



Australian Capital Territory

Legislation Amendment Act 2002

Act 2002 No 11

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Act amended	2
4 Objects	
Section 5 (2) (b) and (c)	2
5 Sections 3, 4 and 5	3
6 Section 6	3
7 Contents of register	
New section 19 (4A)	7
8 Section 41	8
9 Section 45	9
10 Power to make instrument includes power to amend or repeal	
Section 46 (3)	10
11 Section 47	10
12 Notification of registrable instruments	
New section 61 (8A), (8B) and (8C)	13

2002 222B

Contents

		Page
13	General rules about commencement	
	Section 73 (1) (a) and (2) (a)	14
14	Section 73 (3) (b)	14
15	Section 74	14
16	Commencement of naming and commencement provisions on notification day	
	Section 75 (2)	15
17	Commencement by commencement notice	
	Section 77 (2)	15
18	Section 85	16
19	New section 121	16
20	New chapter 14	18
21	Part 15.1, new sections 151 and 152	18
22	New part 15.4	19
23	New chapter 18	21
24	Chapters 18, 19 and 20	24
25	Section 206	24
26	Section 216	25
27	New division 19.3.3	25
28	Part 18.6, heading	27
29	New part 19.6	27
30	Consequential amendments—sch 2	28
31	Repeal of Acts	28
Schedule 1	Minor and consequential amendments of Legislation Act 2001	29
Schedule 2	Consequential amendments	59
Part 2.1	Associations Incorporation Regulations 1991	59
Part 2.2	Auditor-General Act 1996	59
Part 2.3	Bail Act 1992	60
Part 2.4	Building Act 1972	60

		Page
Part 2.5	Casino Control Act 1988	61
Part 2.6	Children and Young People Act 1999	61
Part 2.7	Classification (Publications, Films and Computer Games) (Enforcement) Act 1995	62
Part 2.8	Clinical Waste Act 1990	62
Part 2.9	Competition Policy Reform Act 1996	63
Part 2.10	Consumer Credit (Administration) Act 1996	63
Part 2.11	Coroners Act 1997	63
Part 2.12	Crimes Act 1900	65
Part 2.13	Crimes (Forensic Procedures) Act 2000	67
Part 2.14	Criminal Code 2001	67
Part 2.15	Debits Tax Act 1997	67
Part 2.16	Discrimination Act 1991	68
Part 2.17	Electoral Act 1992	68
Part 2.18	Electricity Safety Act 1971	69
Part 2.19	Environment Protection Act 1997	70
Part 2.20	Fair Trading (Consumer Affairs) Act 1973	71
Part 2.21	First Home Owner Grant Act 2000	72
Part 2.22	Fisheries Act 2000	72
Part 2.23	Forfeiture and Validation of Leases Act 1905	72
Part 2.24	Gas Safety Act 2000	73
Part 2.25	Guardianship and Management of Property Act 1991	73
Part 2.26	Health Records (Privacy and Access) Act 1997	74
Part 2.27	Imperial Acts (Repeal) Act 1988	74
Part 2.28	Independent Competition and Regulatory Commission Act 1997	80
Part 2.29	Interpretation Act 1967	81

Contents

		Page
Part 2.30	Lakes Act 1976	81
Part 2.31	Landlord and Tenant Act 1899	82
Part 2.32	Land (Planning and Environment) Act 1991	82
Part 2.33	Limitation Act 1985	82
Part 2.34	Liquor Act 1975	83
Part 2.35	Low-Alcohol Liquor Subsidies Act 2000	84
Part 2.36	Occupational Health and Safety Act 1989	84
Part 2.37	Perpetuities and Accumulations Act 1985	85
Part 2.38	Public Health Act 1997	85
Part 2.39	Public Interest Disclosure Act 1994	86
Part 2.40	Public Sector Management Act 1994	86
Part 2.41	Race and Sports Bookmaking Act 2001	87
Part 2.42	Residential Tenancies Act 1997	88
Part 2.43	Roads and Public Places Act 1937	88
Part 2.44	Sale of Motor Vehicles Act 1977	89
Part 2.45	Surveyors Act 2001	89
Part 2.46	Taxation Administration Act 1999	90
Part 2.47	Tobacco Act 1927	90
Part 2.48	Tree Protection (Interim Scheme) Act 2001	91
Part 2.49	Utilities Act 2000	91
Part 2.50	Victims of Crime (Financial Assistance) Act 1983	93
Part 2.51	Waste Minimisation Act 2001	94
Part 2.52	Water and Sewerage Act 2000	94
Part 2.53	Workers Compensation Act 1951	95



Australian Capital Territory

Legislation Amendment Act 2002

Act 2002 No 11

An Act to amend the *Legislation Act 2001*, and for other purposes

*Notified under the Legislation Act 2001 on 27 May 2002
(see www.legislation.act.gov.au)*

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

2002 222B

1 Name of Act

This Act is the *Legislation Amendment Act 2002*.

2 Commencement

- (1) This Act commences on the day after its notification day.
- (2) However, a later date or time provided (after ‘commencement:’) at the end of an amendment in schedule 2 has effect as the commencement date or time of the amendment.

Example

An amendment followed by ‘(commencement: the commencement of section 3 of this Act or immediately after the commencement of the *XYZ Act 2001*, whichever is the later)’ means the amendment commences on the commencement of section 3 of this Act or the commencement of the *XYZ Act 2001*, whichever is the later.

3 Act amended

This Act amends the *Legislation Act 2001*.

Note 1 The *Legislation Act 2001* is amended in the body of this Act and in sch 1.

Note 2 Other Acts are amended in sch 2 (see s 30) and several Acts are repealed by s 31.

4 Objects **Section 5 (2) (b) and (c)**

substitute

- (b) restating the law dealing with the ‘life cycle’ of legislation, improving its structure and content, and simplifying its provisions where practicable; and
- (c) assisting users of legislation to find, read, understand and use legislation by—
 - (i) facilitating the shortening and simplification of legislation; and

- (ii) promoting consistency in the form and language of legislation; and
 - (iii) providing rules about the interpretation of legislation; and
 - (iv) facilitating the updating and republication of legislation to ensure its ready availability.
- (3) For this section, the ‘life cycle’ of legislation includes the making (where relevant), notification, commencement, tabling and disallowance (where relevant), operation, interpretation, proof, republication, amendment and repeal of legislation and instruments made under legislation.

5 Sections 3, 4 and 5

renumber as sections 2, 2A and 3

6 Section 6

substitute

4 Application of Act

- (1) This Act applies to all Acts (including this Act) and statutory instruments.
- (2) In particular, Acts and statutory instruments are taken to be made on the basis that they will operate in conjunction with this Act.

Examples

- 1 An Act imposes an obligation and provides that people who ‘fail’ to carry out the obligation are liable to the penalty. The Act does not, however, define ‘fail’ or indicate that the word is used in a special way. In accordance with the dictionary, part 1 to this Act (see s 144), the word ‘fail’ includes ‘refuse’. In other words, a person who refuses to carry out the obligation will be subject to the penalty in the same way as someone who merely neglects the obligation. In this case, the presence in an Act of a word that is defined in the *Legislation Act 2001* attracts the operation of the definition in the dictionary.

- 2 The *XYZ Act 2001* contains the following provision:

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

Because the *XYZ Act* authorises a fee to be determined ‘for this Act’, section 56 of this Act applies and therefore the provisions of part 6.3 (Making of certain statutory instruments about fees) apply to the determination of fees under the provision. In this case, the operation of provisions of the *Legislation Act 2001* is attracted because the *XYZ Act 2001* contains a provision that triggers the application of the part.

- (3) This section is a determinative provision.

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

5 Determinative and non-determinative provisions

- (1) This Act consists of determinative and non-determinative provisions.
- (2) A **determinative provision** is a provision of this Act that is declared to be a determinative provision.

Example

Section 4 (3) provides that section 4 is a determinative provision.

- (3) A **non-determinative provision** is any other provision of this Act.

Example

Section 3 does not contain a provision corresponding to section 4 (3). Therefore section 3 is not a determinative provision.

6 Legislation Act provisions must be applied

- (1) A provision of this Act must be applied to an Act or statutory instrument, in accordance with the terms of the provision, except so far as it is displaced.
- (2) A determinative provision may be displaced expressly or by a manifest contrary intention.

-
- (3) A non-determinative provision may be displaced expressly or by a contrary intention.

Note For the distinction between a ‘manifest contrary intention’ (see s (2)) and ‘contrary intention’ (see s (3)), see the examples in this section.

- (4) The declaration of a provision as ‘determinative’ indicates that it is the intention of the Legislative Assembly that, if the provision is to be displaced at all in a particular case, a more deliberate displacement is required than if the provision were a non-determinative provision.
- (5) This section applies despite any presumption or rule of interpretation.
- (6) A provision of this Act must not be taken to be displaced by a provision of an Act or statutory instrument so far as the provisions can operate concurrently.
- (7) In particular and without limiting subsection (5), a provision of this Act is not displaced by a provision of an Act or statutory instrument because the provisions deal with the same or a similar subject matter.
- (8) This section is a determinative provision.

Examples of different kinds of displacement

1 *Determinative provision—express displacement*

The *Collections Regulation Act 1999* (hypothetical), section 83 contains the following provision:

- (2) The *Legislation Act 2001*, section 47 (3) does not apply to regulations under this Act.

Section 83 (2) illustrates a provision expressly displacing the *Legislation Act 2001*, section 47 (3), a determinative provision.

2 *Determinative provision—manifest contrary intention*

The *Motor Repairers Act 2001* (hypothetical) does not contain a provision like the *Collections Regulation Act 1999*, section 83, but section 79 contains the following provision:

- (3) The regulations may apply, adopt or incorporate an instrument or provision of an instrument as in force from time to time.

Section 79 (3) illustrates a provision displacing the *Legislation Act 2001*, section 47 (3), a determinative provision, by a manifest contrary intention because section 79 (3) clearly contradicts section 47 (3).

3 *Non-determinative provision—contrary intention*

The master of a vessel is charged with contravening the *Liquor Act 2001* (hypothetical), section 126 by selling liquor on or from ‘licensed premises’ otherwise than at a time authorised by the Act. It is claimed that the sale took place on the vessel. The Act defines ‘licensed premises’ to mean that part or those parts of a building or buildings and of the land adjoining it or them as defined by the licensing court. It is argued that the complaint is defective in that a vessel cannot be ‘licensed premises’. However, section 126 is expressed to apply to ‘a licensee, servant, agent or master who sells liquor on or from licensed premises’. In this case, the reference to ‘master’ indicates a contrary intention indicating that the section is intended to apply to liquor sold on or from vessels.

Example of concurrent operation (no displacement)

The *Small Clubs Act 2002* (hypothetical) contains the following provision about how notice of the club’s annual general meeting may be served on members of a registered small club:

60 Serving notice of annual general meeting

The executive committee of a registered small club may serve notice of the annual general meeting of the club on members by pinning the notice to a noticeboard in the club house.

The *Legislation Act 2001*, section 247, a non-determinative provision, allows a document to be served on an individual under an Act in a number of ways (by giving the document to the individual, by sending it by prepaid post etc), but does not mention pinning the document to a noticeboard as a method of giving the notice.

Section 247 is not displaced by the *Small Clubs Act 2002*, section 60, because—

- section 60 does not expressly displace section 247 nor does it indicate a contrary intention (see s 6 (1) and (3)) and, in particular, section 60 does not indicate an intention that the method of service it authorises is to be the only method of serving notice of annual general meetings on members of small clubs; and
- the application of section 247 is not displaced by any presumption or rule of interpretation (see s 6 (5)); and
- sections 60 and 247 can operate concurrently (see s 6 (6)) by allowing complementary methods of service; and

- the fact that sections 60 and 247 deal with the same (or a similar) subject matter does not of itself displace section 247 (see s 6 (7) and also s 6 (5)).

It follows, therefore, that the executive committee is free to serve notice of the annual general meeting under section 60 or section 247.

7 Contents of register

New section 19 (4A)

insert

- (4A) The parliamentary counsel may enter additional material in the register in any way the parliamentary counsel considers is likely to be helpful to users of the register.

Examples

- 1 A uniform legislative scheme is entered into under heads of agreement signed on behalf of the Commonwealth, States and Territories. The Legislative Assembly later passes an Act to implement the scheme on behalf of the ACT and the Act is notified and entered in the register. The agreement is also entered in the register as a notifiable instrument with a notifiable instrument number even though the instrument is not taken to be a notifiable instrument under section 10 (Meaning of *notifiable instrument*). The page of the register for the Act contains the heading 'Registrable instruments' and the agreement is listed underneath. The page of the register for the agreement gives particulars for the agreement and mentions that it is not a notifiable instrument but is included in the register for information.
- 2 An instrument under the Self-Government Act notifying the appointment of Ministers is entered in the register as a notifiable instrument even though the instrument is not taken to be a notifiable instrument under section 10 (Meaning of *notifiable instrument*). The instrument is also numbered as a notifiable instrument. The page of the register for the notification mentions that it is made under the Self-Government Act and is not a notifiable instrument but is included in the register for information.
- 3 The Australian Road Rules that are applied in the ACT under the *Road Transport (Safety and Traffic Management) Regulations 2000* are entered in the register as a notifiable instrument even though the instrument is not taken to be a notifiable instrument under section 47 (Statutory instrument may make provision by applying a law or instrument). The page of the register for the regulations also contains the heading 'Registrable instruments' and the rules are listed underneath. The page of the register for the rules mentions that the rules are applied under the *Road Transport (Safety and*

Traffic Management) Regulations 2000 and that they are to be read with, and as if they formed part of those regulations. The note also explains that because they were applied before the commencement of the *Legislation Act 2001*, they are not a registrable instrument under that Act.

8 Section 41

substitute

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

- (1) This section applies if an Act authorises or requires the Executive to make a subordinate law or disallowable instrument.
- (2) The subordinate law or disallowable instrument is taken to be made by the Executive if—
 - (a) it is signed by 2 or more Ministers who are members of the Executive; and
 - (b) 1 of the signing Ministers is the responsible Minister.
- (3) A subordinate law or disallowable instrument made in accordance with subsection (2) is taken to be made when it is signed by the second Minister signing.
- (4) Subsection (2) (b) does not apply if the responsible Minister cannot sign because he or she is absent from the Territory, ill or on leave.
- (5) In this section:

responsible Minister means—

- (a) the Minister for the time being administering the Act; or
- (b) if, for the time being, different Ministers administer the Act in relation to different matters—
 - (i) if only 1 Minister administers the Act in relation to the relevant matter—that Minister; or

- (ii) if 2 or more Ministers administer the Act in relation to the relevant matter—any of the Ministers; or
- (iii) if subparagraph (ii) does not apply and, for the time being, 2 or more Ministers administer the Act—any of the Ministers;

but does not include a Minister for the time being acting on behalf of the Minister or 2 or more Ministers.

9 Section 45

substitute

45 Power to make court rules (IA s 271)

- (1) The power of an entity to make rules for a court includes power to make rules with respect to any matter necessary or convenient to be prescribed for carrying out or giving effect to the court's jurisdiction under any law that authorises or requires anything to be done in or in relation to the court.
- (2) This section is additional to section 44.
- (3) This section is a determinative provision.

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

- (4) In this section:

court includes a tribunal.

disallowable instrument, for a Commonwealth Act, means a disallowable instrument under the *Acts Interpretation Act 1901* (Cwlth), section 46A.

law means—

- (a) an Act, subordinate law or disallowable instrument; or
- (b) a Commonwealth Act; and

- (c) any regulations, rules, ordinance or disallowable instrument under a Commonwealth Act;

and includes a provision of such a law.

**10 Power to make instrument includes power to amend or repeal
Section 46 (3)**

substitute

- (3) Despite subsection (1), a form that is a registrable instrument may be repealed or repealed and remade (with or without changes), but may not be amended.
- (4) This section is a determinative provision.

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

11 Section 47

substitute

47 Statutory instrument may make provision by applying a law or instrument (SLA s 8)

- (1) This section applies if an Act, subordinate law or disallowable instrument (the *authorising law*) authorises or requires the making of a statutory instrument (the *relevant instrument*) about a matter.
- (2) The relevant instrument may make provision about the matter by applying an ACT law—
 - (a) as in force at a particular time; or
 - (b) as in force from time to time.
- (3) The relevant instrument may make provision about the matter by applying a law of another jurisdiction, or an instrument, as in force only at a particular time.

Note For information on the operation of s (3), see the examples to s (9).

-
- (4) For subsection (3), if—
- (a) the relevant instrument makes provision about a matter by applying a law of another jurisdiction or an instrument; but
 - (b) subsection (3) is not displaced and the law or instrument is not applied as in force from time to time;

the relevant instrument is taken to have applied the law or instrument as in force when the instrument is made.

Example

The *Bushfire Compensation Determination 2002* (hypothetical) provides for the making of claims against a compensation fund. Clause 43 provides that disputes about claims under clause 42 must be decided in accordance with the *Commercial Arbitration Act 1984* (NSW). The determination is made on 1 February 2002. Neither the Act under which the determination is made nor the determination indicates that the NSW Act is applied as in force at a particular date or from time to time. Therefore, the NSW Act as in force on 1 February 2002 is applied by the determination.

- (5) If a law of another jurisdiction or an instrument is applied as in force at a particular time, the text of the law or instrument (as in force at that time) is taken to be a notifiable instrument made under the relevant instrument by the entity authorised or required to make the relevant instrument.
- (6) If subsection (3) is displaced and a law of another jurisdiction or an instrument is applied as in force from time to time, the text of each of the following is taken to be a notifiable instrument made under the relevant instrument by the entity authorised or required to make the relevant instrument:
 - (a) the law or instrument as in force at the time the relevant instrument is made;
 - (b) each subsequent amendment of the law or instrument;
 - (c) if the law or instrument is repealed and remade (with or without changes)—the law or instrument as remade and each subsequent amendment of the law or instrument;

- (d) if a provision of the law or instrument is omitted and remade (with or without changes) in another law or instrument—the provision as remade and each subsequent amendment of the provision.
- (7) The authorising law or, if the relevant instrument is a subordinate law or disallowable instrument, the relevant instrument, may provide that—
 - (a) subsection (5) or (6) does not apply to the relevant instrument; or
 - (b) subsection (5) or (6) applies with the modifications stated in the authorising law or relevant instrument.
- (8) If a provision of an Act, subordinate law or disallowable instrument authorises or requires the application of a law or instrument, the provision authorises the making of changes or modifications to the law or instrument for that application.
- (9) This section is a determinative provision.

Examples for s (3) and s (9)

Here are 2 examples about the operation of subsections (3) and (9): the first illustrates how subsection (3) might be displaced and the second illustrates how a law of another jurisdiction that applies as in force from time to time would operate—

- 1 The effect of subsections (3) and (9), and the definition of *applying* in subsection (10), is that if it is intended to apply, adopt or incorporate a law or instrument as in force from time to time, the authorising law would need to expressly displace subsection (3) (as illustrated in s 6, examples of different kinds of displacement, example 1) *or* indicate a manifest contrary intention (as illustrated in example 2 in those examples).
- 2 The *ABC Regulations 2001* (made under a provision like those illustrated in section 6, examples of different kinds of displacement, examples 1 and 2) provide that noise measurements are to be taken in accordance with the NSW noise control manual as in force from time to time. The effect of the *ABC Regulations 2001* is that whenever the NSW noise control manual is amended in future, the noise measurements must be taken in accordance with the manual as last amended.

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

(10) In this section:

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

applying includes adopting or incorporating.

Note See also s 157 (Defined terms and other parts of speech and grammatical forms).

disallowable instrument, for a Commonwealth Act, means a disallowable instrument under the *Acts Interpretation Act 1901* (Cwlth), section 46A.

instrument includes a provision of an instrument, but does not include an ACT law or a law of another jurisdiction.

law of another jurisdiction means—

- (a) a Commonwealth Act, or any regulations, rules, ordinance or disallowable instrument under a Commonwealth Act; or
- (b) a State Act, or any regulations or rules under a State Act; or
- (c) a New Zealand or Norfolk Island Act, or any regulations or rules under a New Zealand or Norfolk Island Act; or
- (d) a provision of a law mentioned in paragraphs (a) to (c).

12 Notification of registrable instruments **New section 61 (8A), (8B) and (8C)**

insert

- (8A) Despite subsection (2), the parliamentary counsel may notify the making of a registrable instrument even though a requirement prescribed under the regulations for subsection (2) (a **prescribed requirement**) is not complied with.

(8B) Failure to comply with a prescribed requirement in relation to a registrable instrument does not affect the validity of the instrument's notification.

(8C) This section is a determinative provision.

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

13 General rules about commencement Section 73 (1) (a) and (2) (a)

substitute

(a) on the day after its notification day; or

14 Section 73 (3) (b)

substitute

(b) the instrument commences on the day after its notification day.

15 Section 74

substitute

74 Time of commencement (IA s 10A)

- (1) If an Act commences on a day, it commences at the beginning of the day unless a different time of commencement is provided by the Act, another Act, or a commencement notice providing for the commencement of the Act.
- (2) If a statutory instrument commences on a day, it commences at the beginning of the day unless a different time of commencement is provided by the instrument, an Act, or a commencement notice providing for the commencement of the instrument.

16 Commencement of naming and commencement provisions on notification day
Section 75 (2)

substitute

- (2) However, if any of the provisions of a law commence retrospectively, the provisions providing for its name and commencement automatically commence when the earlier or earliest of those provisions commence.

Example

The *XYZ Act 2001* was notified on 1 September 2001. It contains the following provision:

2 Commencement

- (1) This Act, other than sections 9 and 10, commences on a day fixed by the Minister.
- (2) Section 9 is taken to have commenced on 1 July 2001.
- (3) Section 10 is taken to have commenced on 1 August 2001.

The provisions of the *XYZ Act 2001* providing for its name and commencement are taken to have commenced on 1 July 2001.

- (3) This section is a determinative provision.

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

17 Commencement by commencement notice
Section 77 (2)

substitute

- (2) A commencement notice for a law or notifiable instrument is valid even if the day or time fixed or otherwise determined by the notice happens before the notice's notification day.
- (3) If the day or time fixed or otherwise determined by a commencement notice for a law or notifiable instrument happens on or before the notice's notification day, the law or instrument commences on the day after the notice's notification day.

- (4) However, subsection (3) does not apply to the commencement notice if—
- (a) the notice clearly indicates that the law or statutory instrument is to commence at an earlier date or time; and
 - (b) the notice provides for the earlier date or time under authority given by an Act.

Example of par (a)

The commencement notice provides that the law or statutory instrument is ‘taken to have commenced’ at the earlier date or time.

- (5) This section is a determinative provision.

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

18 Section 85

substitute

85 When repeal takes effect (IA s 38)

- (1) This section applies if a law is repealed on a day.
- (2) If the law is remade on that day (with or without changes), the repeal takes effect when the remade law commences.

Note Under s 74, if a law commences on a day, it commences at the beginning of the day unless otherwise provided.

- (3) If the law is not remade on that day (with or without changes), the law continues in force until the end of the day and the repeal takes effect at midnight on the day.

19 New section 121

insert

121 Binding effect of Acts (IA s 7)

- (1) An Act binds everyone, including all governments.

Note See the Self-Government Act, s 27 which provides that, except as provided by the regulations under that Act, an ACT enactment does not bind the Crown in right of the Commonwealth. See also s 120.

- (2) However, an Act does not bind the Territory to the extent that it requires or otherwise provides for the payment of money that, on payment, would form part of the public money of the Territory.
- (3) Also, subsection (1) does not make a government liable to be prosecuted for an offence.
- (4) To the extent that an Act does not bind a government, the same degree of immunity extends to a government entity in relation to an authorised act or omission of the entity.
- (5) This section is a determinative provision.

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

- (6) In this section:

authorised—an act or omission of a government entity is ***authorised*** if—

- (a) for an instrumentality—the act or omission relates to a matter within the scope of the instrumentality’s functions; and
- (b) for an officer or employee of the government—the act or omission relates to a matter within the scope of the duties of the officer or employee; and
- (c) for a contractor who exercises a function on behalf of the government—the act or omission relates to a matter within the scope of the contract; and
- (d) for anyone else who exercises a function on behalf of the government—the act or omission relates to a matter within the scope of the person’s engagement.

government entity includes—

- (a) an instrumentality, officer or employee of the government; and

- (b) a contractor or anyone else who exercises a function on behalf of the government.

government includes the Territory, the Commonwealth, a State, another Territory or New Zealand.

20 New chapter 14

insert

Chapter 14 Interpretation of Acts and statutory instruments

137 Application of ch 14 to statutory instruments (IA s 2 (2))

This chapter applies to a statutory instrument as if—

- (a) the instrument were an Act; and
- (b) a reference to the enactment or passage of the instrument were a reference to its making.

21 Part 15.1, new sections 151 and 152

insert

151 Reckoning of time (IA s 36)

- (1) This section applies if a period is provided or allowed for a purpose by an Act or statutory instrument.
- (2) In working out whether the purpose has been fulfilled within the period provided or allowed, the period is taken to begin at the start point.
- (3) For this section—
 - (a) if a period is to begin from a particular day—the *start point* is the beginning of the next day; and

- (b) if the period is to begin when an act or event happens—the *start point* is the beginning of the day after the act or event happens.

Examples

- 1 The *ABC Act 1995* provides that a person who ceases to be an inspector must return his or her identity card to the authority within 21 days after ceasing to be an inspector. X is notified that his appointment as inspector ends on Friday 1 November. The period of 21 days starts on Saturday 2 November.
 - 2 The *XYZ Act 2001* requires an application for review to be lodged not later than 28 days after service on the licensee of the decision objected to. The period of 28 days begins with the day following the day of service.
- (4) If the last day of the period is not a working day, the last day of the period is the first working day after the end of the period.

Example

The *Hypothetical Act 2000* requires the board to give a copy of its business plan to the Minister not later than 14 days after its preparation. The 14th day is Good Friday (a public holiday) and the following Monday is also a public holiday. Under section 151 (4) of this Act, the last day to give a copy of the business plan is the Tuesday following Easter (the first working day after the 14th day).

152 Continuing effect of obligations (IA s 33B (1))

If, under a provision of an Act or statutory instrument, an act is required to be done within a particular period or before a particular time, the obligation to do the act continues each day after the end of the period or time until the act is done.

22 New part 15.4

insert

Part 15.4 Preservation of certain common law privileges

170 Privileges against selfincrimination and exposure to civil penalty

- (1) An Act or statutory instrument must be interpreted to preserve the common law privileges against selfincrimination and exposure to the imposition of a civil penalty.
- (2) However, this section does not affect the operation of the *Evidence Act 1995* (Cwlth).

Note The *Evidence Act 1995* (Cwlth), s 128 contains provisions that apply if a witness raises these privileges in a proceeding. The section applies to proceedings in ACT courts (see *Evidence Act 1995* (Cwlth), s 4). However, the privileges have been abolished for bodies corporate (see *Evidence Act 1995* (Cwlth), s 187).

- (3) This section is a determinative provision.

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

171 Client legal privilege

- (1) An Act or statutory instrument must be interpreted to preserve the common law privilege in relation to client legal privilege (also known as legal professional privilege).
- (2) However, this section does not affect the operation of the *Evidence Act 1995* (Cwlth).

Note The *Evidence Act 1995* (Cwlth), pt 3.10, div 1 contains provisions about client legal privilege. The provisions apply to proceedings in ACT courts (see *Evidence Act 1995* (Cwlth), s 4).

- (3) This section is a determinative provision.

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

23 New chapter 18

Note Current *Legislation Act 2001*, ch 18 is renumbered as ch 19 by this Act.
insert

Chapter 18 Offences

Note See also s 133 to s 135 (which relate to penalty units and penalty provisions) and s 161 (Corporations liable to offences).

188 Meaning of *Territory law* in ch 18

In this chapter:

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

189 Reference to offence includes reference to related ancillary offences

A reference to an offence against a Territory law includes a reference to an offence against the *Crimes Act 1900*, part 9 that relates to the Territory law.

Example

X is the holder of a licence under the *Plant Development Act 2001* (hypothetical). Section 23 of the Act provides for the cancellation of a licence if a licence holder commits an offence against the Act. While his business premises are being inspected, X incites an employee to obstruct the inspector. As a result, the employee obstructs the inspector (which is an offence against the Act). X is later convicted of incitement against the *Crimes Act 1900*, section 183 (which is an offence in the Crimes Act, part 9). Because of the Legislation Act, section 189, X is taken to have committed an offence against the Plant Development Act and is therefore liable to have his licence cancelled.

Note The result would be the same if X had been convicted of any of the following offences in the Crimes Act, part 9 that related to the offence of obstruction in the Plant Development Act:

- accessory after the fact (s 181)
- conspiracy (s 184).

Apart from the Legislation Act, section 189, the other offences in the Crimes Act, part 9 could also apply to the offence in the Plant Development Act. These are:

- aiding and abetting (s 180)
- attempts (s 182).

190 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.

191 Offences against 2 or more laws (IA s 33F)

- (1) If an act or omission by a person is an offence against 2 or more Territory laws, the person may be prosecuted and convicted for any of the offences, but is not liable to be punished more than once for the act or omission.
- (2) If—
 - (a) an act or omission by a person is an offence against both a Territory law and a law of another jurisdiction; and
 - (b) the person has been punished for the offence against the law of the other jurisdiction;

the person is not liable to be punished for the offence against the Territory law.

- (3) In this section:

law of another jurisdiction means a law of the Commonwealth, a State, another Territory or New Zealand.

192 When must prosecutions begin? (IA s 33H)

- (1) A prosecution for any of the following offences against a Territory law may be begun at any time:
 - (a) an offence by an individual punishable by imprisonment, on a first conviction, for longer than 6 months;
 - (b) an offence by a corporation punishable, on a first conviction, by a fine of more than 150 penalty units;
 - (c) an aiding and abetting offence by an individual in relation to an offence by a corporation punishable, on a first conviction, by a fine of more than 150 penalty units;
 - (d) an offence against the *Crimes Act 1900*, section 90 (Minor theft).
- (2) A prosecution for any other offence against a Territory law may be begun only within—
 - (a) 1 year after the day of commission of the offence; or
 - (b) if a Territory law provides for another period—that period.
- (3) However, if a coroner's inquest or inquiry, or an inquiry under the *Inquiries Act 1991* or the *Royal Commissions Act 1991*, is held into a matter that discloses or is otherwise found to relate to an offence mentioned in subsection (2), a prosecution for the offence may be begun within 1 year after the day when—
 - (a) the coroner's report is made; or
 - (b) the report of the board of inquiry or royal commission is given to the Chief Minister.
- (4) In this section:

aiding and abetting offence means—

 - (a) an offence arising under the *Crimes Act 1900*, section 180 (Aiding and abetting); or

- (b) another offence against a Territory law dealing with aiding and abetting.

193 Continuing offences (IA s 33B (2))

- (1) This section applies to a requirement to do an act if—
 - (a) the act is required to be done under a law within a particular period or before a particular time; and
 - (b) failure to comply with the requirement is an offence against the law.
- (2) A person who fails to comply with the requirement commits an offence for each day until the act is done.
- (3) A day mentioned in subsection (2) includes any day of conviction for an offence and any later day.

Note See also s 152 (Continuing effect of obligations).

24 Chapters 18, 19 and 20

renumber as follows:

- *chapters 18, 19 and 20 as chapters 19, 20 and 21*
- *parts 18.1 to 18.6 as parts 19.1 to 19.6*
- *divisions 18.3.1 and 18.3.2 as divisions 19.3.1 and 19.3.2*

25 Section 206

substitute

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

- (1) An appointment must be made, or evidenced, by writing (the *instrument of appointment*) signed by the appointer.
- (2) If a law provides for a maximum or minimum period of appointment, the instrument of appointment must state the period for which the appointment is made.

Examples of stated appointment periods

- 1 2 years
- 2 until age 65

26 Section 216*substitute***216 Acting appointments must be in writing etc (IA s 28 (7))**

- (1) An acting appointment must be made, or evidenced, by writing (the *instrument of appointment*) signed by the appointer.
- (2) If a law provides for a maximum or minimum period of appointment, the instrument of appointment must state the period for which the acting appointment is made.

Examples of stated appointment periods

- 1 1 year
- 2 until 31 December 2002 (a period of 9 months)

Note See also s 219 (Appointer may decide terms of acting appointment etc) and s 221 (How long does an acting appointment operate?)

27 New division 19.3.3*insert***Division 19.3.3 Appointments—Assembly consultation****226 Meaning of *statutory position* in div 19.3.3(SAA s 3)**

In this division:

statutory position means a position (including as a member of a Territory authority) established under an Act.

Note *Position* includes office (see dict, pt 1, def of *position*).

227 Application of div 19.3.3 (SAA s 4 (1), s 6)

- (1) This division applies if a Minister has the power under an Act to appoint a person to a statutory position.
- (2) However, this division does not apply to an appointment of—
 - (a) a public servant to a statutory position (whether or not the Act under which the appointment is made requires that the appointee be a public servant); or
 - (b) a person to act in a statutory position for not longer than 6 months, unless the appointment is of the person to act in the position for a 2nd or subsequent consecutive period; or
 - (c) a person to a statutory position if the only function of the position is to advise the Minister.

228 Consultation with appropriate Assembly committee (SAA s 4 (1))

- (1) Before making an appointment to a statutory position, a Minister must consult—
 - (a) a standing committee of the Legislative Assembly nominated by the Speaker for the purpose; or
 - (b) if no nomination under paragraph (a) is in force—the standing committee of the Legislative Assembly responsible for the scrutiny of public accounts.
- (2) The committee may make a recommendation to the Minister about the proposed appointment.
- (3) The Minister must not make the appointment until the Minister has received a recommendation or 30 days have passed since the consultation took place, whichever happens first.
- (4) In making the appointment, the Minister must have regard to any recommendation received.

229 Disallowable instrument (SAA s 5)

The instrument making, or evidencing, an appointment to which this division applies is a disallowable instrument.

Note A disallowable instrument must be notified and presented to the Legislative Assembly (see ch 7 (Presentation, amendment and disallowance of subordinate laws and disallowable instruments)).

28 Part 18.6, heading

substitute

Part 19.7 Other matters**29 New part 19.6**

insert

Part 19.6 Functions of Executive and Ministers**253 Exercise of functions of Executive (AA s 3A)**

- (1) A function given to the Executive under an Act may be exercised by any 2 Ministers acting in concert.
- (2) The exercise of a function under subsection (1) is taken to be the exercise of the function by the Executive.
- (3) This section is subject to section 41 (Making of certain statutory instruments by Executive).

254 Administration of matters not allocated (AA s 4)

If a matter relating to the Executive's functions is not allocated under the Self-Government Act, section 43 (1), the Chief Minister administers the matter.

254A Delegation by Minister (AA s 5)

A Minister may delegate the Minister's functions under an Act or statutory instrument to anyone else.

Note For the making of delegations and the exercise of delegated functions, see *Legislation Act 2001*, pt 19.4.

30 Consequential amendments—sch 2

Schedule 2 amends the Acts mentioned in it.

31 Repeal of Acts

- (1) The following Acts are repealed:
 - *Administration Act 1989* No 41
 - *Interpretation Act 1967* No 48
 - *Statutory Appointments Act 1994* No 32
- (2) Each Act mentioned in subsection (1) is declared to be a law to which the *Legislation Act 2001*, section 88 (Repeal does not end transitional or validating effect etc) applies.

Schedule 1 Minor and consequential amendments of Legislation Act 2001

(see s 3)

[1.1] Section 4 (2), note, dot points

substitute

- AA: *Administration Act 1989*
- EA: *Evidence Act 1971*
- IA: *Interpretation Act 1967*
- LRA: *Legislation (Republication) Act 1996*
- SAA: *Statutory Appointments Act 1994*
- SLA: *Subordinate Laws Act 1984.*

[1.2] Section 19 (3)

omit

However, the

substitute

The

[1.3] Section 19

renumber subsections when Act next republished under Legislation Act 2001

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

omit

to be authorised by the parliamentary counsel

substitute

to be authorised

[1.5] New section 28 (9)

insert

- (9) This section is a determinative provision.

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

[1.6] New section 42 (3)

insert

- (3) This section is a determinative provision.

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

[1.7] New section 43 (5)

insert

- (5) This section is a determinative provision.

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

[1.8] Section 44 (3)

omit

, except so far as the authorising law otherwise expressly provides

[1.9] New section 44 (4)

insert

- (4) This section is a determinative provision.

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

[1.10] New section 48 (4)

insert

- (4) This section is a determinative provision.

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

[1.11] New section 49 (4)

insert

- (4) This section is a determinative provision.

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

[1.12] Section 50

omit

If

substitute

- (1) If

[1.13] New section 50 (2)

insert

- (2) This section is a determinative provision.

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

[1.14] New section 52 (2A)

insert

- (2A) This section is a determinative provision.

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

[1.15] Section 52

renumber subsections when Act next republished under Legislation Act 2001

[1.16] Section 53

omit

If

substitute

(1) If

[1.17] New section 53 (2)

insert

(2) This section is a determinative provision.

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

[1.18] New section 54 (3)

insert

(3) This section is a determinative provision.

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

[1.19] Section 56 (4) (c)

omit

a combination

substitute

by a combination

[1.20] New section 56 (6)

insert

(6) This section is a determinative provision.

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

[1.21] New section 57 (5)

insert

(5) This section is a determinative provision.

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

[1.22] New section 58 (7A)

insert

(7A) This section is a determinative provision.

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

[1.23] Section 58

renumber subsections when Act next republished under Legislation Act 2001

[1.24] Section 61 (2)

after

regulations

insert

(whether in relation to the form of the instrument, in relation to the making of the request or otherwise)

[1.25] Section 61

renumber subsections when Act next republished under Legislation Act 2001

[1.26] Section 62

omit

A registrable

substitute

- (1) A registrable

[1.27] New section 62 (2)

insert

- (2) This section is a determinative provision.

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

[1.28] Section 64 heading

substitute

64 Presentation of subordinate laws and disallowable instruments

[1.29] New section 64 (3)

insert

- (3) This section is a determinative provision.

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

[1.30] New section 65 (5)

insert

- (5) This section is a determinative provision.

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

[1.31] New section 65A (7)

insert

- (7) This section is a determinative provision.

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

[1.32] New section 66 (3)*insert*

- (3) This section is a determinative provision.

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

[1.33] New section 67 (4)*insert*

- (4) This section is a determinative provision.

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

[1.34] New section 68 (8)*insert*

- (8) This section is a determinative provision.

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

[1.35] New section 69 (7)*insert*

- (7) This section is a determinative provision.

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

[1.36] New section 70 (4)*insert*

- (4) This section is a determinative provision.

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

[1.37] New section 71 (3)*insert*

(3) This section is a determinative provision.

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

[1.38] Section 73 (5) (d)

insert

(d) section 81 (Exercise of powers between notification and commencement).

[1.39] New section 73 (6)

insert

(6) This section is a determinative provision.

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

[1.40] New section 76 (2A)

insert

(2A) This section is a determinative provision.

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

[1.41] Section 76

renumber subsections when Act next republished under Legislation Act 2001

[1.42] Section 77 (1)

after

law

insert

or notifiable instrument

[1.43] Section 78*substitute***78 Separate commencement of amendments**

- (1) Amendments made by a provision of a law may be given separate commencements, whether or not the provision is self-contained.

Examples

- 1 A provision of an amending law inserts 2 sections. The sections may be given separate commencements.
- 2 A provision of an amending law inserts a section that is divided into paragraphs. The paragraphs may be given separate commencements.

- (2) This section is a determinative provision.

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

[1.44] Section 79 (2)*substitute*

- (2) This section is a determinative provision.

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

[1.45] Section 81 (1) (a) and (b)*substitute*

- (a) the power is given by a law (the *authorising law*) that has been notified but has not commenced;
- (b) the power is given by a law (the *authorising law*) as amended by another law (the *amending law*) and the laws have been notified, but all or any of them have not commenced.

[1.46] Section 81 (4) (a)*substitute*

- (a) for an appointment or statutory instrument that is a registrable instrument—the day after its notification day; or

[1.47] New section 81 (6)

insert

- (6) This section is a determinative provision.

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

[1.48] Section 83

omit

If

substitute

- (1) If

[1.49] New section 83 (2)

insert

- (2) This section is a determinative provision.

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

[1.50] New section 84 (4A)

insert

- (4A) This section is a determinative provision.

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

[1.51] Section 84

renumber subsections when Act next republished under Legislation Act 2001

[1.52] Section 84A (4)

substitute

- (4) This section is a determinative provision.

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

[1.53] New section 86 (3A)

insert

- (3A) This section is a determinative provision.

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

[1.54] Section 86

renumber subsections when Act next republished under Legislation Act 2001

[1.55] New section 87 (4)

insert

- (4) This section is a determinative provision.

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

[1.56] New section 88 (6)

insert

- (6) This section is a determinative provision.

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

[1.57] New section 89 (7A)

insert

- (7A) This section is a determinative provision.

Schedule 1 Minor and consequential amendments of Legislation Act 2001

Amendment [1.58]

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

[1.58] Section 89 (8), definition of *appropriation Act*

substitute

appropriation Act—see the *Financial Management Act 1996*, dictionary.

[1.59] Section 89, example 1, last dot point

substitute

- a provision requiring an amended Act (the *XYZ Act 1990*), or a provision of the *XYZ Act 1990*, to be renumbered in the next republication of the Act under this Act.

[1.60] Section 89

renumber subsections when Act next republished under Legislation Act 2001

[1.61] Section 91 (9) (e)

omit

ACT

[1.62] New section 91 (9A)

insert

(9A) This section is a determinative provision.

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

[1.63] Section 91 (9), examples 4 and 5

substitute

- 4 If a section numbered '7A' is to be inserted, by an amending section headed 'division 2.2, new section 7A', into an amended law with an existing sequence 'section 7 [in division 2.2]—division 2.3 [heading]—section 8', inserted section 7A is inserted between section 7 and the heading to division 2.3 (that is, at the end of division 2.2).

- 5 If a section numbered '7A' is to be inserted, by an amending section headed 'division 2.3, new section 7A', into an amended law with an existing sequence 'section 7 [in division 2.2]—division 2.3 [heading]—section 8', inserted section 7A is inserted between the heading to division 2.3 and section 8 (that is, at the beginning of division 2.3).

[1.64] Section 91

renumber subsections when Act next republished under Legislation Act 2001

[1.65] Section 92

omit

If

substitute

- (1) If

[1.66] Section 92

omit

unless the law otherwise expressly provides

[1.67] Section 92, new example

insert

Example

The *XYZ Amendment Act 2002* is expressed to omit the word 'authorised' from the *ABC Act 1998*, section 20. The word 'authorised' is used once in the heading to section 20, 3 times in subsection (1) of section 20 and twice in subsection (3) of section 20. The amendment omits each of those references to the word 'authorised'.

[1.68] New section 92 (2)

insert

- (2) This section is a determinative provision.

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

[1.69] New section 93 (11)

insert

(11) This section is a determinative provision.

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

[1.70] New section 94 (2A)

insert

(2A) This section is a determinative provision.

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

[1.71] Section 94

renumber subsections when Act next republished under Legislation Act 2001

[1.72] Section 95

omit

If

substitute

(1) If

[1.73] New section 95 (2)

insert

(2) This section is a determinative provision.

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

[1.74] New section 96 (5)

insert

(5) This section is a determinative provision.

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

[1.75] Section 98 (1), example

substitute

Example

A former NSW Act may be referred to by using the name of the NSW Act to which it corresponds eg '*Truck Act 1900*'. In other words, it is not necessary to add words indicating that it is a former NSW Act.

[1.76] Section 102 (3)

omit

[1.77] Section 102 (4)

renumber as section 102 (3)

[1.78] Section 105 (1)

omit

(1) In

substitute

In

[1.79] Section 105 (2)

omit

[1.80] New section 120 (5)

insert

(5) This section is a determinative provision.

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

[1.81] Section 122 (1)

omit

, except so far as the contrary intention appears

[1.82] New section 126 (8)

insert

(8) This section is a determinative provision.

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

[1.83] New section 127 (7)

insert

(7) This section is a determinative provision.

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

[1.84] Section 132 (4)

substitute

(4) This section is a determinative provision.

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

[1.85] Section 133 (2)

substitute

(2) This section is a determinative provision.

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

[1.86] New section 134 (8)

insert

(8) This section is a determinative provision.

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

[1.87] New section 135 (7)

insert

- (7) This section is a determinative provision.

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

[1.88] Section 136

omit

[1.89] Chapter 15, note to chapter heading

omit

[1.90] Section 145

omit

, except so far as the contrary intention appears

[1.91] Section 146 (3), (4) and (5)

substitute

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

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

[1.92] Section 146 (6)

renumber as section 146 (4)

[1.93] New section 147 (8)

insert

- (8) This section is a determinative provision.

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

[1.94] Section 148

omit

Except so far as the contrary intention appears, words

substitute

Words

[1.95] Section 149

omit

, except so far as the contrary intention appears

[1.96] Section 150

omit

, except so far as the contrary intention appears

[1.97] Section 155

omit

A definition

substitute

(1) A definition

[1.98] New section 155 (2)

insert

(2) This section is a determinative provision.

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

[1.99] Section 157

substitute

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.

Example

The *Publication (Grants) Act 2001* contains a definition of **publish** and also contains other forms of the same word ('published', 'publisher', 'publishes', 'publishing' and 'publication'). Because of this section, all forms of the word will have the same meaning except so far as the Act otherwise expressly provides or a contrary intention appears (see s 6 (2)).

[1.100] Section 160 (1)

omit

, except so far as the contrary intention appears

[1.101] New section 160 (3)

insert

- (3) Subsection (2) does not limit the operation of section 6.

Note Section 6 deals with the displacement of a provision of this Act.

[1.102] Section 161 (1)

omit

, except so far as the contrary intention appears

[1.103] Section 168

omit

, except so far as the contrary intention appears

[1.104] Section 176 (3)

substitute

- (3) The jurisdiction so vested is not limited by any limits to which any other jurisdiction of the court or tribunal may be subject.

Note See also s 45 which relates to the making of rules carrying out or giving effect to the court's jurisdiction.

[1.105] Section 177

substitute

If an amount is owing under a law to a person (the *creditor*) by another person (the *debtor*), the creditor may recover the amount as a debt owing by the debtor to the creditor in a court of competent jurisdiction.

[1.106] Section 178 (1)

omit

- (1) A court

substitute

A court

[1.107] Section 178 (2)

omit

[1.108] Section 179 (3)

substitute

- (3) This section is a determinative provision.

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

[1.109] Section 180 (3)

omit

[1.110] Section 185

renumber as section 182

[1.111] Section 186

omit

[1.112] Sections 187 to 191

renumber as sections 183 to 187

[1.113] Section 197 (1)

omit

(1) If

substitute

If

[1.114] Section 197 (2)

omit

[1.115] Section 199 (3), new example

insert

Example

The ACT Conference Organisers Registration Board is a statutory body consisting of 5 members. At a meeting of the board it is agreed to exempt a conference organiser from registration on certain conditions. On the day after the meeting, 1 of the members of the board (X) resigns and another person (Y) is appointed to the board in X's place. At the next meeting of the board, the board considers additional information submitted by the conference organiser and agrees to amend the conditions of exemption. Because of subsection (3), the board's ability to use its power of exemption is not affected by a change in the membership of the board.

[1.116] New section 199 (4A)

insert

- (4A) Subsections (3) and (4) do not affect any quorum requirement applying to the body.

Example

The Act establishing the board mentioned in the example to subsection (3) provides that the quorum for a meeting of the board is the chairperson or deputy chairperson and 2 other members. If the quorum requirement was complied with at each meeting mentioned in the example, the result mentioned in the example would be the same whether or not X attended the first meeting and whether or not Y attended the second meeting.

[1.117] Section 199

renumber subsections when Act next republished under Legislation Act 2001

[1.118] Division 18.3.1, new note

insert

Note for div 18.3.1

Certain statutory appointments made by a Minister require consultation with a Legislative Assembly committee and are disallowable (see div 19.3.3 (Appointments—Assembly consultation)).

[1.119] Section 205 (1)

omit

- (1) This

substitute

This

[1.120] Section 205 (2)

omit

[1.121] Section 215 (1)

omit

(1) This

substitute

This

[1.122] Section 215 (2)

omit

[1.123] Section 219 (1), new example

insert

Example for par (b)

A appoints X to act in a position for 10 months. Two months after X begins to act, A ends the appointment.

[1.124] Section 221 (2), new example

insert

Example for s (2)

A appoints X to act in Y's position for a year while Y is on secondment in another agency. Three months after X begins to act, Y is permanently transferred to the other agency. One month later, Z is appointed to the position in which X is acting. The appointment of Z brings X's acting appointment to an end.

[1.125] Section 230 (3)

omit

[1.126] Section 231 (2)

substitute

(2) However, if a law authorises or requires an entity to delegate a function, the function may not be subdelegated by the delegate.

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. Compare s 236 which deals with the subdelegation of a power to delegate.

- (3) Subsection (2) is a determinative provision.

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

[1.127] Section 236 (2)

substitute

- (2) A power to delegate may not be delegated by the appointer.

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. Compare s 231 which deals with the subdelegation of a delegated function.

- (3) Subsection (2) is a determinative provision.

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

[1.128] Section 250 (3)

omit

adduced

substitute

given

[1.129] Section 251 (2) (b)

omit

provide

[1.130] Section 255 (1), new note

insert

Note See also s 46 (3) which deals with the repeal and replacement of forms and prevents their amendment.

[1.131] Section 255 (9)

substitute

(9) This section is a determinative provision.

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

[1.132] Sections 260 and 261

substitute

300 Delegation by parliamentary counsel

(1) The parliamentary counsel may delegate the parliamentary counsel's functions under this Act to a public servant.

Note For the making of delegations and the exercise of delegated functions, see *Legislation Act 2001*, pt 19.4.

(2) However, the parliamentary counsel may only delegate a function under part 11.3 (Editorial changes) to:

- (a) a person performing the duties of deputy parliamentary counsel in the public service; or
- (b) a public servant prescribed under the regulations.

301 References to Administration Act 1989 etc

(1) In any Act, statutory instrument or document, a reference to the *Administration Act 1989*, the *Interpretation Act 1967*, the *Legislation (Republication) Act 1996* or the *Subordinate Laws Act 1989* is, in relation to anything dealt with in this Act, a reference to this Act.

- (2) In any Act, statutory instrument or document, a reference to a particular provision of the *Administration Act 1989*, the *Interpretation Act 1967*, the *Legislation (Republication) Act 1996* or the *Subordinate Laws Act 1989* is, in relation to anything dealt with in this Act, a reference to the corresponding provision of this Act.

[1.133] Sections 262 and 263

renumber as sections 302 and 303 when Act next republished under Legislation Act 2001

[1.134] Section 264 heading

substitute

264 Application of s 47 (3) to (6)

[1.135] Section 264 (1)

omit

a particular time or from time to time, section 47 (2) and (3)

substitute

at a particular time or from time to time, section 47 (3) to (6)

[1.136] Sections 264 to 274

renumber beginning at section 304 when Act next republished under Legislation Act 2001

[1.137] Section 267 (1)

omit

or the *Statute Law Amendment Act 2001 (No 2)*, schedule 2

substitute

, the *Statute Law Amendment Act 2001 (No 2)*, schedule 2 or the *Legislation Amendment Act 2002*

[1.138] Section 267 (2) (b)

omit

part 2.1

substitute

part 2.1; or

[1.139] New section 267 (2) (c)

insert

- (c) the provisions of the *Administration Act 1989*, the *Interpretation Act 1967*, and the *Statutory Appointments Act 1994*, in force immediately before the commencement of the *Legislation Amendment Act 2002*.

[1.140] Section 267 (5)

substitute

- (5) This section expires 1 year after the commencement of the *Legislation Amendment Act 2002*.

[1.141] Section 268 (2)

substitute

- (2) This section expires 1 year after the commencement of the *Legislation Amendment Act 2002*.

[1.142] Dictionary, part 1, new definitions

insert

by-laws, in relation to an Act, means by-laws made or in force under the Act.

environment protection authority means the Environment Protection Authority under the *Environment Protection Act 1997*.

for, in relation to an Act or statutory instrument, includes for the purposes of the Act or statutory instrument.

Note Under s 7 (3) and s 10 (2) a reference to an Act or statutory instrument includes a reference to a provision of an Act or statutory instrument.

[1.143] Dictionary, part 1, definitions of *former NSW Act* and *former UK Act*

substitute

former NSW Act means an Act corresponding to a NSW Act mentioned in schedule 1.

Note 1 The *Crimes Act 1900* is taken to have been enacted by the Legislative Assembly because of the *Crimes Legislation (Status and Citation) Act 1992*. The 1992 Act was repealed by the *Law Reform (Miscellaneous Provisions) Act 1999*, but its previous operation was saved (see s 5 (2)).

Note 2 The other former NSW Acts are taken to have been enacted by the Legislative Assembly because of the *Interpretation Act 1967*, s 65. Section 65 has expired, but its previous operation was saved (see s 65 (3)).

former UK Act means an Act corresponding to a UK Act mentioned in schedule 1.

Note Former UK Acts are also taken to have been enacted by the Legislative Assembly because of the *Interpretation Act 1967*, s 65.

[1.144] Dictionary, part 1, definition of *indictable offence*

substitute

indictable offence—see section 190 (1).

[1.145] Dictionary, part 1, definition of *judge*

omit

, of the Supreme Court,

[1.146] Dictionary, part 1, new definition of *national capital authority*

insert

national capital authority means the National Capital Authority under the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth).

[1.147] Dictionary, part 1, definition of *repeal*, paragraphs (d) and (e)

renumber as paragraphs (e) and (f)

[1.148] Dictionary, part 1, definition of *repeal*, new paragraph (d)

insert

- (d) for a statutory instrument—revoke the instrument (or part of it); and

[1.149] Dictionary, part 1, definition of *rules*

substitute

rules means—

- (a) of a court or tribunal—rules made by the person or body having power to make rules (however described) regulating the practice and procedure of the court or tribunal; and
- (b) in relation to an Act—rules made or in force under the Act.

[1.150] Dictionary, part 1, definition of *statutory office-holder*

substitute

statutory office-holder means a person occupying a position under an Act or statutory instrument (other than a position in the public service).

[1.151] Dictionary, part 1, definition of *summary offence*

substitute

summary offence—see section 190 (2).

[1.152] Dictionary, part 1, new definition of *working day*

insert

working day means a day that is not a Saturday, Sunday or public holiday.

[1.153] Dictionary, part 2, new definition of *determinative provision*

insert

determinative provision—see section 5 (2).

[1.154] Dictionary, part 2, definition of *law*, paragraph (a)

omit

[1.155] Dictionary, part 2, definition of *law*, paragraphs (b) to (h)

renumber as paragraphs (a) to (g)

[1.156] Dictionary, part 2, new definition of *non-determinative provision*

insert

non-determinative provision—see section 5 (3).

Schedule 2 Consequential amendments

(see s 30)

Part 2.1 Associations Incorporation Regulations 1991

[2.1] Schedule 1, rule 1 heading

substitute

1 Definitions for model rules

[2.2] Schedule 1, rule 1 (1)

omit

(1)

[2.3] Schedule 1, rule 1 (2) and (3)

substitute

1A Application of Legislation Act 2001

The *Legislation Act 2001* applies to these rules in the same way as it would if they were an instrument made under the Act.

Part 2.2 Auditor-General Act 1996

[2.4] Schedule 1, new clause 7

insert

7 Application of Legislation Act, div 19.3.3

The *Legislation Act 2001*, division 19.3.3 (Appointments—Assembly consultation) applies to the appointment of a person to be auditor-general, or to act as auditor-general, as if the power to make the appointment were vested in a Minister, and in that application a

reference in the division to a Minister is taken to be a reference to the Executive.

Part 2.3 Bail Act 1992

[2.5] Section 3 (1), definition of *domestic violence offence*, paragraph (c)

omit

(commencement: the commencement of section 3 of this Act or immediately after the commencement of the *Protection Orders (Consequential Amendments) Act 2001*, whichever is the later)

[2.6] Section 3 (1), definition of *domestic violence offence*

renumber paragraphs when Act next republished under Legislation Act 2001

(commencement: the commencement of section 3 of this Act or immediately after the commencement of the *Protection Orders (Consequential Amendments) Act 2001*, whichever is the later)

Part 2.4 Building Act 1972

[2.7] Section 6A (2)

substitute

- (2) Subsection (1) has effect despite the *Legislation Act 2001*, section 121 (Binding effect of Acts).
- (3) This section expires on 1 July 2004.

[2.8] Section 63B (1), new notes

insert

Note 1 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see *Legislation Act 2001*, s 104).

Note 2 A reference to an offence against a Territory law includes a reference to an offence against the *Crimes Act 1990*, pt 9 (Aiding and abetting, accessories, attempts, incitement and conspiracy) that relates to the law (see *Legislation Act 2001*, s 189).

[2.9] Section 63B (8)

omit

Part 2.5 Casino Control Act 1988

[2.10] Section 3E

omit

[2.11] Section 100 (1) (b), new note

insert

Note A reference to an offence against a Territory law includes a reference to an offence against the *Crimes Act 1990*, pt 9 (Aiding and abetting, accessories, attempts, incitement and conspiracy) that relates to the law (see *Legislation Act 2001*, s 189).

Part 2.6 Children and Young People Act 1999

[2.12] Section 192 (3) (d), new note

insert

Note The *Legislation Act 2001*, s 171 deals with the application of client legal privilege.

[2.13] Section 192 (7)

omit

Part 2.7 Classification (Publications, Films and Computer Games) (Enforcement) Act 1995

[2.14] Section 54A, definition of *offence*

omit

(commencement: the commencement of section 3 of this Act or immediately after the commencement of the *Classification (Publications, Films and Computer Games) (Enforcement) Amendment Act 2001*, schedule 1, amendment 1.12, whichever is the later)

Part 2.8 Clinical Waste Act 1990

[2.15] Section 2, new definition of *offence against this Act*

insert

offence against this Act includes an offence against this Act that there are reasonable grounds for believing has been, or will be, committed.

Note A reference to an offence against a Territory law includes a reference to an offence against the *Crimes Act 1990*, pt 9 (Aiding and abetting, accessories, attempts, incitement and conspiracy) that relates to the law (see *Legislation Act 2001*, s 189).

[2.16] Section 4

omit

Part 2.9 **Competition Policy Reform Act 1996**

[2.17] Section 7 (3)

omit

Interpretation Act 1967

substitute

Legislation Act 2001

Part 2.10 **Consumer Credit (Administration) Act 1996**

[2.18] Section 121 (4), new note

insert

Note The *Legislation Act 2001*, s 171 deals with the application of client legal privilege.

[2.19] Section 121 (6)

omit

Part 2.11 **Coroners Act 1997**

[2.20] Section 102

substitute

102 Annual report of court

- (1) The Chief Coroner must give a report relating to the activities of the court during each financial year to the Attorney-General for presentation to the Legislative Assembly.
- (2) The report must include particulars of—

- (a) reports prepared by coroners into deaths in custody and findings contained in those reports; and
 - (b) notices given under section 14 (3); and
 - (c) recommendations made under section 57 (3); and
 - (d) responses of agencies under section 76, including correspondence about the responses.
- (3) The Chief Coroner must give the report to the Attorney-General as soon as practicable after the end of the financial year and, in any event, within 6 months after the end of the financial year.
- (4) If the Chief Coroner is of the opinion that it will not be reasonably practicable to comply with subsection (3), the Chief Coroner may within that period apply, in writing, to the Attorney-General for an extension of the period.
- (5) The application must include a statement of reasons for the extension.
- (6) The Attorney-General may give the extension (if any) the Attorney-General considers reasonable in the circumstances.
- (7) If the Attorney-General gives an extension, the Attorney-General must present to the Legislative Assembly, within 3 sitting days after the day the extension is given—
- (a) a copy of the application given to the Attorney-General under subsection (4); and
 - (b) a statement by the Attorney-General stating the extension given and the Attorney-General's reasons for giving the extension.
- (8) The Attorney-General must present a copy of a report under this section to the Legislative Assembly within 6 sitting days after the day the Attorney-General receives the report.
- (9) If the Chief Magistrate fails to give a report to the Attorney-General in accordance with this section, the Chief Magistrate must give the

Attorney-General a written statement explaining why the report was not given to the Attorney-General.

- (10) The statement must be given to the Attorney-General within 14 days after the end of the period within which the report was required to be given to the Attorney-General.
- (11) The Attorney-General must present a copy of the statement to the Legislative Assembly within 3 sitting days after the day the Attorney-General receives the statement.

Part 2.12 Crimes Act 1900

[2.21] Part 10, new note

after part heading, insert

Note for pt 10

The *Legislation Act 2001*, s 171 deals with the application of client legal privilege.

[2.22] Section 185, definition of *summary offence*

omit

[2.23] Section 246

omit

[2.24] Section 336

substitute

336 How Magistrates Court may be informed

For this division, the Magistrates Court may inform itself as it considers appropriate.

Note The *Legislation Act 2001*, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

[2.25] Part 22, new sections 434A and 434B

insert

434A Application of certain sections of Commonwealth Crimes Act to Territory laws

The provisions of the *Crimes Act 1914* (Cwlth), sections 13, 15, 17, 19A, 21B and 21C, so far as they are applicable, apply in relation to all Territory laws as if a Territory law were a law of the Commonwealth.

434B Joinder of charges

- (1) Charges against the same person for any number of offences against the same provision of a Territory law may be joined in the same information or summons if the charges are founded on the same facts or form, or are part of, a series of offences of the same or a similar character.
- (2) If a person is convicted of 2 or more offences mentioned in subsection (1), and the offences relate to doing or failing to do the same act, the court may impose 1 penalty in relation to both or all the offences, but the penalty must not exceed the total of the maximum penalties that could be imposed if a separate penalty were imposed in relation to each offence.

[2.26] New part 23

insert

Part 23 Transitional

445 Operation and meaning of s 434A

- (1) Section 434A (Application of certain sections of Commonwealth Crimes Act to Territory laws) has the same meaning and operation as if its provisions—

- (a) had formed part of the *Interpretation Act 1967*, section 33G;
and
- (b) had been relocated from that Act to this Act immediately
before the commencement of this section.
- (2) This section expires 6 months after it commences.

Note Under the *Legislation Act 2001*, s 96 the relocation of a provision does not affect its operation or meaning.

Part 2.13 Crimes (Forensic Procedures) Act 2000

[2.27] Dictionary, note 2, new dot point

insert

- summary offence

[2.28] Dictionary, definition of *summary offence*

omit

Part 2.14 Criminal Code 2001

[2.29] Schedule 1, part 1

omit

Part 2.15 Debits Tax Act 1997

[2.30] Section 5 (1)

substitute

- (1) The *Legislation Act 2001*, section 121 (2) does not apply to this Act.

Note Section 121 (2) provides that an Act does not bind the Territory to the extent that it requires or otherwise provides for the payment of money that, on payment, would form part of the public money of the Territory.

Part 2.16 Discrimination Act 1991

[2.31] Section 108E (1)

omit

- (1) A person

substitute

A person

[2.32] Section 108E (1) (d) and (e)

substitute

- (d) any other offence in relation to the falsity of the information, document or answer.

Note A reference to an offence against a Territory law includes a reference to an offence against the *Crimes Act 1990*, pt 9 (Aiding and abetting, accessories, attempts, incitement and conspiracy) that relates to the law (see *Legislation Act 2001*, s 189).

[2.33] Section 108E (2)

omit

Part 2.17 Electoral Act 1992

[2.34] Section 105 (10)

renumber as section 105 (11)

[2.35] Section 105 (9)

substitute

- (9) If the time by which a nomination under subsection (3) is to be made falls on a public holiday, the nomination must be made no later than that time on the public holiday.
- (10) Subsection (9) has effect despite the *Legislation Act 2001*, section 151 (4) (Reckoning of time).

[2.36] Section 108 (4)

substitute

- (4) If the hour mentioned in subsection (3) falls on a public holiday, anything that under this Act is to be done by the hour of nomination must be done by that time on the public holiday.
- (5) Subsection (4) has effect despite the *Legislation Act 2001*, section 151 (4) (Reckoning of time).

Part 2.18 Electricity Safety Act 1971

[2.37] Section 112 (3) (b) and (c)

substitute

- (b) any other offence in relation to the falsity of the information or document.

Note 1 A reference to an offence against a Territory law includes a reference to an offence against the *Crimes Act 1990*, pt 9 (Aiding and abetting, accessories, attempts, incitement and conspiracy) that relates to the law (see *Legislation Act 2001*, s 189).

Note 2 The *Legislation Act 2001*, s 171 deals with the application of client legal privilege.

[2.38] Section 113

omit

Part 2.19 Environment Protection Act 1997

[2.39] Section 10

substitute

10 Criminal liability of government entities

- (1) Except as expressly provided by this Act, a government entity is not immune from criminal liability under this Act in relation to an authorised act or omission of the entity.
- (2) Subsection (1) does not apply in relation to a prosecution for—
 - (a) an offence against any of the following provisions:
 - section 45 (Compliance with an authorisation)
 - section 137 (3) (which is about polluting the environment causing serious environmental harm)
 - section 138 (3) (which is about polluting the environment causing material environmental harm)
 - section 139 (3) (which is about polluting the environment causing environmental harm)
 - section 141 (Causing an environmental nuisance)
 - section 142 (Placing a pollutant where it could cause harm); or
 - (b) a minor environmental offence within the meaning of division 13.1.
- (3) This section has effect despite the *Legislation Act 2001*, section 121 (4).

Note Section 121 (4) extends the effect of the immunity that a government has from an Act to government entities.

- (4) A word or expression defined in the *Legislation Act 2001*, section 121 has the same meaning in this section.

Part 2.20 **Fair Trading (Consumer Affairs) Act 1973**

[2.40] Section 12I (3) (b) and (c)

substitute

- (b) any other offence in relation to the falsity or misleading nature of the information or document.

Note 1 A reference to an offence against a Territory law includes a reference to an offence against the *Crimes Act 1990*, pt 9 (Aiding and abetting, accessories, attempts, incitement and conspiracy) that relates to the law (see *Legislation Act 2001*, s 189).

Note 2 The *Legislation Act 2001*, s 171 deals with the application of client legal privilege.

(commencement: the commencement of section 3 of this Act or immediately after the commencement of the *Fair Trading Legislation Amendment Act 2001*, section 17, whichever is the later)

[2.41] Section 12J

omit

(commencement: the commencement of section 3 of this Act or immediately after the commencement of the *Fair Trading Legislation Amendment Act 2001*, section 17, whichever is the later)

Part 2.21 First Home Owner Grant Act 2000

[2.42] Section 43 (2), new note

insert

Note The *Legislation Act 2001*, s 171 deals with the application of client legal privilege.

[2.43] Section 44

omit

Part 2.22 Fisheries Act 2000

[2.44] Part 7, new note

after part heading, insert

Note for pt 7

The *Legislation Act 2001*, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

[2.45] Section 73

omit

Part 2.23 Forfeiture and Validation of Leases Act 1905

[2.46] Section 5A

substitute

5A Pt 3 does not bind Territory

- (1) This part does not bind the Territory.

- (2) This section has effect despite the *Legislation Act 2001*, section 121 (Binding effect of Acts).

Part 2.24 Gas Safety Act 2000

[2.47] Section 58 (3) (b) and (c)

substitute

- (b) any other offence relating to the falsity of the information or document.

Note 1 A reference to an offence against a Territory law includes a reference to an offence against the *Crimes Act 1990*, pt 9 (Aiding and abetting, accessories, attempts, incitement and conspiracy) that relates to the law (see *Legislation Act 2001*, s 189).

Note 2 The *Legislation Act 2001*, s 171 deals with the application of client legal privilege.

[2.48] Section 59

omit

Part 2.25 Guardianship and Management of Property Act 1991

[2.49] Section 50 (2) (d) and (e)

substitute

- (d) any other offence in relation to the falsity of the answer, document or information.

Note A reference to an offence against a Territory law includes a reference to an offence against the *Crimes Act 1990*, pt 9 (Aiding and abetting, accessories, attempts, incitement and conspiracy) that relates to the law (see *Legislation Act 2001*, s 189).

Part 2.26 Health Records (Privacy and Access) Act 1997

[2.50] Part 6, new note

after part heading, insert

Note for pt 6

The *Legislation Act 2001*, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

[2.51] Section 28

omit

Part 2.27 Imperial Acts (Repeal) Act 1988

[2.52] Title

substitute

An Act about the interpretation of former UK Acts

[2.53] Section 1

substitute

1 Name of Act

This Act is the *Former UK Acts (Interpretation) Act 1988*.

[2.54] Sections 2 to 8

substitute

2 Purpose

The purpose of this Act is to assist in the interpretation of former UK Acts.

Note The former UK Acts are listed in the *Legislation Act 2001*, sch 1.

3 Application

- (1) Schedule 1 applies to all former UK Acts according to its terms.
- (2) However, if a year is set out in brackets at the end of a provision of schedule 1, the provision applies only to former UK Acts passed after the year.
- (3) Also, if schedule 1 makes some other provision, the schedule applies in accordance with that provision.
- (4) A year set out as mentioned in subsection (2) does not form part of schedule 1.

4 Meaning of certain references

In this Act, a reference to a former UK Act passed at a particular time is a reference to the former UK Act that immediately before it became a former UK Act was a UK Act passed at that time.

5 Relationship with Legislation Act 2001

- (1) If a provision of schedule 1 is inconsistent with a provision of the *Legislation Act 2001*, the provision of the schedule prevails to the extent of the inconsistency.
- (2) Without limiting subsection (1), if a provision of schedule 1 dealing with a matter does not apply to all former UK Acts and a provision of the *Legislation Act 2001* also deals with the matter (whether or not in the same way), then, for that subsection, the provision of the schedule is taken to be intended to deal exclusively with the matter.

[2.55] New schedule 1

insert

Schedule 1 Rules for interpreting former UK Acts

(see s 3)

Part 1.1 Interpretation

1 Definitions for pt 1.1

In a former UK Act:

Bank of England means, as the context requires, the Governor and Company of the Bank of England or the bank of the Governor and Company of the Bank of England.

British Islands means—

- (a) in a former UK Act passed after the year 1889 and before the establishment of the Irish Free State—the United Kingdom, the Channel Islands and the Isle of Man; and
- (b) in a former UK Act passed after the establishment of the Irish Free State—the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland.

British possession means any part of the dominions of the Crown outside the United Kingdom. (1889)

British subject means—

- (a) an Australian citizen; or
- (b) any other person who because of his or her citizenship of another country would, if the *Australian Citizenship Act 1948* (Cwlth), part 2 had continued in force after 30 April 1987, have been a person who has the status of a British subject under that part.

colonial legislature, of a British possession, means the authority, other than the United Kingdom Parliament or the Crown in Council, competent to make laws for the possession. (1889)

colony means any part of the dominions of the Crown outside the British Islands and, in a former UK Act passed in or after 1889 (the *first Act*), includes any part of those dominions that has, after the passing of the first Act, ceased, under a provision of a later UK Act,

to be a colony, but only in the application of the first Act before the commencement of the provision of the later Act, but does not include—

- (a) countries having fully responsible status within the Commonwealth of Nations; and
- (b) associated states. (1889)

Commonwealth citizen means a person other than a British subject who would, if the *Australian Citizenship Act 1948* (Cwlth), part 2 had continued in force after 30 April 1987, have been a person who has the status of a British subject under that part.

Comptroller and Auditor-General means the Comptroller-General of the receipt and issue of the Crown's Exchequer and Auditor-General of Public Accounts appointed under the *Imperial Exchequer and Audit Departments Act 1866* (UK).

consular officer has the same meaning as in the Vienna Convention, article 1 (which is set out in the *Consular Privileges and Immunities Act 1972* (Cwlth), schedule).

Governor-General, of a British possession, includes any person who for the time being has the powers of the Governor-General of the possession. (1889)

Governor, of a British possession, includes the officer for the time being administering the government of the possession. (1889)

legislature—see *colonial legislature*. (1889)

Lord Chancellor means the Lord High Chancellor of Great Britain.

person includes a body. (1889)

Privy Council means the Lords and others of the Crown's Most Honourable Privy Council.

Secretary of State means a Principal Secretary of State of the Crown.

statutory declaration includes a declaration made under a law of a State, Territory or foreign country that authorises a declaration to be made otherwise than in the course of a legal proceeding.

2 References to courts

In a former UK Act, a reference to any court (however described) other than a court of summary jurisdiction is a reference to the Supreme Court.

3 Dominions under central and local legislature

For clause 1, definitions of *British possession* and *colony*, if any part of the dominions of the Crown outside the United Kingdom are under both a central and local legislature, all parts under the central legislature are taken to be a single British possession or colony, as the case requires. (1889)

4 Gender and number

- (1) In a former UK Act—
 - (a) words importing the masculine gender include the feminine; and
 - (b) words importing the feminine gender include the masculine; and
 - (c) words in the singular include the plural and words in the plural include the singular.
- (2) This clause applies—
 - (a) to former UK Acts passed before 1851 only in relation to offences punishable on indictment or summary conviction; and
 - (b) to former UK Acts passed after 1850.

5 References to service by post

If a former UK Act authorises or requires a document to be served by post (whether the expression ‘serve’, ‘give’ or ‘send’ or any

other expression is used), the service is taken to be made by properly addressing, prepaying and posting a letter containing the document. (1889)

Part 1.2 Miscellaneous

6 Citation of other UK Acts

If a former UK Act cites another UK Act by year, statute, session or chapter, or a provision of another UK Act by number or letter, the reference is a reference—

- (a) for Acts included in any revised edition of the UK statutes printed by authority—to that edition; and
- (b) for Acts not so included but included in the edition prepared under the direction of the Record Commission—to that edition; and
- (c) in any other case—to the Acts printed by the Printer to the Crown, or under the superintendence or authority of the Crown's Stationary Office. (1889)

7 References to other enactments

- (1) If a former UK Act refers to an enactment, the reference is a reference to the enactment as amended, and includes a reference to that enactment as extended or applied under any other enactment, including any other provision of that Act. (1889)
- (2) However, if a former UK Act refers to another UK Act, the reference is a reference to the other Act as for the time being amended and in force in the Territory.

Part 2.28 Independent Competition and Regulatory Commission Act 1997

[2.56] Section 24M (3)

substitute

- (3) The *Legislation Act 2001*, division 19.3.3 (Appointments—Assembly consultation) does not apply in relation to an appointment to an industry panel.

[2.57] Section 41 (3), penalty

omit

Maximum penalty:

substitute

Maximum penalty (subsection (3)):

[2.58] Section 41 (3), new note

insert

Note The *Legislation Act 2001*, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

[2.59] Section 41 (4)

omit

[2.60] Section 50 (1), new note

insert

Note The *Legislation Act 2001*, s 170 and 171 deal with the application of the privilege against selfincrimination and client legal privilege.

[2.61] Section 50 (2)

omit

[2.62] Section 50

renumber subsections when Act next republished under Legislation Act 2001.

Part 2.29 Interpretation Act 1967

[2.63] Sections 11A and 11B

relocate to the Legislation Act 2001, as sections 138 and 139

Part 2.30 Lakes Act 1976

[2.64] Section 4B

substitute

4B Application of Act to Territory

- (1) The following provisions do not bind the Territory:
 - section 16 (Prohibitions relating to boats etc)
 - section 17 (Prohibitions relating to swimming etc)
 - section 18 (Interference with signs)
 - section 19 (2) and (3) (Approved buoys, wharves and jetties)
 - section 20 (2) (Restrictions on mooring)
 - section 24 (Anchoring of boats)
 - section 25 (3) (Mooring of boats)
 - section 29 (2) (Restriction on use of hovercraft)
 - section 32 (Camping etc).
- (2) This section has effect despite the *Legislation Act 2001*, section 121 (Binding effect of Acts).

Part 2.31 Landlord and Tenant Act 1899

[2.65] Section 2

substitute

2 Act does not bind Territory

- (1) This Act does not bind the Territory.
- (2) This section has effect despite the *Legislation Act 2001*, section 121 (Binding effect of Acts).

Part 2.32 Land (Planning and Environment) Act 1991

[2.66] Section 274A (3)

substitute

- (3) The *Legislation Act 2001*, division 19.3.3 (Appointments—Assembly consultation) applies to the appointment of a public servant as commissioner.
- (4) Subsection (3) has effect despite the *Legislation Act 2001*, section 227 (2) (a) (Application of div 19.3.3).

Part 2.33 Limitation Act 1985

[2.67] Section 4 (b)

omit

the Crown

substitute

a government

[2.68] Section 7

substitute

7 Application of Act to governments

- (1) For this Act, an action by a government entity is an action by the government.
- (2) This Act does not apply to an action by the Territory—
 - (a) for the recovery of a penalty, tax or duty or of interest on a penalty, tax or duty; or
 - (b) in relation to the forfeiture of a ship.
- (3) This Act does not affect the prerogative right of the Territory to mineral rights.
- (4) This section has effect despite the *Legislation Act 2001*, section 121 (Binding effect of Acts).
- (5) In this section:
government entity—see the *Legislation Act 2001*, section 121 (6).

[2.69] Section 8 (1), definition of Crown

omit

[2.70] Section 8 (1), new definition of government

insert

government—see the *Legislation Act 2001*, section 121 (Binding effect of Acts).

Part 2.34 Liquor Act 1975

[2.71] Dictionary, definition of offence against this Act

omit

Part 2.35 Low-Alcohol Liquor Subsidies Act 2000

[2.72] Section 39 (2)

omit everything after

criminal proceedings other than

substitute

proceedings for an offence in relation to the false, misleading or incorrect nature of the information, answer or document.

Note A reference to an offence against a Territory law includes a reference to an offence against the *Crimes Act 1990*, pt 9 (Aiding and abetting, accessories, attempts, incitement and conspiracy) that relates to the law (see *Legislation Act 2001*, s 189).

Part 2.36 Occupational Health and Safety Act 1989

[2.73] Section 5 (4)

omit

[2.74] Section 5

renumber subsections when Act next republished under Legislation Act 2001.

[2.75] Section 93 (1), new note

insert

Note A reference to an offence against a Territory law includes a reference to an offence against the *Crimes Act 1990*, pt 9 (Aiding and abetting, accessories, attempts, incitement and conspiracy) that relates to the law (see *Legislation Act 2001*, s 189).

Part 2.37 **Perpetuities and Accumulations Act 1985**

[2.76] Section 4

substitute

4 Application of Act to Territory

- (1) The rule against perpetuities and the rule against perpetual trusts bind the Territory.
- (2) However, nothing in the rule against perpetuities, in the rule against perpetual trusts or in this Act affects any settlement made by the Territory.
- (3) Subsection (1) has effect except so far as another Territory law otherwise provides.
- (4) Subsection (2) has effect despite the *Legislation Act 2001*, section 121 (Binding effect of Acts).

Part 2.38 **Public Health Act 1997**

[2.77] Section 82 (2), new note

insert

Note The *Legislation Act 2001*, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

[2.78] Section 82 (3)

omit

Part 2.39 Public Interest Disclosure Act 1994

[2.79] Section 7

substitute

7 Criminal liability of government entities

- (1) A government entity is not immune from criminal liability under this Act in relation to an authorised act or omission of the entity.
- (2) This section has effect despite the *Legislation Act 2001*, section 121 (4).

Note Section 121 (4) extends the effect of the immunity that a government has from an Act to government entities.

- (3) A word or expression defined in the *Legislation Act 2001*, section 121 has the same meaning in this section.

Part 2.40 Public Sector Management Act 1994

[2.80] Section 18 (3)

substitute

- (3) However, subsection (2) does not apply to the appointment if the *Legislation Act 2001*, division 19.3.3 (Appointments—Assembly consultation) applies to the appointment.

Note Under the *Legislation Act 2001*, s 229 the appointment is a disallowable instrument.

[2.81] Section 22 (3), new note

insert

Note The *Legislation Act 2001*, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

[2.82] Section 22 (4)

omit

[2.83] Schedule 3, clause 3.20, modification of *Occupational Health and Safety Act 1989*, section 60D (2), new note

insert

Note The *Legislation Act 2001*, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

[2.84] Schedule 3, clause 3.20, modification of *Occupational Health and Safety Act 1989*, section 60D (3)

omit

Part 2.41 **Race and Sports Bookmaking Act 2001**

[2.85] Section 94 (3)

substitute

- (3) Subsection (2) does not apply to a proceeding for any offence in relation to the false or misleading nature of the information or document.

Note 1 A reference to an offence against a Territory law includes a reference to an offence against the *Crimes Act 1990*, pt 9 (Aiding and abetting, accessories, attempts, incitement and conspiracy) that relates to the law (see *Legislation Act 2001*, s 189).

Note 2 The *Legislation Act 2001*, s 171 deals with the application of client legal privilege.

[2.86] Section 95

omit

Part 2.42 Residential Tenancies Act 1997

[2.87] Section 112 (6)

substitute

- (6) The *Legislation Act 2001*, division 19.3.3 (Appointments—Assembly consultation) applies to a selection by the Minister under subsection (5) as if—
- (a) a reference to the appointment of a person to a statutory office were a reference to a selection by the Minister; and
 - (b) a reference to an appointment were a reference to a selection; and
 - (c) all other necessary changes were made.

Part 2.43 Roads and Public Places Act 1937

[2.88] Section 2A

substitute

2A Application of Act to Territory

- (1) The following provisions do not bind the Territory:
 - section 6 (Drains for surface water)
 - section 7 (Damage to or interference with public places and property on them).
- (2) This section has effect despite the *Legislation Act 2001*, section 121 (Binding effect of Acts).

Part 2.44 **Sale of Motor Vehicles Act 1977**

[2.89] Section 4A

substitute

4A Application of Act to motor dealings by Territory

- (1) This Act does not apply in relation to dealings in motor vehicles by the Territory.
- (2) This section has effect despite the *Legislation Act 2001*, section 121 (Binding effect of Acts).

(commencement: the commencement of section 3 of this Act or immediately after the commencement of the *Justice and Community Safety Legislation Amendment Act 2001*, amendments 1.81 and 1.82, whichever is the later)

Part 2.45 **Surveyors Act 2001**

[2.90] Section 7 (2), other than the notes

substitute

- (2) The *Legislation Act 2001*, division 19.3.3 (Appointments—Assembly consultation) applies to the appointment of a public servant as commissioner.
- (3) Subsection (2) has effect despite the *Legislation Act 2001*, section 227 (2) (a) (Application of div 19.3.3).

[2.91] Section 7 (2), notes

relocate to section 7 (1)

Part 2.46 Taxation Administration Act 1999

[2.92] Section 5

substitute

5 Act binds Territory

- (1) This Act applies to the Territory so far as it requires or otherwise provides for the payment of money that, on payment, would form part of the public money of the Territory.
- (2) This section has effect despite the *Legislation Act 2001*, section 121 (2).

Note Section 121 (2) provides that an Act does not bind the Territory to the extent that it requires or otherwise provides for the payment of money that, on payment, would form part of the public money of the Territory.

[2.93] Section 39

omit

part 18.5

substitute

part 19.5 (Service of documents)

Part 2.47 Tobacco Act 1927

[2.94] Section 38 (2)

omit

[2.95] Section 38 (3), new note

insert

Note The *Legislation Act 2001*, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

[2.96] Section 38

renumber subsections when Act next republished under Legislation Act 2001

Part 2.48 Tree Protection (Interim Scheme) Act 2001

[2.97] Section 40 (3) (b) and (c)

substitute

- (b) any other offence in relation to the falsity of the information or document.

Note 1 A reference to an offence against a Territory law includes a reference to an offence against the *Crimes Act 1990*, pt 9 (Aiding and abetting, accessories, attempts, incitement and conspiracy) that relates to the law (see *Legislation Act 2001*, s 189).

Note 2 The *Legislation Act 2001*, s 171 deals with the application of client legal privilege.

[2.98] Section 41

omit

Part 2.49 Utilities Act 2000

[2.99] Section 74 (2) (d) and (e)

substitute

- (d) any other offence in relation to the falsity of the information or document.

Note 1 A reference to an offence against a Territory law includes a reference to an offence against the *Crimes Act 1990*, pt 9 (Aiding and abetting, accessories, attempts, incitement and conspiracy) that relates to the law (see *Legislation Act 2001*, s 189).

Note 2 The *Legislation Act 2001*, s 171 deals with the application of client legal privilege.

[2.100] Section 75

omit

[2.101] Section 166 (2) (d) and (e)

substitute

- (d) any other offence in relation to the falsity of the information, document or answer.

Note 1 A reference to an offence against a Territory law includes a reference to an offence against the *Crimes Act 1990*, pt 9 (Aiding and abetting, accessories, attempts, incitement and conspiracy) that relates to the law (see *Legislation Act 2001*, s 189).

Note 2 The *Legislation Act 2001*, s 171 deals with the application of client legal privilege.

[2.102] Section 167

omit

[2.103] Section 201 (2) (d) and (e)

substitute

- (d) any other offence in relation to the falsity of the information, document or answer.

Note 1 A reference to an offence against a Territory law includes a reference to an offence against the *Crimes Act 1990*, pt 9 (Aiding and abetting, accessories, attempts, incitement and conspiracy) that relates to the law (see *Legislation Act 2001*, s 189).

Note 2 The *Legislation Act 2001*, s 171 deals with the application of client legal privilege.

[2.104] Section 202

omit

[2.105] Section 226 (b)

substitute

(b) proceeding for an offence against this Act.

Note A reference to an offence against a Territory law includes a reference to an offence against the *Crimes Act 1990*, pt 9 (Aiding and abetting, accessories, attempts, incitement and conspiracy) that relates to the law (see *Legislation Act 2001*, s 189).

[2.106] Section 228 (1)

substitute

(1) This section does not apply to a proceeding for an offence against section 21 (Requirement for licence).

Part 2.50 **Victims of Crime (Financial Assistance) Act 1983**

[2.107] Section 2, definition of *serious crime*, paragraph (e)

substitute

(e) an offence against a law of the Commonwealth, a State or another Territory corresponding to a provision of the *Crimes Act 1900*, part 9 in relation to an offence mentioned in paragraphs (a) to (d).

Note A reference to an offence against a Territory law includes a reference to an offence against the *Crimes Act 1990*, pt 9 (Aiding and abetting, accessories, attempts, incitement and conspiracy) that relates to the law (see *Legislation Act 2001*, s 189).

[2.108] Section 2, definition of *sexual crime*

substitute

sexual crime means any of the following offences:

- (a) an offence against the *Crimes Act 1990*, part 3 (an *ACT sexual offence*);
- (b) an offence against a law of the Commonwealth, a State or another Territory corresponding to an ACT sexual offence;
- (c) an offence against a law of the Commonwealth, a State or another Territory corresponding to a provision of the *Crimes Act 1990*, part 9 in relation to an offence mentioned in paragraph (b).

Note A reference to an offence against a Territory law includes a reference to an offence against the *Crimes Act 1990*, pt 9 (Aiding and abetting, accessories, attempts, incitement and conspiracy) that relates to the law (see *Legislation Act 2001*, s 189).

Part 2.51 Waste Minimisation Act 2001

[2.109] Section 48 (3) (b) and (c)

substitute

- (b) any other offence in relation to the falsity of the information or document.

Note 1 A reference to an offence against a Territory law includes a reference to an offence against the *Crimes Act 1990*, pt 9 (Aiding and abetting, accessories, attempts, incitement and conspiracy) that relates to the law (see *Legislation Act 2001*, s 189).

Note 2 The *Legislation Act 2001*, s 171 deals with the application of client legal privilege.

[2.110] Section 49

omit

Part 2.52 Water and Sewerage Act 2000

[2.111] Section 39 (3) (b) and (c)

substitute

- (b) any other offence in relation to the falsity of the information or document.

Note 1 A reference to an offence against a Territory law includes a reference to an offence against the *Crimes Act 1990*, pt 9 (Aiding and abetting, accessories, attempts, incitement and conspiracy) that relates to the law (see *Legislation Act 2001*, s 189).

Note 2 The *Legislation Act 2001*, s 171 deals with the application of client legal privilege.

[2.112] Section 40

omit

Part 2.53 Workers Compensation Act 1951

[2.113] Section 23I (1)

omit

defined offence

substitute

offence against this Act

(commencement: the commencement of section 3 of this Act or immediately after the commencement of the *Workers Compensation Amendment Act 2001*, section 4, whichever is the later)

[2.114] Section 26U (2)

substitute

- (2) This section applies to a prosecution for an offence against this Act.

Note A reference to an offence against a Territory law includes a reference to an offence against the *Crimes Act 1990*, pt 9 (Aiding and abetting, accessories, attempts, incitement and conspiracy) that relates to the law (see *Legislation Act 2001*, s 189).

(commencement: the commencement of section 3 of this Act or immediately after the commencement of the *Workers Compensation Amendment Act 2001*, section 4, whichever is the later)

[2.115] Dictionary, definition of *defined offence*

omit

(commencement: the commencement of section 3 of this Act or immediately after the commencement of the *Workers Compensation Amendment Act 2001*, section 4, whichever is the later)

Endnote

Republications of amended laws

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

[Presentation speech made in Assembly on 21 February 2002]

I certify that the above is a true copy of the Legislation Amendment Bill 2002 which was passed by the Legislative Assembly on 14 May 2002.

Clerk of the Legislative Assembly