)

Explanatory note

This amendment brings the numbering of subsections into line with current drafting practice.

[3.111] Section 151D (1) (d) (i) to (iii)

renumber as section 151D (4) (a) to (c)

Explanatory note

This amendment brings the numbering of paragraphs into line with current drafting practice.

[3.112] Section 151D (2)

omit

Explanatory note

This amendment omits an obsolete transitional provision.

[3.113] Section 151D (3) and (4)

renumber as section 151D (5) and (6)

Explanatory note

This amendment is consequential on the renumbering of earlier subsections of the section.

[3.114] Section 151D (3)

omit

(4)

substitute

(6)

Explanatory note

This amendment is consequential on the renumbering of a subsection.

[3.115] Section 151D (4)

omit

(3)

substitute

(5)

Explanatory note

This amendment is consequential on the renumbering of a subsection.

[3.116] Section 151D (5) and (6)

substitute

(7) In this section:

registered deed means a deed registered under the *Registration of Deeds Act 1957*.

trust corporation does not include the public trustee.

Explanatory note

This amendment omits provisions that are NSW-specific or related to repealed legislation.

[3.117] New part 22

insert

Part 22 **Miscellaneous**

178 **No right-of-way by user against Territory etc**

- (1) No dedication or grant of a right-of-way is to be presumed, or allowed to be asserted or established, only because of user as against—
- (a) the Territory or the Commonwealth; or
 - (b) a person who holds land in trust for a public purpose.
- (2) This section applies—
- (a) to all proceedings, whether or not they are begun by the Territory, the Commonwealth or a person mentioned in subsection (1) (b); and
 - (b) whether the user began before or after the commencement of the *Dedication by User Limitation Act 1902* (NSW).

Explanatory note

This amendment remakes, in an updated form, the provisions of the *Dedication by User Limitation Act 1902*. That Act is repealed by this Act (see schedule 4).

[3.118] New dictionary

insert

Dictionary

(see s 2)

administrator includes anyone to whom administration of the estate of a dead person is granted, and includes the public trustee acting under the *Administration and Probate Act 1929*, part 6.

annuity, for part 11 (Apportionment)—see section 142.

assurance includes a conveyance and a disposition made otherwise than by will.

bankruptcy includes any act or proceeding in law having effects or results similar to those of bankruptcy.

Example

Winding-up of a company.

conveyance—

- (a) includes an assignment, appointment, lease, settlement or other assurance by deed of any property; and
- (b) for division 6.2 (Covenants for title)—see section 78AA.

deed, in relation to land under the *Land Titles Act 1925*, includes an instrument that has the effect of a deed under that Act.

disposition includes—

- (a) a conveyance; and
- (b) an acknowledgment under the *Administration and Probate Act 1929*, section 56 (Executor may sign acknowledgment in lieu of conveyance); and
- (c) a vesting instrument, declaration of trust, disclaimer, release or any other assurance of property by an instrument other than a will; and
- (d) a release, devise, bequest or appointment of property in a will.

dividend, for part 11 (Apportionment)—see section 142.

executor means the executor to whom probate has been granted, and includes an executor by right of representation.

income, in relation to land, includes rents and profits.

incumbrance includes—

- (a) a mortgage; and
- (b) a trust for securing money; and
- (c) a lien or charge of a portion, annuity, or other capital or annual sum.

instrument includes a deed, a will, an agreement for settlement, and a law of the Territory, the Commonwealth or a State.

interested person, for division 4.6 (Partition)—see section 66F.

mortgage—

- (a) for land under the *Land Titles Act 1925*—see that Act, section 6 (1); and
- (b) for other property—includes a charge on property for securing money or money's worth.

mortgagee—

- (a) for land under the *Land Titles Act 1925*—see that Act, section 6 (1); and
- (b) for other property—includes a person taking title to the mortgage under the original mortgagee.

mortgagor—

- (a) for land under the *Land Titles Act 1925*—see that Act, section 6 (1); and
- (b) for other property—includes any of the following:
 - (i) a person taking title to the equity of redemption under the original mortgagor;
 - (ii) a person entitled to redeem a mortgage, according to his or her interest in the mortgaged property.

personal representative means the executor or administrator for the time being of a dead person.

person with a legal disability means—

- (a) a child; or
- (b) a person with a mental disability.

person with a mental disability means—

- (a) in relation to a proceeding—a person (other than a child) who is not legally competent to be a party to the proceeding; and
- (b) in relation to the doing of something—a person (other than a child) who is not legally competent to do the thing;

and includes such a person even if a guardian or manager has not been appointed for the person under the *Guardianship and Management of Property Act 1991*.

possession, of land, includes receipt of income from the land.

purchaser—

- (a) for division 4.5 (Dispositions on trust for sale or with power of sale)—see section 66; and
- (b) for any other provision—means a purchaser for valuable consideration, and includes—
 - (i) a lessee or mortgagee; and
 - (ii) anyone else who acquires an interest in property for valuable consideration.

registered means registered in the appropriate register kept by the registrar-general.

rent—

- (a) includes yearly or other rent; and
- (b) for part 11 (Apportionment)—see section 142.

securities includes stocks, funds and shares.

settlement—see section 7 (What is a settlement?).

trust corporation means—

- (a) the public trustee or a trustee company; or
- (b) the Official Trustee in Bankruptcy under the *Bankruptcy Act 1966* (Cwlth); or

(c) the trustee in whom the property of a bankrupt is vested.

trust for sale means a binding trust for sale, whether or not exercisable at the request or with the consent of anyone, and with or without a discretionary power to postpone sale.

trustee company—see the *Trustee Companies Act 1947*, section 3.

trustees for sale means the people holding property on trust for sale.

valuable consideration includes marriage, but does not include a nominal consideration in money.

Explanatory note

This amendment inserts a dictionary that includes all the definitions currently in the *Conveyancing Act 1919*, section 7 (as formerly applied by the *Conveyancing Act 1951*, the *Trustee Act 1957* and the *Law of Property (Miscellaneous Provisions) Act 1958*) that are still needed. The definitions applying to the different provisions of the *Conveyancing Act 1919* have, where necessary, been brought into line and updated to bring them more into line with current drafting practice and the equivalent definitions in the *Trustee Act 1925*.

The current definitions of *land*, *property* and *will* are no longer needed because of definitions to be inserted into the *Legislation Act 2001*, dictionary.

The current definitions of *court*, *fine*, *incumbrancee*, *insane person*, *insane patient*, *incapable person*, *land under the provisions of Real Property Act, 1900*, *mortgage-money*, *mortgagee in possession*, *order* and *power to postpone sale* and *security* are not needed because the terms are not used in the remaining provisions of the *Conveyancing Act 1919* (as amended by this Act).

The current definition of *bankrupt* is not needed because of the definition of *bankruptcy* (see *Interpretation Act 1967*, s 11E).

The current definition of *sale* is unnecessary given its ordinary meaning.

Part 3.10 Conveyancing and Law of Property Act 1898

[3.119] Section 1

substitute

Part 1 Preliminary

1 Name of Act

This Act is the *Conveyancing and Law of Property Act 1898*.

Part 3 The conveyance and assignment of property

Explanatory note

This amendment inserts part headings and revises the section providing for the Act's name to bring it into line with current drafting practice.

To assist users of the *Conveyancing and Law of Property Act 1898*, the numbering of parts, divisions and sections have, as far as possible, been kept consistent with the current NSW Act, the *Conveyancing and Law of Property Act 1898* (NSW).

[3.120] Section 29

substitute

29 Voluntary settlement of land not taken to be fraudulent

- (1) A settlement of land properly registered under the *Registration of Deeds Act 1957* or the *Land Titles Act 1925* must not, in favour of a purchaser taking under a contract, deed or other instrument made after that registration, be taken to be fraudulent only because the settlement was not made for valuable consideration.
- (2) Subsection (1) applies despite the provisions of the *Law Reform (Miscellaneous Provisions) Act 1955*, part 12 (United Kingdom laws—substituted provisions), division 5 (Alienation of property to defraud creditors).
- (3) In this section:

settlement includes a conveyance, assignment, lease, mortgage, charge, limitation of uses, declaration of trust, transfer, and any

other instrument creating or transferring an interest in land, whether under the *Land Titles Act 1925* or otherwise.

Explanatory note

This amendment remakes the section to remove a reference to a repealed former NSW Act, update a reference to a former UK Act, and bring the section more closely into line with current drafting practice.

[3.121] Section 30

substitute

30 Honest purchase of reversionary interest not to be set aside etc only for under value

- (1) A purchase made honestly and without fraud or unfair dealing of any reversionary interest in real or personal property must not be opened or set aside only on the ground of under value.

- (2) In this section:

purchase includes every kind of contract, conveyance, or assignment under or by which any beneficial interest in any kind of property may be acquired.

reversionary interest includes an interest in property in remainder or expectancy.

Explanatory note

This amendment remakes the section to update its language and bring it more closely into line with current drafting practice.

[3.122] Section 36 (1)

omit

timber thereon

substitute

timber on it

Explanatory note

This amendment updates archaic language.

[3.123] Section 36 (1)

omit

attached thereto

substitute

attached to it

Explanatory note

This amendment updates archaic language.

[3.124] Section 36 (1)

omit

, upon any claim or application in a summary way as the case may
require or permit

Explanatory note

This amendment omits unnecessary words about Supreme Court practice and procedure.

[3.125] Section 36 (1)

omit

interest thereon

substitute

interest on it

Explanatory note

This amendment updates archaic language.

[3.126] Section 36

omit

said

Explanatory note

This amendment omits an archaic and unnecessary word.

[3.127] Section 36 (1)

omit

entitled thereto

substitute

entitled to them

Explanatory note

This amendment updates archaic language.

[3.128] Section 37 (1), new definitions of *settled estate* and *settled land*

insert

settled estate means a hereditament, or an interest in a hereditament, that is the subject of a settlement, and includes a leasehold interest in land held by a child in his or her own right.

settled land means land, or an interest in land, that is the subject of a settlement.

Explanatory note

This amendment brings together definitions that are presently in other provisions. The relocated definitions have been brought more closely into line with current drafting practice and redundant references to freehold land and estates omitted.

[3.129] Section 37 (1), definition of *settlement*

omit

shall signify

substitute

means

Explanatory note

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

[3.130] Section 37 (1), definition of *settlement*

omit

estate or

Explanatory note

This amendment omits redundant words (see *Interpretation Act 1967*, dict, def of *interest*).

[3.131] Section 37 (2), (3) and (5)

omit

Explanatory note

This amendment omits subsections containing definitions relocated by an amendment of section 37 (1). The amendment also omits a provision about tenants in tail (s (3)) that is not relevant in the ACT.

[3.132] Section 37 (6)

omit

court

substitute

Supreme Court

Explanatory note

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

[3.133] Section 37 (7) and (8)

omit

Explanatory note

This amendment omits subsections containing definitions relocated by an amendment of section 37 (1).

[3.134] Section 37 (9)

omit

as aforesaid unless they concur therein

substitute

of the settled land unless they agree to them

Explanatory note

This amendment updates archaic language.

[3.135] Section 37

renumber subsections when Act next republished under Legislation Act 2001

Explanatory note

This amendment provides for the renumbering of the subsections of section 37 on the next republication of the *Conveyancing and Law of Property Act 1898*.

[3.136] Section 38

substitute

38 Power of Supreme Court to authorise leases of settled estates

- (1) The Supreme Court may, for any purpose, authorise, by order, a lease of a settled estate, or of any right or privilege over or affecting a settled estate, if the court considers it consistent with a proper regard for the interests of everyone entitled under the settlement and otherwise appropriate.
- (2) The Supreme Court may give directions about the exercise of an authority given under this section.

Explanatory note

This amendment omits archaic language, removes unnecessary (and outdated) restrictions on the Supreme Court's power and otherwise brings the section more closely into line with current drafting practice.

[3.137] Sections 43, 45 and 46

substitute

39 Exercise of power to authorise leases

- (1) Without limiting section 38, the Supreme Court's power under that section to authorise a lease of a settled estate may be exercised either—
 - (a) by approving a particular lease (or a particular contract for a lease); or
 - (b) by ordering that powers of leasing are vested in a nominated trustee.
- (2) The Supreme Court may, under subsection (1) (b), vest powers of leasing either in the existing trustee of the settlement or anyone else.
- (3) If the Supreme Court orders that powers of leasing are vested in a trustee, the power has effect when exercised by the trustee as if the power had been originally contained in the settlement.
- (4) If the Supreme Court approves a particular lease (or a particular contract for a lease), the court may nominate the person who is to execute the lease as lessor (the *nominated person*).
- (5) The lease or contract executed by the nominated person has effect as if—
 - (a) the person were, at the time of execution, absolutely entitled to the entire settled estate; and
 - (b) the person had immediately afterwards settled according to the settlement.

Explanatory note

This amendment recasts existing sections 43, 45 and 46 as a single section. The new section omits archaic language, unnecessary restrictions on the Supreme Court's powers and obsolete references to uses. It also clarifies the relationship between the existing provisions.

[3.138] Section 48

substitute

48 Power of Supreme Court to authorise sale of settled estates

- (1) The Supreme Court may, on the conditions it considers appropriate, authorise, by order, the sale of all or any part of a settled estate if the court considers it consistent with a proper regard for the interests of everyone entitled under the settlement and otherwise appropriate.
- (2) The Supreme Court may give directions about the exercise of an authority given under this section.

Explanatory note

This amendment simplifies the section and brings it more closely into line with current drafting practice.

[3.139] Section 53

substitute

53 Execution of documents to give effect to sale

- (1) Without limiting section 48, the Supreme Court may, for the sale of all or any part of a settled estate under that section, nominate the person who is to execute any document for the sale (the *nominated person*).
- (2) A document executed by the nominated person for the sale has effect as if the settlement had contained a power authorising the person to make the sale.

Explanatory note

This amendment remakes the section to omit archaic language, unnecessary restrictions on the Supreme Court's powers, obsolete references to uses, and brings the section more closely into line with current drafting practice.

[3.140] Section 54

substitute

54 Application to Supreme Court for exercise of powers under pt 4

Any of the following may apply to the Supreme Court for an order under section 38 (Power of Supreme Court to authorise leases of settled estates), or section 48 (Power of Supreme Court to authorise sale of settled estates), in relation to a settled estate:

- (a) a person with an interest in the settled estate for a term of years ending on the person's death;
- (b) a person with a life interest in the settled estate;
- (c) an assignee of a person mentioned in paragraph (a) or (b).

Explanatory note

This amendment remakes the section to omit archaic language and unnecessary (and inappropriate) references to how applications may be made to the Supreme Court. The amendment also brings the section more closely into line with current drafting practice.

[3.141] Section 55

substitute

55 Consents required for exercise of power under pt 4

- (1) An application to the Supreme Court for an order under section 38 (Power of Supreme Court to authorise leases of settled estates), or section 48 (Power of Supreme Court to authorise sale of settled estates), in relation to a settled estate must be made with the consent of the following people (the *interested people*):
 - (a) everyone with a beneficial estate or interest under the settlement;
 - (b) all trustees with an estate or interest under the settlement on behalf of any unborn child.

- (2) However, the Supreme Court may make an order under section 38 or 48 even though the consent of 1 or more interested people to the application has not been obtained or has been refused.
- (3) In considering whether to make the order, the Supreme Court must have regard to the following:
 - (a) the number of interested people who have consented to the application;
 - (b) the number of interested people whose consent has not been obtained;
 - (c) the number of interested people whose consent has been refused;
 - (d) the number of interested people who enter an appearance and submit to the orders of the court, except as to costs;
 - (e) the estates or interests that each of the interested people have, or claim to have, in the settled estate.
- (4) If the Supreme Court makes an order under section 38 or 48 even though the consent of 1 or more interested people to the application had not been obtained or had been refused, the order has effect as if all interested people had consented to the application.
- (5) However, the Supreme Court may, by order, exempt from an order under section 38 or 48 the rights, estate or interest of 1 or more interested people whose consent to the application was not obtained or was refused.

Explanatory note

This section remakes sections 55, 59 and 60 of the Act.

Subsection (1) remakes section 55. In remaking the section, the provisions of paragraph (a) (which are about tenancies in tail) have been omitted. Tenancies in tail are freehold estates that are not applicable in the ACT.

Subsections (2) to (4) remake section 59 and subsection (5) remakes section 60.

In remaking the sections, archaic language, and unnecessary (and inappropriate) references to Supreme Court procedure, have been omitted. The relationship between provisions has also been clarified.

[3.142] Section 56

omit

Explanatory note

Section 56 relates to tenancies in tail and is not applicable in the ACT.

[3.143] Sections 57 and 58

omit

Explanatory note

Sections 57 and 58 deal with matters of Supreme Court procedure that do not need to be in an Act.

[3.144] Sections 59 and 60

omit

Explanatory note

The provisions of sections 59 and 60 have been remade as part of section 55.

[3.145] Sections 61 and 62

omit

Explanatory note

Sections 61 and 62 deal with matters of Supreme Court procedure that do not need to be in an Act.

[3.146] Section 63

substitute

63 Application of proceeds of sale

- (1) The amount received from a sale under section 48 (Power of Supreme Court to authorise sale of settled estates) must be applied as follows:

- (a) first, in discharge of all mortgages and other encumbrances and in payment of expenses incidental to the sale or incurred in any attempted sale;
 - (b) second, in payment of the balance to a trustee nominated by the Supreme Court or as the court otherwise directs.
- (2) The Supreme Court may give directions about the application, accumulation and investment of an amount received from a sale under section 48.

Explanatory note

This section remakes the section to remove outdated and unnecessary restrictions on the Supreme Court's power to give directions about the application or investment of funds. The *Trustee Act 1925* contains provisions about the investment of funds by trustees.

[3.147] Section 64

omit

wherefrom

substitute

from which

Explanatory note

This amendment updates archaic language.

[3.148] Section 65, heading

substitute

65 Application of certain money without Supreme Court order

Explanatory note

This amendment updates a heading to bring a reference to the Supreme Court into line with current drafting practice.

[3.149] Section 65

omit

the money in manner aforesaid

substitute

money mentioned in section 63 (Application of proceeds of sale)

Explanatory note

This amendment updates archaic language.

[3.150] Section 65

omit 1st mention of

court

substitute

Supreme Court

Explanatory note

This amendment updates a reference to the Supreme Court in line with current drafting practice.

[3.151] Section 65

omit

petition

substitute

application

Explanatory note

This amendment reflects the current procedure of the Supreme Court.

[3.152] Section 67

omit

Explanatory note

Section 67 empowers the Supreme Court to make orders about the application of purchase money. This power is now given by revised section 63.

[3.153] Sections 68 and 69

substitute

68 Leases by tenants for life etc of settled estates

- (1) This section applies to a person with—
 - (a) an interest in a settled estate for a term of years ending on the person's death; or
 - (b) a life interest in a settled estate.
- (2) The person may, without an application to the Supreme Court, lease the interest (or any part of it) for a term of not longer than 10 years, to take effect in possession not later than 1 year after entering the lease.
- (3) The lease must—
 - (a) be for the best rent that can reasonably be obtained; and
 - (b) contain the usual and proper provisions that the person considers appropriate, including provisions for payment of rent and re-entry for nonpayment of rent.
- (4) A lease under this section is valid against the person giving it, and everyone entitled to estates subsequent to that person under the settlement if the estates are settled.

Explanatory note

This section remakes existing sections 68 and 69 in a single section. In remaking the section, the following changes have been made. First, provisions about tenancies in tail and other freehold estates have been omitted. Freehold estates do not exist in the ACT. Second, provisions about courtesy have been omitted. Courtesy was abolished in the ACT by the *Administration and Probate Act 1929*, section 48. Third, provisions that are inconsistent with the *Land Titles Act 1925* and current ACT conveyancing practice have

been omitted. Fourth, the remaining provisions have been brought more closely into line with current drafting practice.

[3.154] Section 82, heading

substitute

82 Surrender and renewal of children's leaseholds

Explanatory note

This amendment updates the language of a heading.

[3.155] Section 82

omit

an infant

substitute

a child

Explanatory note

This amendment updates language.

[3.156] Section 82

omit

such infant

substitute

the child

Explanatory note

This amendment updates language.

[3.157] Section 82

omit

by motion or summons

Explanatory note

This amendment omits an unnecessary (and outdated) reference to Supreme Court procedure.

[3.158] Section 82

omit

said

Explanatory note

This amendment omits an archaic word.

[3.159] Section 82

omit

enabled from time to time be deed to surrender such lease

substitute

authorised to surrender the lease

Explanatory note

This amendment updates language and corrects a minor error of language.

[3.160] Section 82

omit

in such lease surrendered as aforesaid

substitute

in the surrendered lease

Explanatory note

This amendment updates archaic language.

[3.161] Section 82

omit last mention of

as aforesaid

Explanatory note

This amendment omits unnecessary archaic language.

[3.162] Section 83

omit

incident thereto shall be paid

substitute

incidental to the lease are payable

Explanatory note

This amendment updates archaic language.

[3.163] Section 83

omit

infant

substitute

child

Explanatory note

This amendment updates language.

[3.164] Section 83

omit

interest for the same as the said court directs

substitute

the interest that the Supreme Court directs

Explanatory note

This amendment updates language.

[3.165] Section 84

omit

lease surrendered as aforesaid

substitute

surrendered lease

Explanatory note

This amendment updates archaic language.

[3.166] Section 84

omit

in case such surrender

substitute

if the surrender

Explanatory note

This amendment updates language.

[3.167] Section 85, heading

substitute

85 Grants of renewals by children

Explanatory note

This amendment updates the language of a heading.

[3.168] Section 85

omit

Where any infant

substitute

If a child

Explanatory note

This amendment updates language.

[3.169] Section 85

omit

such infant, or his or her guardian in the name of such infant

substitute

the child, or his or her guardian in the child's name

Explanatory note

This amendment updates language.

[3.170] Section 85

omit

to be signified by an order to be made in a summary way upon the petition of such infant

substitute

made on the application of the child

Explanatory note

This amendment updates language and an outdated reference to Supreme Court procedure.

[3.171] Section 85

omit

such renewal

substitute

the renewal

Explanatory note

This amendment updates language.

[3.172] Section 85

omit

such lease

substitute

the lease

Explanatory note

This amendment updates language.

[3.173] Section 85

omit

such number

substitute

the number

Explanatory note

This amendment updates language.

[3.174] Section 85

omit

such term

substitute

the term

Explanatory note

This amendment updates language.

[3.175] Section 85

omit

said court by such order

substitute

Supreme Court

Explanatory note

This amendment updates language and is consequential on a previous amendment.

[3.176] Section 86 (1)

omit

said

Explanatory note

This amendment omits an archaic word.

[3.177] Section 86 (1)

omit

upon the petition

substitute

on the application

Explanatory note

This amendment updates an outdated reference to Supreme Court procedure.

[3.178] Section 86 (1)

omit

such

substitute

the

Explanatory note

This amendment updates language.

[3.179] Section 86 (1)

omit

be or be not

substitute

is or is not

Explanatory note

This amendment updates language.

[3.180] Section 86 (1)

omit

the same

substitute

it

Explanatory note

This amendment updates language.

[3.181] Section 86 (2) and (3)

substitute

- (2) A lease executed by a person appointed under subsection (1) is as valid as if the person in whose name the lease is executed had executed the lease, and had been alive and not under a disability.

Explanatory note

This amendment updates the language of subsection (2) and omits subsection (3). Subsection (3) makes unnecessary and outdated provision about Supreme Court procedure.

[3.182] Section 87 (2)

substitute

- (2) A renewed lease to be executed under this part must be properly executed by the lessee.

Explanatory note

This amendment updates the language of the subsection and removes reference to outdated conveyancing practice.

[3.183] Section 88

substitute

88 How amounts are to be applied

An amount paid in relation to the renewal of a lease under this part is, after deducting any necessary incidental charges and expenses, to be applied as the Supreme Court directs.

Explanatory note

This amendment updates the language of the section and simplifies it.

[3.184] Section 90

omit

The said court

substitute

The Supreme Court

Explanatory note

This amendment updates language.

[3.185] Section 90

omit

the same respectively

substitute

they

Explanatory note

This amendment updates language.

[3.186] Section 90

omit

in such manner as the said court thinks proper

substitute

in the way the Supreme Court considers appropriate

Explanatory note

This amendment updates language.

[3.187] New section 90A

before section 91, insert in part 6

90A Application of s 91 to s 103

- (1) Sections 91 to 103 apply to mortgages and charges made to secure money advanced or to be advanced by way of loan, or to secure an existing or future debt.
- (2) The powers given under sections 91 to 103 are subject to anything provided in the mortgage or charge.
- (3) The powers given under sections 91 to 103 have the same effect as express powers to the same effect in the mortgage or charge would have had and no more.

Explanatory note

This amendment remakes, in a more modern form, section 104 and relocates it at the beginning of the part in line with current drafting practice. Subsections (2) and (3) clarify the application of the subsections to both mortgages and charges.

[3.188] Section 91

omit

therein

substitute

in a hereditament of any tenure

Explanatory note

This amendment updates archaic language.

[3.189] Section 91 (c)

omit

in manner hereinafter mentioned

substitute

in accordance with this part

Explanatory note

This amendment updates archaic language.

[3.190] Section 92

omit

hereby conferred

substitute

given under this part

Explanatory note

This amendment updates archaic language.

[3.191] Section 93

substitute

93 Notice of sale

A sale of property under this part must not be made unless the person, or 1 of the people, entitled to the property has been given 6 months written notice.

93A Purported exercise of power of sale

- (1) If a sale is purportedly made under this part, the buyer's title must not be called into question on the ground that—

- (a) no case had arisen to authorise the sale; or
 - (b) the notice required by section 93 had not been given.
- (2) If a person suffers loss because of an unauthorised sale under this part, the person has his or her remedy in damages against the seller.

Explanatory note

This amendment remakes existing section 93 in 2 new sections. The new sections update the language of the existing section, clarify the relationship between provisions, and generally brings the provisions more closely into line with current drafting practice. Provisions about service have been omitted. Service provisions are being inserted into the *Legislation Act 2001* by this Bill (see schedule 2).

[3.192] Sections 94 and 95

substitute

94 Application of purchase money

The amount received from a sale under this part must be applied by the person receiving the amount as follows:

- (a) first, in payment of expenses incidental to the sale or incurred in any attempted sale;
- (b) second, in discharge of the interest and costs then owing in relation to the mortgage or charge because of which the sale was made;
- (c) third, in discharge of the principal then owing in relation to the mortgage or charge;
- (d) fourth, in payment of the balance to or on behalf of the person entitled to the property subject to the mortgage or charge.

95 Property that may be conveyed etc to purchaser

The person exercising a power of sale over property under this part has power to convey or assign to the purchaser, by deed or other

instrument, all the interest in the property that the mortgagor or person who created the charge had power to dispose of.

Explanatory note

This amendment omits archaic language and brings the drafting of the sections more closely into line with current drafting practice. The amendment also clarifies the application of the sections to both mortgages and charges (see new s 90A inserted by an earlier amendment in this part) and clarifies that the power to convey or assign under section 95 may be exercised by deed or other instrument.

[3.193] Section 96 (1)

omit

(1) At

substitute

At

Explanatory note

This amendment is consequential on the omission of section 96 (2).

[3.194] Section 96 (1)

omit

hereby conferred

substitute

under this part

Explanatory note

This amendment updates archaic language.

[3.195] Section 96 (1)

omit

the same shall be

substitute

the power is

Explanatory note

This amendment updates language.

[3.196] Section 96 (1)

omit

same property or to the title thereto which

substitute

property or its title that

Explanatory note

This amendment updates archaic language.

[3.197] Section 96 (2)

omit

Explanatory note

This amendment omits an obsolete provision.

[3.198] Section 97

omit

as aforesaid

substitute

under this part

Explanatory note

This amendment updates archaic language.

[3.199] Section 98

substitute

98 Receiver taken to be agent of mortgagor etc

A receiver appointed under this part is taken to be the agent of the mortgagor or person whose property is subject to the charge, and that mortgagor or person is solely responsible for the receiver's acts or omissions, unless the instrument creating the mortgage or under which the charge arose provides otherwise.

Explanatory note

This amendment brings the drafting of the section more closely into line with current drafting practice and also clarifies the application of the section to both mortgages and charges (see new s 90A inserted by an earlier amendment in this part).

[3.200] Section 99

omit

Every receiver appointed as aforesaid shall have

substitute

A receiver appointed under this part has

Explanatory note

This amendment updates archaic language.

[3.201] Section 100

substitute

100 Ending appointment of receiver etc

- (1) The power under this part to appoint a receiver includes power to end the appointment and appoint someone else as receiver.
- (2) The power to end the appointment of a receiver is exercisable in the same way, and subject to the same conditions, as the power to make the appointment.

Explanatory note

This amendment updates the language and form of this section (compare *Interpretation Act 1967*, s 28).

[3.202] Section 101

omit

Every receiver appointed as aforesaid shall be

substitute

A receiver appointed under this part is

Explanatory note

This amendment updates archaic language.

[3.203] Section 102

omit

Every receiver appointed as aforesaid shall

substitute

A receiver appointed under this part must

Explanatory note

This amendment updates archaic language.

[3.204] Section 102

before

charge

insert

mortgage or

Explanatory note

This amendment clarifies application of the section to both mortgages and charges (see new s 90A inserted by an earlier amendment in this part).

[3.205] Section 102

omit

affixed to the freehold or not) which

substitute

or not a fixture) that

Explanatory note

This amendment omits a redundant reference to freehold, which no longer exists in the ACT, and updates language.

[3.206] Section 103

substitute

103 Application of amounts received by receiver

Amounts received by a receiver appointed under this part must be applied as follows:

- (a) first, in discharge of all taxes, rates and assessments, in payment of the receiver's commission, and in payment of insurance premiums;
- (b) second, in discharge of the interest then owing in relation to the mortgage or charge because of which the receiver was appointed;
- (c) third, in discharge of the principal then owing in relation to the mortgage or charge;
- (d) fourth, in payment of the balance to or on behalf of the person entitled to the property subject to the mortgage or charge.

Explanatory note

This amendment omits archaic language and brings the drafting of the section more closely into line with current drafting practice. The amendment also clarifies the application of the section to both mortgages and charges (see new s 90A inserted by an earlier amendment in this part), and deals specifically with the receiver's duty to apply amounts in discharge of principal (compare s 94 (c)).

[3.207] Section 104

omit

Explanatory note

This section is inserted (in a remade form) by an earlier amendment in this part as section 90A.

[3.208] Section 105

omit

Explanatory note

This amendment omits a section that is specific to old system title land and is accordingly redundant.

[3.209] Section 106

omit

by rule of the same court

substitute

by order

Explanatory note

This amendment updates language.

[3.210] Section 107 (1) (a)

omit

legal practitioner

substitute

lawyer

Explanatory note

This amendment updates an expression in line with current drafting practice.

[3.211] Section 108 (1)

omit

upon petition

substitute

, on application

Explanatory note

This amendment updates a reference to Supreme Court procedure.

[3.212] Section 108 (1)

omit

such debt or of such part thereof

substitute

the debt or a part of it

Explanatory note

This amendment updates archaic language.

[3.213] Section 108 (1)

omit

in such manner as the said court thinks fit

substitute

in the way the court directs

Explanatory note

This amendment updates language.

[3.214] Section 108 (2)

omit

thereupon

substitute

on registration

Explanatory note

This amendment updates archaic language.

[3.215] Section 108 (2)

omit

such part thereof

substitute

the part of it

Explanatory note

This amendment updates archaic language.

[3.216] Section 108 (3)

omit

said court shall

substitute

Supreme Court may

Explanatory note

This amendment updates archaic language.

[3.217] Section 108 (3)

omit

upon the petition of such

substitute

on application by the

Explanatory note

This amendment updates an outdated reference to Supreme Court procedure.

[3.218] Section 108 (3)

omit

therewith

substitute

with the execution

Explanatory note

This amendment updates archaic language.

[3.219] Section 108 (4)

omit

the foregoing provisions

substitute

this section

Explanatory note

This amendment updates archaic language.

[3.220] Section 108 (4)

omit

said court

substitute

Supreme Court

Explanatory note

This amendment updates archaic language.

[3.221] Section 108 (4)

omit

such

substitute

the

Explanatory note

This amendment updates language.

[3.222] Section 108 (4)

omit

thereof

Explanatory note

This amendment omits an archaic word.

[3.223] Section 109 (1)

omit

Where any person hereafter dies seised of or

substitute

If anyone dies

Explanatory note

This amendment omits archaic language and language specific to freehold estates.

[3.224] Section 109 (1)

omit

such

substitute

the

Explanatory note

This amendment updates language.

[3.225] Section 109 (1)

omit

thereof

substitute

of them

Explanatory note

This amendment updates archaic language.

[3.226] Section 109 (2)

omit

Nothing herein contained shall

substitute

This section does not

Explanatory note

This amendment updates archaic language.

[3.227] Section 109 (2)

omit

the person so dying as aforesaid

substitute

the dead person

Explanatory note

This amendment updates archaic language.

[3.228] Section 109 (3)

omit

Nothing herein contained shall

substitute

This section does not

Explanatory note

This amendment updates archaic language.

[3.229] New section 110

insert in part 7

110 Application of pt 7

This part applies to a lease for—

- (a) a term of years absolute or ending on a life or otherwise; or
- (b) the life of the lessee or someone else.

Explanatory note

This amendment remakes, in a more modern form, section 116 and relocates it at the beginning of the part in line with current drafting practice.

[3.230] Section 111

omit

upon such terms as may seem fit

substitute

on any conditions it considers appropriate

Explanatory note

This amendment updates language.

[3.231] Section 112

substitute

112 Record of relief granted

If the Supreme Court grants relief under section 111 in relation to a lease, the court may order that a record of the relief having been granted is to be made by endorsement on the lease or otherwise.

Explanatory note

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

[3.232] Section 113

substitute

113 Limit on relief

The Supreme Court must not grant relief under this part to a person if—

- (a) the court has already granted relief to the person in relation to the same covenant or condition; or
- (b) a forfeiture under the covenant or condition in relation to which relief is sought has already been waived out of court in favour of the person.

Explanatory note

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

[3.233] Section 115 (1)

omit

after the passing of this Act

Explanatory note

This amendment omits words that are now redundant.

[3.234] Section 116

omit

Explanatory note

This amendment omits the section because it is remade as new section 110 by an earlier amendment in this part.

[3.235] Section 118

omit

, whether now or hereafter entered into,

Explanatory note

This amendment omits words that are now redundant.

[3.236] Section 120

omit

therewith shall

substitute

with the rent charge does

Explanatory note

This amendment updates archaic language.

Part 3.11 Credit Act 1985

[3.237] Section 2

omit

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

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

[3.238] Section 244

omit

Explanatory note

This amendment omits a provision that has never commenced and that it is not proposed to commence.

Part 3.12 Crimes Act 1900

[3.239] Section 349AA, definition of *summary offence*

omit

section 33E of the *Interpretation Act 1967*

substitute

the *Legislation Act 2001*, section 136

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment is consequential on amendments of the *Interpretation Act 1967* and the *Legislation Act 2001* contained in schedule 2 to this Act. The amendments remake provisions of the *Interpretation Act 1967* as provisions of the *Legislation Act 2001*.

[3.240] Section 349ZX (12)

after

1999

insert

applies

Explanatory note

This amendment inserts a missing word.

Part 3.13 Crimes (Forensic Procedures) Act 2000

[3.241] Section 112 (2)

omit

section 82

substitute

section 84

Explanatory note

This amendment corrects a cross-reference.

[3.242] Dictionary, definition of *summary offence*

omit

section 33E of the *Interpretation Act 1967*

substitute

the *Legislation Act 2001*, section 136

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment is consequential on amendments of the *Interpretation Act 1967* and the *Legislation Act 2001* contained in schedule 2 to this Act. The amendments remake provisions of the *Interpretation Act 1967* as provisions of the *Legislation Act 2001*.

Part 3.14 Defamation Act 1901

[3.243] Section 1

substitute

1 Name of Act

This Act is the *Defamation Act 1901*.

Explanatory note

This amendment revises the section providing for the Act's to bring it into line with current drafting practice.

[3.244] Section 3 (1)

omit

before 24 August 1847, being the date of the passing of the Act 11 Victoria No. 13,

substitute

in NSW before 24 August 1847

Explanatory note

This amendment clarifies a NSW specific reference.

[3.245] Section 10 (1)

omit everything after paragraph (d), substitute

commits an offence.

Maximum penalty: 300 penalty units, imprisonment for 3 years or both.

Explanatory note

This amendment brings an offence provision more closely into line with current drafting practice.

[3.246] Section 11

omit everything after

false,

substitute

commits an offence.

Maximum penalty: 300 penalty units, imprisonment for 3 years or both.

Explanatory note

This amendment brings an offence provision more closely into line with current drafting practice.

[3.247] Section 12

omit everything after

libel

substitute

commits an offence.

Maximum penalty: 300 penalty units, imprisonment for 3 years or both.

Explanatory note

This amendment brings an offence provision more closely into line with current drafting practice.

Part 3.15 Defamation (Amendment) Act 1909

[3.248] Section 9 (1)

omit everything after

fine

substitute

of not more than 5 penalty units.

Explanatory note

This amendment brings an offence provision more closely into line with current drafting practice.

Part 3.16 Domestic Animals Act 2000

[3.249] Section 43 (5) (a) and (b)

omit

notice

substitute

permit

Explanatory note

This amendment corrects incorrect references.

[3.250] Division 4.2

omit

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment omits a division about the service of documents that is no longer necessary as a result of amendments of the *Legislation Act 2001* (proposed new section 223) contained in schedule 2 to this Act.

Part 3.17 Drugs of Dependence Act 1989

[3.251] Section 172 (5)

omit

Explanatory note

Section 172 (5) states that where a corporation is convicted of an offence, the penalty that the court may impose is a fine not exceeding 5 times the maximum amount that the court could impose as a pecuniary penalty for that offence.

This provision is no longer necessary (see *Interpretation Act 1967*, s 33AA and *Legislation Act 2001*, proposed new s 133 inserted by an amendment in schedule 2 to this Act).

Part 3.18 Education Act 1937

[3.252] Section 10 (2)

substitute

- (2) The defence mentioned in subsection (1) (c) does not apply if, on the day of the alleged offence—
- (a) the child could have travelled to an appropriate government school by catching a single bus; and
 - (b) the total of the distance from the child's home to the closest bus stop (for that bus) and the distance from the appropriate government school to the closest bus stop (for that bus) was not more than—
 - (i) if the child was under 12 years old—3km; or
 - (ii) if the child was 12 years old or older—5km.

Explanatory note

This amendment corrects a cross-reference and updates language.

Part 3.19 Fertilizers Act 1904

[3.253] Section 1

substitute

1 Name of Act

This Act is the *Fertilisers Act 1904*.

Explanatory note

This amendment revises the section providing for the Act's name and brings spelling into line with current drafting practice.

[3.254] Section 2, definition of *fertilizer*

substitute

fertiliser means any manure used or intended to be used as fertiliser, but does not include stable manure, lime, refuse from fellmongeries or similar articles in their natural state.

Explanatory note

This amendment revises the definition to bring spelling, and the structure of the definition, into line with current drafting practice.

Part 3.20 Financial Management Act 1996

[3.255] Section 1

substitute

1 Name of Act

This Act is the *Financial Management Act 1996*.

Explanatory note

This amendment revises the section providing for the Act's name to bring it into line with current drafting practice.

[3.256] Section 3 (1), definition of *budget papers*

omit

laid before

substitute

presented to

Explanatory note

This amendment updates language to reflect a change in terminology. The *Legislation Act 2001* refers to documents being presented to the Legislative Assembly, while the soon to be repealed *Subordinate Laws Act 1989* refers to documents being laid before the Legislative Assembly. The language of the *Legislation Act 2001* is consistent with the current practice of the Legislative Assembly.

[3.257] Section 10

omit

cause to be laid before

substitute

present to

Explanatory note

This amendment updates language to reflect a change in terminology. The *Legislation Act 2001* refers to documents being presented to the Legislative Assembly, while the soon to be repealed *Subordinate Laws Act 1989* refers to documents being laid before the Legislative Assembly. The language of the *Legislation Act 2001* is consistent with the current practice of the Legislative Assembly.

The amendment also removes unnecessary words.

[3.258] Sections 11 (1), 12 (1) and 12A (1)

omit

laid before

substitute

presented to

Explanatory note

This amendment updates language to reflect a change in terminology. The *Legislation Act 2001* refers to documents being presented to the Legislative Assembly, while the soon to be repealed *Subordinate Laws Act 1989* refers to documents being laid before the Legislative Assembly. The language of the *Legislation Act 2001* is consistent with the current practice of the Legislative Assembly.

[3.259] Section 13 (1)

omit

cause to be laid before

substitute

present to

Explanatory note

This amendment updates language to reflect a change in terminology. The *Legislation Act 2001* refers to documents being presented to the Legislative Assembly, while the soon to be repealed *Subordinate Laws Act 1989* refers to documents being laid before the Legislative Assembly. The language of the *Legislation Act 2001* is consistent with the current practice of the Legislative Assembly.

The amendment also removes unnecessary words.

[3.260] Section 13 (3)

omit

laid before

substitute

presented to

Explanatory note

This amendment updates language to reflect a change in terminology. The *Legislation Act 2001* refers to documents being presented to the Legislative Assembly, while the soon to be repealed *Subordinate Laws Act 1989* refers to documents being laid before the Legislative Assembly. The language of the *Legislation Act 2001* is consistent with the current practice of the Legislative Assembly.

[3.261] Section 14 (4)

substitute

- (4) If the Executive gives a direction under subsection (1), the Treasurer must present the following to the Legislative Assembly within 3 sitting days after the direction is given:

- (a) a copy of the direction;
- (b) a statement of the reasons for giving it.

Explanatory note

This subsection has been recast to remove unnecessary words, bring the subsection more closely into line with current drafting practice and update language to reflect a change in terminology. The *Legislation Act 2001* refers to documents being presented to the Legislative Assembly, while the soon to be repealed *Subordinate Laws Act 1989* refers to

documents being laid before the Legislative Assembly. The language of the *Legislation Act 2001* is consistent with the current practice of the Legislative Assembly.

[3.262] Section 15 (2)

substitute

- (2) If a reallocation of funds under subsection (1) involves an amount larger than 3% of the appropriation within which the reallocation is made or \$150 000 (whichever is the larger), the Treasurer must present the following to the Legislative Assembly within 3 sitting days after a direction is given:
- (a) a copy of the direction;
 - (b) a statement of the reasons for the reallocation.

Explanatory note

This subsection has been recast to remove unnecessary words, bring the subsection more closely into line with current drafting practice and update language to reflect a change in terminology. The *Legislation Act 2001* refers to documents being presented to the Legislative Assembly, while the soon to be repealed *Subordinate Laws Act 1989* refers to documents being laid before the Legislative Assembly. The language of the *Legislation Act 2001* is consistent with the current practice of the Legislative Assembly.

[3.263] Sections 15A (3) and 16 (2)

omit

he or she shall cause a copy of the direction to be laid before

substitute

the Treasurer must present a copy of the direction to

Explanatory note

This amendment updates language to reflect a change in terminology. The *Legislation Act 2001* refers to documents being presented to the Legislative Assembly, while the soon to be repealed *Subordinate Laws Act 1989* refers to documents being laid before the Legislative Assembly. The language of the *Legislation Act 2001* is consistent with the current practice of the Legislative Assembly.

The amendment also removes unnecessary words and brings the language more closely into line with current drafting practice.

[3.264] Section 17 (2) (b)

omit

laid before

substitute

presented to

Explanatory note

This amendment updates language to reflect a change in terminology. The *Legislation Act 2001* refers to documents being presented to the Legislative Assembly, while the soon to be repealed *Subordinate Laws Act 1989* refers to documents being laid before the Legislative Assembly. The language of the *Legislation Act 2001* is consistent with the current practice of the Legislative Assembly.

[3.265] Section 17 (3)

omit

he or she shall cause a copy of the direction to be laid before

substitute

the Treasurer must present a copy of the direction to

Explanatory note

This amendment updates language to reflect a change in terminology. The *Legislation Act 2001* refers to documents being presented to the Legislative Assembly, while the soon to be repealed *Subordinate Laws Act 1989* refers to documents being laid before the Legislative Assembly. The language of the *Legislation Act 2001* is consistent with the current practice of the Legislative Assembly.

The amendment also removes unnecessary words and brings the language more into line with current drafting practice.

[3.266] Section 17A (2) (b)

omit

laid before

substitute

presented to

Explanatory note

This amendment updates language to reflect a change in terminology. The *Legislation Act 2001* refers to documents being presented to the Legislative Assembly, while the soon to be repealed *Subordinate Laws Act 1989* refers to documents being laid before the Legislative Assembly. The language of the *Legislation Act 2001* is consistent with the current practice of the Legislative Assembly.

[3.267] Section 17A (3)

omit

he or she shall cause a copy of the direction to be laid before

substitute

the Treasurer must present a copy of the direction to

Explanatory note

This amendment updates language to reflect a change in terminology. The *Legislation Act 2001* refers to documents being presented to the Legislative Assembly, while the soon to be repealed *Subordinate Laws Act 1989* refers to documents being laid before the Legislative Assembly. The language of the *Legislation Act 2001* is consistent with the current practice of the Legislative Assembly.

The amendment also removes unnecessary words and brings the language more closely into line with current drafting practice.

[3.268] Section 18 (3)

substitute

- (3) If the Treasurer has authorised expenditure under subsection (1) during a financial year and expenditure has been incurred under that authorisation during the year, the Treasurer must present the following to the Legislative Assembly as soon as practicable after the end of the year:
- (a) a copy of the authorisation;
 - (b) a statement of the reasons for giving it.

Explanatory note

This subsection has been recast to remove unnecessary words, bring the subsection more closely into line with current drafting practice and update language to reflect a change in terminology. The *Legislation Act 2001* refers to documents being presented to the Legislative Assembly, while the soon to be repealed *Subordinate Laws Act 1989* refers to documents being laid before the Legislative Assembly. The language of the *Legislation Act 2001* is consistent with the current practice of the Legislative Assembly.

[3.269] Sections 18A (3) and 19B (2)

omit

he or she shall cause a copy of the authorisation to be laid before

substitute

the Treasurer must present a copy of the authorisation to

Explanatory note

This amendment updates language to reflect a change in terminology. The *Legislation Act 2001* refers to documents being presented to the Legislative Assembly, while the soon to be repealed *Subordinate Laws Act 1989* refers to documents being laid before the Legislative Assembly. The language of the *Legislation Act 2001* is consistent with the current practice of the Legislative Assembly.

The amendment also removes unnecessary words and brings the language more closely into line with current drafting practice.

[3.270] Section 25

omit

he or she shall cause to be laid before

substitute

the Treasurer must present to

Explanatory note

This amendment updates language to reflect a change in terminology. The *Legislation Act 2001* refers to documents being presented to the Legislative Assembly, while the soon to be repealed *Subordinate Laws Act 1989* refers to documents being laid before the Legislative Assembly. The language of the *Legislation Act 2001* is consistent with the current practice of the Legislative Assembly.

The amendment also removes unnecessary words and brings the language more closely into line with current drafting practice.

[3.271] Section 25A (2)

omit

cause the report to be laid before

substitute

present the report to

Explanatory note

This amendment updates language to reflect a change in terminology. The *Legislation Act 2001* refers to documents being presented to the Legislative Assembly, while the soon to be repealed *Subordinate Laws Act 1989* refers to documents being laid before the Legislative Assembly. The language of the *Legislation Act 2001* is consistent with the current practice of the Legislative Assembly.

The amendment also removes unnecessary words.

[3.272] Section 27 (2) and (3) (d) (i)

omit

laid before

substitute

presented to

Explanatory note

This amendment updates language to reflect a change in terminology. The *Legislation Act 2001* refers to documents being presented to the Legislative Assembly, while the soon to be repealed *Subordinate Laws Act 1989* refers to documents being laid before the Legislative Assembly. The language of the *Legislation Act 2001* is consistent with the current practice of the Legislative Assembly.

[3.273] Section 30

omit

shall cause to be laid before

substitute

must present to

Explanatory note

This amendment updates language to reflect a change in terminology. The *Legislation Act 2001* refers to documents being presented to the Legislative Assembly, while the soon to be repealed *Subordinate Laws Act 1989* refers to documents being laid before the Legislative Assembly. The language of the *Legislation Act 2001* is consistent with the current practice of the Legislative Assembly.

The amendment also removes unnecessary words.

[3.274] Section 47 (3)

omit

he or she shall cause a copy of the approval to be laid before

substitute

the Treasurer must present a copy of the approval to

Explanatory note

This amendment updates language to reflect a change in terminology. The *Legislation Act 2001* refers to documents being presented to the Legislative Assembly, while the soon to be repealed *Subordinate Laws Act 1989* refers to documents being laid before the Legislative Assembly. The language of the *Legislation Act 2001* is consistent with the current practice of the Legislative Assembly.

The amendment also removes unnecessary words and brings the language more closely into line with current drafting practice.

[3.275] Section 62 (2)

substitute

- (2) The responsible Minister must present each document mentioned in subsection (1) (a) and (b) to the Legislative Assembly within 6 sitting days after the day the Minister receives the documents.

Explanatory note

This subsection has been recast to remove unnecessary words and update language to reflect a change in terminology. The *Legislation Act 2001* refers to documents being

presented to the Legislative Assembly, while the soon to be repealed *Subordinate Laws Act 1989* refers to documents being laid before the Legislative Assembly. The language of the *Legislation Act 2001* is consistent with the current practice of the Legislative Assembly.

Part 3.21 Food Regulations 1994

[3.276] Regulation 18 (3)

substitute

- (3) Subregulation (2) and this subregulation cease to have effect on 6 July 2001.

(Commencement: 6 July 2000.)

Explanatory note

This provision was inserted by the *Food Regulations Amendment SL 2000 No 26*. It stated that the subregulations cease to have effect 12 months after the date of commencement of ‘these regulations’, instead of the commencement of the *Food Regulations Amendment SL 2000 No 26*.

This amendment makes it clear that the date that the subregulations cease to have effect is 12 months after the date of commencement of the *Food Regulations Amendment SL 2000 No 26*, which is 6 July 2001.

The amendment is backdated to the day the regulations were notified in the Gazette to ensure that the subregulations do not expire before 6 July 2001.

[3.277] Regulation 37 (4) and (5)

substitute

- (4) Subregulation (3) applies to a tray installed on or after 6 July 2000.
- (5) Subregulation (4) and this subregulation cease to have effect on 6 July 2003.

(Commencement: 6 July 2000.)

Explanatory note

These provisions were inserted by the *Food Regulations Amendment SL 2000 No 26*. Subregulation (4) stated that subregulation (3) applies to a tray installed on or after the date

of commencement of ‘these regulations’, and subregulation (5) that subregulations (4) and (5) cease to have effect 3 years after the date of commencement of ‘these regulations’. The reference should have been to the commencement of the *Food Regulations Amendment* SL 2000 No 26.

This amendment makes it clear that subregulation (3) applies on or after the date of commencement of the *Food Regulations Amendment* SL 2000 No 26, which is 6 July 2000. It also makes it clear that the date that the subregulations cease to have effect is 3 years after the date of commencement of the *Food Regulations Amendment* SL 2000 No 26, which is 6 July 2003.

The amendment is backdated to the day the regulations were notified in the Gazette to ensure that subregulation (4) does not purport to have a retrospective operation and to ensure that the subregulations do not expire before 6 July 2003.

Part 3.22

Forfeiture and Validation of Leases Act 1905

[3.278] Title

omit

; to amend the Forfeiture of Leases Act 1901

Explanatory note

This amendment omits redundant words.

[3.279] Section 1

substitute

1 Name of Act

This Act is the *Forfeiture and Validation of Leases Act 1905*.

Explanatory note

This amendment revises the section providing for the Act’s name to bring it into line with current drafting practice.

[3.280] Sections 3 and 4

substitute

2 Definitions for pt 2

In this part:

lease includes—

- (a) an original or derivative under-lease; and
- (b) an agreement for a lease if the lessee has become entitled to have the lease granted.

lessee includes an original or derivative under-lessee.

lessor includes an original or derivative under-lessor.

under-lease includes an agreement for an under-lease if the under-lessee has become entitled to have the under-lease granted.

under-lessee includes a person deriving title under or from an under-lessee.

under-lessor includes a person deriving title under or from an under-lessor.

3 Application of pt 2

- (1) This part applies to a lease or under-lease despite any provision of the lease to the contrary.
- (2) However, this part does not apply to a residential tenancy agreement under the *Residential Tenancies Act 1997*.

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment omits section 3, which is redundant with the incorporation of the relevant provisions of the *Forfeiture of Leases Act 1901* into this part.

The amendment substitutes 2 new sections for existing section 4. New section 2 incorporates, in an updated form, the definitions presently in the *Forfeiture of Leases Act 1901*, section 1 (3) and the *Forfeiture and Validation of Leases Act 1905*, section 4. New

section 3 incorporates, in an updated form, the provisions currently in the *Forfeiture of Leases Act 1901*, section 4.

[3.281] New sections 4 and 4A

insert

4 Restrictions on re-entry or forfeiture

- (1) A right of re-entry or forfeiture under a lease for breach of a provision of the lease is not enforceable by proceeding or otherwise unless—
 - (a) the lessor gives the lessee a notice—
 - (i) specifying the breach; and
 - (ii) requiring the lessee to pay compensation for the breach; and
 - (iii) if the breach can be remedied—requiring the lessee to remedy the breach; and
 - (b) the lessee fails within a reasonable time after being given the notice—
 - (i) to pay reasonable compensation for the breach; and
 - (ii) if the breach can be remedied—to remedy the breach.

Note If a form is approved under s 12 (Approved forms) for a notice, the form must be used.

- (2) If the lessor under a lease seeks to enforce, by proceeding or otherwise, a right of re-entry or forfeiture under the lease for breach of a provision of the lease, the lessee may apply to the Supreme Court for relief.
- (3) If the lessee applies to the Supreme Court for relief, the court may grant or refuse relief.

- (4) If the Supreme Court grants relief, it may do so on the conditions it considers appropriate, including the granting of an injunction to restrain similar breaches of the lease in the future.
- (5) This section does not apply in relation to—
 - (a) a lease granted by the Territory; or
 - (b) a lease for a term of 1 year or less; or
 - (c) a provision of a lease—
 - (i) against assigning, under-leasing or parting with possession, or disposing, of the leased land; or
 - (ii) for forfeiture on the bankruptcy of the lessee; or
 - (d) the taking in execution of the lessee's interest; or
 - (e) re-entry or forfeiture for nonpayment of rent.
- (6) For this section, the term of a lease limited to continue only while the lessee does not breach the lease is taken to be the term for which the lease could continue apart from a breach.

4A Notices under s 4 (1)

- (1) A notice under section 4 (1) must be in writing.
- (2) If the lessee is not in the ACT, the notice may be given to the lessee by serving it personally on the lessee's lawyer or agent in the ACT.
- (3) Subsection (2) does not limit any other Territory law that authorises service of the notice in another way.

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

New section 4 remakes, in a more modern form, the *Forfeiture of Leases Act 1901*, section 1.

New section 4A remakes, in a more modern form, the *Forfeiture of Leases Act 1901*, section 2. In remaking the section, archaic provisions and provisions covered by the *Interpretation Act 1967*, sections 17A and 18 have been omitted. The unreasonably broad and unfair provisions of the *Forfeiture of Leases Act 1901*, section 2 (2) have not been included in the remade section.

[3.282] Section 5

substitute

5 Protection of under-lessees

- (1) If the lessor under a lease seeks to enforce, by proceeding or otherwise, a right of re-entry or forfeiture under the lease for breach of a provision of the lease, a person (the *interested person*) claiming an interest in all or part of the leased property as under-lessee may apply to the Supreme Court for relief.
- (2) If the interested person applies to the Supreme Court for relief, the court may grant or refuse relief.
- (3) Without limiting subsection (2), the Supreme Court may stay any proceeding brought by the lessor to enforce the right of re-entry or forfeiture under the lease and vest all or any part of the leased property in the interested person as under-lessee, or in any other capacity, for a term not longer than the term of the lease.
- (4) If the Supreme Court grants relief, it may do so on the conditions it considers appropriate.
- (5) For this section, the term of a lease limited to continue only while the lessee does not breach the lease is taken to be the term for which the lease could continue apart from a breach.

Explanatory note

This amendment remakes the section in a more modern form that is consistent, as far as possible, with new section 4.

[3.283] Section 5A

substitute

5A Application of pt 3 to Territory

This part does not bind the Territory.

Explanatory note

This amendment recasts the section in a more modern form.

[3.284] Section 6

substitute

6 Lease taken to be granted in intended exercise of power

If—

- (a) a valid power of leasing is vested in or may be exercised by a person granting a lease; and
- (b) the lease cannot have effect, or continue to have effect, according to its terms independently of the power (because of the ending of the estate or interest of the person or otherwise);

the lease is, for this part, taken to be granted in the intended exercise of the power, even though the power is not mentioned in the lease.

Explanatory note

This amendment recasts the section to omit archaic language and bring it more closely into line with current drafting practice.

[3.285] Section 7 (1)

omit

such

substitute

the

Explanatory note

This amendment updates language.

[3.286] Section 7 (1)

omit

has been or may hereafter be

substitute

is

Explanatory note

This amendment omits (and updates) words that are now obsolete.

[3.287] Section 7 (1)

omit

therein

substitute

in the lease

Explanatory note

This amendment updates archaic language.

[3.288] Section 7 (1)

after

his

insert

or her

Explanatory note

This amendment removes gender-specific language.

[3.289] Section 7 (1)

omit

thereunder

substitute

under the lease

Explanatory note

This amendment updates archaic language.

[3.290] Section 7 (1)

omit

as aforesaid

Explanatory note

This amendment omits unnecessary archaic language.

[3.291] Section 7 (2)

substitute

- (2) However, no-one is entitled under the equitable contract mentioned in subsection (1) to obtain a variation of the lease if the people who would have been bound by the contract are willing to confirm the lease without variation.

Explanatory note

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

[3.292] Section 7 (3)

omit

Explanatory note

This amendment omits an obsolete provision relating to old system title land.

[3.293] Section 8

substitute

8 Certain leases validated

- (1) This section applies if—

- (a) a lease granted in the intended exercise of a valid power of leasing is invalid because, when the lease was granted, the person granting the lease could not lawfully grant it; and
 - (b) the person was at least 18 years old at that time; and
 - (c) the person can, at a later time, lawfully grant the lease or a similar lease under the power.
- (2) If this section applies, the lease is taken to have been granted by the person under the power at the later time.
- (3) This part applies to the lease.

Explanatory note

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

[3.294] Section 9

substitute

9 Acceptance of rent taken to be confirmation of lease

- (1) This section applies if, on or before acceptance of rent under an invalid lease, a written receipt, memorandum or note confirming the lease is signed by the person accepting the rent or by someone authorised by that person.
- (2) The acceptance of the rent is, as against the person accepting the rent, taken to be a confirmation of the lease.

Explanatory note

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

[3.295] Section 10

substitute

10 Lessee bound to accept confirmation

- (1) This section applies if—
 - (a) a person (the *first person*) is in possession of land under an invalid lease; and
 - (b) someone else (the *other person*) is entitled, subject to the interest of the first person in the land, to possession of the land or to receipt of its rents and profits; and
 - (c) the other person can confirm the lease without variation.
- (2) The first person (or a person deriving title to the lease under or from the first person), or anyone else who would have been bound by the lease if it had been valid, must, if asked by the other person, accept confirmation of the lease by the other person.
- (3) The confirmation may be made by a written memorandum or note signed by the other person and the person accepting the confirmation.
- (4) On the confirmation of the lease, the lease is taken to have been valid from the time it was granted.

Explanatory note

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

[3.296] Section 11

substitute

11 Saving of other rights

This part does not affect the rights of anyone in relation to a breach of a provision of an invalid lease.

Examples

- 1 Rights of a person named as lessor of an invalid lease to re-entry or forfeiture for breach of a provision of the lease.

Explanatory note

This amendment simplifies the section and brings it more closely into line with current drafting practice.

[3.297] Section 12

omit

Explanatory note

This amendment omits a transitional provision that is now obsolete.

[3.298] New part 4

after section 12, insert

Part 4 Miscellaneous

Explanatory note

This amendment inserts a new part into which the *Forfeiture of Leases Act 1901*, section 3 is relocated.

Part 3.23 Forfeiture of Leases Act 1901

[3.299] Section 3

*relocate to Forfeiture and Validation of Leases Act 1905, part 4 and
renumber as section 12*

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment relocates a section of this Act to the *Forfeiture and Validation of Leases Act 1905*. The section is being inserted by the *Legislation (Consequential Amendments) Bill 2001*.

[3.300] Remainder of Act

repeal

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

Other amendments in this schedule remake relevant provisions of this Act as provisions of the *Forfeiture and Validation of Leases Act 1905*. This amendment repeals the remaining provisions of this Act which are no longer needed.

Part 3.24 Games Wagers and Betting-houses Act 1901

[3.301] Section 1

substitute

1 Name of Act

This Act is the *Games, Wagers and Betting Houses Act 1901*.

Explanatory note

This amendment revises the section providing for the Act's name to bring it into line with current drafting practice.

[3.302] Section 2

substitute

2 Words and expressions used in Gaming and Betting Act 1906

A word or expression used in the *Gaming and Betting Act 1906* has the same meaning in this Act.

Explanatory note

This amendment restructures the section to bring it more closely into line with current drafting practice. There is no need to refer to the contrary intention (see *Interpretation Act 1967*, s 11G and dict, def of *definition*) or to the *Gaming and Betting Act 1906* as a former NSW Act. Under amendments of the *Interpretation Act 1967* made by the Law

Reform (Miscellaneous Provisions) Act 1999, the *Gaming and Betting Act 1906* is now an ACT Act.

[3.303] Section 4 (1)

omit

house room premises

substitute

house, room, premises

Explanatory note

This amendment inserts commas.

[3.304] Section 4 (1)

omit

officer of police

substitute

police officer

Explanatory note

This amendment substitutes the term ‘police officer’ (which is defined in the *Interpretation Act 1967*, dictionary) for ‘officer of police’.

[3.305] Section 4 (1)

omit

arrest search

substitute

arrest, search

Explanatory note

This amendment inserts a comma.

[3.306] Section 4 (1)

omit

tables instruments of gaming moneys

substitute

tables, instruments of gaming, moneys

Explanatory note

This amendment inserts commas.

[3.307] Section 4 (2)

omit

officer of police

substitute

police officer

Explanatory note

This amendment substitutes the term ‘police officer’ (which is defined in the *Interpretation Act 1967*, dictionary) for ‘officer of police’.

[3.308] Section 4 (2)

omit

house room premises

substitute

house, room, premises

Explanatory note

This amendment inserts commas.

[3.309] Section 4 (2)

omit

tables instruments of gaming moneys

substitute

tables, instruments of gaming, moneys

Explanatory note

This amendment inserts commas.

[3.310] Section 6 (1)

omit everything after

conducting such

substitute

gaming house, room, premises or place commits an offence.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

Explanatory note

This amendment restructures part of the subsection to bring it more closely into line with current drafting practice.

[3.311] Section 6 (2) and (3)

substitute

- (2) A person found in such house, room, premises or place without lawful excuse commits an offence.

Maximum penalty: 10 penalty units.

- (3) If a person is convicted of an offence against subsection (1) or (2), all the moneys and securities seized under the special warrant are forfeited to the Territory.

Explanatory note

This amendment restructures the subsections to bring them more closely into line with current drafting practice.

[3.312] Section 9

omit

money wager or stake

substitute

money, wager or stake

Explanatory note

This amendment inserts a comma.

[3.313] Section 10

omit

house room premises

substitute

house, room, premises

Explanatory note

This amendment inserts commas.

[3.314] Section 10 (b)

omit

officer of police

substitute

police officer

Explanatory note

This amendment substitutes the term ‘police officer’ (which is defined in the *Interpretation Act 1967*, dictionary) for ‘officer of police’.

[3.315] Section 11

omit

prosecutions forfeitures

substitute

prosecutions, forfeitures,

Explanatory note

This amendment inserts commas.

[3.316] Section 14, heading

substitute

14 Meaning of *valuable thing*

Explanatory note

This amendment revises a section heading in line with current drafting practice.

[3.317] Section 14, definition of *valuable thing*

omit

verbal or in writing

substitute

(oral or in writing),

Explanatory note

This amendment revises language, and inserts punctuation, in line with current drafting practice.

[3.318] Section 15 (1)

omit

house office room or place

substitute

house, office, room, or other place

Explanatory note

This amendment inserts commas and adds ‘other’ to match the definition of *place* in the *Gaming and Betting Act 1906*.

[3.319] Section 15 (1)

omit

officer of police

substitute

police officer

Explanatory note

This amendment substitutes the term ‘police officer’ (which is defined in the *Interpretation Act 1967*, dictionary) for ‘officer of police’.

[3.320] Section 15 (1)

omit

arrest search

substitute

arrest, search

Explanatory note

This amendment inserts a comma.

[3.321] Section 15 (1)

omit

moneys coin notes cheques

substitute

moneys, coin, notes, cheques,

Explanatory note

This amendment inserts commas.

[3.322] Section 15 (2)

omit

officer of police

substitute

police officer

Explanatory note

This amendment substitutes the term ‘police officer’ (which is defined in the *Interpretation Act 1967*, dictionary) for ‘officer of police’.

[3.323] Section 16 (1)

omit

deputy commissioner of police

substitute

chief police officer

Explanatory note

This amendment substitutes ‘chief police officer’ (which is defined in the *Interpretation Act 1967*, dictionary) for ‘deputy commissioner of police’.

[3.324] Section 16 (1)

omit

or inspector

Explanatory note

This amendment removes a reference to a rank that no longer exists in the Australian Federal Police.

[3.325] Section 16 (1)

omit

house office room or place

substitute

house, office, room, or other place

Explanatory note

This amendment inserts commas and adds ‘other’ to match the definition of *place* in the *Gaming and Betting Act 1906*.

[3.326] Section 16 (1)

omit

officers of police

substitute

police officers

Explanatory note

This amendment substitutes the term ‘police officers’ (which is defined in the *Interpretation Act 1967*, dictionary) for ‘officers of police’.

[3.327] Section 16 (2)

omit

deputy commissioner of police

substitute

chief police officer

Explanatory note

This amendment substitutes ‘chief police officer’ (which is defined in the *Interpretation Act 1967*, dictionary) for ‘deputy commissioner of police’.

[3.328] Section 16 (2)

omit

or inspector

Explanatory note

This amendment removes a reference to a rank that no longer exists in the Australian Federal Police.

[3.329] Section 17 (1)

omit

house office room

substitute

house, office, room,

Explanatory note

This amendment inserts commas.

[3.330] Section 19 (1)

omit

Whosoever opens keeps or uses any house office room

substitute

A person who opens, keeps or uses any house, office, room,

Explanatory note

This amendment updates language, and inserts commas to restructure the subsection, to bring it more closely into line with current drafting practice.

[3.331] Section 19 (1)

omit

opened kept

substitute

opened, kept

Explanatory note

This amendment inserts a comma.

[3.332] Section 19 (1)

omit

room or place

substitute

room, or other place

Explanatory note

This amendment inserts a comma and adds ‘other’ to match the definition of *place* in the *Gaming and Betting Act 1906*.

[3.333] Section 19 (1)

omit everything after

used any such purposes,

substitute

commits an offence.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

Explanatory note

This amendment restructures the offence to bring it more closely into line with current drafting practice.

[3.334] Section 19 (2)

substitute

- (2) A person who is in such house, office, room, or other place without lawful excuse commits an offence.

Maximum penalty: 10 penalty units.

Explanatory note

This amendment restructures the offence to bring it more closely into line with current drafting practice and adds ‘other’ to match the definition of *place* in the *Gaming and Betting Act 1906*.

[3.335] Section 19 (3)

omit

moneys coin notes cheques

substitute

moneys, coin, notes, cheques,

Explanatory note

This amendment inserts commas.

[3.336] Section 19 (3)

omit

house room office or

substitute

house, office, room, or other

Explanatory note

This amendment inserts commas, changes the order of the words for consistency and adds ‘other’ to match the definition of *place* in the *Gaming and Betting Act 1906*.

[3.337] Section 20

omit

Whosoever being the owner or occupier of any house office room or place opened kept

substitute

The owner or occupier of a house, office, room, or other place opened, kept

Explanatory note

This amendment removes unnecessary words to restructure the offence in this section to bring it more closely into line with current drafting practice, inserts commas and adds ‘other’ to match the definition of *place* in the *Gaming and Betting Act 1906*.

[3.338] Section 20

after

assistant

insert

who

Explanatory note

This amendment is part of the restructuring of the offence in this section.

[3.339] Section 20 (a)

omit

receives

substitute

receive

Explanatory note

This amendment is consequential on the restructuring of the offence in this section.

[3.340] Section 20 (a) (i)

omit

fight game

substitute

fight, game,

Explanatory note

This amendment inserts commas.

[3.341] Section 20 (a) (ii)

omit

assurance undertaking

substitute

assurance, undertaking,

Explanatory note

This amendment inserts commas.

[3.342] Section 20 (b)

omit

gives any acknowledgment note

substitute

give any acknowledgment, note,

Explanatory note

This amendment is consequential on the restructuring of the offence in this section and inserts commas.

[3.343] Section 20

omit everything after paragraph (b), substitute

commits an offence.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

Explanatory note

This amendment restructures the offence to bring it more closely into line with current drafting practice.

[3.344] Section 21

omit

Whosoever

substitute

A person must not

Explanatory note

This amendment is part of the restructuring of the offence in this section to bring it more closely into line with current drafting practice.

[3.345] Section 21 (a)

omit

exhibits or publishes or causes to be exhibited or published any
placard handbill card writing

substitute

exhibit or publish, or cause to be exhibited or published, any
placard, handbill, card, writing,

Explanatory note

This amendment is part of the restructuring of the offence in this section and inserts commas.

[3.346] Section 21 (a) (i)

omit

house office room or place is opened kept

substitute

house, office, room, or other place is opened, kept

Explanatory note

This amendment inserts commas and adds ‘other’ to match the definition of *place* in the *Gaming and Betting Act 1906*.

[3.347] Section 21 (a) (ii)

omit

house office room or

substitute

house, office, room, or other

Explanatory note

This amendment inserts commas and adds ‘other’ to match the definition of *place* in the *Gaming and Betting Act 1906*.

[3.348] Section 21 (b)

omit

house office room or place invites

substitute

house, office, room, or other place invite

Explanatory note

This amendment is part of the restructuring of the offence in this section, inserts commas and adds ‘other’ to match the definition of *place* in the *Gaming and Betting Act 1906*.

[3.349] Section 21

omit everything after

manner

substitute

aforesaid.

Maximum penalty: 10 penalty units.

Explanatory note

This amendment is part of the restructuring of the offence in this section.

[3.350] Section 22

omit everything before paragraph (a), substitute

22 Penalty for advertising betting

A person must not send, exhibit or publish, or cause to be sent, exhibited or published, any letter, circular, telegram, placard, handbill or advertisement—

Explanatory note

This amendment is part of the restructuring of the offence in this section and inserts commas to bring it more closely into line with current drafting practice.

[3.351] Section 22 (b)

omit

house office room or place

substitute

house, office, room, or other place

Explanatory note

This amendment inserts commas and adds ‘other’ to match the definition of *place* in the *Gaming and Betting Act 1906*.

[3.352] Section 22

omit everything after

with any such bet or

substitute

wager.

Maximum penalty: 10 penalty units.

Explanatory note

This amendment is part of the restructuring of the offence in this section.

[3.353] Section 23

substitute

23 Recovery of deposit on bet

- (1) Any money or valuable thing received by a person mentioned in section 20 as a deposit on a bet, or as consideration for an assurance, undertaking, promise or agreement, mentioned in that section is taken to have been received to the use of the person from whom it was received.
- (2) The money or valuable thing (or its value) may be recovered by the person from whom it was received, with costs, as a debt in any court of competent jurisdiction.
- (3) This part does not apply to anyone who receives money or a valuable thing as a stake or deposit to be paid to—
 - (a) the winner of a race, or a lawful sport, game or exercise; or

(b) the owner of a horse engaged in a race.

Explanatory note

This amendment inserts commas, removes archaic language and brings the section more closely into line with current drafting practice.

[3.354] Section 26 (1)

omit

action suit or other proceeding for any irregularity trespass

substitute

action, suit or other proceeding for any irregularity, trespass

Explanatory note

This amendment inserts commas.

[3.355] Section 26 (1)

omit

in under or by virtue of any authority thereby given if action or suit brought

substitute

under any authority given by this Act if, before the proceeding is brought,

Explanatory note

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

[3.356] Section 26 (1)

omit

the irregularity trespass

substitute

the irregularity, trespass

Explanatory note

This amendment inserts a comma.

[3.357] Section 26 (2)

omit

action suit

substitute

action, suit

Explanatory note

This amendment inserts a comma.

[3.358] Section 26 (2)

omit

proceedings orders

substitute

proceedings, orders

Explanatory note

This amendment inserts a comma.

[3.359] Section 27

omit

(1) Any

substitute

Any

Explanatory note

This amendment omits the subsection number, as there is no section 27 (2).

Part 3.25 Gaming and Betting Act 1906

[3.360] Title

substitute

An Act for the regulation and suppression of gaming, betting, and wagering, to restrict the holding of race meetings, and for related purposes

Explanatory note

This amendment revises the Act's long title to take account of the current scope of the Act.

[3.361] Section 1

substitute

1 Name of Act

This Act is the *Gaming and Betting Act 1906*.

Explanatory note

This amendment revises the section providing for the Act's name to bring it into line with current drafting practice.

[3.362] Section 2, definition of *betting offence*

substitute

betting offence means an offence, in relation to betting, against—

- (a) this Act; or
- (b) the *Games, Wagers and Betting Houses Act 1901*; or
- (c) the *Unlawful Games Act 1984*.

Explanatory note

This amendment remakes the definition to omit the reference to the Principal Act (the definition of ***Principal Act*** is omitted by another amendment in this part) and to bring the definition more closely into line with current drafting practice.

[3.363] Section 2, definition of *Bookmaker*

substitute

bookmaker means a race bookmaker or a sports bookmaker.

(Commencement: the commencement of section 2 of this Act or the commencement of the *Race and Sports Bookmaking Act 2001*, section 101, whichever is later.)

Explanatory note

This amendment updates the definition. Definitions of ***race bookmaker*** and ***sports bookmaker*** are inserted by another amendment in this part.

[3.364] Section 2, definition of *gaming offence*

substitute

gaming offence means an offence, in relation to gaming, against—

- (a) this Act; or
- (b) the *Games, Wagers and Betting Houses Act 1901*; or
- (c) the *Unlawful Games Act 1984*.

Explanatory note

This amendment remakes the definition to omit the reference to the Principal Act (the definition of ***Principal Act*** is omitted by another amendment in this part) and to bring the definition more closely into line with current drafting practice.

[3.365] Section 2, definition of *Ground*

omit

thereon

substitute

on the land

Explanatory note

This amendment updates an archaic word.

[3.366] Section 2, definition of *Occupier*

substitute

occupier, of a house, office, room, or other place, or of land or a building, includes a lessee or sublessee who is not the owner.

Explanatory note

This amendment revises the definition to omit archaic language and bring the definition more closely into line with current drafting practice.

[3.367] Section 2, definition of *Owner*

substitute

owner includes—

- (a) for a house, office, room, or other place, or land or a building—
 - (i) a lessee under a lease granted under the *Land (Planning and Environment) Act 1991*; or
 - (ii) a person who is in receipt of, entitled to receive (or, if the place, land or building were let, would be entitled to receive), its rents and profits; and
- (b) for a subleased house, office, room, or other place, or a building—a sublessee.

Explanatory note

This amendment updates the definition to omit references to old system title land and repealed laws, and bring its language more closely into line with current drafting practice.

[3.368] Section 2, definition of *Principal Act*

omit

Explanatory note

This amendment is consequential on the adoption of the *Games, Wagers and Betting Houses Act 1901* as an ACT Act.

[3.369] Section 2, definition of *Public place*, paragraph (e)

omit

thereof

substitute

of the building

Explanatory note

This amendment updates archaic language.

[3.370] Section 2, definition of *Public place*

omit

the Australian Capital Territory Totalizator Agency Board
established under the *Betting (Totalizator Agency) Act 1964*

substitute

ACTTAB Limited

Explanatory note

This amendment is consequential on the corporatisation of the Australian Capital Territory Totalizator Agency Board. The board became ACTTAB Limited.

[3.371] Section 2, definition of *Public place*

omit

that Board

substitute

ACTTAB Limited

Explanatory note

This amendment is consequential on the above amendment.

[3.372] Section 2, definition of *Unlawful game*

substitute

unlawful game—see the *Unlawful Games Act 1984*, section 3 (Interpretation).

Explanatory note

This amendment brings a definition into line with current drafting practice.

[3.373] Section 2, definitions (as amended by this Act and the *Race and Sports Bookmaking Act 2001*)

relocate to dictionary

(Commencement: the commencement of section 2 of this Act or the commencement of the *Race and Sports Bookmaking Act 2001*, section 101, whichever is later.)

Explanatory note

This amendment relocates to the dictionary all definitions from the existing interpretation section. The dictionary is inserted by a later amendment in this part.

[3.374] Section 2, 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 words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act or in other legislation.

For example, the signpost definition ‘*race bookmaker*—see the *Race and Sports Bookmaking Act 2001*, dictionary.’ means that the expression ‘race bookmaker’ is defined in the dictionary to that Act and the definition applies to 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 *Interpretation Act 1967*, s 11F and s 11G).

(Commencement: the commencement of section 2 of this Act or the commencement of the *Race and Sports Bookmaking Act 2001*, section 101, whichever is later.)

Explanatory note

New section 2 is a standard provision explaining the status of the dictionary. The dictionary is inserted by a later amendment in this part.

[3.375] Section 2A

omit

Principal Act

substitute

Games, Wagers and Betting Houses Act 1901

Explanatory note

This amendment is consequential on the omission of the definition of *Principal Act* by an earlier amendment in this part.

[3.376] Section 3 (b)

substitute

(b) in a way prohibited by the *Games, Wagers and Betting Houses Act 1901*, section 17 (Betting-houses prohibited).

Explanatory note

This amendment is consequential on the omission of the definition of *Principal Act* by an earlier amendment in this part.

[3.377] Sections 4 and 5

substitute

4 Use of house as common gaming house etc

An owner or occupier of a house, office, room, or other place must not knowingly allow it to be used in contravention of this Act.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

5 Use of land for access to common gaming house etc

An owner or occupier of any land or building must not knowingly allow the land or building to be used as a means of access to, or of exit or escape from, a house, office, room, or other place used in contravention of this Act.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

Explanatory note

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

[3.378] Section 6 (1) (a)

omit

the same

substitute

it

Explanatory note

This amendment updates language.

[3.379] Section 6 (1) (b)

omit

same

substitute

land or building

Explanatory note

This amendment updates language.

[3.380] Section 6 (1)

omit

he

substitute

the owner

Explanatory note

This amendment removes gender-specific language.

[3.381] Section 6 (1), 2nd sentence

substitute

- (2) Any tenancy is ended 10 days after a notice to quit is served under subsection (1) and the owner may take legal proceedings to evict the occupier.

Explanatory note

This amendment separates subsection (1) into 2 subsections in line with current drafting practice.

[3.382] Section 6 (2)

substitute

- (3) A notice to quit under subsection (1) must be served personally on the occupier.
- (4) However, if the occupier cannot be found, the notice may be served by securing it in a conspicuous place on the house, office, room, or other place, or the land or building.

Explanatory note

This amendment remakes existing subsection (2) to bring it into more closely into line with current drafting practice.

[3.383] Section 7

substitute

7 Cancellation of notice to quit

- (1) An occupier who has received a notice to quit under section 6 may apply to the Supreme Court for cancellation of the notice.
- (2) The making of an application under this section operates as a stay of any proceedings under section 6 to evict the occupier.
- (3) The Supreme Court may cancel the notice to quit, on the conditions that the court considers appropriate, if the occupier has not—
 - (a) knowingly allowed the house, office, room, or other place to be used in contravention of this Act; or
 - (b) knowingly allowed the land or building to be used as a means of access to, or of exit or escape from, a house, office, room, or other place used in contravention of this Act.

Explanatory note

This amendment removes unnecessary provisions about Supreme Court procedure and brings the section more closely into line with current drafting practice.

[3.384] Section 8

omit

superintendent, inspector, or sub-inspector of police

substitute

police officer of the rank of superintendent or sergeant

Explanatory note

This amendment updates a reference to ranks in the Australian Federal Police.

[3.385] Section 8

omit

such

substitute

the

Explanatory note

This amendment updates language.

[3.386] Section 9 (3) (a) and (b)

substitute

- (a) by the owner or occupier of the house, office, room, or other place the subject of the declaration, on proof that the owner or occupier has not allowed it to be used in contravention of this Act; or
- (b) by a police officer of the rank of superintendent or sergeant, on proof that the house, office, room, or other place is not used in contravention of this Act.

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment brings the paragraphs more closely into line with current drafting practice and updates a reference to ranks in the Australian Federal Police.

[3.387] Section 9 (4)

omit everything after

must

substitute

be served on a police officer of the rank of superintendent or sergeant at least 2 days before the hearing of the application.

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment brings the subsection more closely into line with current drafting practice and updates a reference to ranks in the Australian Federal Police.

[3.388] Section 11

substitute

11 Service of notice of declaration

- (1) If a declaration about a house, office, room, or other place is made under section 8 (Declaration of common gaming-house), the chief police officer or a police officer of the rank of superintendent or sergeant must—
 - (a) publish (on 2 days) a notice of the making of the declaration in a newspaper published and circulating in the ACT; and
 - (b) serve the notice on the owner or occupier of the house, office, room, or other place—
 - (i) personally; or
 - (ii) if personal service is not practicable—by attaching a copy of the notice at or near the entrance to the house, office, room, or place.
- (2) In a proceeding under this Act, a copy of a newspaper containing a notice of the making of a declaration is evidence that the notice was published in the newspaper on the date of the newspaper.

Explanatory note

This amendment brings the section more closely into line with current drafting practice and updates a reference to ranks in the Australian Federal Police.

[3.389] Section 12

substitute

12 Being in etc a common gaming house

- (1) A person must not be in, or enter or leave, a house, office, room, or other place (or land or a building used as a means of access to, or of exit or escape from, a house, office, room, or other place) if, for the house, office, room, or other place—

- (a) a declaration under section 8 (Declaration of common gaming-house) is in force; and
- (b) a notice has been published under section 11.

Maximum penalty: 10 penalty units.

- (2) It is a defence to the prosecution of a person for an offence against this section if the person proves that he or she was in, or entering or leaving, the place, land or building for a lawful purpose.

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

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

[3.390] Sections 13 and 14

substitute

13 Declared premises used in contravention of Act after notice served on owner

- (1) If—
 - (a) after service of a notice on an owner under section 11 (Service of notice of declaration); and
 - (b) while the notice is in force;

the house, office, room, or other place the subject of the notice is used in contravention of this Act, the owner commits an offence.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) It is a defence to the prosecution if the owner proves that the owner took all reasonable steps to evict the occupier.

14 Declared premises used in contravention of Act after notice served on occupier

- (1) If—
- (a) after service of a notice on an occupier under section 11 (Service of notice of declaration); and
 - (b) while the notice is in force;
- the house, office, room, or other place the subject of the notice is used in contravention of this Act, the occupier commits an offence.
- Maximum penalty: 100 penalty units, imprisonment for 1 year or both.
- (2) It is a defence to the prosecution if the occupier proves that the occupier took all reasonable steps to stop the use.

Explanatory note

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

[3.391] Section 15

omit

any such declaration

substitute

a declaration under section 8 (Declaration of common gaming-house)

Explanatory note

This amendment removes an archaic word, ‘such’, and inserts the reference to the provision under which the declaration is made.

[3.392] Section 15

omit

or place, any member of the police force

substitute

or other place, a police officer

Explanatory note

This amendment adds ‘other’ to match the definition of *place* and substitutes ‘police officer’ (which is defined in the *Interpretation Act 1967*, dictionary) for ‘member of the police force’.

[3.393] Section 15 (a)

substitute

(a) enter the house, office, room, or other place;

Explanatory note

This amendment removes an archaic word (said), inserts the reference to the places being referred to and adds ‘other’ to match the definition of *place*.

[3.394] Section 15 (b)

omit

he

substitute

the officer

Explanatory note

This amendment removes gender-specific language.

[3.395] Section 15 (b)

omit

same

substitute

house, office, room, or other place

Explanatory note

This amendment removes an archaic word (same), inserts the reference to the places being referred to and adds ‘other’ to match the definition of *place*.

[3.396] Section 15 (c)

omit everything after

entering

substitute

under paragraph (a) or (b);

Explanatory note

This amendment updates language.

[3.397] Section 15 (d)

omit

aforesaid

substitute

mentioned in paragraphs (a) to (c)

Explanatory note

This amendment updates language.

[3.398] Section 15 (e)

omit everything after

for money

substitute

in the house, office, room, or other place.

Explanatory note

This amendment updates language and adds ‘other’ to match the definition of *place*.

[3.399] Section 17 (a)

substitute

- (a) a police officer authorised under this Act or the *Games, Wagers and Betting Houses Act 1901* to enter a house, office,

room, or other place is wilfully prevented from or is obstructed or delayed in entering the house, office, room, or other place or part of the house, office, room, or other place;

Explanatory note

This amendment substitutes ‘police officer’ (which is defined in the *Interpretation Act 1967*, dictionary) for ‘member of the police force’, replaces the reference to the Principal Act with the name of the Act (the definition of *Principal Act* is omitted by an earlier amendment in this part), adds ‘other’ to match the definition of *place* and removes archaic language.

[3.400] Section 17 (b)

omit

any such house, office, room, or place so authorized

substitute

the house, office, room, or other place authorised under this Act or the *Games, Wagers and Betting Houses Act 1901*

Explanatory note

This amendment updates language and adds ‘other’ to match the definition of *place*.

[3.401] Section 17 (b)

omit

same or any part, of any member of the police force authorized as aforesaid

substitute

house, office, room, or other place or part of the house, office, room, or other place, of a police officer

Explanatory note

This amendment adds ‘other’ to match the definition of *place*, removes archaic language and substitutes ‘police officer’ (which is defined in the *Interpretation Act 1967*, dictionary) for ‘member of the police force’.

[3.402] Section 17 (b)

omit

such entry

substitute

entry

Explanatory note

This amendment updates language.

[3.403] Section 17 (c)

omit

such house, office, room, or place

substitute

the house, office, room, or other place

Explanatory note

This amendment adds ‘other’ to match the definition of *place* and updates language.

[3.404] Section 17

omit everything after paragraph (c), substitute

it is evidence (unless the contrary is proven) that the house, office, room, or other place is used as a common gaming house and that the people found there were playing an unlawful game.

Explanatory note

This amendment omits archaic language and adds ‘other’ to match the definition of *place*.

[3.405] Section 17A, penalty

substitute

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

Explanatory note

This amendment revises a penalty provision to bring it into line with current drafting practice.

[3.406] Section 17B (1), penalty

substitute

Maximum penalty: 10 penalty units.

Explanatory note

This amendment revises a penalty provision to bring it into line with current drafting practice.

[3.407] Sections 17C (1) and 17D (1), penalty

substitute

Maximum penalty: 20 penalty units.

Explanatory note

This amendment revises a penalty provision to bring it into line with current drafting practice.

[3.408] Section 17F, heading

substitute

17F Requirement to give name and address

Explanatory note

This amendment updates the section heading.

[3.409] Section 17F (3), penalty

substitute

Maximum penalty (subsection (3)): 5 penalty units.

Explanatory note

This amendment revises a penalty provision to bring it into line with current drafting practice.

[3.410] Section 18

substitute

18 Street betting

- (1) A person (the *first person*) must not frequent, use, or be in, a street or public place to receive or be promised any money or valuable thing (either for the first person or someone else) from another person by promising (expressly or by implication) that the first person or someone else will pay money or give a valuable thing on an event or contingency relating to a sport.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) A bookmaker who, either personally or through an agent or employee, makes a bet in or on a street or public place commits an offence.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (3) An agent or employee of a bookmaker who makes a bet in or on a street or public place commits an offence.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (4) A person must not—

- (a) be in or on a street or public place to bet; or
- (b) bet or offer to bet, by way of wagering or gaming, in a street or public place; or
- (c) organise or take part in a sweepstake in a street or public place.

Maximum penalty: 10 penalty units.

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

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

[3.411] Section 19

substitute

19 Recovery of money received illegally

- (1) Money or a valuable thing received by a bookmaker, a bookmaker's agent or employee, or someone else mentioned in section 18, is taken to belong to the person who paid or gave it if it was received—
 - (a) as consideration for a promise (express or implied) that the bookmaker, agent, employee or other person would pay money or give a valuable thing on an event or contingency relating to a sport; or
 - (b) as a deposit on a bet made in a street or public place.
- (2) The money or valuable thing, or its value, may be recovered, with costs, as a debt in a court of competent jurisdiction.

Explanatory note

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

[3.412] Section 19B (1), penalty

substitute

Maximum penalty: 10 penalty units.

Explanatory note

This amendment brings the penalty provision into line with current drafting practice.

[3.413] Section 19B (2) (b)

substitute

- (b) a determination of ACTTAB Limited under the *Betting (ACTTAB Limited) Act 1964*;

Explanatory note

The amendment updates the references to the Australian Capital Territory Totalizator Agency Board (which was corporatised and became ACTTAB Limited) and the *Betting (Totalizator Agency) Act 1964* (that became the *Betting (ACTTAB Limited) Act 1964*).

[3.414] Section 19B (2) (c)

omit

race-meeting

substitute

race meeting

Explanatory note

This amendment brings spelling into line with current drafting practice.

[3.415] Section 19B (2) (ba) to (d)

renumber as section 19B (2) (c) to (e)

Explanatory note

This amendment renumbers paragraphs.

[3.416] Section 19B (3)

substitute

- (3) In this section:

betting includes totalizator dividends and probable totalizator dividends.

betting odds includes totalizator dividends and probable totalizator dividends.

race meeting means horse, pony, trotting race or races, coursing event or other sport or exercise.

Explanatory note

This amendment brings definitions into line with current drafting practice.

[3.417] Section 19C

omit

place and on a date therein specified

substitute

stated place and date

Explanatory note

This amendment updates language.

[3.418] Section 19C

omit

any race or coursing event therein mentioned shall

substitute

a stated race or coursing event must

Explanatory note

This amendment updates language.

[3.419] Sections 23 to 27

substitute

23 Prohibition on betting with children

A person (the *first person*) must not—

- (a) make, or offer to make, a bet or wager with someone the first person knows to be younger than 18 years old (a *child*), or with someone on the child's behalf; or

- (b) for the purpose of earning a reward, benefit or advantage, send to someone the first person knows is a child a document that invites, or may reasonably be implied to invite, the child to—
 - (i) make a bet or wager; or
 - (ii) enter into or take a share or interest in a bet or wagering transaction; or
 - (iii) apply to someone or at a place to obtain information or advice for the purpose of a bet or wager or about an event or other contingency on which betting or wagering is generally carried on.

Maximum penalty: 20 penalty units.

24 Presumption about sender of document

- (1) If a document mentioned in section 23 mentions someone as a person to whom a payment may be made or from whom information may be obtained about betting or wagering, the person mentioned is taken to have sent the document.
- (2) However, the person is not taken to have sent the document if the person proves that the person—
 - (a) did not consent to be mentioned in the document; and
 - (b) was not involved in and did not know about the sending of the document.

25 Presumption of knowledge that person a child etc when document sent

- (1) This section applies if a document mentioned in section 23 (Prohibition on betting with children) is sent to a person (the *first person*) at a university, college, school or other place of education and the person is under 18 years old.

- (2) The person (the *second person*) who sent the document is taken to have known that the first person was under 18 years old.
- (3) However, the second person is not taken to have known that the first person was under 18 years old if the second person proves that he or she believed on reasonable grounds that the first person was at least 18 years old.
- (4) The document is taken to have been sent for the purpose of earning a reward, benefit or advantage unless the second person proves otherwise.

26 Presumption of knowledge that person a child if bet with child

- (1) A person (the *first person*) who makes or offers to make a bet or wager with a person (the *second person*) under 18 years old is taken to have known that the second person was under 18 years old.
- (2) However, the first person is not taken to have known that the second person was under 18 years old if the first person proves that he or she believed on reasonable grounds that the second person was at least 18 years old.

27 Recovery of stolen etc money used for betting by child

- (1) This section applies if—
 - (a) an amount is stolen or embezzled from a person (the *first person*) by a child; and
 - (b) all or part of the amount is paid by the child as a bet or wager to another person (the *second person*).
- (2) The amount paid by the child as the bet or wager or the amount stolen or embezzled by the child, whichever is the lesser, is a debt payable by the second person to the first person and may be recovered by proceedings in a court of competent jurisdiction.

Explanatory note

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

[3.420] New dictionary

insert

Dictionary

(see s 2)

race bookmaker—see the *Race and Sports Bookmaking Act 2001*, dictionary.

sports bookmaker—see the *Race and Sports Bookmaking Act 2001*, dictionary.

(Commencement: the commencement of section 2 of this Act or the commencement of the *Race and Sports Bookmaking Act 2001*, section 101, whichever is later.)

Explanatory note

This amendment inserts the dictionary and 2 new signpost definitions.

Part 3.26 Innkeepers' Liability Act 1902

[3.421] Sections 1 and 3

substitute

1 Name of Act

This Act is the *Innkeepers Liability Act 1902*.

2 Definitions for Act

In this Act:

inn means any hotel, inn, tavern, public house, or other place of refreshment the keeper of which was, before the enactment of this

Act, responsible by law for the goods and property of his or her guests and lodgers.

innkeeper means the keeper of an inn.

Explanatory note

This amendment brings sections providing for the Act's name, and the interpretation of terms, into line with current drafting practice.

Part 3.27 Judgment Creditors' Remedies Act 1901

[3.422] Section 1

substitute

1 Name of Act

This Act is the *Judgment Creditors Remedies Act 1901*.

Explanatory note

This amendment revises the section providing for the Act's name to bring it into line with current drafting practice.

Part 3.28 Landlord and Tenant Act 1899

[3.423] Section 1

substitute

Part 1 Preliminary

1 Name of Act

This Act is the *Landlord and Tenant Act 1899*.

Explanatory note

This amendment inserts a part heading and revises the section providing for the Act's name to bring it into line with current drafting practice.

[3.424] Part 1

renumber as part 1A

Explanatory note

This amendment is consequential on the last amendment.

[3.425] Section 3

omit

Schedule B

substitute

schedule 1

Explanatory note

This amendment is consequential on the renumbering of the schedule.

[3.426] Section 3

omit

Schedule C

substitute

schedule 2

Explanatory note

This amendment is consequential on the renumbering of the schedule.

[3.427] Section 22

substitute

22 Definitions for pt 4

In this part:

agent means—

- (a) anyone usually employed by the landlord in letting the land or collecting its rents; or
- (b) anyone authorised to act in the particular matter by instrument signed by the landlord.

land means land, houses or other corporeal hereditaments.

Explanatory note

This amendment revises a definition section to bring it more closely into line with current drafting practice.

[3.428] Section 23 (2) (a)

omit

an officer of police

substitute

a police officer

Explanatory note

This amendment substitutes the term ‘police officer’ (which is defined in the *Interpretation Act 1967*) for ‘officer of police’.

[3.429] Section 60

omit

after the passing of the Act

Explanatory note

This amendment omits redundant transitional words.

[3.430] Schedule B

renumber as schedule 1

Explanatory note

This amendment renumbers a schedule in line with current drafting practice.

[3.431] Schedule C

renumber as schedule 2

Explanatory note

This amendment renumbers a schedule in line with current drafting practice.

Part 3.29 Land (Planning and Environment) Act 1991

[3.432] Section 82 (4)

substitute

- (4) A copy of a declaration given under subsection (3) (a) to the lessee or occupier of any land must be accompanied by a notice under subsection 282A (1) (Review of decisions).

Explanatory note

This amendment corrects a cross-reference and simplifies the language of the subsection.

[3.433] Section 125 (5)

omit

in accordance with paragraph 282A (4) (b) shall

substitute

under section 282A (4) (Review of decisions) must

Explanatory note

This amendment corrects a cross-reference and updates some language of the subsection.

[3.434] Section 186F (1)

omit

amount is

substitute

amount is to be paid is

Explanatory note

This amendment inserts words that had been left out.

[3.435] Section 282A (2) (k)

omit

or

Explanatory note

This amendment omits an unnecessary conjunction.

[3.436] New section 291

insert

291 Conversion of Commonwealth leases

- (1) This section applies if—
- (a) a declaration under the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth), section 27 (1) has been rescinded, revoked, amended or varied and as a consequence land that had been national land has ceased to be national land; and
 - (b) a lease had been granted under a prescribed law over all or part of that land and the lease was in force immediately before the rescission, revocation, amendment or variation of the declaration.
- (2) The lease is taken to have been granted under this Act from the day of the rescission, revocation, amendment or variation of the declaration.
- (3) In this section:
- prescribed law*** means any of the following laws:

- *Leases Ordinance 1918*

- *Leases (Special Purposes) Ordinance 1925*
- *City Area Leases Ordinance 1936.*

(Commencement: 21 December 2000.)

Explanatory note

This section remakes the *Land (Planning and Environment) (Consequential Provisions) Act 1991*, section 27B. That Act was repealed by the *Statute Law Amendment Act 2000*, schedule 5.

Section 27B has an ongoing operation. Although its ongoing operation is saved by the *Interpretation Act 1967*, section 42 (1), this amendment remakes the section from the time of the repeal to enable it to be easily found.

Part 3.30

Land (Planning and Environment) Regulations

[3.437] Regulation 21

omit

For the purposes of paragraph 282 (da) of the Act,

Explanatory note

This amendment omits unnecessary words containing an incorrect cross-reference.

[3.438] Regulation 22

omit

For the purposes of paragraph 282 (da) of the Act, a

substitute

A

Explanatory note

This amendment omits unnecessary words containing an incorrect cross-reference.

[3.439] Regulations 23 (1) and 24 (1)

omit

For the purposes of paragraph 282 (da) of the Act, section

substitute

Section

Explanatory note

This amendment omits unnecessary words containing an incorrect cross-reference.

**Part 3.31 Law Reform (Miscellaneous
Provisions) Act 1955**

[3.440] Part 12, heading

substitute

**Part 12 United Kingdom laws—
substituted provisions**

Explanatory note

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

[3.441] New part 13

insert

Part 13 Miscellaneous

67 Stipulations not of the essence of contracts

Stipulations in a contract, about time or anything else, that, in accordance with the rules of equity, are taken not to be, or not to have been, of the essence of the contract must be interpreted and have effect at law in accordance with those rules.

Explanatory note

This amendment relocates, in a more modern form, the *Law of Property (Miscellaneous Provisions) Act 1958*, section 4. That Act is repealed by this Act (see schedule 4).

Part 3.32 Legal Aid Act 1977

[3.442] Sections 9 (5) and (8) and 43 (2)

omit

Trustee Act 1957

substitute

Trustee Act 1925

Explanatory note

This amendment updates a reference to the Trustee Act.

Part 3.33 Legal Practitioners Act 1970

[3.443] Sections 79 (3), 128 (1) (b) and 133

omit

Trustee Act 1957

substitute

Trustee Act 1925

Explanatory note

This amendment updates a reference to the Trustee Act.

Part 3.34 Liquor Regulations Amendment, SL 2000 No 58

[3.444] Regulation 1

substitute

1 Commencement

These regulations commence on the day they are notified in the Gazette.

(Commencement: 21 December 2000.)

Explanatory note

The commencement provision of these regulations provided that the regulations ‘commence on the commencement of section 2 of the *Liquor Amendment Act 2000*’. The *Liquor Amendment Act 2000*, section 2 commenced on 5 October 2000. In fact, the reference to the *Liquor Amendment Act 2000* should have been a reference to the *Liquor Amendment Act 2000 (No 2)*. Section 2 of that Act commenced on 20 December 2000 (that is, the day that Act was notified in the Gazette). The regulations were not notified in the Gazette until 21 December 2000.

The amendment makes it clear that the regulations validly commenced on the day they were notified in the Gazette. This result is consistent with the provision now made by the *Legislation Act 2001*, section 73 (3). The amendment is backdated to the day the regulations were notified in the Gazette to ensure that they validly commenced on that day.

Part 3.35 Long Service Leave Act 1976

[3.445] Section 2 (1), definition of *award*

substitute

award means an award or determination under the *Workplace Relations Act 1996* (Cwlth).

Explanatory note

This amendment updates the definition of *award* to refer to the *Workplace Relations Act 1996* (Cwlth) and also changes the definition to make it clear that a determination is made under that Act.

Part 3.36 Long Service Leave (Building and Construction Industry) Act 1981

[3.446] Section 3 (1), definitions of *agreement* and *award*

substitute

agreement means an industrial agreement under the *Workplace Relations Act 1996* (Cwlth).

award means an award or determination under the *Workplace Relations Act 1996* (Cwlth).

Explanatory note

This amendment updates the definition of *agreement* to refer to the *Workplace Relations Act 1996* (Cwlth).

This amendment also updates the definition of *award* to refer to the *Workplace Relations Act 1996* (Cwlth) and also changes the definition to make it clear that a determination is made under that Act.

Part 3.37 Magistrates Court Act 1930

[3.447] Section 19 (1)

omit

(1) Whenever

substitute

If

Explanatory note

This amendment updates language and is consequential on the next amendment.

[3.448] Section 19 (2)

omit

Explanatory note

This amendment omits a subsection about the interpretation of former NSW Acts. The subsection is no longer needed because the former NSW Acts that remain in force have been amended to convert NSW-specific court references into ACT equivalents.

Part 3.38 Nature Conservation Act 1980

[3.449] Part 2, heading

substitute

Part 2 Nature conservation strategies, declarations and action plans

Explanatory note

This amendment revises a part heading to more accurately reflect the coverage of the part.

Part 3.39 Pawnbrokers Act 1902

[3.450] Section 1

substitute

1 Name of Act

This Act is the *Pawnbrokers Act 1902*.

Explanatory note

This amendment revises the section providing for the Act's name to bring it into line with current drafting practice.

[3.451] Section 6A (2)

omit

Commissioner of Police

substitute

chief police officer

Explanatory note

This amendment substitutes ‘chief police officer’ (which is defined in the *Interpretation Act 1967*, dictionary) for ‘Commissioner of Police’.

[3.452] Section 7 (1)

omit

Commissioner

substitute

chief police officer

Explanatory note

This amendment substitutes ‘chief police officer’ (which is defined in the *Interpretation Act 1967*, dictionary) for ‘Commissioner’.

[3.453] Section 7A

omit

Commissioner of Police

substitute

chief police officer

Explanatory note

This amendment substitutes ‘chief police officer’ (which is defined in the *Interpretation Act 1967*, dictionary) for ‘Commissioner of Police’.

[3.454] Section 8 (3)

omit

Commissioner of Police

substitute

chief police officer

Explanatory note

This amendment substitutes ‘chief police officer’ (which is defined in the *Interpretation Act 1967*, dictionary) for ‘Commissioner of Police’.

[3.455] Section 8 (3)

omit

the Commissioner to

substitute

the chief police officer to

Explanatory note

This amendment substitutes ‘chief police officer’ (which is defined in the *Interpretation Act 1967*, dictionary) for ‘Commissioner’.

[3.456] Section 13 (3)

substitute

- (3) A person who, without reasonable excuse, contravenes this section commits an offence.

Maximum penalty: 20 penalty units.

Explanatory note

This amendment brings an offence provision more closely into line with current drafting practice.

[3.457] Section 14 (1)

insert

Maximum penalty: 5 penalty units.

Explanatory note

This amendment inserts a penalty provision at the end of a subsection in line with current drafting practice.

[3.458] Section 16 (2)

omit

an officer of police

substitute

a police officer

Explanatory note

This amendment substitutes the term ‘police officer’ (which is defined in the *Interpretation Act 1967*, dictionary) for ‘officer of police’.

[3.459] Section 16, penalty

substitute

Maximum penalty (subsection (2)): 5 penalty units.

Explanatory note

This amendment clarifies the application of a penalty provision in line with current drafting practice.

[3.460] Section 29

omit

an officer of police

substitute

a police officer

Explanatory note

This amendment substitutes the term ‘police officer’ (which is defined in the *Interpretation Act 1967*, dictionary) for ‘officer of police’.

[3.461] Section 36

omit everything before paragraph (a), substitute

A person commits an offence if the person—

Explanatory note

This amendment and the next amendment restructure an offence in line with current drafting practice.

[3.462] Section 36

omit everything after

specified

substitute

article.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

Explanatory note

This amendment and the previous amendment restructure an offence in line with current drafting practice.

[3.463] Section 37, penalty

substitute

Maximum penalty (subsection (2)): 50 penalty units, imprisonment for 6 months or both.

Explanatory note

This amendment clarifies the application of a penalty provision in line with current drafting practice.

Part 3.40 Perpetuities and Accumulations Act 1985

[3.464] Section 2, definition of *trust* and *trustee*

substitute

trust—see the *Trustee Act 1925*, section 4.

trustee—see the *Trustee Act 1925*, dictionary.

Explanatory note

This amendment updates a reference to the Trustee Act and recasts the definitions in line with current drafting practice.

[3.465] Section 22

omit

Explanatory note

This amendment omits a redundant section that amended the *Trustee Act 1957*. That Act is repealed by this Act (see schedule 4).

Part 3.41 Piracy Punishment Act 1902

[3.466] Section 1

substitute

1 Name of Act

This Act is the *Piracy Punishment Act 1902*.

Explanatory note

This amendment revises the section providing for the Act's name to bring it into line with current drafting practice.

**Part 3.42 Public Health Regulations
2000**

[3.467] Dictionary, definition of *doctor*

substitute

doctor—see *Legislation Act 2001*, dictionary, part 1.

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment is consequential on amendments of the *Interpretation Act 1967* and the *Legislation Act 2001* contained in schedule 2 to this Act. The amendments remake the *Interpretation Act 1967*, dictionary as the *Legislation Act 2001*, dictionary, part 1.

[3.468] Dictionary, definitions of *medical record* and *private hospital*

omit

Explanatory note

This amendment omits signpost definitions that are no longer needed. *Medical record* was defined by reference to regulation 89, and *private hospital* by reference to regulation 78. Those regulations expired on 1 January 2001.

Part 3.43 Public Roads Act 1902

[3.469] Section 1

substitute

1 Name of Act

This Act is the *Public Roads Act 1902*.

Explanatory note

This amendment revises the section providing for the Act's name to bring it into line with current drafting practice.

[3.470] Section 6, definition of *road*

omit

the Crown in right of

Explanatory note

This amendment omits unnecessary words.

[3.471] Section 19 (2)

substitute

- (2) The notice must state that objections to the closing of the road must be given to the Minister within 1 month after the notification of the notice under the *Legislation Act 2001*.

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment is consequential on amendments made by the *Legislation (Consequential Amendments) Bill 2001*.

[3.472] Section 29, heading

substitute

29 Protection of Territory and Commonwealth

Explanatory note

This amendment revises a section heading in line with current drafting practice.

Part 3.44 Public Trustee Act 1985

[3.473] Section 62

substitute

62 Directions of board about investments

In giving a direction for section 56, 57, 58, 60 or 61 about the making of an investment by the public trustee, the board may not authorise the investment of money except in a way authorised under the *Trustee Act 1925*.

Explanatory note

This amendment removes a redundant reference to the former status of the *Trustee Act 1925* as an applied New South Wales Act (see *Interpretation Act 1967*, s 65) and recasts the section in line with current drafting practice.

Part 3.45 Road Transport (Alcohol and Drugs) Act 1977

[3.474] Dictionary, definition of *doctor*

substitute

doctor—see *Legislation Act 2001*, dictionary, part 1.

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment is consequential on amendments of the *Interpretation Act 1967* and the *Legislation Act 2001* contained in schedule 2 to this Act. The amendments remake the *Interpretation Act 1967*, dictionary as the *Legislation Act 2001*, dictionary, part 1.

Part 3.46 Road Transport (Safety and Traffic Management) Regulations 2000

[3.475] Regulation 33 (1), definition of *police officer*

substitute

police officer—see *Legislation Act 2001*, dictionary, part 1.

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment is consequential on amendments of the *Interpretation Act 1967* and the *Legislation Act 2001* contained in schedule 2 to this Act. The amendments remake the *Interpretation Act 1967*, dictionary as the *Legislation Act 2001*, dictionary, part 1.

Part 3.47 Taxation Administration Act 1999

[3.476] Section 3 (1), note

substitute

Note **Document** is defined in the *Legislation Act 2001*, dict, pt 1, and includes information in electronic form.

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment is consequential on amendments of the *Interpretation Act 1967* and the *Legislation Act 2001* contained in schedule 2 to this Act. The amendments remake the *Interpretation Act 1967*, dictionary as the *Legislation Act 2001*, dictionary, part 1.

[3.477] Section 3 (1), definition of *penalty unit*

omit

Explanatory note

This amendment omits an unnecessary definition.

[3.478] Section 3 (1)

omit

(1) In

substitute

In

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment is consequential on the next amendment.

[3.479] Section 3 (2) and (3)

omit

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment omits unnecessary subsections.

Subsection (2) is unnecessary because the *Interpretation Act 1967*, dictionary defines *exercise* a function to include perform the function. *Function* is defined to include duty. Those definitions are being moved to the *Legislation Act 2001*, dictionary, part 1, by amendments contained in schedule 2 to this Act.

Subsection (3) is unnecessary because of the next amendment.

[3.480] New section 3A

insert

3A Notes

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

Note See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of notes.

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment inserts new section 3A, that is the latest standard provision explaining the status of notes.

[3.481] Section 39

omit

section 18 of the *Interpretation Act 1967*

substitute

the *Legislation Act 2001*, part 18.5

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment is consequential on amendments of the *Interpretation Act 1967* and the *Legislation Act 2001* contained in schedule 2 to this Act. The amendments remake provisions of the *Interpretation Act 1967* as provisions of the *Legislation Act 2001*.

Part 3.48 Truck Act 1900

[3.482] New section 1A

before section 1, insert

1A Name of Act

This Act is the *Truck Act 1900*.

Explanatory note

This amendment revises (and relocates) the section providing for the Act's name in line with current drafting practice.

[3.483] Sections 1 (1), 2 and 9, penalty

substitute

Maximum penalty: 50 penalty units.

Explanatory note

This amendment brings penalty provisions into line with current drafting practice.

[3.484] Section 3, penalty

substitute

Maximum penalty: 20 penalty units.

Explanatory note

This amendment brings a penalty provision into line with current drafting practice.

[3.485] Section 6, penalty

substitute

Maximum penalty: 5 penalty units.

Explanatory note

This amendment brings a penalty provision into line with current drafting practice.

[3.486] Section 12

relocate as section 1B

Explanatory note

This amendment relocates a definition section in line with current drafting practice.

[3.487] Section 13

omit

Explanatory note

This amendment omits a section relocated, in a revised form, by another amendment in this part (see new s 1A).

Part 3.49 Trustee Act 1925

[3.488] Title

substitute

An Act relating to trustees and trust property, and for related purposes

Explanatory note

This amendment removes redundant words and revises the Act's long title in line with current drafting practice.

[3.489] Section 1

substitute

Part 1 Preliminary

1 Name of Act

This Act is the *Trustee Act 1925*.

Explanatory note

This amendment locates the part heading and revises the section providing for the Act's name to bring it into line with current drafting practice.

[3.490] Heading after section 1

omit

Explanatory note

This amendment omits a heading made redundant by the last amendment.

[3.491] Sections 5 and 5A

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 words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act or in other legislation.

For example, the signpost definition '*trust*—see section 4 (Meaning of *trust*).' means that the expression 'trust' is defined in 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 *Interpretation Act 1967*, s 11F and s 11G).

3 Notes

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

Note See *Interpretation Act 1967*, s 12 (1), (4) and (5) for the legal status of notes.

4 **Meaning of *trust***

- (1) In this Act, *trust* includes—
- (a) an implied or constructive trust (including a trust where the trustee has a beneficial interest in the trust property); and
 - (b) the duties of a legal representative of a dead person.
- (2) However, *trust* does not include the duties incidental to an estate conveyed by way of mortgage.

Explanatory note

This amendment omits section 5 (Interpretation) made redundant by the insertion of a dictionary by a later amendment and outdated section 5A (Notes) about the status of notes.

New section 2 is a standard provision explaining the status of the dictionary. The existing interpretation section is replaced by the dictionary. New section 3 is the latest standard provision explaining the status of notes.

This amendment also inserts a definition of *trust* as a separate section.

[3.492] Heading before section 6 (after division 1 heading)

omit

Explanatory note

This amendment omits a heading in line with current drafting practice.

[3.493] Section 6, heading

substitute

6 **Appointment of new trustees**

Explanatory note

This amendment revises the heading to more accurately reflect the contents of the section.

[3.494] Section 6 (2)

omit

so appointed in any of the following cases, namely

substitute

appointed in the following cases

Explanatory note

This amendment updates language.

[3.495] Section 6 (2) (b) and (c)

omit

New South Wales

substitute

the ACT

Explanatory note

These amendments are consequential on the repeal of the *Trustee Act 1957* by this Act (see schedule 4). That Act provides that references to ‘New South Wales’ in the *Trustee Act 1925* are references to the Territory.

[3.496] Section 6 (2) (a) to (d)

omit

where

substitute

if

Explanatory note

This amendment updates language.

[3.497] Section 6 (2) (e) to (g)

substitute

(e) if a trustee refuses to act, is unfit to act, or cannot act, as trustee;

(f) if a trustee is a child;

- (g) if a trustee is removed under the trust instrument;
- (h) if a trustee that is a corporation is dissolved.

Explanatory note

This amendment updates language.

[3.498] Section 6 (2A)

omit

Explanatory note

This amendment omits a provision about delegation by a trustee engaged in war service under the repealed *Trustee (Emergency Provisions) Ordinance 1944*.

[3.499] Section 6 (4) and (5)

substitute

- (4) The appointment may be made by—
 - (a) the person (the *nominated person*) nominated by the trust instrument to appoint new trustees; or
 - (b) if there is no nominated person, or the nominated person cannot or is unwilling to act—the surviving or continuing trustee for the time being; or
 - (c) if there is no surviving or continuing trustee—by the legal representative of the last surviving or continuing trustee.
- (5) The appointment may be made for all or any part of the trust property.
- (6) The following provisions apply to appointments under subsection (1):
 - (a) 2 or more trustees may be appointed concurrently;
 - (b) the number of trustees may be increased up to 4;
 - (c) a separate set of up to 4 trustees may be appointed for any part of the trust property held on trusts distinct from those relating

to any other part or parts of the trust property even if a new trustee is not to be appointed for other parts of the property;

- (d) any existing trustee may be appointed or remain a trustee of the separate set of trustees;
- (e) if only 1 trustee was originally appointed—a separate trustee may be appointed for the distinct part;
- (f) it is not necessary to appoint more than 1 new trustee if only 1 trustee was originally appointed or to fill up the original number of trustees if more than 2 trustees were originally appointed.

Explanatory note

This amendment updates archaic language and sentence structure.

[3.500] Section 6 (6) to (10)

renumber as section 6 (7) to (11)

Explanatory note

This renumbering is consequential on the previous amendment.

[3.501] Section 6 (7)

omit

or any part thereof

substitute

or any part of the trust property

Explanatory note

This amendment updates archaic language.

[3.502] Section 6 (8)

omit

authorities

Explanatory note

This amendment omits a redundant word (see *Interpretation Act 1967*, dict, def of *power*).

[3.503] Section 6 (8)

omit

instrument (if any) creating the trust

substitute

trust instrument

Explanatory note

This amendment omits words made redundant by the new definition of *trust instrument* in the dictionary inserted by this part.

[3.504] Section 6 (9) and (10)

omit

relative to

substitute

about

Explanatory note

This amendment updates language.

[3.505] Section 6 (10)

omit

instrument (if any) creating the trust

substitute

trust instrument

Explanatory note

This amendment omits words made redundant by the new definition of *trust instrument* in the dictionary inserted by this part.

[3.506] Section 6 (11)

substitute

- (12) The provisions of this section about a continuing trustee apply to a refusing or retiring trustee if the trustee is willing to act in the execution of this section.
- (13) However—
- (a) if there is a continuing trustee—this section does not authorise a refusing or retiring trustee to act separately from the continuing trustee; or
 - (b) if a refusing or retiring trustee does not act in the execution of this section—the fact that the trustee was willing to act does not affect the validity of an appointment made by anyone else.

Explanatory note

This amendment recasts the subsection to remove a proviso in line with current drafting practice.

[3.507] Section 6 (12)

renumber as section 6 (14)

Explanatory note

This renumbering is consequential on the previous amendment.

[3.508] Section 6 (13)

substitute

- (15) This section applies to a trust except so far as the contrary intention appears in the trust instrument.

Explanatory note

This amendment updates archaic language and provides for consequential renumbering of the subsection.

[3.509] Section 7 (2)

omit

so appointed in any of the following cases, namely

substitute

appointed in the following cases

Explanatory note

This amendment omits redundant language.

[3.510] Section 7 (4) to (7)

substitute

- (4) The appointment may be made by—
 - (a) the person (the ***nominated person***) nominated by the trust instrument to appoint new trustees; or
 - (b) if there is no nominated person, or the nominated person cannot or is unwilling to act—the trustee for the time being.
- (5) The appointment may be made for all or any part of the trust property.
- (6) The following provisions apply to appointments under subsection (1):
 - (a) 2 or more trustees may be appointed concurrently;
 - (b) the number of trustees may be increased up to 4.
- (7) Except as provided by the trust instrument or another Territory law, it is not necessary to appoint any additional trustee.
- (8) Section 6 (8), (9), (11) and (14) apply to the appointment of an additional trustee.

Explanatory note

This amendment updates archaic language and sentence structure, provides for consequential renumbering of the subsections and omits a reference to section 6 (14) (which is omitted by another amendment).

[3.511] Heading before section 8

omit

Explanatory note

This amendment omits the heading in line with current drafting practice.

[3.512] Section 8 (5)

omit

authorities

Explanatory note

This amendment omits a redundant word (see *Interpretation Act 1967*, dict, def of **power**).

[3.513] Section 8 (8)

substitute

- (8) This section applies to a trust except so far as the contrary intention appears in the trust instrument.

Explanatory note

This amendment updates archaic language and simplifies the subsection.

[3.514] Heading before section 9

omit

Explanatory note

This amendment omits a heading in line with current drafting practice.

[3.515] Section 9, heading

substitute

9 Vesting on appointment and retirement

Explanatory note

This amendment revises the heading to more accurately reflect the contents of the section.

[3.516] Section 9 (3)

substitute

- (3) Land under the *Land Titles Act 1925* does not vest until—
- (a) the appropriate transfer is registered; or
 - (b) an entry of the vesting is made in the register kept under that Act.

Explanatory note

This amendment omits redundant references to repealed Acts.

[3.517] Section 9 (3A)

renumber as section 9 (4)

Explanatory note

This amendment renumbers a subsection.

[3.518] Section 9 (4)

substitute

- (5) The following property does not vest until the appropriate transfer is registered:
- (a) a mortgage for securing money subject to the trust (other than land under the *Land Titles Act 1925* or land conveyed on trust for securing debentures or debenture stock);
 - (b) other property for which a conveyance is required to be registered under the law of the place where the property is located.

Explanatory note

This amendment omits a redundant reference to a repealed Act and brings the subsection more closely into line with current drafting practice.

[3.519] Section 9 (5)

renumber as section 9 (6)

Explanatory note

This amendment renumbers a subsection.

[3.520] Section 9 (5) (b)

omit

situate

substitute

located

Explanatory note

This amendment updates an archaic word.

[3.521] Section 9 (6), 1st sentence

renumber as section 9 (7)

Explanatory note

This amendment provides for the consequential renumbering of the subsection.

[3.522] Section 9 (6), 2nd sentence

substitute

(8) In subsection (7):

lease includes an underlease and an agreement for a lease or underlease.

Explanatory note

This amendment is consequential on the renumbering of a subsection and provides for the numbering of an unnumbered sentence.

[3.523] Section 9 (8)

omit

instrument (if any) creating the trust

substitute

trust instrument

Explanatory note

This amendment omits words made redundant by the new definition of *trust instrument* in the dictionary inserted by this part.

[3.524] Section 9 (7) and (8)

renumber as section 9 (9) and (10)

Explanatory note

This amendment provides for the consequential renumbering of subsections.

[3.525] Heading before section 10

omit

Explanatory note

This amendment omits the heading in line with current drafting practice.

[3.526] Section 10 (1)

omit

thereof

substitute

of the will

Explanatory note

This amendment updates an archaic word.

[3.527] Section 11 (1)

omit

thereto, such

substitute

to it, the

Explanatory note

This amendment updates archaic language.

[3.528] Section 11 (3)

substitute

- (3) For land under the *Land Titles Act 1925*—
- (a) if the declaration is that the executor holds the land as trustee—the land is not taken to be so held until the registrar-general enters for the land a caveat forbidding the registration of any instrument not in accordance with the trusts and provisions of the will; or
 - (b) if the declaration is that the executor holds the land as beneficiary—the land is not taken to be so held until the registrar-general withdraws any inconsistent caveat.

Explanatory note

This amendment omits a reference to a repealed Act and brings the subsection more closely into line with current drafting practice.

[3.529] Heading before section 12

omit

Explanatory note

This amendment omits a heading in line with current drafting practice.

[3.530] Section 12 (2)

omit

instrument creating the trust

substitute

trust instrument

Explanatory note

This amendment omits words made redundant by the new definition of *trust instrument* in the dictionary inserted by this part.

[3.531] Section 12 (3) and (4)

substitute

- (3) This section applies whether or not the land is under the *Land Titles Act 1925*.
- (4) For land under the *Land Titles Act 1925*, if an appointment or retirement or an instrument by which an executor declares that the executor holds as trustee or as beneficiary is registered, the registrar-general must make an entry of the vesting of the trust property or enter, vary or withdraw caveats, as the case requires.

Explanatory note

This amendment omits a reference to a repealed Act, a redundant reference to the NSW registrar-general and brings this provision more closely into line with current drafting practice.

[3.532] Section 12 (4AA)

renumber as section 12 (5)

Explanatory note

This amendment provides for the consequential renumbering of the subsection.

[3.533] Section 12 (4A) and (5)

omit

Explanatory note

This amendment omits redundant subsections.

[3.534] Section 13 (1)

substitute

- (1) A statement in a registered deed by which a new trustee is appointed to the effect of any of the following matters, is, in favour of a

subsequent honest purchaser, conclusive evidence of the appointment and any vesting resulting from the appointment:

- (a) that a trustee has remained outside the ACT for longer than 1 year without having properly delegated the execution of the trust;
- (b) that a trustee has remained outside the ACT for longer than 2 years;
- (c) that a trustee refuses to act, is unfit to act, or cannot act, as trustee.

Explanatory note

This amendment recasts the subsection to change a reference to New South Wales to the ACT, omits a reference to the repealed *Trustee (Emergency Provisions) Ordinance 1944* and brings the subsection more closely into line with current drafting practice.

[3.535] Section 13 (2)

omit

purchaser in good faith

substitute

honest purchaser

Explanatory note

This amendment updates language.

[3.536] Section 13 (3)

omit

a purchaser in good faith

substitute

an honest purchaser

Explanatory note

This amendment updates language.

[3.537] Heading before section 14 (after division 2 heading)

substitute

Subdivision 2.2.1 Investment

Explanatory note

This amendment changes an unnumbered heading to a subdivision heading in line with current drafting practice.

[3.538] Sections 14, 14A (1) and (3) and 14B (1)

omit

instrument (if any) creating the trust

substitute

trust instrument

Explanatory note

This amendment omits words made redundant by the new definition of *trust instrument* in the dictionary inserted by this part.

[3.539] Section 14B (3)

omit

an instrument creating a trust

substitute

a trust instrument

Explanatory note

This amendment omits words made redundant by the new definition of *trust instrument* in the dictionary inserted by this part.

[3.540] Sections 14C (3), 14D (7) and 14E (1) and (2)

omit

instrument (if any) creating the trust

substitute

trust instrument

Explanatory note

This amendment omits words made redundant by the new definition of *trust instrument* in the dictionary inserted by this part.

[3.541] Section 17 (1)

omit

(1) A

substitute

A

Explanatory note

This amendment renumbers the subsection as a section consequentially on the omission by this part of subsections (2) and (3) (transitional and application provisions).

[3.542] Section 18 (2) (c) and (d)

substitute

(c) unless the amount of the loan is not more than $\frac{2}{3}$ of the value of the property as stated in the report.

Explanatory note

This amendment removes a redundant loan limit for leased land.

[3.543] Section 19 (1)

omit

(1) If

substitute

If

Explanatory note

This amendment renumbers the subsection as a section consequentially on the omission by this part of subsections (2) and (3) (transitional and application provisions).

[3.544] Section 20 (1) (a)

omit

unpaid;

substitute

unpaid; and

Explanatory note

This amendment joins the 2 paragraphs of section 20 (1) with the conjunction ‘and’ in line with current drafting practice.

[3.545] Section 20 (1) (b)

omit

thereof

substitute

for the part

Explanatory note

This amendment updates archaic language.

[3.546] Section 21 (1) (d)

substitute

(d) for the release, modification or variation of any rights,
privileges or liabilities attached to the security.

Explanatory note

This amendment inserts commas in line with current drafting practice.

[3.547] Section 21 (3)

omit

any act or thing so done in good faith

substitute

anything done honestly

Explanatory note

This amendment updates language.

[3.548] Section 21 (3) and (4)

omit

instrument (if any) creating the trust

substitute

trust instrument

Explanatory note

This amendment omits words made redundant by the new definition of *trust instrument* in the dictionary inserted by this part.

[3.549] Section 21 (6)

substitute

- (5) This section applies to a trust except so far as the contrary intention appears in the trust instrument.

Explanatory note

This amendment updates archaic language and simplifies the subsection.

[3.550] Section 22 (2A)

omit

, whether under the provisions of subsection 188 (2) of the Corporations Law, or otherwise

Explanatory note

This amendment omits unnecessary words that contained an outdated reference to the Corporations Law.

[3.551] Section 22 (3)

omit

any act or thing so done in good faith

substitute

anything done honestly

Explanatory note

This amendment updates language.

[3.552] Section 22 (4)

omit

instrument (if any) creating the trust

substitute

trust instrument

Explanatory note

This amendment omits words made redundant by the new definition of *trust instrument* in the dictionary inserted by this part.

[3.553] Section 22 (2A) to (4)

renumber as section 22 (3) to (5)

Explanatory note

This amendment provides for the consequential renumbering of the subsections.

[3.554] Section 22 (5)

substitute

- (6) This section applies to a trust except so far as the contrary intention appears in the trust instrument.

Explanatory note

This amendment updates archaic language and simplifies the subsection.

[3.555] Section 23 (2)

substitute

- (2) This section applies to a trust except so far as the contrary intention appears in the trust instrument.

Explanatory note

This amendment updates archaic language and simplifies the subsection.

[3.556] Section 24 (5)

substitute

- (3) This section applies to a trust except so far as the contrary intention appears in the trust instrument.

Explanatory note

This amendment updates archaic language and simplifies the subsection.

[3.557] Section 25 (1)

omit

- (1) A

substitute

A

Explanatory note

This amendment renumbers the subsection as a section consequent on the omission of subsection (2) (an application provision) by a later amendment.

[3.558] Heading before section 26

substitute

Subdivision 2.2.2 Sale and other dealings

Explanatory note

This amendment changes an unnumbered heading to a subdivision heading in line with current drafting practice.

[3.559] Section 26 (1) (da) to (f)

renumber as section 26 (1) (e) to (h)

Explanatory note

This amendment provides for the consequential renumbering of the paragraphs.

[3.560] Section 26 (1) (d)

omit everything after

a restriction or reservation

substitute

in relation to building on, or other use of, land; or

Explanatory note

This amendment removes references to mining and minerals. The *Land (Planning and Environment) (Amendment) Act (No 2) 1995* repealed the *Mining Act 1930* and substituted a requirement for an approval under the *Land (Planning and Environment) Act 1991*. The *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth), section 31A vests all rights of the Commonwealth in relation to minerals in Territory land (within the meaning of that Act) in the Territory.

[3.561] Section 26 (1) (da)

omit

or sell mines and minerals apart from the surface of the land,

Explanatory note

This amendment is related to the amendment of section 26 (1) (d).

[3.562] Section 26 (1) (da) (i)

omit

sold

substitute

sold; and

Explanatory note

This amendment joins the remaining 2 subparagraphs with the conjunction ‘and’ in line with current drafting practice.

[3.563] Section 26 (1) (da) (ii) and (iii)

omit

Explanatory note

This amendment is related to the amendment of section 26 (1) (d).

[3.564] Section 26 (1) (da) (iv)

renumber as paragraph 26 (1) (e) (ii)

Explanatory note

This amendment provides for the consequential renumbering of the paragraph.

[3.565] Section 26 (4A)

renumber as section 26 (5)

Explanatory note

This amendment provides for the consequential renumbering of the subsection.

[3.566] Section 26 (5)

substitute

- (6) This section applies to a trust except so far as the contrary intention appears in the trust instrument.

Explanatory note

This amendment updates archaic language and simplifies the subsection.

[3.567] Section 27 (1)

omit

in fee simple

Explanatory note

This amendment omits an unnecessary reference to freehold land.

[3.568] Section 27 (3)

substitute

- (3) This section applies to a trust except so far as the contrary intention appears in the trust instrument.

Explanatory note

This amendment updates archaic language and simplifies the subsection.

[3.569] Section 27B (2)

substitute

- (2) Subject to any express direction to the contrary in the trust instrument, if there is power to postpone sale—
- (a) the trustee for sale is not liable for postponing the sale, in the exercise of his or her discretion, for any indefinite period; and
 - (b) a buyer need not investigate any directions about the postponement of sale.

Explanatory note

This amendment recasts the subsection to remove a semicolon and bring the drafting of the subsection more closely into line with current drafting practice.

[3.570] Section 27B (4)

renumber as section 27B (3)

Explanatory note

This amendment provides for the consequential renumbering of the subsection.

[3.571] Section 27B (4)

omit

the commencement of this Act

substitute

1 December 1957

Explanatory note

This amendment is consequential on the repeal of the *Trustee Act 1957* by this Act (see s 9 (i) of that Act).

[3.572] Section 27B (4)

omit

the same shall be construed as

substitute

the disposition or settlement is taken to be

Explanatory note

This amendment updates language.

[3.573] New section 27D

insert

27D Application of rule in *Howe v Earl of Dartmouth* to leases

- (1) The rule in *Howe v Earl of Dartmouth* (1802) (7 Ves 137) does not apply in relation to property consisting of a lease of land granted under the *Land (Planning and Environment) Act 1991*.
- (2) This section applies to a trust so far as the contrary intention appears in the trust instrument.

Explanatory note

This amendment re-enacts the *Trustee Act 1957*, section 14. That Act is repealed by this Act.

[3.574] Section 28 (3) (b)

omit everything after

from time to time

substitute

unpaid;

Explanatory note

This amendment amends the paragraph to remove a separate sentence in line with current drafting practice. The sentence is reinserted as a separate subsection by a later amendment in this part.

[3.575] Section 28 (3) (d)

substitute

- (d) that, if an instalment (or a part of an instalment) or interest is in arrears for 6 months (or any shorter period provided in the contract), all of the purchase money is payable immediately.

Explanatory note

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

[3.576] New section 28 (4)

insert

- (4) For subsection (3) (b), an instalment must not be payable during the first 3 years from the date of the contract of sale that is less than 5% of the purchase money, and all instalments payable after then must be equal in amount.

Explanatory note

This amendment inserts as a new subsection a sentence removed from section 28 (3) (b) by a previous amendment.

[3.577] Section 28 (4) to (11)

renumber as section 28 (5) to (12)

Explanatory note

This amendment provides for the consequential renumbering of the subsections.

[3.578] Section 28 (4) (c)

substitute

- (e) that the mortgage must contain covenants by the mortgagor to pay the principal and interest, to maintain and protect the property, and insure all buildings (if any) on the land against loss or damage by fire to their full insurable value;

Explanatory note

This amendment recasts the paragraph to update language and bring the paragraph more closely into line with current drafting practice.

[3.579] Section 28 (7)

omit

1/10 part

substitute

1/10th

Explanatory note

This amendment recasts the term in line with current drafting practice.

[3.580] Section 28 (8)

omit

1/10 part

substitute

1/10th

Explanatory note

This amendment recasts a term in line with current drafting practice.

[3.581] Section 28 (8)

omit everything after

in accordance with

substitute

subsection (5) (b), (c) and (d), and the provisions of subsection (6) apply

Explanatory note

This amendment amends cross-references consequentially.

[3.582] Section 28 (12)

substitute

- (13) This section applies to a trust except so far as the contrary intention appears in the trust instrument.

Explanatory note

This amendment updates archaic language and simplifies the subsection.

[3.583] Section 30

substitute

30 Depreciatory conditions

- (1) The sale of land by a trustee subject to a condition that may have been unnecessarily depreciatory is not a ground for—
- (a) the buyer objecting to the title to the land; or
 - (b) a beneficiary challenging the sale; or
 - (c) if the land has been conveyed to the buyer—the buyer’s title to the land being challenged.
- (2) However—
- (a) a beneficiary may challenge the sale of the land on the ground that a condition may have been unnecessarily depreciatory if the consideration for the sale was made inadequate because of the condition; and
 - (b) a buyer’s title may be challenged on the ground that a condition may have been unnecessarily depreciatory if the

buyer was acting in collusion with the trustee when the contract for the sale was made.

Explanatory note

This amendment inserts a reference to the land as the thing being sold, recasts subsection (1) in line with current drafting practice and omits subsection (2) (an application provision).

[3.584] Section 31 (1)

omit

thereof

substitute

of the land

Explanatory note

This amendment updates archaic language.

[3.585] Section 31 (2)

substitute

- (2) This section applies to a trust except so far as the contrary intention appears in the trust instrument.

Explanatory note

This amendment updates archaic language and simplifies the subsection.

[3.586] Section 32, heading

substitute

32 Sale, exchange and partition

Explanatory note

This amendment inserts a comma.

[3.587] Section 32 (1) to (3)

substitute

- (1) If a trustee is authorised by the trust instrument or by law to dispose of land by sale, exchange or partition, the trustee may dispose of all or any part of the land in that way.

Explanatory note

This amendment removes references to mining and minerals and provides that all or part of the trust property may be disposed of (see the amendments of s 26 (1) made by this part). The *Land (Planning and Environment) (Amendment) Act (No 2) 1995* repealed the *Mining Act 1930* and substituted a requirement for an approval under the *Land (Planning and Environment) Act 1991*. The *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth), section 31A vests all rights of the Commonwealth in relation to minerals in Territory land (within the meaning of that Act) in the Territory.

[3.588] Section 32 (6)

omit

sale exchange

substitute

sale, exchange

Explanatory note

This amendment inserts a comma.

[3.589] Section 32 (4) to (6)

renumber as section 32 (2) to (4)

Explanatory note

This amendment provides for the consequential renumbering of the subsections.

[3.590] Section 32A

substitute

32A Power to purchase equity of redemption instead of foreclosure

- (1) This section applies if default is made in a mortgage held by a trustee over land in Australia.

- (2) Unless expressly prevented by the trust instrument, the trustee may, instead of foreclosing, buy the equity of redemption if the amount spent on the purchase—
- (a) is subject to the same trusts as the mortgage debt; and
 - (b) is not more than 5% of the amount owing under the mortgage.

Explanatory note

This amendment recasts the section to remove a proviso and bring the section more closely into line with current drafting practice.

[3.591] Section 33 (3)

substitute

- (3) This section does not affect any rule of law relating to the apportionment of capital and income between a life tenant of land and a person entitled to the remainder of the interest in the land.

Explanatory note

This amendment recasts the subsection to remove archaic language and bring the subsection more closely into line with current drafting practice.

[3.592] Section 33 (6)

substitute

- (6) This section extends to land secured by a mortgage under the *Land Titles Act 1925* and, in relation to such security, an order for foreclosure includes an order for foreclosure under that Act.

Explanatory note

This amendment omits a reference to a repealed Act and recasts the subsection to bring it more closely into line with current drafting practice.

[3.593] Section 34 (1) and (2)

omit

thereof

substitute

of it

Explanatory note

This amendment updates archaic language.

[3.594] Section 34 (2) and 35 (2)

omit

, provided that the trustee has acted bona fide

substitute

if the trustee acted honestly

Explanatory note

This amendment updates language.

[3.595] Section 36 (1)

omit

, that is to say

Explanatory note

This amendment removes redundant words.

[3.596] Section 36 (1) (a) and (b)

omit

same, or upon

substitute

land, or on

Explanatory note

This amendment updates language.

[3.597] Section 36 (2)

omit

same

substitute

land

Explanatory note

This amendment updates language.

[3.598] Section 36 (3) (b)

substitute

- (b) give an option for renewal that will not extend the lease beyond the term for which the trustee is authorised to make the lease.

Explanatory note

This amendment updates archaic language.

[3.599] Section 36 (4)

omit

demise the land or any part thereof

substitute

lease all or part of the land

Explanatory note

This amendment updates archaic language.

[3.600] Section 36 (5A) to (6)

renumber as section 36 (6) to (10)

Explanatory note

This amendment provides for the renumbering of the subsections.

[3.601] Section 36 (5A) (b)

omit

(5B)

substitute

(7)

Explanatory note

This amendment is consequential on the renumbering of a subsection.

[3.602] Section 36 (5A) (c)

substitute

- (c) it contains a condition of re-entry if the rent is not paid within a period (not longer than 30 days) provided in the lease; and

Explanatory note

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

[3.603] Section 36 (5A) (f)

substitute

- (f) the lease is executed by the lessee.

Explanatory note

This amendment updates the paragraph to reflect current conveyancing practice.

[3.604] Section 36 (5C)

omit

paragraph (5A)

substitute

subsection (6)

Explanatory note

This amendment is consequential on the renumbering of a subsection.

[3.605] Section 36 (7)

substitute

- (11) This section applies to a trust except so far as the contrary intention appears in the trust instrument.

Explanatory note

This amendment updates archaic language and simplifies the subsection.

[3.606] Section 37 (2)

omit

present future

substitute

present, future

Explanatory note

This amendment inserts a comma.

[3.607] Section 37 (4)

omit

instrument (if any) creating the trust

substitute

trust instrument

Explanatory note

This amendment omits words made redundant by the new definition of *trust instrument* in the dictionary inserted by this part.

[3.608] Section 37 (6)

substitute

- (6) This section applies to a trust except so far as the contrary intention appears in the trust instrument.

Explanatory note

This amendment updates archaic language and simplifies the subsection.

[3.609] Section 38 (1)

omit

instrument (if any) creating the trust

substitute

trust instrument

Explanatory note

This amendment omits words made redundant by the new definition of *trust instrument* in the dictionary inserted by this part.

[3.610] Section 38 (1)

omit

he or she shall have and shall be deemed always to have had

substitute

the trustee has

Explanatory note

This amendment omits unnecessary transitional words and updates language.

[3.611] Section 38 (1A)

substitute

(2) If—

- (a) a trustee holds land in relation to which an amount is owing for rates or taxes, or in relation to which the trustee is under a statutory obligation to spend an amount; and
- (b) the trustee does not have money subject to the same trusts as the land from which the amount can be paid;

the trustee has power to raise the money necessary to pay or spend the amount by sale or mortgage of all or part of the land or by sale, conversion, calling in or mortgage of all or part of the trust property held on the same trusts as the land.

Explanatory note

This amendment remakes the subsection to update language and bring it more closely into line with current drafting practice.

[3.612] Section 38 (2)

renumber as section 38 (3)

Explanatory note

This amendment renumbers a subsection.

[3.613] Section 39

omit

the application thereof

substitute

its application

Explanatory note

This amendment updates archaic language.

[3.614] Section 39A (1)

omit everything before paragraph (a), substitute

- (1) If a trustee is entitled, whether separately or as a co-mortgagee, to a debt secured by mortgage of land in trust for all or part of the debt for people by way of succession, and the trustee is in possession of the mortgaged land, the trustee must apply the net income of the land in making payments as follows:

Explanatory note

This amendment omits transitional text from the subsection.

[3.615] Section 39A (1A) to (2A)

substitute

- (2) Subject to the mortgagor's rights, the trustee holds the balance of the income received by the trustee on the trusts to which the mortgage debt is subject.
- (3) The payments to be made by the trustee under subsection (1) are those that became payable after the trustee enters into possession.
- (4) However, if on the day the trustee enters into possession the amount of a periodical payment is owing, and the amount relates in whole or part to a period after the trustee enters into possession, the amount is taken, for this section, to accrue from day-to-day and is apportionable accordingly.

Explanatory note

This amendment omits transitional text from the subsections and recasts them to bring them more closely into line with current drafting practice.

[3.616] Section 39A (3)

renumber as section 39A (5)

Explanatory note

This amendment renumbers a subsection.

[3.617] Section 39A (3)

omit

in the payment specified in paragraphs (1) (a), (b) and (c)

substitute

in making payments under subsection (1)

Explanatory note

This amendment is consequential on other amendments of the section.

[3.618] Section 39A (4)

substitute

- (6) Despite anything in this section, the trustee may apply income of the mortgaged property received by the trustee in making payments under subsection (1) that are not authorised by subsections (3) and (4), but the person entitled to the interest on the mortgage debt is entitled to recover out of the capital of the mortgage debt all payments made by the trustee under this subsection.

Explanatory note

This amendment omits redundant words and transitional text and makes changes consequential on other amendments of the section.

[3.619] Section 39B

omit

Explanatory note

This amendment omits a validation provision that relates to things done by trustees before 1957. The effect of the section is preserved by the *Interpretation Act 1967*, section 42 (Repeal does not end transition validating effect etc).

[3.620] Heading before section 40

substitute

Subdivision 2.2.3 Property not in possession

Explanatory note

This amendment changes an unnumbered heading to a subdivision heading in line with current drafting practice.

[3.621] Section 40 (1)

substitute

- (1) If trust property consists of or includes a share or interest in property (or the proceeds of the sale of property) not vested in the trustee, or

any other thing in action, then, when it comes into possession or becomes payable or transferable, the trustee may—

- (a) agree on or work out the amount or value of it, or any part of it, in any way the trustee considers appropriate; and
 - (b) accept in or towards satisfaction of it, at market or current value, or on any valuation or estimate of value that the trustee considers appropriate, any securities authorised by the trust instrument or by law for the investment of money subject to the trust; and
 - (c) allow any deductions for duties, costs or charges that the trustee considers proper or reasonable; and
 - (d) execute a release in relation to it.
- (2) The trustee is not responsible for loss caused by anything done honestly under subsection (1).

Explanatory note

This amendment updates archaic language and brings the language of the existing subsection more closely into line with current drafting practice. It also numbers an unnumbered sentence as a separate subsection.

[3.622] Section 40 (2) to (5)

renumber as section 40 (3) to (6).

Explanatory note

This amendment provides for the consequential renumbering of the subsections.

[3.623] Section 40 (2) (b)

substitute

- (b) bring proceedings for any act or omission by anyone in whom the securities or other property (or any part) is or has been vested.

Explanatory note

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

[3.624] Section 40 (3) and (4)

omit

(2)

substitute

(3)

Explanatory note

This amendment is consequential on the renumbering of existing subsection (2).

[3.625] Section 40 (4)

omit

therein mentioned

substitute

mentioned in the subsection

Explanatory note

This amendment updates archaic language.

[3.626] Section 40 (6)

substitute

- (7) This section applies to a trust except so far as the contrary intention appears in the trust instrument.

Explanatory note

This amendment updates archaic language and simplifies the subsection.

[3.627] Heading before section 41

substitute

Subdivision 2.2.4 Insurance

Explanatory note

This amendment changes an unnumbered heading to a subdivision heading in line with current drafting practice.

[3.628] Section 41 (4)

substitute

- (4) This section applies to a trust except so far as the contrary intention appears in the trust instrument.

Explanatory note

This amendment updates archaic language and simplifies the subsection.

[3.629] Section 42 (2)

omit

the same shall be held upon

substitute

the money is to be held on

Explanatory note

This amendment updates language.

[3.630] Section 42 (4)

omit

thereof

substitute

of it

Explanatory note

This amendment updates archaic language.

[3.631] Section 42 (5)

substitute

- (5) An application to the Supreme Court for a direction under subsection (4) is subject to the consent of anyone whose consent is required by the trust instrument to the investment of money subject to the trust.

Explanatory note

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

[3.632] Section 42 (6)

omit

thereof

substitute

of it

Explanatory note

This amendment updates archaic language.

[3.633] Section 42 (8)

substitute

- (8) This section applies to a trust except so far as the contrary intention appears in the trust instrument.

Explanatory note

This amendment updates archaic language and simplifies the subsection.

[3.634] Heading before section 43

substitute

Subdivision 2.2.5 Maintenance, advancement and protective trusts

Explanatory note

This amendment changes an unnumbered heading to a subdivision heading in line with current drafting practice.

[3.635] Section 43

omit

the infant

substitute

the child

Explanatory note

This amendment updates a term in line with current drafting practice.

[3.636] Section 43 (1)

omit

an infant

substitute

a child

Explanatory note

This amendment updates a term in line with current drafting practice.

[3.637] Section 43 (3A) to (6)

renumber as section 43 (4) to (7)

Explanatory note

This amendment renumbers the subsections.

[3.638] Section 43 (3A)

omit

same

substitute

intermediate income

Explanatory note

This amendment updates archaic language.

[3.639] Section 43 (3A), (4) and (6) (b)

omit

instrument (if any) creating the trust

substitute

trust instrument

Explanatory note

This amendment omits words made redundant by the new definition of *trust instrument* in the dictionary inserted by this part.

[3.640] Section 43 (3A), (4), (5), (7) and (9)

omit

infancy

substitute

childhood

Explanatory note

This amendment updates language.

[3.641] Section 43 (3A)

omit

subsection

substitute

section

Explanatory note

This amendment corrects a reference.

Section 43 (4)

omit

thereof

Explanatory note

This amendment omits archaic language.

[3.642] Section 43 (5)

omit

thereof

substitute

of them

Explanatory note

This amendment updates archaic language.

[3.643] Section 43 (6)

omit

, that is to say

Explanatory note

This amendment omits redundant words.

[3.644] Section 43 (6) (b)

omit

attaining the age of 21 years or on the occurrence of some prior

substitute

reaching 18 years old or on the happening of an earlier

Explanatory note

This amendment is consequential on the changes of the age of majority from 21 to 18 and updates language.

[3.645] Section 43 (6) (b)

omit

in fee simple or

Explanatory note

This amendment omits a redundant reference to freehold.

[3.646] Section 43 (7)

substitute

- (8) Any accumulations held in trust in accordance with subsection (7) do not affect the provisions of any settlement made by the child under a Territory law during his or her childhood.

Explanatory note

This amendment updates language and provides for the consequential renumbering of the subsection and a cross-reference in the subsection.

[3.647] Section 43 (8) and (9)

renumber as section 43 (9) and (10)

Explanatory note

This amendment renumbers the subsections.

[3.648] Section 43 (8)

omit

(6)

substitute

(7)

Explanatory note

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

[3.649] Section 43 (9)

omit

thereof

substitute

of it

Explanatory note

This amendment updates archaic language.

[3.650] Section 43 (10)

substitute

- (11) This section applies to a trust except so far as the contrary intention appears in the trust instrument.

Explanatory note

This amendment updates archaic language and simplifies the subsection.

[3.651] Section 44 (1)

substitute

- (1) If, under a trust, a person is entitled to the capital of the trust property or to a share in it, the trustee may pay or apply any capital money subject to the trust, not more than $\frac{1}{2}$ of the value of the property or share, for the advancement or benefit of the person or, if the person is a child, for the maintenance, education, advancement or benefit of the person in any way the trustee considers appropriate (in his or her absolute discretion).

Explanatory note

This amendment updates archaic language and simplifies the subsection.

[3.652] Section 44 (5)

omit

of full age

substitute

an adult

Explanatory note

This amendment updates language.

[3.653] Section 44 (7)

substitute

- (7) This section applies to a trust except so far as the contrary intention appears in the trust instrument.

Explanatory note

This amendment updates archaic language and simplifies the subsection.

[3.654] Section 45 (3) to (5)

substitute

- (3) The income of the trust fails or determines during the trust period if the principal beneficiary does something or an event happens that, if the income were payable to the principal beneficiary absolutely, the principal beneficiary would lose the right to receive the income or any part of it.
- (4) The income of the trust fails or determines whether the principal beneficiary does the thing, or the event happens, before or after the termination of any prior interest.
- (5) The trust of the income does not fail or determine because of an advance under any statutory or express power.

Explanatory note

This amendment updates the language of the subsections and recasts the subsections to bring them more closely into line with current drafting practice.

[3.655] Section 45 (6)

omit everything before paragraph (a), substitute

- (6) If the trust of the income fails or determines during the trust period, income during the rest of the trust period is to be held on trust for application—

Explanatory note

This amendment updates the language of the subsection.

[3.656] Section 45 (6) (a)

omit

wife or husband

substitute

spouse

Explanatory note

This amendment updates gender specific language.

[3.657] Section 45 (6) (b)

omit

wife husband

substitute

spouse

Explanatory note

This amendment updates gender specific language.

[3.658] Section 45 (6) (b)

omit

thereof

substitute

of it

Explanatory note

This amendment updates archaic language.

[3.659] Section 45 (9)

substitute

- (9) This section applies to a trust except so far as the contrary intention appears in the trust instrument.

Explanatory note

This amendment updates archaic language and simplifies the subsection.

[3.660] Heading before section 46

substitute

Subdivision 2.2.6 Appropriation and payment to public trustee

Explanatory note

This amendment changes an unnumbered heading to a subdivision heading in line with current drafting practice.

[3.661] Section 46 (1)

omit

the actual state or condition of investment thereof

substitute

its actual condition or state of investment

Explanatory note

This amendment updates archaic language.

[3.662] Section 46 (1) (c)

omit

thereafter

substitute

afterwards

Explanatory note

This amendment updates archaic language.

[3.663] Section 46 (2)

omit

shall extend and apply

substitute

applies

Explanatory note

This amendment updates language.

[3.664] Section 46 (2) (b)

omit

of Australia

Explanatory note

This amendment omits redundant words.

[3.665] Section 46 (2) (b)

omit

thereof

Explanatory note

This amendment omits archaic language.

[3.666] Section 46 (4)

omit

thereof which

substitute

of it that

Explanatory note

This amendment updates language.

[3.667] Section 46 (5)

omit

instrument (if any) creating the trust

substitute

trust instrument

Explanatory note

This amendment omits words made redundant by the new definition of *trust instrument* in the dictionary inserted by this part.

[3.668] Section 46 (5)

omit

thereto

substitute

to it

Explanatory note

This amendment updates archaic language.

[3.669] Section 46 (5)

omit

he or she is of full age and capacity and he or she

substitute

the person is not a person with a legal disability and

Explanatory note

This amendment updates language.

[3.670] Section 46 (7) (a)

omit

an infant,

substitute

a child—

Explanatory note

This amendment updates a term in line with current drafting practice.

[3.671] Section 46 (7) (b)

omit

is mentally incapable,

substitute

is a person with a mental disability—

Explanatory note

This amendment updates language.

[3.672] Section 46 (8)

omit

instrument (if any) creating the trust for the investment of money
subject thereto

substitute

trust instrument,

Explanatory note

This amendment updates and simplifies language.

[3.673] Section 46 (8) (a)

omit

an infant, where

substitute

a child if

Explanatory note

This amendment updates language.

[3.674] Section 46 (8) (b)

omit

who is mentally incapable, where

substitute

with a mental disability if

Explanatory note

This amendment updates language.

[3.675] Section 46 (8A) to (12)

renumber as section 46 (9) to (13)

Explanatory note

This amendment renumbers subsections.

[3.676] Section 46 (8A)

omit

of Australia

Explanatory note

This amendment omits redundant words.

[3.677] Section 46 (8A)

omit

thereof

Explanatory note

This amendment omits archaic language.

[3.678] Section 46 (9)

omit

legacy share

substitute

legacy, share

Explanatory note

This amendment inserts a comma.

[3.679] Section 46 (9)

omit

disposition management and varying investment which would have been applicable thereto

substitute

, disposition, management and varying investment that would have applied to the property

Explanatory note

This amendment updates language and inserts commas.

[3.680] Section 46 (9)

omit

or when

Explanatory note

This amendment omits redundant words.

[3.681] Section 46 (12)

omit

a purchaser in good faith, be deemed

substitute

an honest purchaser or the registrar-general, be taken

Explanatory note

This amendment updates language and extends the protection given by the 1st sentence of the subsection to the registrar-general.

[3.682] Section 46 (12), 2nd sentence

omit

Explanatory note

This amendment omits a sentence made redundant by the previous amendment of the subsection.

[3.683] Section 46 (13)

substitute

(14) In this section:

settled, in relation to a legacy, share or interest, means a legacy, share or interest settled by the trust instrument or another instrument, and includes a legacy, share or interest to which a person is not absolutely entitled in possession on the day the appropriation is made.

Explanatory note

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

[3.684] Section 46 (15)

omit

instrument (if any) creating the trust

substitute

trust instrument

Explanatory note

This amendment omits words made redundant by the new definition of *trust instrument* in the dictionary inserted by this part.

[3.685] Section 46 (16)

substitute

- (16) This section applies to a trust except so far as the contrary intention appears in the trust instrument.

Explanatory note

This amendment updates archaic language and simplifies the subsection.

[3.686] Section 47 (1)

omit

an infant

substitute

a child

Explanatory note

This amendment updates language.

[3.687] Section 47 (1)

omit

forth

substitute

out

Explanatory note

This amendment updates language.

[3.688] Section 47 (2)

omit

infant

substitute

child

Explanatory note

This amendment updates language.

[3.689] Section 47 (3)

substitute

- (3) If the money is held in trust for a person with a legal disability, the public trustee may—
- (a) for an amount of trust money of not more than \$500—at the public trustee’s discretion; or
 - (b) for an amount of money more than \$500 but not more than \$2 000—with the Supreme Court’s consent;
- apply all or part of the money for the maintenance, education or benefit of the person or pay it to someone else to be so applied by that person.

Explanatory note

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

[3.690] Section 47 (3A)

renumber as section 47 (4)

Explanatory note

This amendment renumbers a subsection.

[3.691] Section 47 (3B)

substitute

- (5) A receipt given by the chief executive for amounts paid to the Minister under subsection (4) is an effective discharge to the public trustee for the amounts.

Explanatory note

This amendment updates language and brings the subsection more closely into line with current drafting practice. The amendment also omits an unnecessary reference to an officer authorised by the chief executive to give receipts.

[3.692] Section 47 (3C) to (3E)

renumber as section 47 (6) to (8)

Explanatory note

This amendment renumbers the subsections.

[3.693] Section 47 (3C) and (3E)

omit

(3A)

substitute

(4)

Explanatory note

This amendment is consequential on the renumbering of a subsection.

[3.694] Section 47 (3D)

omit

(3C)

substitute

(6)

Explanatory note

This amendment is consequential on the renumbering of a subsection.

[3.695] Section 47 (3E) (b)

omit

in pursuance of subsection (3A)

substitute

under subsection (4)

Explanatory note

This amendment updates language and provides for the consequential renumbering of a cross-reference.

[3.696] Heading before section 48

substitute

Subdivision 2.2.7 Receipts and compounding

Explanatory note

This amendment changes an unnumbered heading to a subdivision heading in line with current drafting practice.

[3.697] Section 48 (1)

omit

(1) The

substitute

The

Explanatory note

This amendment renumbers the subsection as a section consequential on the omission of subsection (2) (an application provision) by a later amendment in this part.

[3.698] Section 48 (1)

omit

the same, and shall effectually exonerate

substitute

them, and exonerates

Explanatory note

This amendment updates language.

[3.699] Section 48 (1)

omit

thereof

substitute

of them

Explanatory note

This amendment updates archaic language.

[3.700] Section 49 (1)

omit everything before paragraph (a), substitute

- (1) The trustees or a majority acting together, or a sole trustee if the trust instrument or a Territory law authorises a sole trustee to act, may—

Explanatory note

This amendment updates language.

[3.701] Section 49 (1) (aa) to (e)

renumber as section 49 (1) (b) to (f)

Explanatory note

This amendment renumbers the paragraphs.

[3.702] Section 49 (3) and (4)

substitute

- (3) A trustee is not responsible for loss resulting from anything done honestly under this section.
- (4) This section applies to a trust except so far as the contrary intention appears in the trust instrument.

Explanatory note

This amendment updates language and simplifies the subsections.

[3.703] Heading before section 50

substitute

Subdivision 2.2.8 Safe custody, audit and valuation

Explanatory note

This amendment changes an unnumbered heading to a subdivision heading in line with current drafting practice.

[3.704] Section 50 (3)

substitute

- (3) This section applies to a trust except so far as the contrary intention appears in the trust instrument.

Explanatory note

This amendment updates archaic language and simplifies the subsection.

[3.705] Section 51 (5)

substitute

- (5) This section applies to a trust except so far as the contrary intention appears in the trust instrument.

Explanatory note

This amendment updates archaic language and simplifies the subsection.

[3.706] Section 52 (1)

omit

instrument (if any) creating the trust

substitute

trust instrument

Explanatory note

This amendment omits words made redundant by the new definition of *trust instrument* in the dictionary inserted by this part.

[3.707] Section 52 (2) and (3)

substitute

- (2) A valuation made honestly under this section is binding on everyone interested under the trust.
- (3) This section applies to a trust except so far as the contrary intention appears in the trust instrument.

Explanatory note

This amendment updates language and simplifies the subsections.

[3.708] Heading before section 53

substitute

Subdivision 2.2.9 Agents, banks and others

Explanatory note

This amendment changes an unnumbered heading to a subdivision heading in line with current drafting practice.

[3.709] Section 53 (1)

omit

being a bank or a legal practitioner

substitute

a bank, lawyer

Explanatory note

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

[3.710] Section 53 (3)

omit

in good faith

substitute

honestly

Explanatory note

This amendment updates language.

[3.711] Section 53 (6)

substitute

- (6) This section applies to a trust except so far as the contrary intention appears in the trust instrument.

Explanatory note

This amendment updates archaic language and simplifies the subsection.

[3.712] Section 54 (1) (b)

omit

thereon

Explanatory note

This amendment omits archaic language.

[3.713] Section 54 (1)

omit

instrument (if any) by which the trust was created

substitute

trust instrument

Explanatory note

This amendment omits words made redundant by the new definition of *trust instrument* in the dictionary inserted by this part.

[3.714] Section 54 (1)

omit

authority:

substitute

authority.

Explanatory note

This amendment updates punctuation.

[3.715] Section 54 (1A) and (2)

renumber as section 54 (2) and (3)

Explanatory note

This amendment renumbers the subsections.

[3.716] Section 54 (3)

substitute

- (4) This section applies to a trust except so far as the contrary intention appears in the trust instrument.

Explanatory note

This amendment updates language and simplifies the subsection.

[3.717] Section 54A, heading

substitute

54A Bank may recognise certain signatures and endorsements

Explanatory note

This amendment updates language.

[3.718] Section 54A (1) and (2)

omit

banker

substitute

bank

Explanatory note

This amendment updates language.

[3.719] Section 54A (1) (a) and (2) (a)

insert at the end of the paragraphs

and

Explanatory note

This amendment joins the 2 paragraphs of each subsection in line with current drafting practice.

[3.720] Section 54A (3)

substitute

- (3) This section does not affect the liability of a person to anyone in relation to whom the person is in a fiduciary position.

Explanatory note

This amendment updates language.

[3.721] Section 55, heading

substitute

55 Property outside ACT

Explanatory note

This amendment updates the heading.

[3.722] Section 55 (1)

omit

New South Wales

substitute

the ACT

Explanatory note

This amendment inserts a reference to the ACT consequential on the repeal of the *Trustee Act 1957* by this Act. That Act provides that references to ‘New South Wales’ in the *Trustee Act 1925* are references to the Territory.

[3.723] Section 55 (3) and (4)

substitute

- (3) The trustee is not liable for any loss arising from an appointment under this section only because the trustee made the appointment.
- (4) This section applies to a trust except so far as the contrary intention appears in the trust instrument.

Explanatory note

This amendment updates language and simplifies the subsections.

[3.724] Section 56 (1)

omit

in reference thereto

Explanatory note

This amendment omits archaic language.

[3.725] Section 56 (3)

substitute

- (3) This section applies to a trust except so far as the contrary intention appears in the trust instrument.

Explanatory note

This amendment updates language and simplifies the subsection.

[3.726] Heading before section 57

substitute

Subdivision 2.2.10 Surviving trustees

Explanatory note

This amendment changes an unnumbered heading to a subdivision heading in line with current drafting practice.

[3.727] Section 57 (1)

substitute

- (1) If a power or trust is given to or vested in 2 or more trustees jointly, the power or trust may be exercised by the survivor or survivors of them for the time being.
- (2) This section applies to a trust except so far as the contrary intention appears in the trust instrument.

Explanatory note

This amendment updates language and brings the section more closely into line with other amended sections.

[3.728] Heading before section 58

substitute

Subdivision 2.2.11 Protection of trustees

Explanatory note

This amendment changes an unnumbered heading to a subdivision heading in line with current drafting practice.

[3.729] Section 58 (1)

omit

in good faith under or in pursuance of

substitute

honestly under

Explanatory note

This amendment updates language.

[3.730] Section 59 (2)

omit

banker

substitute

bank

Explanatory note

This amendment updates language.

[3.731] Section 59 (3)

omit

instrument (if any) creating the trust

substitute

trust instrument

Explanatory note

This amendment omits words made redundant by the new definition of *trust instrument* in the dictionary inserted by this part.

[3.732] Section 60 (1)

omit

thereto

substitute

to it

Explanatory note

This amendment updates archaic language.

[3.733] Section 60 (3) and (4)

omit

thereof

substitute

of it

Explanatory note

This amendment updates archaic language.

[3.734] Section 60 (4)

omit

thereto

substitute

to it

Explanatory note

This amendment updates archaic language.

[3.735] Section 61A

omit

such

substitute

the

Explanatory note

This amendment updates language.

[3.736] Section 61A

omit

nothing contained shall

substitute

this section does not

Explanatory note

This amendment updates language.

[3.737] Section 63 (1)

omit

judge for his or her opinion advice

substitute

Supreme Court for an opinion, advice

Explanatory note

This amendment substitutes a reference to the Supreme Court for a reference to ‘the judge’ and inserts a comma.

[3.738] Section 63 (2), (8), (9) and (11)

omit

opinion advice

substitute

opinion, advice

Explanatory note

This amendment inserts a comma.

[3.739] Section 63 (3)

omit

legal practitioner

substitute

lawyer

Explanatory note

This amendment changes a term in line with current drafting practice.

[3.740] Section 63 (4), (8), (10) and (11)

omit

judge

substitute

Supreme Court

Explanatory note

This amendment substitutes references to the Supreme Court for references to ‘the judge’.

[3.741] Section 63 (8) to (11)

renumber as section 63 (5) to (8)

Explanatory note

This amendment renumbers the subsections.

[3.742] Section 63 (9)

omit

therewith

substitute

with it

Explanatory note

This amendment updates archaic language.

[3.743] Section 63 (11)

omit

the provisions of subsection (10) any person

substitute

subsection (7), anyone

Explanatory note

This amendment updates a cross-reference.

[3.744] Section 63 (11)

omit

subsection (8)

substitute

subsection (5)

Explanatory note

This amendment updates a cross-reference.

[3.745] Section 63 (11)

omit

originating summons

substitute

application

Explanatory note

This amendment updates a reference to Supreme Court practice.

[3.746] Section 64 (3A) to (7)

renumber as section 64 (4) to (8)

Explanatory note

This amendment renumbers the subsections.

[3.747] Section 64 (3A)

omit

and discharge of all the powers, authorities, duties and

substitute

of all the

Explanatory note

This amendment omits unnecessary words (see *Interpretation Act 1967*, dict, defs of *function*, *power* and *exercise*).

[3.748] Section 64 (8)

substitute

- (9) This section applies to a trust except so far as the contrary intention appears in the trust instrument.
- (10) However, subsection (9) does not affect the jurisdiction or powers of a court.

Explanatory note

This amendment updates language and simplifies the existing subsection.

[3.749] Section 65 (4)

substitute

- (4) This section applies to a trust except so far as the contrary intention appears in the trust instrument.

Explanatory note

This amendment updates language and simplifies the subsection.

[3.750] Section 66 (1)

omit

- (1) No

substitute

No

Explanatory note

This amendment renumbers the subsection as a section consequential on the omission of subsection (2) (an application provision) by a later amendment in this part.

[3.751] Section 66 (1)

omit

in good faith

substitute

honestly

Explanatory note

This amendment updates language.

[3.752] Section 66 (1)

omit

therewith

substitute

with the delegation

Explanatory note

This amendment updates archaic language.

[3.753] Section 68 (2)

omit everything after

land

substitute

under the *Land Titles Act 1925*.

Explanatory note

This amendment omits a reference to a repealed Act.

[3.754] Part 3, heading

substitute

Part 3 Powers of Supreme Court

Explanatory note

This amendment recasts the heading in line with current drafting practice.

[3.755] Heading before section 70 (after division 1 heading)

omit

Explanatory note

This amendment omits a heading in line with current drafting practice.

[3.756] Section 70 (3)

omit everything before

, the court

substitute

(3) Without limiting any other provision of this section

Explanatory note

This amendment updates language.

[3.757] Section 70 (3)

omit

felony

substitute

an indictable offence

Explanatory note

This amendment is consequential on the abolition of the distinction between felony and misdemeanour by the *Crimes Act 1900*, section 9. An indictable offence is an offence punishable by imprisonment for more than 1 year (see *Interpretation Act 1967*, s 33D).

[3.758] Section 70 (8) and (9)

renumber as section 70 (7) and (8)

Explanatory note

This amendment renumbers the subsections.

[3.759] Section 70 (8)

omit

authorities

Explanatory note

This amendment omits a redundant word (see *Interpretation Act 1967*, dict, def of *power*).

[3.760] Section 70 (8)

omit

instrument (if any) creating the trust

substitute

trust instrument

Explanatory note

This amendment omits words made redundant by the new definition of *trust instrument* in the dictionary inserted by this part.

[3.761] Heading before section 71

omit

Explanatory note

This amendment omits a heading in line with current drafting practice.

[3.762] Section 71 (1)

substitute

- (1) The Supreme Court may make an order under this section (a *vesting order*).

Note Section 78 deals with the effect of vesting orders.

Explanatory note

This amendment recasts the subsection to bring it into line with current drafting practice.

[3.763] Section 71 (2)

omit

A vesting order may be made in any of the following cases, namely

substitute

The Supreme Court may make a vesting order in the following cases

Explanatory note

This amendment recasts the text in line with current drafting practice.

[3.764] Section 71 (2)

omit

where

substitute

if

Explanatory note

This amendment updates language.

[3.765] Section 71 (2) (d) and (e)

substitute

(d) if the trustee is a child;

(e) if the trustee is a person with a mental disability;

Explanatory note

This amendment updates language.

[3.766] Section 71 (7)

omit

or referred to

Explanatory note

This amendment omits redundant words.

[3.767] Section 71 (9)

omit

either before or after the commencement of this Act

Explanatory note

This amendment omits redundant transitional words.

[3.768] Section 72

omit

in respect thereof

Explanatory note

This amendment omits archaic language.

[3.769] Section 73, heading

substitute

73 Child beneficiary

Explanatory note

This amendment updates the language of a heading.

[3.770] Section 73

omit

an infant

substitute

a child

Explanatory note

This amendment updates language.

[3.771] Section 73

omit 1st mention of

thereof

substitute

of the property

Explanatory note

This amendment updates archaic language.

[3.772] Section 73

omit

the infant

substitute

the child

Explanatory note

This amendment updates language.

[3.773] Section 73

omit 2nd mention of

thereof

Explanatory note

This amendment omits archaic language.

[3.774] Section 74

omit

an infant or is mentally incapable

substitute

a person with a legal disability

Explanatory note

This amendment updates language.

[3.775] Section 74

omit 1st mention of

thereof

Explanatory note

This amendment omits archaic language.

[3.776] Section 74

omit

in respect thereof

substitute

in property

Explanatory note

This amendment updates archaic language.

[3.777] Section 74

omit

being an infant or a mentally incapable person

substitute

with a legal disability

Explanatory note

This amendment updates language.

[3.778] Section 75 (1) (a)

substitute

- (a) if the land is under the *Land Titles Act 1925*—the Supreme Court may make an order discharging the mortgage; and

Explanatory note

This amendment inserts a reference to the Supreme Court consequential on the repeal of the *Trustee Act 1957* by this Act. That Act provides that references to ‘the court’ in the *Trustee Act 1925* are references to the Supreme Court.

[3.779] Section 75 (3)

omit

, namely

Explanatory note

This amendment omits redundant language.

[3.780] Section 75 (3)

omit

where

substitute

if

Explanatory note

This amendment updates language.

[3.781] Section 75 (4)

omit

or referred to

Explanatory note

This amendment omits redundant words.

[3.782] Section 76 (1)

omit

a decree

substitute

an order

Explanatory note

This amendment updates language.

[3.783] Section 76 (1)

omit

, if it thinks expedient,

Explanatory note

This amendment omits unnecessary words.

[3.784] Section 76 (1)

omit

thereof

substitute

of it

Explanatory note

This amendment updates archaic language.

[3.785] Section 76 (2)

omit

therein

substitute

in the land

Explanatory note

This amendment updates archaic language.

[3.786] Section 76 (2)

omit

decree

substitute

order

Explanatory note

This amendment updates language.

[3.787] Section 77 (1)

omit

The court

substitute

The Supreme Court

Explanatory note

This amendment is consequential on the repeal of the *Trustee Act 1957* by this Act.

[3.788] Section 77 (1)

omit

a decree

substitute

an order

Explanatory note

This amendment updates language.

[3.789] Section 77 (2) (a)

omit

thereof

substitute

of it

Explanatory note

This amendment updates archaic language.

[3.790] Section 77 (2) (b)

omit

the decree

substitute

the order

Explanatory note

This amendment updates language.

[3.791] Section 78 (1)

omit

person of full capacity

substitute

person who is not a person with a legal disability

Explanatory note

This amendment updates language.

[3.792] Section 78 (1)

omit

been of full capacity

substitute

not been a person with a legal disability

Explanatory note

This amendment updates language.

[3.793] Section 78 (3)

substitute

(3) Land does not vest because of a vesting order made under this part until—

(a) if the land is under the *Land Titles Act 1925*—an entry of the vesting is made in the register kept under that Act; or

(b) in any other case—the order is registered under the
Registration of Deeds Act 1957.

Explanatory note

This amendment omits references to repealed Acts, updates a reference to the legislation for the registration of deeds and recasts the provision in line with current drafting practice.

[3.794] Section 78 (5) to (8)

renumber as section 78 (4) to (7)

Explanatory note

This amendment renumbers the subsections.

[3.795] Section 78 (5)

omit

, that is to say, in the case of

Explanatory note

This amendment removes redundant language.

[3.796] Section 78 (6)

omit

thereof

substitute

of it

Explanatory note

This amendment updates archaic language.

[3.797] Section 78 (7)

omit everything after

according to the order

substitute

and everyone must obey the order

Explanatory note

This amendment updates and simplifies language.

[3.798] Section 78 (8)

omit

any company association or person

substitute

anyone

Explanatory note

This amendment simplifies language.

[3.799] Section 78 (8)

omit

thereon

substitute

on it

Explanatory note

This amendment updates archaic language.

[3.800] Section 81 (1) and (2)

omit

instrument (if any) creating the trust

substitute

trust instrument

Explanatory note

This amendment omits words made redundant by the new definition of *trust instrument* in the dictionary inserted by this part.

[3.801] Section 81 (4)

omit

or under any other Act or ordinance in force in the Territory

substitute

or another Act

Explanatory note

This amendment omits redundant language (see *Interpretation Act 1967*, dict, def of *Act*).

[3.802] Section 82 (1)

omit

or freehold land

Explanatory note

This amendment omits a redundant reference to freehold land.

[3.803] Section 82 (1)

omit

any infant

substitute

a child

Explanatory note

This amendment updates language.

[3.804] Section 82 (1)

omit

as to the court seems fit, that is to say

Explanatory note

This amendment omits redundant language.

[3.805] Section 82 (1) (b)

omit

thereon

substitute

on the land

Explanatory note

This amendment updates archaic language.

[3.806] Section 82 (4)

omit everything before paragraph (a), substitute

(4) The Supreme Court may authorise the trustee—

Explanatory note

This amendment simplifies language and changes a reference to the court to the Supreme Court.

[3.807] Section 82 (4) (a)

omit

thereof

substitute

of the land

Explanatory note

This amendment updates archaic language.

[3.808] Section 82 (6) and (7)

omit

The court

substitute

The Supreme Court

Explanatory note

This amendment is consequential on the repeal of the *Trustee Act 1957* by this Act.

[3.809] Section 82A, heading

substitute

83 Improvements and repairs without Supreme Court's approval

Explanatory note

This amendment replaces a general reference to the Supreme Court with a specific reference to that court.

[3.810] Section 82A (1)

omit

or freehold land

Explanatory note

This amendment omits a redundant reference to freehold land.

[3.811] Section 82A (1)

omit

any infant

substitute

a child

Explanatory note

This amendment updates language.

[3.812] Section 82A (1)

omit

1/3

substitute

¹/3rd

Explanatory note

This amendment recasts the term in line with current drafting practice.

[3.813] Section 84, heading

substitute

84 Sale of child's property

Explanatory note

This amendment updates the language of a heading.

[3.814] Section 84 (1)

omit

an infant

substitute

a child

Explanatory note

This amendment updates language.

[3.815] Section 84 (1), (2) and (3)

omit

judge

substitute

Supreme Court

Explanatory note

This amendment changes references to 'the judge' to the Supreme Court.

[3.816] Section 84 (4)

omit

infant

substitute

child

Explanatory note

This amendment updates language.

[3.817] Section 85 (3)

omit

the court may be exercised by the Supreme Court

substitute

the Supreme Court may be exercised

Explanatory note

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

[3.818] Section 86 (2)

omit everything before

the court

substitute

(2) Subsection (1) authorises

Explanatory note

This amendment simplifies language.

[3.819] Section 86 (3)

omit

Explanatory note

This amendment omits a redundant provision about married women's property.

[3.820] Section 87 (2)

omit

The court

substitute

The Supreme Court

Explanatory note

This amendment is consequential on the repeal of the *Trustee Act 1957* by this Act.

[3.821] Section 88, heading

substitute

88 Order in absence of trustee

Explanatory note

This amendment updates the language of a heading.

[3.822] Section 88

omit

thereto

substitute

to the proceeding

Explanatory note

This amendment updates archaic language.

[3.823] Section 88

omit

a decree therein

substitute

an order

Explanatory note

This amendment updates language.

[3.824] Section 88

omit

legal practitioner

substitute

lawyer

Explanatory note

This amendment updates language.

[3.825] Section 91

substitute

91 Orders in other proceedings

- (1) If in any proceeding in the Supreme Court the facts proved would entitle the court to make an order on an application under this Act, the court may make the order without requiring a separate proceeding to be begun.
- (2) The order is taken to be made on an application under this Act.

Explanatory note

This amendment omits unnecessary provisions about Supreme Court practice and procedure.

[3.826] Section 92 (1)

omit

thereof

substitute

of the property

Explanatory note

This amendment updates archaic language.

[3.827] Section 93

omit

Explanatory note

This amendment omits an unnecessary section about costs.

[3.828] Section 94

omit

Explanatory note

This amendment omits an unnecessary provision about Supreme Court orders.

(Commencement: immediately after the commencement of the
Legislation Act 2001, section 18 (ACT legislation register).)

[3.829] Section 94B

substitute

94B Orders of Supreme Court

If application is made to the Supreme Court under section 94A, the
court may make any order that it considers just.

Explanatory note

This amendment updates language and omits unnecessary provision about costs.

[3.830] New section 94F

insert before section 95

94F Definitions for pt 4

In this part:

payment into court, in relation to stocks and securities, includes the deposit with, or the transfer to, the Supreme Court of the stocks or securities.

trustee includes every implied or constructive trustee.

Explanatory note

This amendment relocates the definitions of *payment into court* from section 5 and *trustee* from section 99 in line with current drafting practice.

[3.831] Section 95 (1)

omit

the same

substitute

them

Explanatory note

This amendment updates language.

[3.832] Section 95 (2)

omit

are desirous of paying the same

substitute

wish to pay them

Explanatory note

This amendment updates language.

[3.833] Section 95 (2)

omit

concurrence

substitute

agreement

Explanatory note

This amendment updates language.

[3.834] Section 95 (3)

omit

banker

substitute

bank,

Explanatory note

This amendment updates language and inserts a comma.

[3.835] Section 95 (3) and (4)

omit

transfer

substitute

transfer,

Explanatory note

This amendment inserts a comma.

[3.836] Section 95 (4)

omit

the same

substitute

it

Explanatory note

This amendment updates archaic language.

[3.837] Section 95 (4)

omit

transferred

substitute

transferred,

Explanatory note

This amendment inserts a comma.

[3.838] Section 96

substitute

96 Person liable to person with a legal disability

If a person with a legal disability is entitled to an amount payable in discharge of land, stock, or a thing in action, conveyed under this Act, the person by whom the amount is payable may pay the amount into court.

Explanatory note

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

[3.839] Section 98 (2)

omit

any trustee person or company

substitute

anyone

Explanatory note

This amendment updates language.

[3.840] Section 98 (4)

omit

investment

substitute

investment,

Explanatory note

This amendment inserts a comma.

[3.841] Section 98 (4)

omit

thereof

substitute

of them

Explanatory note

This amendment updates archaic language.

[3.842] Section 99

omit

Explanatory note

This amendment is consequential on the above amendment.

[3.843] Part 5, heading

substitute

Part 5 Miscellaneous

Explanatory note

This amendment updates a heading in line with current drafting practice.

[3.844] Section 100

omit

Explanatory note

This amendment gives effect to the *Crimes Act 1900*, section 465 which abolished rules for the forfeiture of property because of conviction for an offence.

[3.845] Section 102 (3)

omit

motion

substitute

initiative

Explanatory note

This amendment updates language.

[3.846] Section 103

substitute

103 Indemnity for anything done under Act etc

- (1) This Act, and every order purporting to be made under this Act, is a complete indemnity to anyone for anything done under this Act or the order.
- (2) It is not necessary for anyone to inquire whether an order purporting to be made under this Act was properly made.

Explanatory note

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

[3.847] Section 103A

renumber as section 104

Explanatory note

This amendment renumbers a section.

[3.848] Section 103A

omit

the Schedule

substitute

schedule 1

Explanatory note

This amendment is consequential on the amendment of the schedule's heading below.

[3.849] New section 105

insert

105 Illusory etc share valid in law and equity

- (1) The exercise of a power of appointment under a trust is valid at law and in equity even if a beneficiary or object is given an insubstantial, nominal or illusory share or an insubstantial, nominal, or illusory share is left unappointed to devolve on a beneficiary or object.
- (2) This section does not apply to a trust instrument that states the amount of the share or shares from which no beneficiary or object may be excluded.

Explanatory note

This amendment remakes, in a modern form the *Conveyancing and Law of Property (Supplemental) Act 1901*, sections 11 and 12. Section 13 of that Act is a spent savings provision. That Act is repealed by this Act.

[3.850] Schedule, heading

substitute

**Schedule 1 Preamble to Charitable Uses
Act 1601**

(see s 104)

[3.851] New dictionary

insert

Dictionary

(see s 2)

administrator includes anyone to whom administration of the estate of a dead person is granted, and includes the public trustee acting under the *Administration and Probate Act 1929*, part 6.

contingent right, in relation to land, includes—

- (a) a contingent or executory interest or a possibility coupled with an interest, whether or not the object of the gift or limitation of the interest or possibility is known; and
- (b) a right of entry, whether immediate or future and vested or contingent.

conveyance, in relation to a person, includes the execution or doing by the person of everything necessary to convey, assign, appoint, surrender, or otherwise transfer or dispose of, property.

executor means the executor to whom probate has been granted, and includes an executor by right of representation.

government securities include government stocks, funds, bonds, debentures and Treasury bills.

instrument includes a deed, a will, an agreement for settlement and a law of the Territory, the Commonwealth or a State.

joint tenant includes joint owner.

legal representative includes executor and administrator.

mortgage—

- (a) for land under the *Land Titles Act 1925*—see that Act, section 6 (1); and
- (b) for other property—includes any estate or interest regarded in equity as only a security for money.

mortgagee—

- (a) for land under the *Land Titles Act 1925*—see that Act, section 6 (1); and
- (b) for other property—includes a person taking title to the mortgage under the original mortgagee.

mortgagor—

- (a) for land under the *Land Titles Act 1925*—see that Act, section 6 (1); and
- (b) for other property—includes any of the following:
 - (i) a person taking title to the equity of redemption under the original mortgagor;
 - (ii) a person entitled to redeem a mortgage, according to his or her interest in the mortgaged property.

payment into court, for part 4—see section 94F.

person with a legal disability means—

- (a) a child; or
- (b) a person with a mental disability.

person with a mental disability means—

- (a) in relation to a proceeding—a person (other than a child) who is not legally competent to be a party to the proceeding; and
- (b) in relation to the doing of something—a person (other than a child) who is not legally competent to do the thing;

and includes such a person even if a guardian or manager has not been appointed for the person under the *Guardianship and Management of Property Act 1991*.

possessed includes—

- (a) a vested estate less than a life estate, legal or equitable, in possession or expectancy, in property; and
- (b) the receipt of income from such an estate.

purchaser includes—

- (a) a lessee or mortgagee; and
- (b) anyone who acquires an interest in property for valuable consideration.

right includes estate and interest.

securities includes stocks, funds and shares.

stock includes—

- (a) paid-up shares; and
- (b) in relation to a vesting order—a fund, annuity or security (including a share or interest in such a fund, annuity or security) transferable in books kept by a corporation or by instrument of transfer (including a transfer subject to other requirements).

transfer, of stock, includes the execution of a deed or power of attorney, and anything else done by the transferor, to give title to the transferee.

trust—see section 4 (Meaning of ***trust***).

trustee—

- (a) includes a legal representative, the public trustee and a trustee company; and

(b) for part 4 (Payment into court)—see section 94F.

trustee company—see the *Trustee Companies Act 1947*, section 3.

trust instrument means the instrument (if any) creating the trust.

vesting order means an order under section 71.

Explanatory note

This amendment inserts a dictionary that incorporates all the definitions currently in section 5 (Interpretation) that are still needed. The definitions have, where necessary, been revised to bring them more closely into line with current drafting practice and the equivalent definitions in the *Conveyancing Act 1919*.

The definitions of **bank**, **land**, **property**, **the Public Trustee**, **the Commonwealth** and **the registrar of the court** are no longer necessary because of the definitions in the dictionary to the *Interpretation Act 1967*.

The following definitions are also omitted for the reasons stated:

- **Act of Parliament** is used only in the definition of **instrument** which has been revised to include the relevant elements of the term in an updated form.
- **convey**, **pay into court** and **purchase** are parts of speech and grammatical forms of other defined terms (see *Interpretation Act 1967*, s 11E).
- **sale** (as part of the definition of **purchaser**) is unnecessary given its ordinary meaning.
- **the Crown Lands Acts** is a reference to the *Crown Lands Act 1884* (NSW) and amending NSW Acts that were repealed by Act 1996 No 1.
- **the State** is redundant.
- **the Territory** when used in a geographical sense is defined in the *Interpretation Act 1967* (see s 23) and the reference to the Jervis Bay Territory is unnecessary since the ACT's laws apply to that Territory (see the *Jervis Bay Territory Acceptance Act 1915* (Cwlth), s 4A).

[3.852] Application provisions

omit the following provisions:

- sections 6 (14), 8 (9), 9 (9), 10 (5) and 11 (4)
- sections 12 (6), 13 (4), 17 (2) and (3), 18 (5) and (6), 19 (2) and (3) and 20 (3)

- sections 21 (7), 22 (6), 23 (3), 24 (6), 25 (2), 26 (6), 27 (4), 27B (3), 27C (3) and 28 (13)
- sections 31 (3), 32 (7), 33 (7), 34 (4), 35 (4), 36 (8), 37 (7) and 40 (7)
- sections 41 (5), 42 (9), 43 (11), 44 (8), 46 (17), 47 (4), 48 (2), 49 (5) and 50 (4)
- sections 51 (6), 52 (4), 53 (7), 54 (4), 55 (5), 56 (4), 57 (2), 58 (4) and 59 (5)
- sections 64 (9), 65 (5), 66 (2) and 68 (4)
- sections 81 (5), 82 (9), 82A (4), 84 (5) and 85 (4)

Explanatory note

This amendment omits provisions that apply the Act to stated things or actions that happened either before or after the commencement of the *Trustee Act 1957* on 1 December 1957 (see s 9 (i) of that Act).

[3.853] Transitional provisions

omit the following provisions:

- section 6 (15)
- section 21 (5)
- sections 43 (12) and 45 (10)
- section 61 (3)
- section 86 (4)

Explanatory note

This amendment omits transitional provisions that apply the Act to stated things or actions that happened after the commencement of the *Trustee Act 1957* on 1 December 1957 (see s 9 (i) of that Act).

[3.854] References to ‘the court’

omit

the court

substitute

the Supreme Court

in the following provisions:

- sections 6 (1) and (3), 7 (2) (b) and (3), 10 (2) and (4) and 17 (1)
- section 28 (11) (first mention)
- sections 42 (4) and 46 (7)
- section 46 (10) (first mention)
- section 47 (3C) (first mention)
- section 51 (4)
- section 70 (1), (2) and (3)
- section 70 (4) (first mention)
- section 70 (5)
- section 71 (6) (first mention)
- section 71 (8) and (9)
- section 72
- section 73 (first mention)
- section 74
- section 75 (1) (b) (first mention)
- section 75 (3) (a)
- section 75 (5)
- section 76 (1) (first mention)
- section 77 (2)
- section 78 (1) (first mention)
- section 79
- section 80 (first mention)
- section 81 (1) (first mention)
- section 81 (2) (first mention)
- section 81 (3)
- section 81 (4) (first mention)
- section 82 (1) (first mention)
- section 82 (2), (5) and (8)
- section 82A (1) and (2)

- section 85 (1)
- section 85 (2) (first mention)
- section 86 (1) (first mention)
- section 86 (2)
- section 87 (1)
- section 88 (first mention)
- section 89
- section 89A (1)
- section 90
- section 95 (2) and (3)
- section 98 (2), (3) and (4)
- section 102 (1) (first mention)
- section 102 (2) (first mention)
- section 102 (3) (first mention)

Explanatory note

This amendment inserts a reference to the Supreme Court consequential on the repeal of the *Trustee Act 1957* by this Act. That Act provides that references to ‘the court’ in the *Trustee Act 1925* are references to the Supreme Court.

[3.855] References to ‘Registrar-General for the Territory’

omit

Registrar-General for the Territory

substitute

registrar-general

in the following provisions:

- section 12 (4AA)
- section 13 (3)
- section 20 (2)
- section 34 (3)
- section 35 (3)

- section 82 (8)
- section 82A (3)

Explanatory note

This amendment omits redundant language and refers to the office of registrar-general in line with current drafting practice.

[3.856] Insertion of ‘or’ at end of paragraphs

insert

or

at the end of the following provisions:

- section 26 (1) (a) to (c) and (db) and (e), and (2) (a) and (b)
- section 36 (3) (a)
- section 77 (2) (a)
- section 82 (4) (a) to (d)

Explanatory note

This amendment inserts the disjunctive ‘or’ in line with current drafting practice.

[3.857] Divisions—renumbering

renumber divisions when Act next republished under Legislation Act 2001

Part 3.50 Trustee Companies Act 1947

[3.858] Section 25A (3) (a)

omit

Trustee Act 1957

substitute

Trustee Act 1925

Explanatory note

This amendment updates a reference to the Trustee Act.

Part 3.51 Unit Titles Act 2001

[3.859] Section 130, heading

substitute

130 Application of Legislation Act

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment is consequential on the next amendment.

[3.860] Section 130 (1)

omit

Interpretation Act 1967, Part 3,

substitute

Legislation Act 2001

(Commencement: the commencement of section 2 of this Act or the commencement of the *Legislation Act 2001*, section 18 (ACT legislation register), whichever is later.)

Explanatory note

This amendment is consequential on amendments of the *Interpretation Act 1967* and the *Legislation Act 2001* contained in schedule 2 to this Act. The amendments remake provisions of the *Interpretation Act 1967* as provisions of the *Legislation Act 2001*.

Part 3.52 Utilities Act 2000

[3.861] Section 17 (1), definition of *customer*, paragraph (a)

omit

and

substitute

or

Explanatory note

This amendment corrects a conjunction.

[3.862] Section 17 (1), definition of *customer*, paragraph (b)

omit

where the context requires,

Explanatory note

This amendment omits unnecessary words.

[3.863] Section 28 (2)

substitute

(2) In this section:

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

national electricity code—see the ICRC Act, section 3 (1) (Interpretation).

Explanatory note

This amendment changes the definitions to signpost definitions, in line with current drafting practice.

[3.864] Section 150, heading

substitute

150 Definitions for pt 10

Explanatory note

This amendment is consequential on the next amendment.

[3.865] Section 150, new definitions of *connected* and *offence*

insert

connected—a thing is ***connected*** with a particular offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, is being used, or is intended to be used, to commit the offence.

offence includes an offence that there are reasonable grounds for believing has been, is being, or will be committed.

Explanatory note

This amendment remakes, in standard definition form, 2 definitions presently located in section 151.

[3.866] Section 151

omit

Explanatory note

This amendment is consequential on the last amendment.

[3.867] Section 170 (1)

omit

- (1) The

substitute

The

Explanatory note

This amendment is consequential on the omission of section 170 (2) by a later amendment in this part.

[3.868] Section 170 (1), new note

insert

Note The *Interpretation Act 1967*, s 25B (1) provides that a provision of an Act that gives an entity (including the council) a function also gives the entity the powers necessary and convenient to exercise the function.

Explanatory note

This amendment inserts a note because of the omission of section 170 (2) by the next amendment.

[3.869] Section 170 (2)

omit

Explanatory note

This amendment omits an unnecessary subsection. The *Interpretation Act 1967*, section 25B (1) covers the matter dealt with in section 170 (2).

[3.870] Section 174 (2), new note

insert

Note The *Interpretation Act 1967*, s 13BB (3) provides that if an Act gives a function or power to a body (including the council), the exercise of the function or power is not affected only because of vacancies in the body's membership.

Explanatory note

This amendment inserts a note because of the omission of section 174 (3) by the next amendment.

[3.871] Section 174 (3)

omit

Explanatory note

This amendment omits an unnecessary subsection. The *Interpretation Act 1967*, section 13BB (3) covers the matter dealt with in section 174 (3).

[3.872] Section 175 (3), new note

insert

Note A person may be reappointed to a position if the person is eligible for appointment to the position (see *Interpretation Act 1967*, s 28 (3) (c) and dict, def of *appoint*).

Explanatory note

This amendment inserts a note because of the omission of section 175 (4) by the next amendment.

[3.873] Section 175 (4)

omit

Explanatory note

This amendment omits an unnecessary subsection. The *Interpretation Act 1967*, section 28 (3) (c) covers the matter dealt with in section 175 (4).

[3.874] Section 176

omit

Explanatory note

This amendment omits an unnecessary section. The *Interpretation Act 1967*, section 28 (8) covers the matter dealt with in this section.

[3.875] Section 177, new note

insert

Note A member's appointment also ends if the member resigns (see *Interpretation Act 1967*, s 28 (8) and (9)).

Explanatory note

This amendment inserts a note because of the omission of section 176 by the above amendment.

[3.876] Section 226, heading

substitute

226 References in pt 14 to *proceeding under this Act*

Explanatory note

This amendment revises a section heading to more accurately reflect the contents of the section.

[3.877] Section 248

omit

Explanatory note

This amendment omits an unnecessary definition.

[3.878] Section 253

omit

1 year after it commences

substitute

, or is taken to have expired, on 1 July 2001

Explanatory note

This amendment amends an expiry provision to a division. The expiry provision was drafted on the assumption that the division would commence on a single day. In fact provisions of the division commenced on 2 days. The amendment clarifies the intended expiry of the division.

[3.879] Dictionary, new definition of *approved meter*

insert

approved meter, for division 6.4 (Passing on supply costs)—see section 97.

Explanatory note

This amendment inserts a new signpost definition into the dictionary.

[3.880] Dictionary, definition of *authorised person*

substitute

authorised person means a person appointed as an authorised person under section 114.

Explanatory note

This amendment changes a signpost definition to a standard definition.

[3.881] Dictionary, new definitions of *connected* and *customer debt*

insert

connected with an offence, for part 10 (Enforcement)—see section 150.

customer debt, for part 12 (Complaints)—see section 184.

Explanatory note

This amendment inserts new signpost definitions into the dictionary.

[3.882] Dictionary, definition of *function*

omit

Explanatory note

This amendment omits an unnecessary definition. The *Interpretation Act 1967*, dictionary defines ***function*** to include power and duty.

[3.883] Dictionary, new definitions of *gas distribution network* and *gas transmission network*

insert

gas distribution network—see section 10 (2).

gas transmission network—see section 10 (1).

Explanatory note

This amendment inserts new signpost definitions into the dictionary.

[3.884] Dictionary, definition of *ICRC inspector*

substitute

ICRC inspector means a person appointed as an ICRC inspector under section 152.

Explanatory note

This amendment changes a signpost definition to a standard definition.

[3.885] Dictionary, new definitions of *installation* and *interference*

insert

installation, for part 7 (Network operations)—see section 103.

interference, for part 8 (Protection of networks)—see section 123.

Explanatory note

This amendment inserts new signpost definitions into the dictionary.

[3.886] Dictionary, definitions of *network*, *network operations* and *occupier*

substitute

network—

- (a) for this Act—means any of the following:
 - (i) an electricity network;
 - (ii) a gas network;
 - (iii) a sewerage network;
 - (iv) a water network;
 - (v) a network prescribed for a prescribed utility service under section 15 (Prescribed utility services); or
- (b) for sections 130, 131 and 132—see section 133 (Extended meaning of *network*).

network operations, for part 7 (Network operations)—see section 103.

occupier, of premises—

- (a) for this Act—means a person who has, or is entitled to, lawful possession or control of the premises (whether alone or together with 1 or more other people); or

(b) for part 10 (Enforcement)—see section 150.

Explanatory note

This amendment amends the definition of *network* to also refer to its meaning for sections 130 to 132.

This amendment amends the definition of *network operations* to make it clear that the term is used in, and therefore defined for, part 7.

This amendment amends the definition of *occupier* to also refer to its meaning for part 10.

[3.887] Dictionary, new definitions of offence and party

insert

offence, for part 10 (Enforcement)—see section 150.

party, for part 12 (Complaints)—see section 184.

Explanatory note

This amendment inserts new signpost definitions into the dictionary.

[3.888] Dictionary, definition of personal information

substitute

personal information—see the *Privacy Act 1988* (Cwlth), section 6 (Interpretation), but does not include information available to a section of the public.

Explanatory note

This amendment changes the definition to a signpost definition in line with current drafting practice.

[3.889] Dictionary, new definitions of proceeding under this Act, registrar and respondent

insert

proceeding under this Act, for part 14 (Vicarious liability)—see section 226.

registrar, for part 12 (Complaints)—see section 184.

respondent, for part 12 (Complaints)—see section 184.

Explanatory note

This amendment inserts new signpost definitions into the dictionary.

[3.890] Dictionary, definitions of *technical inspector* and *utility*

substitute

technical inspector means a person appointed as a technical inspector under section 67 (Technical inspectors).

utility—

- (a) for this Act—means a person licensed to provide a utility service; or
- (b) for part 9 (Controller’s power to take over operations)—see section 134.

Explanatory note

This amendment changes the signpost definition of *technical inspector* to a standard definition.

This amendment amends the definition of *utility* to also refer to its meaning for part 9.

[3.891] Dictionary, new definition of *withdrawal*

insert

withdrawal, for part 12 (Complaints)—see section 184.

Explanatory note

This amendment inserts a new signpost definition into the dictionary.

Part 3.53 Victims of Crime Regulations 2000

[3.892] Dictionary, definition of *the Act*

omit

Explanatory note

This amendment omits an unnecessary definition. The *Interpretation Act 1967*, section 55B provides that, in regulations, a reference to *the Act* is a reference to the Act under which the regulations are made.

Schedule 4
Part 4.1

Repeal of redundant or obsolete Acts and regulations
Former NSW Acts incorporated in other laws

Schedule 4 Repeal of redundant or obsolete Acts and regulations

(see s 6)

Part 4.1 Former NSW Acts incorporated in other laws

Explanatory note for pt 4.1

The Acts repealed by this part are former NSW Acts. The provisions of the *Apportionment Act 1905*, the *Dedication by User Limitation Act 1902* and the *Partition Act 1900* are incorporated into the *Conveyancing Act 1919* by amendments in this Act.

The provisions of the *Conveyancing and Law of Property (Supplemental) Act 1901* are incorporated into the *Trustee Act 1925* by an amendment in schedule 3 of this Act.

All of these Acts are, therefore, redundant.

Apportionment Act 1905

Conveyancing and Law of Property (Supplemental) Act 1901

Dedication By User Limitation Act 1902

Partition Act 1900

Part 4.2 Acts that formerly applied NSW Acts as laws of the Territory

Division 4.2.1 Conveyancing Act 1951

Explanatory note for div 4.2.1

The *Conveyancing Act 1951* is an Act that formerly applied provisions of a New South Wales law (the *Conveyancing Act 1919*) as a law of the Territory.

Because of amendments of the *Interpretation Act 1967* made by the *Law Reform (Miscellaneous Provisions) Act 1999*, former NSW Acts in force in the Territory immediately before 10 November 1999 became, for all purposes, laws made by the Legislative Assembly. The provision of the *Conveyancing Act 1951* that applied provisions of the *Conveyancing Act 1919* (NSW) as a law of the Territory (s 3) is, therefore, redundant.

The *Conveyancing Act 1951*, section 4 deals with the meaning of the ‘commencement of this Act’ in the *Conveyancing Act 1919* (NSW) (as applied by the *Conveyancing Act 1951*). It means the day the *Conveyancing Act 1951* commenced, 1 November 1951. Those provisions of the *Conveyancing Act 1919* (NSW) that were applied by the *Conveyancing Act 1951* that refer to the ‘commencement of this Act’ have been amended (in schedule 3) to refer to 1 November 1951.

The *Conveyancing Act 1951*, section 5 applies that Act to particular transactions. That section is spent. However, its effect is saved by the *Interpretation Act 1967*, section 42 (1).

Conveyancing Act 1951 No 10

Division 4.2.2 Law of Property (Miscellaneous Provisions) Act 1958

Explanatory note for div 4.2.2

The *Law of Property (Miscellaneous Provisions) Act 1958* is an Act that formerly applied provisions of a New South Wales law (the *Conveyancing Act 1919*) as a law of the Territory and adopted a rule about contract law.

Because of amendments of the *Interpretation Act 1967* made by the *Law Reform (Miscellaneous Provisions) Act 1999*, former NSW Acts in force in the Territory immediately before 10 November 1999 became, for all purposes, laws made by the Legislative Assembly. The provision of the *Law of Property (Miscellaneous Provisions) Act 1958* that applied provisions of the *Conveyancing Act 1919* (NSW) as a law of the Territory (s 3) is, therefore, redundant.

The *Law of Property (Miscellaneous Provisions) Act 1958*, section 2 is a spent repeal section.

The *Law of Property (Miscellaneous Provisions) Act 1958*, section 4 is about stipulations in a contract. The section has been relocated, in a more modern form, to the *Law Reform (Miscellaneous Provisions) Act 1955* (by an amendment in schedule 3).

Schedule 4	Repeal of redundant or obsolete Acts and regulations
Part 4.3	Amending regulations
Division 4.2.3	Trustee Act 1957

Law of Property (Miscellaneous Provisions) Act 1958 No 7

Division 4.2.3 Trustee Act 1957

Explanatory note for div 4.2.3

The *Trustee Act 1957* is an Act that formerly applied provisions of 2 New South Wales laws (the *Trustee Act 1925* and the *Conveyancing Act 1919*) as laws of the Territory. The *Trustee Act 1957* also applied the rule in *Howe v Earl of Dartmouth* (7 Ves. 137) to leases in the ACT.

Because of amendments of the *Interpretation Act 1967* made by the *Law Reform (Miscellaneous Provisions) Act 1999*, former NSW Acts in force in the Territory immediately before 10 November 1999 became, for all purposes, laws made by the Legislative Assembly. The provisions of the *Trustee Act 1957* that applied provisions of the *Trustee Act 1925* (NSW) as a law of the Territory (part 2) are, therefore, redundant. The provisions of the *Trustee Act 1957* that applied provisions of the *Conveyancing Act 1919* (NSW) as a law of the Territory (part 3, division 1) are also redundant.

The *Trustee Act 1957*, part 3, division 2 deals with the powers of trustees in relation to resumption of property. The resumption of land held under trust is now dealt with by the *Lands Acquisition Act 1994*, section 97.

The *Trustee Act 1957*, part 4 applied the rule in *Howe v Earl of Dartmouth* (7 Ves. 137) to leases in the ACT. Part 4 has been remade, in a more modern form, in the *Trustee Act 1925* by an amendment in schedule 3.

Trustee Act 1957 No 14

Part 4.3 Amending regulations

Explanatory note for pt 4.3

The regulations repealed by this part are amending regulations made before 1 January 2000.

The purpose of the regulations repealed by this part ended when the last of their amending provisions commenced. The effect of repealed amending regulations is preserved by the *Interpretation Act 1967*, section 39 (as applied by the *Subordinate Laws Act 1989*, s 9).

The repeal of the pre-1 January 2000 regulations by this part complements provisions included in the *Interpretation Act 1967* in 1999 that provide for the automatic repeal of amending and repealing subordinate laws when all their provisions have commenced (see s 43, as applied by the *Subordinate Laws Act 1989*, s 9).

The repeals made by this part complete the repeal of the remaining pre-1 January 2000 amending and repealing subordinate laws. This will make it easier for users of ACT legislation to be certain they have found all legislation on a particular topic.

Amendments of the *Co-operative Trading Society Regulations* 1956 No 13
Amendments of the *Co-operative Society Regulations* 1979 Nos 24 and 27
Cooperative Societies Regulations (Amendment) 1982 Nos 52 and 53
Cooperative Societies Regulations (Amendment) 1985 Nos 8 and 18
Cooperative Societies Regulations (Amendment) 1986 Nos 1, 2 and 25
Cooperative Societies Regulations (Amendment) 1987 No 12
Cooperative Societies Regulations (Amendment) 1990 No 11
Cooperative Societies Regulations (Amendment) 1991 No 19

Part 4.4 **Other redundant or obsolete Acts and regulations**

Explanatory note for pt 4.4

This part repeals Acts and regulations that are obsolete or redundant.

The *Education Services for Overseas Students (Registration and Regulation of Providers) Act 1994* is no longer required to regulate the provision of education and training services to overseas students in the ACT. This is now regulated by the *Education Services for Overseas Students Act 2000* (Cwlth). The *Education Services for Overseas Students (Registration and Regulation of Providers) Regulations* are expressly repealed because the Act under which they are made is being repealed.

The *Inebriates Act 1900* is a former NSW Act. Its provisions are obsolete.

The *Inebriates (Amendment) Act 1909* is a former NSW Act that amended the *Inebriates Act 1900*.

The *Inebriates Act 1900* and the *Inebriates (Amendment) Act 1909* were repealed by the *Mental Health Act 1983*, but the repealing provisions were never commenced and the

Schedule 4
Part 4.4

Repeal of redundant or obsolete Acts and regulations
Other redundant or obsolete Acts and regulations

Mental Health Act 1983 was repealed by the *Mental Health (Consequential Provisions) Act 1994*.

The *Public Health (Miscellaneous Provisions) Act 1997* is an amending Act. The remaining provisions of the Act are to commence in the near future.

The *Referendum (Machinery Provisions) Regulations* made machinery provisions for the referendum that entrenched the principles of the proportional representation (Hare-Clark) electoral system. The regulations are spent.

The *Self-Government (Transitional Provisions) Act 1989* made transitional provisions for self-government. The provisions are no longer needed and their previous operation is saved by the *Interpretation Act 1967*, section 42 (Repeal does not end transitional or validating effect etc).

Education Services for Overseas Students (Registration and Regulation of Providers) Act 1994 No 77

Education Services for Overseas Students (Registration and Regulation of Providers) Regulations SL 1994 No 48

Inebriates Act 1900

Inebriates (Amendment) Act 1909

Public Health (Miscellaneous Provisions) Act 1997 No 70

Referendum (Machinery Provisions) Regulations SL 1995 No 2

Self-Government (Transitional Provisions) Act 1989 No 23

Endnote

Penalty units

- 1 The *Interpretation Act 1967*, s 33AA deals with the meaning of offence penalties that are expressed in penalty units.

[Presentation speech made in Assembly on 15 June 2001]

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