



Australian Capital Territory

# Statute Law Amendment Act 2002 (No 2)

Act 2002 No 49

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Australian Capital Territory

# **Statute Law Amendment Act 2002 (No 2)**

**Act 2002 No 49**

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

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*Notified under the Legislation Act 2001 on 20 December 2002  
(see [www.legislation.act.gov.au](http://www.legislation.act.gov.au))*

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

## 1 Name of Act

This Act is the *Statute Law Amendment Act 2002 (No 2)*.

## 2 Commencement

- (1) This Act commences on the 28<sup>th</sup> day after its notification day.

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

- (2) However, the following parts commence on 31 December 2002:

- part 3.10 (*Lakes Act 1976*)
- part 3.13 (*Poisons Act 1933*)
- part 3.14 (*Poisons and Drugs Act 1978*)
- part 3.16 (*Public Health Act 1997*).

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

- (4) In this section:

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

### Example

An amendment followed by ‘(commencement: 1 January 2002)’ means that the amendment is taken to have commenced on 1 January 2002.

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

### **3 Purpose**

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

### **4 Notes**

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

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

### **5 Acts and regulations amended—schs 1-3**

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

### **6 Acts repealed—schs 4 and 5**

- (1) Schedules 4 and 5 repeal the Acts mentioned in them.
- (2) The following Acts are declared to be laws to which the *Legislation Act 2001*, section 88 (Repeal does not end transitional or validating effect etc) applies:
  - *Demise of the Crown Act 1547* 1 Edw 6 c 7
  - *Demise of the Crown Act 1702* 1 Anne c 2
  - *Demise of the Crown Act 1707* 6 Anne c 41
  - *Demise of the Crown Act 1901* 1 Edw 7 c 5.

## **Schedule 1**      **Minor amendments**

(see s 5)

### **Part 1.1**                      **Commissioner for the Environment Act 1993**

#### **[1.1] New part 6**

*insert*

### **Part 6**                      **Validation**

#### **30**      **Validation of appointment**

Joseph Thomas Baker is taken to be, and always to have been, the commissioner for the environment for the period beginning on 15 December 2001 and ending on 30 April 2002 as if the instrument of appointment purportedly appointing Joseph Thomas Baker as commissioner for the environment made by the Minister for Urban Services on 24 September 2001 had been properly—

- (a) notified under the *Legislation Act 2001*, section 61; and
- (b) presented to the Legislative Assembly under the *Legislation Act 2001*, section 64 (1).

*Note*      The instrument of appointment made by the Minister for Urban Services on 24 September 2001 is accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au) and is numbered DI2001-315.

#### **31**      **Validation of acts, rights and obligations**

- (1) Anything done by Joseph Thomas Baker in accordance with the instrument of appointment mentioned in section 30 during the period beginning on 15 December 2001 and ending on 30 April 2002 in the purported exercise of the powers of the commissioner for the environment is taken to be, and always have



been, as valid as if the instrument of appointment had been properly—

- (a) notified under the *Legislation Act 2001*, section 61; and
  - (b) presented to the Legislative Assembly in accordance with the *Legislation Act 2001*, section 64 (1).
- (2) Without limiting subsection (1), any right or obligation that was to have been created by an act of Joseph Thomas Baker as mentioned in subsection (1), is taken to be, and always have been, created by that act.
- (3) This section does not limit section 30.

## **32 Expiry of pt 6**

This part expires the same day it commences.

*Note* If a law validates something that is or may otherwise be invalid, the validating effect of the law does not end merely because of the repeal of the law. See *Legislation Act*, s 88 (1) (b).

### **Explanatory note**

This amendment inserts provisions to validate the appointment and actions of the Commissioner for the Environment, Dr Baker, from the end of his previous term on 15 December 2001 until his reappointment on 29 April 2002. This is needed because the instrument reappointing Dr Baker from the end of his term on 15 December 2001 to the end of June 2003 was inadvertently not presented to the Assembly within the time required under the *Legislation Act*. Dr Baker was subsequently reappointed by another instrument of appointment on 29 April 2002 and that instrument of appointment has been notified and presented to the Assembly within the required time.

## Part 1.2                      Intoxicated Persons (Care and Protection) Act 1994

### [1.2] Section 11

*omit*

12 hours.

*substitute*

15 hours.

(commencement: the day after this Act's notification day)

#### Explanatory note

This amendment increases the time that the licensee of a place licensed under the *Intoxicated Persons (Care and Protection) Act 1994* can allow a person admitted to the place to remain there. The period is being increased from 12 to 15 hours to allow for a new shelter that is due to begin early next year with opening hours of 8pm to 10am. If the legislation is not changed, a person admitted to the shelter at 8pm would have to leave by 8am in the morning. In some circumstances (eg on a cold winter morning) it may be more reasonable for a person to be able to stay until 10am.

## Part 1.3                      Nature Conservation Act 1980

### [1.3] New section 53 (5)

*insert*

(5) In this section:

**reserved area** includes an area of public land that—

- (a) is reserved under the Territory plan as a special purpose reserve; and
- (b) is not leased land.

(commencement: the day after this Act's notification day)

### **Explanatory note**

This amendment brings special purpose reserves that are unleased land within the definition of ‘reserved areas’ for section 53 (Access to reserved areas). The definition of ‘reserved area’ in the *Nature Conservation Act 1980*, dictionary already covers wilderness areas, national parks and nature reserves. Section 53 allows the conservator of flora and fauna to prohibit or restrict access to reserved areas if public safety would be endangered or management interfered with. The different designations of land administered by Environment ACT can cause administrative difficulty if it is necessary to close land, eg because of bushfire. Closure of places like Tidbinbilla presently requires the exercise of powers under both the *Nature Conservation Act 1980* and the *Trespass on Territory Land Act 1932* using different instruments and procedures. This fragmented approach creates enforcement difficulties. Including special purpose reserves as ‘reserved areas’ for section 53 will allow the conservator to close land using a single instrument and procedure. As there are some small parts of special purpose reserves that are covered by rural leases, leased areas are not proposed to be included within the definition of ‘reserved areas’ and the power to close reserved areas would not extend to them.

## **Part 1.4                      Smoke-free Areas (Enclosed Public Places) Act 1994**

### **[1.4] Section 2, new definition of *Australian Standard 1668.2***

*insert*

*Australian Standard 1668.2* means Australian Standard 1668.2 as in force on 5 October 1994.

(commencement: the day after this Act’s notification day)

### **Explanatory note**

This amendment inserts a definition of *Australian Standard 1668.2* to make it clear that the references in the Act to the standard are to the standard as it was in force when relevant provisions of the Act commenced.

### **[1.5] New section 10A**

*insert*

## **10A Variation of exemptions**

- (1) The occupier of a restaurant or licensed premises for which a certificate of exemption is in effect may apply to the Minister for the exemption to be varied.
- (2) The Minister must vary the exemption unless—
  - (a) for a restaurant—a certificate could not be granted for the exemption as varied under section 8 (2); or
  - (b) for part of licensed premises—a certificate could not be granted for the exemption as varied under section 8 (3); or
  - (c) the restaurant or licensed premises are being rebuilt or relocated.
- (3) If the Minister varies the exemption, the Minister must enter the details of the variation in the register.

(commencement: the day after this Act's notification day)

**Explanatory note**

This amendment inserts an additional section to allow for applications to vary exemptions that have been granted under the Act. This will enable restaurants and licensed premises that wish to change their operating arrangements (other than by rebuilding or relocating their premises) to have their existing exemption varied rather than needing to apply for a new exemption (which is a more costly process).

## **Part 1.5** **Workers Compensation Act** **1951**

### **[1.6] New section 14 (3) and (4)**

*insert*

- (3) However, an individual is taken not to be a *worker* employed by the principal if—
  - (a) the engagement of the individual by the principal is arranged by an educational institution where the individual is enrolled; and

- (b) the engagement is part of a work experience program (however described) run by the educational institution.

**Example of work experience program**

work placement program

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

- (4) In subsection (3):

***educational institution*** means—

- (a) a school, college or other educational institution established or maintained on behalf of the Territory; or
- (b) a school registered, or provisionally registered, under the *Education Act 1937*, part 3 (Registered schools); or
- (c) an educational institution established under a Territory law or a law of the Commonwealth or a State.

**Explanatory note**

This amendment clarifies the Act to ensure that students in the workplace on work experience programs (however described) are not considered to be workers. This was the position under the Act before it was amended by the *Workers Compensation Amendment Act 2001* (the **Amendment Act**). Amendments under the Amendment Act to ensure that individuals being trialled by employers before being employed are covered by the *Workers Compensation Act 1951* left the position of work experience students unclear. Work experience students in the workplace are covered by insurance arrangements entered into by the educational institution they attend. Because the educational institution bears the risk of injury to work experience students, employers are more willing to give work experience to students than if the employers had to pay extra workers compensation premiums for the students. This amendment does not affect the requirement under the *Occupational Health and Safety Act 1989* to provide a safe work environment or any obligation of educational institutions to safeguard the wellbeing of students.

**[1.7] Section 38**

*omit*

is entitled

*substitute*

is or may be entitled

**Explanatory note**

This amendment brings section 38 into line with the policy of the Act as a whole. Employers are required to pay injured workers from the time of injury, before liability is established. Section 38 was inserted by the *Workers Compensation Amendment Act 2001* as part of a package of reforms designed to reduce workers compensation costs by treating injured workers promptly for injuries and, in that way, reducing the risk of injuries lasting long-term. Injuries treated promptly are less likely to become long-term injuries and therefore are less costly for insurers and the community.

**[1.8] Section 59 (3)**

*omit*

arbitration

*substitute*

conciliation or arbitration

**Explanatory note**

This amendment allows decisions about the proportion of a worker's loss of use of a thing mentioned in the Act, schedule 1 (Compensation for permanent injuries) to be conciliated, rather than having to be decided by arbitration if the parties cannot agree on a proportionate loss of use. The amendment brings section 59 into line with the policy of the Act that conciliation is an option for resolving issues without having to resort to more expensive adversarial proceedings.

**[1.9] New section 77 (3A)**

*insert*

(3A) To remove any doubt, the payment under subsection (2) (a) need not be divided equally between the dependants, but may be divided between them as the Magistrates Court considers appropriate.

**Explanatory note**

This amendment clarifies section 77 to ensure that the Magistrates Court may divide a compensation payment payable to dependants as the court considers appropriate. Section 77 was revised by the *Workers Compensation Amendment Act 2001* (the *amendment Act*). Before the amendment of the *Workers Compensation Act 1951* by the amendment Act, the Magistrates Court divided compensation payable to dependants as the

court considered appropriate. This amendment ensures that the Magistrates Court continues to have that power.

**[1.10] New section 77 (5)**

*insert*

- (5) If the worker did not have dependants, the personal representative of the worker is entitled to a maximum of \$4 000 cpi indexed for the funeral expenses of the worker.

**Explanatory note**

This amendment reinserts the entitlement of a dead worker's personal representative to costs for the worker's funeral expenses. This entitlement was inadvertently omitted when amendments were made to the Act by the *Workers Compensation Amendment Act 2001*.

**[1.11] Section 79 (2)**

*omit*

inadequate

*substitute*

manifestly inadequate

**Explanatory note**

This amendment brings section 79 into line with section 80 (2) (b). It also addresses concerns that working out whether the amount of compensation payable under an agreement between the worker and employer in substitution for a right under the *Workers Compensation Act 1951* is inadequate would require a mini-hearing of the worker's claim for compensation. The ability to enter into a registered agreement under the Act is intended to reduce the need for the Magistrates Court to consider claims and reduce the cost of claims. By including 'manifestly' before inadequate, the provision only requires the Magistrates Court to consider the injury to which the agreement relates at face value and reduces the chance that the court will refuse to register the agreement of the parties.

**[1.12] Schedule 1, column 3 heading**

*substitute*

**column 3**

**Schedule 1**      Minor amendments  
**Part 1.5**      Workers Compensation Act 1951

Amendment [1.12]

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**% of  
single  
loss  
amount  
payable**

**Explanatory note**

This amendment rewrites a column heading to the table in schedule 1 (Compensation for permanent injuries) to bring it into line with the rest of the Act. Before this amendment, the heading to the table was ambiguous and could lead readers to believe the amount of compensation to which the percentage under the column related was the maximum loss amount (although that phrase was not used). The Act, section 51 (1) clearly sets out that the amount payable for a loss to which the table relates is the percentage of the single loss amount stated in schedule 1, column 3.



## **Schedule 2      Structural amendments**

(see s 5)

### **Part 2.1                      Legislation Act 2001**

#### **[2.1] Section 19 (1) (i)**

*substitute*

- (i) bills presented to the Legislative Assembly;
- (j) explanatory statements for bills, and amendments of bills, presented to the Legislative Assembly;
- (k) explanatory statements, and regulatory impact statements under chapter 5, for subordinate laws and disallowable instruments.

#### **Explanatory note**

This amendment adds explanatory statements for bills (and amendments of bills), subordinate laws and disallowable instruments, and regulatory impact statements to the list of material that must be included on the ACT legislation register. Explanatory statements for bills (previously called explanatory memoranda), and explanatory statements and regulatory impact statements for subordinate laws and disallowable instruments have been included on the register since the beginning of the current Assembly.

#### **[2.2] Section 19 (4) (e)**

*omit*

#### **Explanatory note**

This amendment is consequential on the insertion of new section 19 (1) (j). It omits a paragraph that listed explanatory memoranda for bills, and amendments of bills, as part of the material that may be included on the ACT legislation register.

**[2.3] Section 19 (4) (f) and (g)**

*renumber as section 19 (4) (e) and (f)*

**Explanatory note**

This amendment renumbers paragraphs consequentially on the omission of section 19 (4) (e).

**[2.4] Section 45 (4), definition of law**

*substitute*

*law* means—

- (a) an Act, subordinate law or disallowable instrument; or
- (b) a Commonwealth Act, or any regulations, rules, ordinance or disallowable instrument under a Commonwealth Act; or
- (c) a provision of a law mentioned in paragraph (a) or (b).

**Explanatory note**

This amendment remakes the definition to be consistent in style with the definition of *law of another jurisdiction* in section 47 (10).

**[2.5] Section 47 (4)**

*omit*

instrument is made

*substitute*

relevant instrument is made

**Explanatory note**

This amendment clarifies a provision.

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**[2.6] Section 60 (1) (d)**

*substitute*

- (d) does not include a number that would give the instrument a unique name; or
- (e) is otherwise not in accordance with current legislative drafting practice.

**Explanatory note**

This amendment inserts an additional paragraph (e) for consistency with existing section 60 (2) (b). The amendment will allow the parliamentary counsel to ensure that registrable instruments included on the register are correctly named. The correct, consistent naming of instruments will facilitate access to instruments on the register.

**[2.7] Section 60 (1), new example**

*after example for par (d), insert*

**Example for par (e)**

A registrable instrument has the name ‘*XYZ Amendment Order 2002 (No 1)*’. The instrument was made under the *XYZ Act 2000* (the ***authorising Act***). The name of the instrument does not correctly reflect the name of the authorising Act.

**Explanatory note**

This amendment includes an example to illustrate the operation of new section 60 (1) (e).

**[2.8] Section 69 (4) (d)**

*omit*

repealed

*substitute*

amended

**Explanatory note**

This amendment corrects a minor error.

## **[2.9] Section 75 (1), new example**

*insert*

### **Example**

The *XYZ Act 2002* was notified on 1 October 2002. It contains the following provision:

#### **2 Commencement**

This Act commences on 1 December 2002.

The provisions of the *XYZ Act 2002* providing for its name and commencement commence on 1 October 2002.

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

### **Explanatory note**

This amendment inserts a new example.

## **[2.10] Section 75 (2)**

*substitute*

- (2) However, if a provision of the law is taken to have commenced before the law's notification day, the naming and commencement provisions are taken to have automatically commenced—
- (a) on that commencement; or
  - (b) if 2 or more provisions of the law are taken to have commenced at different times before the notification day—on the earlier or earliest of the commencements.

### **Example**

#### **2 Commencement**

(1) This Act, other than sections 9 and 10, commences on a day fixed by the Minister by written notice.

(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.

**Explanatory note**

This amendment recasts the subsection to make it more self-explanatory. The operation of the subsection is unchanged. The amendment also updates the example to bring it more closely into line with the amended example to section 77 (1) and omits a note that is unnecessary in section 75 (2) because it is included in section 75 (1).

**[2.11] Section 77 (1), example**

*omit*

by notice

*substitute*

by written notice

**Explanatory note**

This amendment updates an example to bring it more closely into line with the definition of *commencement notice* in section 11.

**[2.12] Section 79 (1), example**

*omit*

by notice

*substitute*

by written notice

**Explanatory note**

This amendment updates an example to bring it more closely into line with the amended example to section 77 (1).

**[2.13] Section 80**

*omit*

(the *law concerned*),

*substitute*

, (the *law concerned*)

**Explanatory note**

This amendment corrects punctuation.

**[2.14] Section 82, definition of *repeal***

*substitute*

*repeal* includes lapse and expiry.

**Explanatory note**

This amendment adds ‘lapse’ to the definition of *repeal* in section 82.

**[2.15] Section 88 heading**

*substitute*

**88      Repeal does not end effect of transitional laws etc  
(IA s 42)**

**Explanatory note**

This amendment revises the section heading to more accurately reflect the contents of the section.

**[2.16] Section 89 (4)**

*after*

automatically

*insert*

repealed

**Explanatory note**

This amendment inserts a missing word.

**[2.17] New section 89 (5A)**

*insert*

(5A) If an instrument making, or evidencing, an appointment (including an acting appointment) is a registrable instrument, the instrument is automatically repealed on the day the appointment ends.

**Explanatory note**

This amendment inserts a provision for the automatic repeal of registrable instruments making, or evidencing, appointments when the appointments end. The amendment will

ensure that the instruments can be removed from the current part of the ACT legislation register when the appointments end. This will ensure that the current part of the register is not cluttered up, over time, with instruments about appointments that have ended. Instruments removed from the current part of the register will continue to be accessible in the repealed part of the register.

**[2.18] Section 89 (9), new definition of *amend***

*insert*

*amend* does not include modify.

**Explanatory note**

This amendment makes it clear that the provisions of the section about the automatic repeal of amending laws and provisions do not apply to modifying laws and provisions. A modifying law or provision has the effect of modifying the operation of the law (see Legislation Act, s 95). Accordingly, it is not appropriate that they should be automatically repealed in the same way as amending laws and provisions.

**[2.19] Section 89**

*renumber subsections when Act next republished under Legislation Act 2001*

**Explanatory note**

This amendment provides for the consequential renumbering of subsections.

**[2.20] Section 89, example 1 heading**

*substitute*

**Example 1 for s 89**

**Explanatory note**

This amendment revises the example heading to make it clear that the example is an example of the section.

### **[2.21] Section 89, example 1**

*omit*

Its repealing provisions, and its other provisions apart from the amending provisions, commence on the date of notification, 21 March 2002. Its amending provisions commence on a date fixed by the Minister by notice, 12 April 2002.

*substitute*

Its repealing provisions, and its other provisions apart from the naming provision, the commencement provision and the amending provisions, commence on the day after its notification day, 22 March 2002. Its amending provisions commence on a date fixed by the Minister by written notice, 12 April 2002.

#### **Explanatory note**

This amendment revises part of an example to bring it more closely into line with other provisions of the Act, especially section 73 (General rules about commencement). Section 73 was amended by the *Legislation Amendment Act 2002* to change the default commencement date.

### **[2.22] Section 89, example 2 heading**

*substitute*

**Example 2 for s 89**

#### **Explanatory note**

This amendment revises the example heading to make it clear that the example is an example of the section.

### **[2.23] Section 89**

*insert*

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

#### **Explanatory note**

This amendment inserts a standard note.



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**[2.24] Section 94 (1) and (2)**

*substitute*

- (1) This section applies if—
- (a) a law expressly or impliedly authorises or requires—
    - (i) the making of an appointment or statutory instrument; or
    - (ii) the delegation of a function; or
    - (iii) the issue of a licence or permit (however described); or
    - (iv) the doing (however described) of anything else; and
  - (b) the law is amended by another law; and
  - (c) under the amended law—
    - (i) the appointment or statutory instrument may be made; or
    - (ii) the function may be delegated; or
    - (iii) the licence or permit may be issued; or
    - (iv) the thing may be done;whether by the same or a different entity.

**Examples for par (a) (iv)**

- 1 the giving of an approval, consent or permission
- 2 the making of a recommendation

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

- (2) An appointment, statutory instrument, delegation, licence, permit or other thing mentioned in subsection (1) that was in force immediately before the commencement of the amendment continues to have effect as if it had been made, issued or done (however described) under the amended law.

**Explanatory note**

This amendment remakes section 94 (1) and (2) to expressly include licences and permits as things that continue to have effect if the law under which they are issued is amended. The amendment also includes examples and makes it clear that ‘doing’ and ‘done’ are intended to cover actions that are described using other verbs in the relevant law (eg give).

**[2.25] Section 101 (1), example**

*omit*

section and subsection

*substitute*

section, subsection and paragraph

**Explanatory note**

This amendment corrects a minor error.

**[2.26] Section 131 (1)**

*omit*

it

*substitute*

the word or expression (or, if the reference includes a reference to the definition of another word or expression, that word or expression)

**Explanatory note**

This amendment extends the provision about the meaning of signpost definitions to signpost definitions that define the meaning of a word or expression by reference to the definition of another word or expression (see example inserted by next amendment).

**[2.27] Section 131 (1), new example 3**

*insert*

- 3 A signpost definition ‘OH&S Council—see the *XYZ Act 2000*, dictionary, definition of *council*.’ means that the expression ‘OH&S Council’ has the same meaning as the word ‘council’ has in the definition of *council* in the *XYZ Act 2000*, dictionary, as in force from time to time.

**Explanatory note**

This amendment inserts an example to explain the operation of the previous amendment of section 131 (1).

**[2.28] Section 134 (3), 2nd example**

*omit*

retains possession of

*substitute*

keeps

**Explanatory note**

This amendment updates language.

**[2.29] Section 135 (2) and (3), examples**

*omit*

not exceeding

*substitute*

of not more than

**Explanatory note**

This amendment updates language.

**[2.30] Section 139 (2) (e)**

*omit*

memorandum

*substitute*

statement (however described)

**Explanatory note**

This amendment updates a reference to the explanatory material presented with a bill.

**[2.31] Section 151 (3), example 2**

*omit*

not later

*substitute*

not later than

**Explanatory note**

This amendment corrects a minor error.

**[2.32] Section 152**

*substitute*

**152 Continuing effect of obligations**

If, under a provision of an Act or statutory instrument, an act is required to be done, the obligation to do the act continues until the act is done even if—

- (a) the provision required the act to be done within a particular period or before a particular time, and the period has ended or the time has passed; or
- (b) someone has been convicted of an offence in relation to failure to do the act.

**Explanatory note**

This amendment remakes the section to clarify that an obligation to do an act continues until the act is done even if someone has been convicted of an offence for failing to do the act (see also s 193 (Continuing offences)).

**[2.33] Section 161 (2), example**

*omit*

2 000 penalty units

*substitute*

100 penalty units

**Explanatory note**

This amendment makes the example consistent with section 161 (3).

**[2.34] New section 227 (3)**

*insert*

(3) In this section:

*public servant* includes a fire commissioner, deputy fire commissioner or other member of the fire brigade.

**Explanatory note**

This amendment clarifies that a fire commissioner, deputy fire commissioner or other member of the fire brigade is a public servant for division 19.3.3. An appointment to which that division applies must be the subject of Assembly consultation before it is made, and is disallowable. These requirements, previously found in the *Statutory Appointments Act 1994*, were transferred to the Legislation Act by the *Legislation Amendment Bill 2002*. The requirements are expressed not to apply to appointments of public servants. Members of the fire brigade were regarded as public servants for the Statutory Appointments Act and there was no intention to change this when the provisions were moved into the Legislation Act. However, the terms ‘public servant’ and ‘public service’ have been expressly defined in the Legislation Act and ‘public servant’ now means someone employed in the Australian Capital Territory Public Service. As the fire brigade is constituted under the *Fire Brigade (Administration) Act 1974* and is not part of the ACT public service constituted under the *Public Sector Management Act 1994*, section 227 is being amended to ensure that appointments of people who are already employed under the Fire Brigade (Administration) Act are not caught by division 19.3.3.

**[2.35] Section 229 heading**

*substitute*

**229 Appointment is disallowable instrument**

**Explanatory note**

This amendment remakes the heading to make it more informative.

**[2.36] Section 239 (3)**

*omit*

opinion, belief or

**Explanatory note**

This amendment is consequential on the insertion into section 239 of a new definition of *state of mind*.

**[2.37] New section 239 (5)**

*insert*

(5) In this section:

*state of mind* includes knowledge, intention, opinion, belief or purpose.

**Explanatory note**

This amendment inserts a new definition of *state of mind* to clarify the meaning of the term in section 239. The term is intended to have a wide meaning and is defined in an inclusive way.

**[2.38] Section 247**

*omit*

A document

*substitute*

(1) A document

**Explanatory note**

This amendment is consequential on the insertion of new section 247 (2).

**[2.39] New section 247 (2)**

*insert*

(2) This section applies to service of a document outside the ACT in the same way as it applies to service of the document in the ACT.

**Explanatory note**

This amendment inserts a new subsection to make it clear that the section applies to service of documents outside the ACT (eg sending a licence renewal by prepaid post to the business address of an individual in NSW). The effect of the section is subject to section 251. Section 251 preserves the operation of other laws that require service of documents (eg court processes) otherwise than as provided in the section.

**[2.40] Section 248**

*omit*

A document

*substitute*

- (1) A document

**Explanatory note**

This amendment is consequential on the insertion of new section 248 (2).

**[2.41] New section 248 (2)**

*insert*

- (2) This section applies to service of a document outside the ACT in the same way as it applies to service of the document in the ACT.

**Explanatory note**

This amendment inserts a new subsection to make it clear that the section applies to service of documents outside the ACT (eg sending a licence renewal by prepaid post to the registered office of a corporation in NSW). The effect of the section is subject to section 251. Section 251 preserves the operation of other laws that require service of documents (eg court processes) otherwise than as provided under part 19.5.

**[2.42] Section 255 (2)**

*substitute*

- (2) The authorising law authorises a form to be approved or prescribed in relation to any matter under or in relation to the relevant law.

**Explanatory note**

This amendment brings language into line with language used elsewhere in the Act (see especially new definition of *in relation to* inserted by another amendment in this part).

**[2.43] Schedule 1, part 1.1**

*substitute*

**Part 1.1                      Former NSW and UK Acts in  
force before establishment of  
Territory**

<b>column 1 item</b>	<b>column 2 name of Act</b>	<b>column 3 number or date of assent and original jurisdiction</b>
1	<i>Magna Carta</i>	(1297) 25 Edw 1 c 29 (UK)
2	<i>Criminal and Civil Justice Act 1351</i>	25 Edw 3 St 5 c 4 (UK)
3	<i>Due Process of Law Act 1354</i>	28 Edw 3 c 3 (UK)
4	<i>Due Process of Law Act 1368</i>	42 Edw 3 c 3 (UK)
5	<i>Free Access to Courts Act 1400</i>	2 Hen 4 c 1 (UK)
6	<i>Petition of Right 1627</i>	3 Chas 1 c 1 (UK)
7	<i>Bill of Rights 1688</i>	1 Will and Mary sess 2 c 2 (UK)
8	<i>Act of Settlement 1700</i>	12 and 13 Will 3 c 2 (UK)
9	<i>Set-off of Debts Act 1728</i>	2 Geo 2 c 22 (UK)
10	<i>Set-off of Debts Act 1735</i>	8 Geo 2 c 24 (UK)
11	<i>Royal Marriages Act 1772</i>	12 Geo 3 c 11 (UK)
12	<i>Foreign Tribunals Evidence Act 1856</i>	19 and 20 Vic c 113 (UK)
13	<i>Evidence by Commission Act 1859</i>	22 Vic c 20 (UK)
14	<i>Public Instruction Act 1880</i>	43 Vic No 23 (NSW)



<b>column 1 item</b>	<b>column 2 name of Act</b>	<b>column 3 number or date of assent and original jurisdiction</b>
15	<i>Evidence by Commission Act 1885</i>	48 and 49 Vic c 74 (UK)
16	<i>Contractors Debts Act 1897</i>	No 29 (NSW)
17	<i>Conveyancing and Law of Property Act 1898</i>	No 17 (NSW)
18	<i>Landlord and Tenant Act 1899</i>	No 18 (NSW)
19	<i>Crimes Act 1900</i>	No 40 (NSW)
20	<i>Truck Act 1900</i>	No 55 (NSW)
21	<i>Judgment Creditors Remedies Act 1901</i>	No 8 (NSW)
22	<i>Games, Wagers and Betting Houses Act 1901</i>	No 18 (NSW)
23	<i>Arrest on Mesne Process Act 1902</i>	No 24 (NSW)
24	<i>Innkeepers Liability Act 1902</i>	No 64 (NSW)
25	<i>Pawnbrokers Act 1902</i>	No 66 (NSW)
26	<i>Public Roads Act 1902</i>	No 95 (NSW)
27	<i>Anglican Church of Australia Constitutions Act 1902</i>	24 December 1902 (NSW)
28	<i>Fertilisers Act 1904</i>	No 33 (NSW)
29	<i>Forfeiture and Validation of Leases Act 1905</i>	No 8 (NSW)
30	<i>Free Education Act 1906</i>	No 12 (NSW)
31	<i>Gaming and Betting Act 1906</i>	No 13 (NSW)
32	<i>Second-hand Dealers Act 1906</i>	No 30 (NSW)

**Explanatory note**

This amendment updates this table, including because some Acts that were in the table are repealed by this Act (see this Act, sch 4).

**[2.44] Dictionary, part 1, new definition of AAT**

*insert*

*AAT*—see definition of *administrative appeals tribunal*.

**Explanatory note**

This amendment inserts a signpost definition in accordance with current drafting practice.

**[2.45] Dictionary, part 1, definition of ADI**

*substitute*

*ADI*—see definition of *authorised deposit-taking institution*.

**Explanatory note**

This amendment remakes the definition of *ADI* as a signpost definition in accordance with current drafting practice.

**[2.46] Dictionary, part 1, definition of authorised deposit-taking institution**

*substitute*

*authorised deposit-taking institution* (or *ADI*) means an authorised deposit-taking institution under the *Banking Act 1959* (Cwlth).

**Explanatory note**

This amendment remakes the definition of *authorised deposit-taking institution* to include reference to the acronym *ADI* in accordance with current drafting practice.

**[2.47] Dictionary, part 1, new definition of DPP**

*insert*

*DPP*—see definition of *director of public prosecutions*.

**Explanatory note**

This amendment inserts a signpost definition in accordance with current drafting practice.

**[2.48] Dictionary, part 1, definition of *found guilty***

*substitute*

*found guilty*, of an offence, includes—

- (a) having the offence taken into account under the *Crimes Act 1900*, section 357 (which is about taking outstanding charges into account when passing sentence); and
- (b) having an order made in relation to the offence under the *Crimes Act 1900*, section 402 (Conditional release of offenders without proceeding to conviction) or the *Children and Young People Act 1999*, section 98 (Disposition without proceeding to conviction).

**Explanatory note**

This amendment remakes the definition of *found guilty* to include the information in brackets about the sections mentioned in the definition and to change the cross-reference to the *Children and Young People Act 1999* to the appropriate provision.

**[2.49] Dictionary, part 1, new definition of *in relation to***

*insert*

*in relation to* includes the following:

- (a) in respect of;
- (b) with respect to;
- (c) in connection with;
- (d) in regard to;
- (e) with reference to;
- (f) relating to;
- (g) for or with respect to.

**Explanatory note**

This amendment inserts a new definition of *in relation to*. This is the standard connecting phrase used in ACT drafting.

**[2.50] Dictionary, part 1, new definition of *Legislation Act***

*insert*

*Legislation Act* means the *Legislation Act 2001*.

**Explanatory note**

This amendment inserts a new definition of *Legislation Act*.

**[2.51] Dictionary, part 1, definition of *prescribed***

*after*

or

*insert*

under

**Explanatory note**

This amendment brings the definition more closely into line with section 104 (References to laws include references to instruments under laws) and makes it clear that matters can be prescribed under an Act by instruments made under regulations under the Act. See also definition of *under* in the Legislation Act, dictionary, part 1.

**[2.52] Dictionary, part 1, definition of *tenancy tribunal***

*omit*

**Explanatory note**

This amendment omits a redundant definition. The tenancy tribunal was abolished by the *Leases (Commercial and Retail) Act 2001*.

**[2.53] Dictionary, part 1, definition of *Territory plan***

*omit*

as in force from time to time

**Explanatory note**

This amendment omits unnecessary words. A reference to a law or instrument includes a reference to the law or instrument as originally made, and as amended from time to time since it was originally made (see Legislation Act, s 102 (1) (a)).

**[2.54] Further amendments, mentions of *with respect to***

*omit*

with respect to

*substitute*

in relation to

*in*

- section 44 (1)
- section 45 (1)
- section 48 (1) (a)
- section 50 (1)
- section 56 (2)
- section 307 (1)

**Explanatory note**

This amendment is consequential on the insertion (by another amendment in this part) of a definition of *in relation to* in the Legislation Act, dictionary, part 1. Under that definition, *in relation to* includes ‘with respect to’.

## Schedule 3      Technical amendments

(see s 5)

### Part 3.1      Casino Control Act 1988

#### [3.1] Section 4

*substitute*

#### 4      Designation of casino

The regulations may designate an area to be the casino for this Act.

##### Explanatory note

This amendment brings the provision into line with other ACT laws that provide for the making of regulations by the Executive rather than a Minister (see Legislation Act, s 41).

### Part 3.2      Civil Law (Wrongs) Act 2002

#### [3.2] New section 146A

*insert*

#### 146A Abolition of torts of maintenance and champerty

- (1) The torts of maintenance and champerty are abolished.

*Note* For the abolition of the common law offences of maintenance, champerty and being a common barrator, see *Law Reform (Miscellaneous Provisions) Act 1955*, s 68.

- (2) Subsection (1) does not affect any rule of law about—
- (a) the illegality or avoidance of contracts that are tainted with maintenance or are champertous; or
  - (b) the misconduct of a lawyer who—
    - (i) engages in conduct that would have been maintenance at common law; or

(ii) is a party to a champertous agreement.

**Explanatory note**

This amendment relocates provisions about the abolition of the torts of maintenance and champerty from the *Law Reform (Miscellaneous Provisions) Act 1955* to the *Civil Law (Wrongs) Act 2002*.

**[3.3] New section 154A**

*insert*

**154A Abolition of torts of maintenance and champerty—saving of existing rights and liabilities**

- (1) The *Legislation Act 2001*, section 84 (Saving of operation of repealed and amended laws) applies to the abolition of a tort under section 151A as if the section repealed a law.
- (2) This section expires on the expiry of section 150.
- (3) Subsection (1) is declared to be a provision to which the *Legislation Act 2001*, section 88 (Repeal does not end transitional or validating effect etc) applies.

**Explanatory note**

This amendment is consequential on the relocation by another amendment in this schedule of provisions about the abolition of the torts of maintenance and champerty from the *Law Reform (Miscellaneous Provisions) Act 1955* to the *Civil Law (Wrongs) Act 2002*. Subsections (2) and (3) are added to provide for the expiry of the section and the preservation of its ongoing transitional effect.

## **Part 3.3 Credit Regulations (Amendment) 1994 No 33**

**[3.4] Regulation 2**

*substitute*

**2 Commencement**

These regulations commence on the day they are notified in the Gazette.

(commencement: 7 October 1994)

**Explanatory note**

The commencement provision of these regulations provided that the regulations ‘commence on the day on which section 7 of the *Credit (Amendment) Act 1994* commences’. That Act commenced on 5 October 1994 (that is, the day that Act was notified in the Gazette). However, the regulations were not notified in the Gazette until 7 October 1994.

The backdating of this amendment makes it clear that the regulations validly commenced on the day they were notified in the Gazette. This result is consistent with the provision now made by the Legislation Act, section 73 (3) (which is about the commencement of laws).

## **Part 3.4                      Crimes Act 1900**

### **[3.5] Section 24**

*omit*

thereby

*substitute*

by the assault

**Explanatory note**

This amendment updates language.

### **[3.6] Section 27 (3) (h)**

*omit*

1999

*substitute*

1999)

**Explanatory note**

This amendment corrects a minor error.



---

**[3.7] Section 28 (1)**

*substitute*

(1) In this section:

*conveyance*—see section 27 (1).

*interferes with*—see section 27 (2).

*public utility service*—see section 27 (1).

*transport facility*—see section 27 (1).

**Explanatory note**

This amendment changes the definitions to signpost definitions in accordance with current drafting practice.

**[3.8] Section 41**

*omit*

thereby

*substitute*

by the abandonment or exposure

**Explanatory note**

This amendment updates language.

**[3.9] Section 49 heading**

*substitute*

**49 Alternative verdicts for certain offences against the person**

**Explanatory note**

This amendment remakes the heading to make the section's scope clearer.

**[3.10] Section 56 (1), definition of *adult***

*omit*

**Explanatory note**

This amendment omits an unnecessary definition (see Legislation Act, dict, pt 1, def *adult*).

**[3.11] Section 62 (4)**

*omit everything after*

*unless*

*substitute*

*the evidence is rebutted by the prosecution.*

**Explanatory note**

This amendment updates language.

**[3.12] Section 62 (6)**

*omit*

*in loco parentis*

*substitute*

*in place of a parent*

**Explanatory note**

This amendment updates language.

**[3.13] Section 66 (6), definition of *classified***

*substitute*

*classified*—see the *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995*, dictionary.

**Explanatory note**

This amendment revises a signpost definition in accordance with current drafting practice.

**[3.14] Section 70 heading**

*substitute*

**70      Alternative verdicts for certain sexual offences**

---

**Explanatory note**

This amendment remakes the heading to make the section's scope clearer.

**[3.15] Section 76 (2) (a)**

*omit*

midwife

*substitute*

registered midwife under the *Nurses Act 1988*

**Explanatory note**

This amendment allows section 76 (4), which defines a midwife, to be omitted.

**[3.16] Section 76 (4)**

*omit*

**Explanatory note**

This amendment omits the definition of *midwife* that was made redundant by amendment of section 76 (2) (a) by another amendment in this schedule.

**[3.17] Section 78 heading**

*substitute*

**78 Meaning of *sexual servitude* and *sexual services* for pt 5**

**Explanatory note**

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

**[3.18] Section 109 (2)**

*omit*

refuses or

**Explanatory note**

This amendment omits unnecessary words (see Legislation Act, dict, pt 1, def *fail*).

**[3.19] Section 155**

*omit*

---

In

*substitute*

(1) In

**Explanatory note**

This amendment is consequential on the insertion of new section 155 (2) by another amendment.

**[3.20] New section 155 (2)**

*insert*

(2) In this section:

*document of title to land* includes any document that is or contains evidence of title to the land or an interest in the land.

*Note*      **Interest**, in relation to land or other property, is—

- (a) a legal or equitable estate in the land or other property; or
- (b) a right, power or privilege over, or in relation to, the land or other property.

See Legislation Act, dict, pt 1, def *interest*.

**Explanatory note**

The dictionary definition of *document of title to land* is omitted by another amendment in this schedule. The term is used only in section 155 and the definition is relocated and recast in accordance with current drafting practice.

**[3.21] Section 162 (b)**

*omit*

refuses or

**Explanatory note**

This amendment omits unnecessary words (see Legislation Act, dict, pt 1, def *fail*).

**[3.22] Section 163 (3)**

*substitute*

(3) In this section:

*Commonwealth officer*—see the *Crimes Act 1914* (Cwlth), section 3.

*constable*—see the *Crimes Act 1914* (Cwlth), section 3.

**Explanatory note**

This amendment updates the definitions to current definition style.

**[3.23] Sections 167, 168, 170 and 173 (1)**

*omit*

Whosoever

*substitute*

A person who

**Explanatory note**

This amendment updates language.

**[3.24] Section 195 (2) (b)**

*substitute*

(b) to—

(i) seize things of that kind; or

(ii) record fingerprints from things; or

(iii) to take forensic samples from things;

found in the course of the search; and

**Explanatory note**

This amendment inserts ‘or’ at the end of subparagraph (b) (i) and (ii) in accordance with current drafting practice.

**[3.25] Sections 211 (2) (d) and (3) (d) and 232 (2)**

*omit*

refuse or

---

**Explanatory note**

This amendment omits unnecessary words (see Legislation Act, dict, pt 1, def *fail*).

**[3.26] Section 258 (4)**

*omit*

**Explanatory note**

This amendment omits an unnecessary definition (see Legislation Act, dict, pt 1, def *commissioner of police*).

**[3.27] Section 259**

*omit*

**Explanatory note**

This amendment omits a redundant provision. The section defines *Act* and *statute*. *Act* is defined in the Legislation Act and the definition of *statute* is redundant.

**[3.28] Section 265**

*omit*

in connection therewith or consequent thereon.

*substitute*

in relation to, or consequent on, the trial.

**Explanatory note**

This amendment updates archaic language.

**[3.29] Section 280 (1)**

*omit*

therein

*substitute*

in the indictment

**Explanatory note**

This amendment updates archaic language.

---

**[3.30] Section 280 (2)**

*omit*

in respect thereof

*substitute*

in relation to them

**Explanatory note**

This amendment updates archaic language.

**[3.31] Section 285**

*substitute*

**285 Accused may be defended by lawyer**

- (1) An accused person has the right in any court to—
  - (a) make a full answer and defence to a charge by a lawyer; and
  - (b) reserve the person's address until after the close of the evidence for the defence.
- (2) If the accused person reserves the person's address until after the close of the evidence for the defence, all evidence in reply for the prosecution must be given before the person's address.

**Explanatory note**

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

**[3.32] Section 288 (3) (d)**

*substitute*

- (d) if the defendant is told by or on behalf of the prosecution that the person has not been found by the name, or at the address, given by the defendant—

- (i) the defendant immediately gives notice of any information in the defendant's possession that might be of material assistance in finding the person; or
- (ii) if the defendant later receives any such information—the defendant immediately gives the prosecution notice of the information.

**Explanatory note**

This amendment updates the paragraph's language and improves its structure.

**[3.33] Section 295**

*substitute*

**295 Witnesses in mitigation**

- (1) This section applies before a court passes sentence on a convicted person.
- (2) The court may, at its own initiative or at the request of the prosecution or the convicted person, summon witnesses and examine them on oath in relation to any matter in extenuation of the person's offence.

**Explanatory note**

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

**[3.34] Section 300, definition of *court***

*omit*

**Explanatory note**

This amendment omits a redundant definition.



---

**[3.35] Section 350 (14)**

*omit*

**Explanatory note**

This amendment omits the definition of *available documents* which is included in subsection (16) by another amendment in this schedule.

**[3.36] Section 350 (16), new definition of *available documents***

*insert*

*available documents* means any of the following:

- (a) any written statements or admissions that were made for use as evidence at a trial and would have been admissible as evidence at the trial;
- (b) the depositions taken at any committal proceeding;
- (c) any written statements or admissions used as evidence in any committal proceeding.

**Explanatory note**

This amendment relocates a definition to the subsection containing other definitions for the section and updates the form of the definition.

**[3.37] Section 350 (15) and (16)**

*renumber as section 350 (14) and (15) when Act next republished under Legislation Act 2001*

**Explanatory note**

This amendment is consequential on the omission of section 350 (14) by another amendment in this schedule.

**[3.38] Section 356**

*omit*

thereof

*substitute*

of the sentence or sentences

**Explanatory note**

This amendment updates archaic language.

**[3.39] Section 367 (1) (b)**

*substitute*

- (b) in any other case—order that the article be forfeited to the Territory.

**Explanatory note**

This amendment updates language.

**[3.40] Section 367 (2) (a)**

*substitute*

- (a) if it is satisfied that the article should be forfeited—order that the article be forfeited to the Territory; or

**Explanatory note**

This amendment updates language.

**[3.41] Section 379 (2)**

*omit*

member of the police force

*substitute*

police officer

**Explanatory note**

This amendment updates a reference.

**[3.42] Section 403 (5)**

*omit*

**Explanatory note**

This amendment omits a reference to the *Fines and Penalties Act 1901* (NSW) which is no longer in force in the ACT.

**[3.43] Section 403 (6) and (7)**

*renumber as section 403 (5) and (6) when Act next republished under Legislation Act 2001*

**Explanatory note**

This amendment is consequential on the omission of section 403 (5) by another amendment in this schedule.

**[3.44] Section 405 (3)**

*omit*

in all or any of the following ways, that is to say, by:

*substitute*

in 1 or more of the following ways:

**Explanatory note**

This amendment updates language.

**[3.45] Section 405 (10)**

*substitute*

(10) In this section:

*authorised person* means the Attorney-General or a person appointed under the *Supreme Court Act 1933*, section 68 (1) to prosecute indictable offences triable before the Supreme Court.

*variation*, in relation to how instalments of a penalty are to be paid, includes a variation of the amount of any instalments of the penalty.

**Explanatory note**

This amendment recasts the form of the definition of *variation* in accordance with current drafting practice.

**[3.46] Section 410 (1)**

*omit*

refuses or

**Explanatory note**

This amendment omits unnecessary words (see Legislation Act, dict, pt 1, def *fail*).

**[3.47] Section 416**

*substitute*

**416 Service of documents**

A document may be served under this Act on a person—

- (a) by giving a copy of the document to the person; or
- (b) by leaving a copy of the document, addressed to the person, at the person's last-known home or business address with someone who appears to be at least 16 years old and to live or be employed at the address.

*Note*      For other ways of serving documents, see Legislation Act, pt 19.5.

**Explanatory note**

This amendment updates the section and inserts a new note about the service of documents.

**[3.48] Section 420**

*omit*

**Explanatory note**

This amendment omits a provision that gives the Supreme Court jurisdiction to hear and decide matters about community service orders. The section is unnecessary because the Legislation Act, section 176 provides for the jurisdiction of courts.

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### **[3.49] Dictionary, new notes**

*insert*

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

*Note 2* In particular, the Legislation Act, dict, pt 1, defines the following terms:

- Act
- adult
- contravene
- chief police officer
- commissioner of police
- director of public prosecutions
- fail
- indictable offence (see also s 190)
- judge
- lawyer
- magistrate
- medical practitioner
- penalty unit (see also s 133)
- police officer
- summary offence (see also s 190)
- the Territory.

#### **Explanatory note**

This amendment inserts standard dictionary notes.

### **[3.50] Dictionary, definition of *document of title to land***

*omit*

**Explanatory note**

This amendment is consequential on the insertion of the definition into section 155 by another amendment in this schedule.

**[3.51] Dictionary, definition of *medical practitioner***

*omit*

**Explanatory note**

This amendment omits an unnecessary definition (see Legislation Act, dict, pt 1, def *medical practitioner*).

## **Part 3.5                                  Crimes Legislation Amendment Act 2001**

**[3.52] Part 11**

*omit*

**Explanatory note**

This amendment omits the *Crimes Legislation Amendment Act 2001*, part 11. That part makes amendments of the *Supreme Court Act 1933* that are no longer necessary. The amendments were consequential on another proposed amendment of the Supreme Court Act (the insertion of new section 37R) by the Crimes Legislation Amendment Bill 2001. However, proposed section 37R was omitted from the bill by an amendment during the passage of the bill.

## **Part 3.6                                  Domestic Animals Act 2000**

**[3.53] Dictionary, definition of *animal welfare offence***

*substitute*

***animal welfare offence*** means an offence against a provision of any of the following sections of the *Animal Welfare Act 1992*:

- (a) section 7 (Cruelty);
- (b) section 8 (Pain);
- (c) section 9 (Confined animals);

- (d) section 10 (Alleviation of pain);
- (e) section 11 (Release);
- (f) section 12 (Administering poison);
- (g) section 12A (Laying poison);
- (h) section 13 (Electrical devices);
- (i) section 14 (Spurs);
- (j) section 15 (Conveyance and containment);
- (k) section 15A (Carriage of dogs);
- (l) section 16 (Working, riding and driving unfit animals);
- (m) section 17 (Matches, competitions and baiting);
- (n) section 19 (Medical and surgical procedures—people other than veterinary surgeons).

**Explanatory note**

This amendment updates the definition consequent to amendments of the *Animal Welfare Act 1992* by the *Animal Welfare Amendment Act 2000*, as follows:

- by inserting the offences under new section 12A (Laying poison) and new section 15A (Carriage of dogs) inserted by the amending Act;
- by consequentially amending the references to the headings to sections 12 and 19.

The offences in new sections 12A and 15A are similar in nature to the other offences mentioned in the definition.

## Part 3.7      Evidence (Miscellaneous Provisions) Act 1991

### [3.54] Part 2 heading

*substitute*

## Part 2      Giving of evidence about sexual offences

### Explanatory note

This amendment omits from the heading a reference to children to bring the heading's scope into line with the contents of the part.

## Part 3.8      Health Professionals (Special Events Exemptions) Act 2000

### [3.55] Section 3, new definition of *drugs and poisons standard*

*insert*

*drugs and poisons standard*—see the *Poisons and Drugs Act 1978*, dictionary.

### Explanatory note

This amendment is consequential on amendments of the *Poisons and Drugs Act 1978* made by this schedule.

### [3.56] Section 3, definition of *restricted substance*

*substitute*

*restricted substance* means—

- (a) a substance mentioned in the drugs and poisons standard, schedule 4;
- (b) a restricted substance under the *Poisons and Drugs Act 1978*;  
or



- (c) a drug of dependence under the *Drugs of Dependence Act 1989*.

**Explanatory note**

This amendment is consequential on amendments of the *Poisons and Drugs Act 1978* made by this schedule.

## **Part 3.9**                      **Health Professions Board (Procedures) Act 1981**

### **[3.57] Section 5 (1)**

*omit*

- (1) The chairperson

*substitute*

The chairperson

**Explanatory note**

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

### **[3.58] Section 5 (2)**

*substitute*

*Note 1* For the making of appointments (including acting appointments), see Legislation Act, div 19.3.

*Note 2* In particular, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

*Note 3* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

**Explanatory note**

This amendment omits section 5 (2) which makes the appointment of the chairperson and each board member by the Minister a notifiable instrument. The omission allows the Legislation Act, division 19.3.3 (Appointments—Assembly consultation) to apply to the appointments. The amendment also adds standard notes about appointments.

## Part 3.10                      Lakes Act 1976

### [3.59] Sections 1 and 4

*substitute*

#### 1      **Name of Act**

This Act is the *Lakes Act 1976*.

#### 2      **Dictionary**

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

*Note 1*    The dictionary at the end of this Act defines certain words and expressions used in this Act.

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

#### 3      **Notes**

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

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

#### **Explanatory note**

This amendment brings the naming provision of the Act into line with current drafting practice, adds standard dictionary and notes provisions and omits the definition section for the Act. A new dictionary is inserted by another amendment.

### [3.60] Section 4B (1)

*substitute*

(1) The following provisions do not bind the Territory:

- section 16 (General restrictions on boats)
- section 17 (Restrictions on bathing, swimming and diving)
- 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 and caravanning).

**Explanatory note**

This amendment updates section heading references consequentially on other amendments.

**[3.61] Sections 6, 7 and 8**

*substitute*

**6 Delegate for lakes**

The chief executive must appoint a public servant as the Delegate for Lakes.

*Note 1* For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

*Note 2* In particular, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

**7 Inspectors**

- (1) The chief executive may appoint a public servant as an inspector for this Act.

*Note* See the notes to s 6. Also, a person may be appointed for a particular provision of the Act (see *Legislation Act 2001*, s 7 (3)).

- (2) The delegate for lakes and police officers are also inspectors.

**8 Identity cards**

- (1) The chief executive must issue the delegate for lakes and an inspector (other than a police officer) with an identity card that states the person is an inspector for this Act, or stated provisions of this Act, and shows—

- (a) a recent photograph of the person; and
- (b) the name of the person; and

- (c) the date of issue of the card; and
  - (d) a date of expiry for the card; and
  - (e) anything else prescribed under the regulations.
- (2) A person who ceases to be an inspector must return his or her identity card to the chief executive as soon as practicable, but no later than 7 days after ceasing to be an inspector.

Maximum penalty (subsection (2)): 1 penalty unit.

**Explanatory note**

This amendment removes the requirement that the chief executive must create and maintain offices for inspectors etc in the public service. The Legislation Act, section 207 provides that an appointment may be made by naming the person appointed or by nominating the occupant of a position (however described), at a particular time or from time to time. Standard notes about appointments are also inserted.

This amendment also updates the provision about identity cards.

**[3.62] Section 10**

*substitute*

**10 Obstruction or hindrance of inspectors**

- (1) A person must not, without reasonable excuse, obstruct or hinder an inspector in the exercise of the inspector's functions under this Act.

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

- (2) A person must not, without reasonable excuse, contravene a direction given by an inspector under this Act.

Maximum penalty: 50 penalty units.

**Explanatory note**

This amendment updates language.

**[3.63] Section 13 heading**

**13 Alterations in flow and water level**

---

**Explanatory note**

This amendment brings the section's heading into line with current drafting practice by making it more descriptive of the section's contents.

**[3.64] Section 13 (2)**

*substitute*

- (2) The Minister must ensure that any action necessary to minimise any detriment, inconvenience and damage that may result from doing something under subsection (1) is taken.

**Explanatory note**

This amendment updates language.

**[3.65] Section 15**

*omit*

by a sign erected, placed or displayed in such manner as he or she thinks necessary

*substitute*

by a sign erected or displayed

**Explanatory note**

This amendment updates and simplifies language.

**[3.66] Section 16 heading**

*substitute*

**16 General restrictions on boats**

**Explanatory note**

This amendment brings the section's heading into line with current drafting practice by making it more descriptive of the section's contents.

**[3.67] Section 17 heading**

**17 Restrictions on bathing, swimming and diving**

---

**Explanatory note**

This amendment brings the section's heading into line with current drafting practice by making it more descriptive of the section's contents.

**[3.68] Section 21 (3) (c)**

*omit*

commissioner for police

*substitute*

chief police officer

**Explanatory note**

This amendment updates a reference to a position.

**[3.69] Section 21 (8)**

*substitute*

- (8) Subsections (5) and (6) do not apply to a public employee, or someone else, who is authorised by the Territory to exercise a function in relation to a lake.

**Explanatory note**

This amendment simplifies the language of the subsection in accordance with current drafting practice.

**[3.70] Section 22**

*substitute*

**22 Closing of parts of lake for certain events**

- (1) The Minister may, by notice published in a daily newspaper circulating in the ACT, declare a part of a lake to be a closed area for the period stated in the notice.
- (2) The Minister may also, by the notice, authorise an entity to conduct a stated event in the closed area during the stated period.

*Note*      **Entity** includes an unincorporated body, see Legislation Act, dict, pt 1.

- (3) A person must not enter the closed area during the period stated in the notice unless, in a case to which subsection (2) applies, the person is authorised by the entity to enter the area.

Maximum penalty: 50 penalty units.

- (4) Subsection (3) does not apply to a public employee, or someone else, who is authorised by the Territory to exercise a function in relation to the lake.

- (5) In this section:

*event* means a regatta, exhibition, sporting contest or other display.

**Explanatory note**

This amendment combines existing sections 22 and 23 and brings them into line with current drafting practice.

**[3.71] Section 22A**

*renumber as section 23 when Act next republished under Legislation Act 2001*

**Explanatory note**

This amendment is consequential on the remaking of section 22 by another amendment in this schedule.

**[3.72] Section 23**

*omit*

**Explanatory note**

This amendment is consequential on the remaking of section 22 by another amendment in this schedule.

**[3.73] Section 24 (1)**

*substitute*

- (1) A person must not anchor a boat on a lake at night.

Maximum penalty: 50 penalty units.

**Explanatory note**

This amendment updates language.

**[3.74] Section 26 (4)**

*substitute*

- (4) A notice under this section may be served on a sports club—
- (a) by giving a copy of the notice to a member of the governing body of the club; or
  - (b) by sending it by prepaid post, addressed to the governing body of the club, at the club's last-known address.

*Note*      For other ways of serving documents, see Legislation Act, pt 19.5.

**Explanatory note**

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

**[3.75] Section 27 (3)**

*substitute*

- (3) Subsections (1) and (1A) do not apply to a public employee, or someone else, who is authorised by the Territory to exercise a function in relation to the lake.

**Explanatory note**

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

**[3.76] Section 27**

*renumber subsections when Act next republished under Legislation Act 2001*

**Explanatory note**

This amendment renumbers the section's subsections so that they form a single sequence.

**[3.77] Section 30 (2) (b)**

*omit*

refuses or fails to comply with



*substitute*

contravenes

**Explanatory note**

This amendment updates language.

**[3.78] Section 32**

*substitute*

**32 Camping and caravanning**

A person must not camp, or allow a caravan to stand, in a lake area at night.

Maximum penalty: 30 penalty units.

**Explanatory note**

This amendment updates language.

**[3.79] Section 35 (1)**

*omit*

portion

*substitute*

part

**Explanatory note**

This amendment updates language.

**[3.80] Section 35 (2)**

*omit*

by instrument

**Explanatory note**

This amendment omits redundant words.

**[3.81] Section 37**

*substitute*

**37 Compliance with lighting rules**

- (1) The operator of a boat that is under way, or anchored, on a lake at night must ensure that the boat carries a light as required by this division.

Maximum penalty: 10 penalty units.

- (2) In this section:

*operator* means—

- (a) the person in charge of the boat; or  
(b) if no-one is in charge—each person on the boat; or  
(c) if no-one is on the boat—the owner.

**Explanatory note**

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

**[3.82] Section 38 (1) (b)**

*omit*

between the hours of sunset and sunrise

*substitute*

at night

**Explanatory note**

This amendment updates language.

**[3.83] Section 38 (2) to (5)**

*omit*

A boat to which this section applies shall

*substitute*

---

---

The boat must

**Explanatory note**

This amendment updates language.

**[3.84] Section 39**

*substitute*

**39 Light to be carried by small power boats**

- (1) This section applies to a power boat that is less than 5m long.
- (2) If the boat is under way, or anchored, on a lake at night, the boat must show a white light that is visible at a distance of 1.5km.

**Explanatory note**

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

**[3.85] Section 39A**

*omit*

between the hours of sunset and sunrise

*substitute*

at night

**Explanatory note**

This amendment updates language.

**[3.86] Section 40**

*substitute*

**40 Emergency lights**

- (1) The operator of a boat that is under way, or anchored, on a lake at night must—
  - (a) carry an electric torch or ignited lantern ready for immediate use; and

- (b) if a light required by this division fails—show the light of the torch or lantern in place of the failed light.

Maximum penalty: 30 penalty units.

- (2) In this section:

*operator* means—

- (a) the person in charge of the boat; or  
(b) if no-one is in charge—the owner.

**Explanatory note**

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

**[3.87] Sections 42, 43 and 44**

*omit*

by a provision of

*substitute*

under

**Explanatory note**

This amendment updates language.

**[3.88] Section 45**

*omit*

shall be deemed

*substitute*

is taken

**Explanatory note**

This amendment updates language.

**[3.89] Section 47**

*omit*

---

person or association of persons

*substitute*

entity

**Explanatory note**

This amendment updates language.

**[3.90] Section 48 heading**

*substitute*

**48 Unsafe navigation of boat**

**Explanatory note**

This amendment brings the section's heading into line with current drafting practice by making it more descriptive of the section's contents.

**[3.91] Section 48 (1)**

*omit*

manner

*substitute*

way

**Explanatory note**

This amendment updates language.

**[3.92] Section 50 (2)**

*omit*

legally qualified medical practitioner

*substitute*

doctor

**Explanatory note**

This amendment updates language.

**[3.93] Section 51 heading**

*substitute*

**51 Review of decisions by AAT**

**Explanatory note**

This amendment brings the section's heading into line with current drafting practice.

**[3.94] Section 51A**

*substitute*

**51A Acts and omissions of representatives**

(1) In this section:

*representative*, of a person, means—

- (a) if the person is an individual—an employee or agent of the person; or
- (b) if the person is a corporation—an employee, agent or executive officer of the person.

*state of mind*, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.
- (2) An act done or omitted to be done on behalf of a person by a representative of the person is also taken to have been done or omitted to be done by the person if the representative was acting within the scope of the representative's actual or apparent authority.
- (3) However, subsection (2) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.

*Note*      A defence of reasonable precautions and appropriate diligence is also provided for offences against pt 3 by s 30.

- (4) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
- (a) the act was done or omission was made by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (5) An individual who is convicted of an offence cannot be punished by imprisonment for the offence if the individual would not have been convicted of the offence without subsection (2) or (4).

**Explanatory note**

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

**[3.95] Section 55 (2), new note**

*insert*

*Note* For other provisions about forms, see Legislation Act, s 255.

**Explanatory note**

This amendment adds a standard note about approved forms.

**[3.96] New dictionary**

*insert*

## Dictionary

(see s 2)

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

*Note 2* In particular, the Legislation Act, dict, pt 1, defines the following terms:

- contravene
- doctor
- entity

- exercise
- function
- night
- penalty unit (see also s 133)
- public employee
- Territory land
- the Territory.

***associated work*** includes a wharf or jetty, owned by the Territory or the Commonwealth, erected in a lake area.

***boat*** includes launch, yacht, canoe, raft, pontoon and anything else that can carry people or goods through or on water.

***commercial activities*** means—

- (a) selling, or offering for sale, food, drink or other things; or
- (b) letting, or offering to let, on hire bicycles, boats or other things; or
- (c) carrying, or offering to carry, passengers or things in or on a boat for fee or reward; or
- (d) carrying, or offering to carry, passengers or things in or on a horse-drawn vehicle; or
- (e) carrying on the business of boat repair; or
- (f) undertaking any other activities prescribed under the regulations for this definition.

***dairy bridge*** means the bridge over which Dairy Road is carried across the Molonglo River.

***delegate for lakes*** means the Delegate for Lakes appointed under section 6.

***foreshores*** means—



- (a) for Lake Ginninderra—the land described in schedule 1; and
- (b) for any other lake—the area of land bounded by the level of the lake and an imaginary line drawn at a distance of 100m from the high water level of the lake;

other than land held under lease from the Commonwealth or occupied with the authority of the Territory or the Commonwealth or under a law in force in the ACT.

*inspector* means a person who is an inspector under section 7.

*lake* means Lake Burley Griffin, Lake Ginninderra or any other area declared by the Minister under section 5 to be a lake.

*lake area* means the area consisting of a lake, the foreshores of the lake and the islands (if any) in the lake.

*Lake Burley Griffin* means the waters of the Molonglo River between Scrivener Dam and dairy bridge.

*Lake Ginninderra* means the body of water inside the land described in schedule 1.

*owner*, of land, includes anyone with an interest in the land.

*power boat* means a boat propelled by mechanical power, and includes a boat under both power and sail.

*prohibited area* means a part of a lake declared by the Minister under section 21 to be a prohibited area.

*sports club* means an entity established for sporting or athletic purposes.

*under way*—a boat is *under way* unless it is anchored, moored, aground, or made fast to the shore or a jetty.

*visible*, for a light, means visible on a dark night with a clear atmosphere.

**Explanatory note**

This amendment inserts a new dictionary in accordance with current drafting practice. The dictionary incorporates the definitions in section 4 (which is omitted by another amendment) with the exception of the definition of *closed area* consequent on the omission of section 23 by another amendment. The language of several definitions has been updated in accordance with current drafting practice and the definition of *lake* has been revised by omitting ‘body of water’ and substituting ‘area’ to bring the definition into line with section 5 (Declaration of area as lake).

## **Part 3.11                      Law Reform (Miscellaneous Provisions) Act 1955**

### **[3.97] Section 68, new note**

*insert*

*Note*      For the abolition of the torts of maintenance and champerty, see *Civil Law (Wrongs) Act 2002*, s 151A.

**Explanatory note**

This amendment is consequential on the relocation by another amendment in this schedule of provisions about the abolition of the torts of maintenance and champerty to the *Civil Law (Wrongs) Act 2002*.

### **[3.98] Sections 69 to 72**

*substitute*

#### **69      Saving of existing rights and liabilities**

The *Legislation Act 2001*, section 84 (Saving of operation of repealed and amended laws) applies to the abolition of an offence under section 68 as if the section repealed a law.

**Explanatory note**

This amendment is consequential on the relocation by another amendment of provisions about the abolition of the torts of maintenance and champerty to the *Civil Law (Wrongs) Act 2002*.

## **Part 3.12                      Mental Health (Treatment and Care) Act 1994**

### **[3.99] Section 144**

*omit*

**Explanatory note**

This amendment omits a redundant provision. The provision requires a doctor to obtain the consent of the Mental Health Tribunal before giving a certificate relating to a person for the *Mental Health Act 1962*. The section is redundant because the provision has been superseded by the *Mental Health (Treatment and Care) Act 1994* and the *Mental Health Act 1962* is being repealed by schedule 5.

## **Part 3.13                      Poisons Act 1933**

### **[3.100]                      Sections 2 and 3**

*substitute*

#### **2                      Dictionary**

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

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

For example, the signpost definition '*drugs and poisons standard*—see the *Poisons and Drugs Act 1978*, dictionary.' means that the expression 'poisons and drugs standard' is defined in the dictionary to that Act and the definition applies to this Act.

*Note 2*    A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act,

provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

### **3 Notes**

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

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

#### **Explanatory note**

This amendment adds standard dictionary and notes provisions and omits the definition sections for the Act. A new dictionary inserted by another amendment. Existing section 3 is remade as new section 19A by another amendment in this schedule.

#### **[3.101] Section 4**

*substitute*

### **4 Application of Act to 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).

#### **Explanatory note**

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

#### **[3.102] Section 6**

*substitute*

### **6 Appointment of analysts**

The chief executive may appoint a public servant as an analyst for this Act.

*Note 1*      For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

*Note 2*      In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

**Explanatory note**

This amendment brings the section into line with current drafting practice. In particular, it removes the requirement that the chief executive must create and maintain an office or offices of analyst in the public service. The Legislation Act, section 207 provides that an appointment may be made by naming the person appointed or by nominating the occupant of a position (however described), at a particular time or from time to time. This amendment also adds standard notes about appointments.

**[3.103] Section 8**

*omit*

any schedule 4 substances within the meaning of the *Poisons and Drugs Act 1978*

*substitute*

any substance mentioned in the drugs and poisons standard, schedule 4

**Explanatory note**

This amendment is consequential on the amendment of the *Poisons and Drugs Act 1978* by another amendment.

**[3.104] Section 10 (1), new note**

*insert*

*Note* The following Acts are also relevant to poisons and drugs:

- the *Drugs of Dependence Act 1989*
- the *Poisons and Drugs Act 1978*.

**Explanatory note**

This amendment inserts an explanatory note to assist users of the Act.

**[3.105] Section 11**

*omit*

or have in his or her possession for sale

**Explanatory note**

This amendment omits unnecessary words. The definition of *sell* includes have in possession for sale.

**[3.106]      Section 15**

*substitute*

**15      Sale or supply from vending machines prohibited**

- (1) A person must not—
- (a) install a vending machine for the sale or supply of a poison or poisonous substance; or
  - (b) sell or supply a poison or poisonous substance using a vending machine.

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

- (2) In this section:

*vending machine* means a machine, or device, operated by a token, money or electronic funds transfer by a member of the public.

**Explanatory note**

This amendment updates this section by changing the references to ‘automatic machine’ to ‘vending machine’ and inserting a new definition of *vending machine* in place of the definition of *automatic machine* in existing section 2 of the Act.

**[3.107]      Section 19**

*omit*

deemed

*substitute*

taken

**Explanatory note**

This amendment updates language.

---

**[3.108] New section 19A**

*insert*

**19A Extended meaning of *possession***

For this Act, a person is taken to be in *possession* of a substance if the substance is in or on land or premises occupied, used or controlled by the person, unless the person establishes that the person had no knowledge of the substance being in or on land or premises occupied by the person.

**Explanatory note**

This amendment remakes existing section 3 to bring it more closely into line with current drafting practice.

**[3.109] Section 20A (2), new note**

*insert*

*Note* For other provisions about forms, see Legislation Act, s 255.

**Explanatory note**

This amendment adds a standard note about approved forms.

**[3.110] Section 21**

*substitute*

**21 Appointment of authorised people**

The Minister may appoint a public servant as an authorised person for this Act.

*Note 1* For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

**Explanatory note**

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

**[3.111]      New dictionary**

*insert*

## Dictionary

(see s 2)

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

*Note 2*      In particular, the Legislation Act, dict, pt 1, defines the following terms:

- exercise
- function
- penalty unit (see also s 133)
- public employee.

***analyst*** means an analyst appointed under section 6.

***authorised person*** means a person appointed under section 21.

***biological preparation*** means a substance declared to be a biological preparation under section 10 (Declaration of substances by Minister).

***drugs and poisons standard***—see the *Poisons and Drugs Act 1978*, dictionary.

***licence*** means a licence under this Act.

***poison*** means a substance (other than a substance that is a poison under the *Poisons and Drugs Act 1978*) the introduction of which into the body of a person by any route involves the risk of death to the person, and includes a substance declared to be a poison under section 10.

*Note*      The following Acts are also relevant to poisons and drugs:

- the *Drugs of Dependence Act 1989*
- the *Poisons and Drugs Act 1978*.



***poisonous substance*** means a substance (other than a substance that is a poison under the *Poisons and Drugs Act 1978*) the introduction of which into the body of a person by any route involves the risk of material departure from the normal health of the person, and includes a substance that is declared to be a poisonous substance under section 10.

***possession***—see section 19A (Extended meaning of *possession*).

*Note* For a general defence to possession, see s 19A.

***restricted substance*** means a substance declared to be a restricted substance under section 10.

***sell*** includes—

- (a) offer for sale; and
- (b) expose for sale; and
- (c) barter (or offer or expose for barter); and
- (d) exchange (or offer or expose for exchange); and
- (e) supply for value (or offer or expose to supply for value); and
- (f) supply for free (or offer or expose to supply for free) to gain or maintain custom, or otherwise for commercial gain; and
- (g) have in possession for sale.

**Explanatory note**

This amendment inserts a new dictionary that incorporates all the definitions currently in section 2 (Definitions for Act) that are still needed. The definitions have, where necessary, been revised to bring them more closely into line with current drafting practice.

The substantive changes to the existing definitions are as follows:

- the definition of ***automatic machine*** is omitted consequent on the amendment of section 15 by another amendment;
- the term ***British pharmacopoeia*** is not used elsewhere in the Act and the definition is omitted;

- the definition of *licensee* is omitted because other parts of speech and grammatical forms of a defined term (ie *licence*) have corresponding meanings to the defined term (see Legislation Act, section 157).

A signpost definition of *possession* is also included.

## **Part 3.14                      Poisons and Drugs Act 1978**

### **[3.112]                      Sections 2 and 3**

*substitute*

#### **2                      Dictionary**

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

*Note 1*      The dictionary at the end of this Act defines certain words and expressions used in this Act.

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

#### **2A                      Notes**

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

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

#### **3                      Incorporation of drugs and poisons standard definitions**

For this Act, a scheduled substance defined in the drugs and poisons standard, part 1 has the meaning given in that part.

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

#### **4                      Non-application of Act to certain goods containing scheduled substances**

This Act does not apply in relation to the possession, supply or use of a good mentioned in schedule 2 that contains a scheduled substance.

*Note* The following Acts also apply to poisons and drugs:

- the *Drugs of Dependence Act 1989*
- the *Poisons Act 1933*.

#### **Explanatory note**

This amendment adds standard dictionary and notes provisions and omits the definition sections for the Act. A new dictionary inserted by another amendment.

This amendment also inserts 2 new sections. New section 3 which incorporates the substance of existing section 3 (2) and new section 4 which incorporates the substance of existing section 39 and relocates it in accordance with current drafting practice.

A definition of *scheduled substance*, reflecting existing section 3 (1), is included in the new dictionary. Amendments of existing section 40 (by another amendment in this schedule) give effect to existing section 3 (3) (which is about references to schedules to the poisons and drugs standard).

### **[3.113] Sections 4 and 5**

*substitute*

#### **5 Definitions for pt 2**

In this part:

*restricted substance* means a substance prescribed under the regulations for this definition.

*specialist* means a doctor who is recognised as a consultant physician or specialist in accordance with the *Health Insurance Act 1973* (Cwlth), section 61.

#### **Explanatory note**

This amendment combines existing section 4 (Meaning of *specialist* in pt 2) and section 5 (Substances to which pt 2 applies) and recasts the application provision as a definition.

### **[3.114] Section 6 heading**

*substitute*

## **6      Unauthorised prescribing or supplying by doctors**

### **Explanatory note**

This amendment substitutes a new heading that more accurately describes the scope of the section.

### **[3.115]      Sections 6 and 7**

*omit*

a substance to which this part applies

*substitute*

a restricted substance

### **Explanatory note**

This amendment simplifies the text of these provisions by using the new definition of *restricted substance* that is inserted by new section 5.

### **[3.116]      Section 8 (1)**

*omit*

in a class of persons prescribed in relation to

*substitute*

prescribed under the regulations for

### **Explanatory note**

This amendment updates language

### **[3.117]      Section 9**

*omit*

a substance to which this part applies

*substitute*

a restricted substance

**Explanatory note**

This amendment simplifies the text of these provisions by using the new definition of *restricted substance* that is inserted by new section 5.

**[3.118] Section 14 (1) (a) and (b)**

*substitute*

- (a) if the applicant is an individual—the Minister is satisfied that the person is not suffering from a mental or physical disability that would make the person incapable of complying with this Act; and
- (b) the premises specified in the application are appropriate for storing the poison and for manufacturing or selling the poison (as appropriate); and

**Explanatory note**

This amendment updates language.

**[3.119] Section 16 (2)**

*substitute*

- (2) A notice under section 41 (3) (a) must state the date (not earlier than 28 days after the day the notice is given) when the variation takes effect.

**Explanatory note**

This amendment updates a cross-reference and simplifies the subsection in accordance with current drafting practice.

**[3.120] Section 18 (1) (f)**

*omit*

a natural person

*substitute*

an individual

**Explanatory note**

This amendment updates language.

**[3.121]      Section 18 (2)**

*omit*

(2)

**Explanatory note**

This amendment updates a cross-reference.

**[3.122]      Division 4.2 heading**

*substitute*

**Division 4.2                      Authorisations to use poisons for  
research**

**Explanatory note**

This amendment remakes the heading to make the division's scope clearer.

**[3.123]      Section 26 (1) (d)**

*omit*

render

*substitute*

make

**Explanatory note**

This amendment updates language.

**[3.124]      Section 28 (2)**

*substitute*

- (2) A notice under section 41 (4) (a) must state the date (not earlier than 28 days after the day the notice is given) when the variation takes effect.

**Explanatory note**

This amendment updates a cross-reference and simplifies the subsection in accordance with current drafting practice.

**[3.125] Section 29 (1) (d)**

*omit*

41 (2) (k)

*substitute*

41 (4) (a)

**Explanatory note**

This amendment updates a cross-reference.

**[3.126] Section 29 (2)**

*omit*

(2)

**Explanatory note**

This amendment updates a cross-reference.

**[3.127] Part 5 heading**

*substitute*

**Division 4.3 Poisons—other offences**

**Explanatory note**

This amendment is consequential on the breaking-up of part 5 (Miscellaneous) to improve the structure of the Act.

**[3.128] New part 5 heading**

*before section 37, insert*

**Part 5 Anabolic steroids**

**Explanatory note**

This amendment is consequential on the breaking-up of part 5 (Miscellaneous) to improve the structure of the Act.

**[3.129]      Section 35 heading**

*substitute*

**35      Supply of poison**

**Explanatory note**

This amendment remakes the heading to bring it more closely into line with the section's contents.

**[3.130]      Section 38 heading**

*substitute*

**38      Administration or sale etc of anabolic steroids**

**Explanatory note**

This amendment remakes the heading to bring it more closely into line with the section's contents.

**[3.131]      Section 39**

*omit*

**Explanatory note**

This amendment is consequential on new section 4 inserted by another amendment in this schedule.

**[3.132]      New part 6 heading**

*before section 40, insert*

**Part 6                      Advertising of scheduled  
   substances**



**Explanatory note**

This amendment is consequential on the breaking-up of part 5 (Miscellaneous) to improve the structure of the Act.

**[3.133] Section 40 (1)**

*substitute*

- (1) A person must not publish or display an advertisement that—
- (a) promotes or encourages the use of a substance mentioned in the drugs and poisons standard, schedule 1, 3 or 4; or
  - (b) indicates that the person, or someone else, is willing or authorised to supply such a substance.

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

**Explanatory note**

This amendment remakes the subsection consequentially on the omission of section 3 (3) by another amendment in this schedule and brings the subsection more closely into line with current drafting practice.

**[3.134] Section 40 (4)**

*substitute*

- (4) In subsection (1), a reference to a substance mentioned in the drugs and poisons standard, schedule 3 includes a reference to such a substance that is listed in the drugs and poisons standard, appendix H.

**Explanatory note**

This amendment is consequential on the omission of section 3 (3) by another amendment in this schedule.

**[3.135] New part 7 heading**

*before section 41, insert*

**Part 7 Miscellaneous**

**Explanatory note**

This amendment is consequential on the breaking-up of part 5 (Miscellaneous) to improve the structure of the Act.

**[3.136]      Sections 41 and 42**

*substitute*

**41      Notice of decisions reviewable by AAT**

- (1) The chief health officer must give notice of a decision refusing to give an authorisation under section 8 to the applicant for the authorisation.
- (2) The Minister must give notice of the following decisions to an applicant for a licence or authorisation:
  - (a) refusing to give the licence under section 14;
  - (b) giving the licence under section 14 subject to conditions;
  - (c) refusing to grant the authorisation under section 26;
  - (d) specifying a condition in the authorisation under section 27;
  - (e) granting the authorisation under section 26 for a period other than the period applied for.
- (3) The Minister must give notice of the following decisions about a licence to the licensee (or former licensee):
  - (a) varying a condition specified in the licence under section 16 (1);
  - (b) refusing to amend the licence under section 17;
  - (c) specifying in the licence the date an amendment under section 17 takes effect;
  - (d) cancelling the licence under section 18 (1);
  - (e) giving directions about the disposal of a poison under section 36.

- (4) The Minister must give notice of the following decisions about an authorisation to an authorised person (or former authorised person):
- (a) varying a condition specified in the authorisation under section 28 (1);
  - (b) cancelling the authorisation under section 29 (1);
  - (c) refusing to renew the authorisation under section 31;
  - (d) renewing the authorisation under section 31 for a period other than the period applied for;
  - (e) giving directions about the disposal of a poison under section 36.
- (5) A notice under subsection (1) or (2) must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

## **42 Review by administrative appeals tribunal**

Application may be made to the administrative appeals tribunal for review of a decision mentioned in section 41.

### **Explanatory note**

This amendment updates cross-references and brings the sections more closely into line with current drafting practice.

## **[3.137] Section 43**

*substitute*

## **43 Appointment of analysts**

The Minister may appoint a person to be an analyst for this Act.

*Note 1* For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

*Note 3* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

**Explanatory note**

This amendment omits the reference to the appointment being by instrument in writing. The Legislation Act, section 206 provides that an appointment must be made, or evidenced, in writing. Standard notes about appointments are also added.

**[3.138] Section 47A (2), new note**

*insert*

*Note* For other provisions about forms, see Legislation Act, s 255.

**Explanatory note**

This amendment adds a standard note about approved forms.

**[3.139] Section 48**

*substitute*

**48 Delegation of chief health officer's functions**

The chief health officer may delegate the chief health officer's functions under this Act to a public servant.

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

**Explanatory note**

This amendment updates the delegation provision, as follows:

- the words 'in writing' have been omitted because the Legislation Act, section 232 provides that a delegation must be made, or evidenced, in writing;
- the word 'function' is substituted for 'power' in accordance with current drafting practice.

This amendment also adds a standard note about delegations.

**[3.140] Schedule 2, item 1, column 2**

*omit*

Organization

*substitute*

Organisation

**Explanatory note**

This amendment updates spelling.

**[3.141] Schedule 2, items 9 to 12**

*substitute*

9	inorganic pigments not specified in the drugs and poisons standard, schedule 6
10	lubricants, unless specified in another schedule to the drugs and poisons standard
11	matches
12	motor fuels, other than those containing methyl alcohol, unless specified in another schedule to the drugs and poisons standard

**Explanatory note**

This amendment makes it clear that the references to schedules in items 9, 10 and 12 are to schedules to the drugs and poisons standard.

**[3.142] New dictionary**

*insert*

## Dictionary

(see s 2)

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

*Note 2* In particular, the Legislation Act, dict, pt 1, defines the following terms:

- chief health officer

- contravene
- entity
- exercise
- function
- penalty unit (see also s 133)
- public servant.

***analyst*** means an analyst appointed under section 43.

***approving officer*** means a person who is authorised by a recognised institution to do the following things on its behalf:

- (a) approve a program;
- (b) request the cancellation of an authorisation;
- (c) support an application for renewal.

***authorisation*** means an authorisation under section 26.

***authorised person*** means the holder of an authorisation.

***drugs and poisons standard*** means the document last prepared under the *Therapeutic Goods Act 1989* (Cwlth), section 52D (2) (b) that has come into effect (including any amendment of that document under that Act, section 52D (2) (a) that has come into effect), and includes any modification of the standard by the Minister under section 46.

***licence*** means a manufacturer's or vendor's licence under section 14.

***manufacture***, a poison, means—

- (a) carry out any process by which it is obtained; or
- (b) refine it; or
- (c) change it into another poison; or
- (d) mix or compound it; or

- (e) pack or repack it for sale or for use in relation to a profession, trade, business or industry.

***poison*** means a substance mentioned in the drugs and poisons standard, schedule 7.

*Note* The following Acts are also relevant to poisons and drugs:

- the *Drugs of Dependence Act 1989*
- the *Poisons Act 1933*.

***poisons register*** means a poisons register kept under section 22.

***program*** means a program of research or education conducted under the supervision of a recognised institution.

***recognised institution*** means—

- (a) the Commonwealth Scientific and Industrial Research Organisation; or
- (b) an institution prescribed under the regulations for this definition.

***relevant offence*** means—

- (a) an offence against this Act; or
- (b) an offence, whether committed in the ACT, in Australia outside the ACT or outside Australia—
  - (i) relating to a scheduled substance; or
  - (ii) punishable on conviction by a fine of at least 100 penalty units (or an equivalent amount at the time of conviction) or by imprisonment for a period of at least 1 year.

***restricted substance***, for part 2 (Restricted substances)—see section 5.

***sell*** includes offer or expose for sale.

***scheduled substance*** means a substance mentioned in a schedule to the drugs and poisons standard.

*Note*      A scheduled substance defined in the drugs and poisons standard, pt 1 and used in this Act (or the regulations) has the meaning given in that part (see s 3).

***specialist***, for part 2 (Restricted substances)—see section 5.

***specified poison*** means—

- (a) in relation to an authorised person—a poison specified in the person’s authorisation under section 26 (4) (b); or
- (b) in relation to a licensee—a poison specified in the licence under section 14 (3) (b).

***specified premises***, for a licence, means any premises the address of which is specified in the licence under section 14 (3) (c).

***supply*** includes sell.

***trial protocol***, for a program of research, means a written statement describing—

- (a) its aims; and
- (b) how it is proposed to be conducted; and
- (c) the proposed method of analysis of its results.

#### **Explanatory note**

This amendment inserts a new dictionary that incorporates all the definitions currently in section 2 (Definitions for Act) and section 3 (Scheduled substances) that are still needed. The definitions have, where necessary, been revised to bring them more closely into line with current drafting practice.

The substantive changes to the existing definitions are as follows:

- the definition of ***current poisons standard*** is subsumed into the revised definition of ***drugs and poisons standard***;
- the definition of ***licensee*** is omitted because other parts of speech and grammatical forms of a defined term (ie ***licence***) have corresponding meanings to the defined term (see Legislation Act, section 157);



- the definition of *manufacture* is amended to refer to poisons rather than scheduled substances because the Act regulates the manufacture of poisons only;
- the definition of *supply* is amended to remove unnecessary words.
- New definitions of *restricted substance* and *specialist* (which apply only to part 2 of the Act) are also inserted in accordance with current drafting practice.

## **Part 3.15**                      **Poisons and Drugs Regulations 1993**

### **[3.143]                      Regulations 3 to 6**

*substitute*

#### **3                      Prescribed institutions—Act, dict, def of *recognised institution*, par (b)**

The following institutions are prescribed:

- (a) Australian Catholic University;
- (b) Canberra Institute of Technology;
- (c) The Australian National University;
- (d) the University College within the Australian Defence Force Academy;
- (e) University of Canberra.

#### **4                      Restricted substances—Act, s 5, def of *restricted substance***

The substances mentioned in schedule 1, column 2 are prescribed.

#### **5                      Prescribed people for restricted substances—Act, s 8**

A person mentioned in an item in schedule 1, column 3 is prescribed for the substance mentioned in column 2 of the item.

#### **6                      Possession of certain poisons—Act, s 33 (2) (b)**

- (1) The substances mentioned in schedule 2, column 2 are prescribed.
- (2) A person mentioned in an item in schedule 2, column 3 is prescribed for the purpose mentioned in column 4, and for the substance mentioned in column 2, of the item.
- (3) The people in day-to-day control of analytical laboratories are prescribed for a substance mentioned in schedule 3 for the purpose of analysis.

**Explanatory note**

This amendment brings these provisions more closely into line with current drafting practice and makes changes consequential on other amendments.

**[3.144] Schedule 1**

*renumber as schedule 2*

**Explanatory note**

This amendment renumbers the schedule so that the schedules are in the same sequence as the regulations that refer to them.

**[3.145] Schedule 1 heading**

*substitute*

## **Schedule 2 Poisons prescribed for manufacturing use**

(see reg 6 (1) and (2))

**Explanatory note**

This amendment adds a meaningful heading to the schedule.

**[3.146] Schedule 1, column 3 heading**

*omit*

**class**

*substitute*

**people**



**[3.151]      Schedule 3, column 3 heading**

*omit*

**class**

*substitute*

**people**

**Explanatory note**

This amendment is consequential on another amendment.

**[3.152]      Schedule 3, item 7, column 3**

*omit*

medical practitioners

*substitute*

doctors

**Explanatory note**

This amendment updates language.

## **Part 3.16                      Public Health Act 1997**

**[3.153]      Section 4 (d) and (e)**

*omit*

performance

*substitute*

exercise

**Explanatory note**

*Exercise* a function is defined in the Legislation Act, dictionary, part 1 to include perform the function. It is the drafting term that is used now in relation to functions.

**[3.154]      Section 7 (1) and (2)**

*substitute*

- (1) The Minister must appoint a person to be the chief health officer.

*Note* For the making of appointments generally, see Legislation Act, pt 19.3.

- (2) The chief health officer must be a public servant and a doctor.

**Explanatory note**

This amendment updates the appointment provision and inserts a standard note about appointments. The Legislation Act, section 206 provides that an appointment must be made, or evidenced, in writing.

**[3.155] Section 8**

*substitute*

**8 Acting chief health officer**

- (1) The chief executive may appoint a person to act as the chief health officer—
- (a) during any vacancy or all vacancies in the position of chief health officer; or
  - (b) during any period, or all periods, when the chief health officer cannot for any reason exercise the functions of the position.

*Note* For the making of acting appointments generally, see Legislation Act, div 18.3.2.

- (2) An acting chief health officer must be a doctor.
- (3) The *Legislation Act 2001*, section 209 (Power of appointment includes power to make acting appointment) does not apply to the position of chief health officer.

**Explanatory note**

This amendment updates the acting provision, inserts a standard note about acting appointments and displaces the Legislation Act, section 209. The Legislation Act, section 216 provides that an acting appointment must be made, or evidenced, in writing. Existing section 8 (3) is unnecessary because the Legislation Act, section 221 (1) provides that if a person acts in a position because it is vacant, the person may not act for more than 1 year after the position became vacant. Existing section 8 (4) is unnecessary because the Legislation Act, section 225 provides that an acting appointment, or anything done under an acting appointment, is not invalid only because of a defect or irregularity in the

appointment. The Legislation Act, section 209 is displaced because acting appointments are made by the chief executive rather than the Minister and an acting chief health officer need not be a public servant.

**[3.156]      Section 10 (2)**

*omit*

**Explanatory note**

This amendment omits a redundant provision about the first report of the chief health officer under the *Public Health Act 1997*.

**[3.157]      Section 10 (3) and (4)**

*substitute*

- (2) A report must be given to the Minister within 3 months after it is prepared.
- (3) The Minister must present a report to the Legislative Assembly within 6 sitting days after the day the Minister receives it.

**Explanatory note**

This amendment updates language and brings the period for presenting a report to the Legislative Assembly into line with the period applying to annual reports under the *Annual Reports (Government Agencies) Act 1995*, section 14.

**[3.158]      Section 11, note**

*omit*

pt 18.4

*substitute*

pt 19.4

**Explanatory note**

This amendment updates a cross-reference.

**[3.159]      Section 12**

*substitute*

**12      Appointment of public health officers**

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The chief executive may appoint a person to be a public health officer.

*Note 1* For the making of appointments generally, see Legislation Act, pt 19.3.

*Note 2* A power to appoint a person to a position includes power to appoint a person to act in the position (see Legislation Act, s 209).

**Explanatory note**

This amendment removes the requirement that the chief executive must create and maintain offices for public health officers in the public service. The Legislation Act, section 207 provides that an appointment may be made by naming the person appointed or by nominating the occupant of a position (however described), at a particular time or from time to time. Standard notes about appointments are also inserted.

**[3.160] Section 13**

*substitute*

**13 Appointment of authorised medical officers**

The chief executive may appoint a doctor to be an authorised medical officer.

*Note 1* For the making of appointments generally, see Legislation Act, pt 19.3.

*Note 2* A power to appoint a person to a position includes power to appoint a person to act in the position (see Legislation Act, s 209).

**Explanatory note**

This amendment removes the requirement that the chief executive must create and maintain offices for authorised medical officers in the public service. The Legislation Act, section 207 provides that an appointment may be made by naming the person appointed or by nominating the occupant of a position (however described), at a particular time or from time to time. Standard notes about appointments are also inserted.

**[3.161] Section 15 (1) to (3)**

*substitute*

**15 Appointment of analysts**

- (1) The chief executive may appoint a person to be an analyst for this Act.

*Note 1* For the making of appointments generally, see Legislation Act, pt 19.3.

*Note 2* A power to appoint a person to a position includes power to appoint a person to act in the position (see Legislation Act, s 209).

**Explanatory note**

This amendment removes the requirement that the chief executive must create and maintain offices for analysts in the public service. The Legislation Act, section 207 provides that an appointment may be made by naming the person appointed or by nominating the occupant of a position (however described), at a particular time or from time to time. Standard notes about appointments are also inserted.

**[3.162] Section 15**

*renumber subsections when Act next republished under Legislation Act 2001*

**Explanatory note**

This amendment renumbers subsections in accordance with current drafting practice.

**[3.163] Section 15B heading**

*substitute*

**15B Non-public servant analysts—appointment subject to conditions**

**Explanatory note**

This amendment is consequential on the amendment of section 15 made by this schedule.

**[3.164] Section 15B (1)**

*omit*

as an analyst under section 15 (3) (b)

*substitute*

who is not a public servant as an analyst under section 15



**Explanatory note**

This amendment is consequential on the amendment of section 15 made by this schedule.

**[3.165] Section 15C heading**

*substitute*

**15C Non-public servant analysts—procedure for imposition  
etc of conditions on chief executive’s initiative**

**Explanatory note**

This amendment is consequential on the amendment of section 15 made by this schedule.

**[3.166] Section 15D heading**

*substitute*

**15D Non-public servant analysts—suspension or cancellation  
of appointment**

**Explanatory note**

This amendment is consequential on the amendment of section 15 made by this schedule.

**[3.167] Section 15D (1)**

*substitute*

- (1) This section applies to a person who is not a public servant and who is appointed as an analyst under section 15 (Analysts).

**Explanatory note**

This amendment is consequential on the amendment of section 15 made by this schedule.

**[3.168] Section 22 (3)**

*substitute*

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

*Note 1* The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or as at a particular time,

is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

*Note 2*    A notifiable instrument must be notified under the Legislation Act.

**Explanatory note**

This amendment amends the subsection consequentially on the Legislation Act, section 47 (Statutory instrument may make provision by applying law or instrument) and brings the subsection into line with current drafting practice.

**[3.169]      Section 42D (3)**

*substitute*

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

*Note 1*    The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or as at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

*Note 2*    A notifiable instrument must be notified under the Legislation Act.

**Explanatory note**

This amendment amends the subsection consequentially on the Legislation Act, section 47 (Statutory instrument may make provision by applying law or instrument) and brings the subsection into line with current drafting practice.

**[3.170]      Section 48 (5)**

*omit*

**Explanatory note**

This amendment omits a definition that is being remade in the next amendment in accordance with current drafting practice.

**[3.171]      New section 48 (7)**

*insert*

- (7) In this section:

*licence* includes a licence that is under suspension under another section of this Act.

**Explanatory note**

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

**[3.172] Section 48**

*renumber subsections when Act next republished under Legislation Act 2001*

**Explanatory note**

This amendment renumbers subsections in accordance with current drafting practice.

**[3.173] Section 56V, definition of *commencement day***

*substitute*

*commencement day* means 28 August 2000.

**Explanatory note**

This amendment replaces a reference to the date part of an amending act commenced with a reference to the actual date it commenced.

**[3.174] Section 58 (2), new note**

*insert*

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

**Explanatory note**

This amendment inserts a standard note about service of documents.

**[3.175] Section 61 (2), new note**

*insert*

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

**Explanatory note**

This amendment inserts a standard note about service of documents.

**[3.176] Section 69 (1), new note**

*insert*

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

**Explanatory note**

This amendment inserts a standard note about service of documents.

**[3.177]      Section 75**

*substitute*

**75      Definitions for pt 5**

In this part:

***connected***—a thing is ***connected*** with an offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, or is intended to be used, to commit the offence.

***occupier***, of a place an authorised officer enters under this part, includes a person the officer believes on reasonable grounds to be an occupier of the place.

*Note*      The dictionary defines ***occupier*** of a place to include an owner, a person in charge or a person authorised to be at the place as an agent of an occupier, owner or person in charge of the place.

***offence*** includes—

- (a) an offence that there are reasonable grounds for believing is being or has been committed; and
- (b) a contravention of this Act by or on behalf of the Territory that there are reasonable grounds for believing is being or has been committed.

**Explanatory note**

This amendment brings the form of the definitions more closely into line with current drafting practice.

**[3.178] Section 82 (1)**

*omit*

performance of the officer's functions for the purposes of this Act.

*substitute*

exercise of the officer's functions under this Act.

**Explanatory note**

This amendment updates language.

**[3.179] Section 85 heading**

*substitute*

**85 Detention of things at place of seizure**

**Explanatory note**

This amendment updates language.

**[3.180] Section 86 (2)**

*omit*

is guilty of

*substitute*

commits

**Explanatory note**

This amendment updates language.

**[3.181] Section 100 (2)**

*substitute*

- (2) A determination may apply, adopt or incorporate an instrument or provision of an instrument as in force from time to time.

*Note 1*    The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or as at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disappplied (see s 47 (7)).

*Note 2*    A notifiable instrument must be notified under the Legislation Act.

**Explanatory note**

This amendment amends the subsection consequentially on the Legislation Act, section 47 (Statutory instrument may make provision by applying law or instrument) and brings the subsection into line with current drafting practice.

**[3.182]      Section 105 (1) and (2)**

*substitute*

- (1) A counsellor must notify the chief health officer of a person the counsellor has counselled if the counsellor believes, on reasonable grounds, that the person has, or may have, a notifiable condition.

Maximum penalty: 25 penalty units.

- (2) A person who is responsible for the care, support or education of someone else must notify the chief health officer of the person if the first person believes, on reasonable grounds, that the other person has, or may have, a notifiable condition.

Maximum penalty: 25 penalty units.

**Explanatory note**

This amendment recasts the subsections to improve their readability.

**[3.183]      Section 116 (1) and (3)**

*omit*

notice

*substitute*

direction

**Explanatory note**

This amendment corrects a minor error.

**[3.184] Section 122 (1)**

*omit*

performance

*substitute*

exercise

**Explanatory note**

*Exercise* a function is defined in the Legislation Act, dictionary, part 1 to include perform the function. It is the drafting term that is used now in relation to functions.

**[3.185] Section 122 (1)**

*omit*

performed

*substitute*

exercised

**Explanatory note**

*Exercise* a function is defined in the Legislation Act, dictionary, part 1 to include perform the function. It is the drafting term that is used now in relation to functions.

**[3.186] Section 123 (3) and (4)**

*substitute*

- (2) A report must be given to the Minister within 3 months after it is prepared.
- (3) The Minister must present a report to the Legislative Assembly within 6 sitting days after the day the Minister receives it.

**Explanatory note**

This amendment updates language and brings the period for presenting a report to the Legislative Assembly into line with the period applying to annual reports under the *Annual Reports (Government Agencies) Act 1995*, section 14.

**[3.187]      Section 124 (3)**

*substitute*

- (3) The Minister must present a copy of a direction under subsection (2) to the Legislative Assembly within 6 sitting days after the day it is made.

**Explanatory note**

This amendment updates language and brings the period for presenting a report to the Legislative Assembly into line with the period applying to annual reports under the *Annual Reports (Government Agencies) Act 1995*, section 14.

**[3.188]      Section 127 (2)**

*substitute*

- (2) The Minister must present a copy of the report to the Legislative Assembly within 6 sitting days after the day the Minister receives it.

**Explanatory note**

This amendment updates language and brings the period for presenting a report to the Legislative Assembly into line with the period applying to annual reports under the *Annual Reports (Government Agencies) Act 1995*, section 14.

**[3.189]      Section 128 (1)**

*omit*

In performing any function under this division,

*substitute*

In exercising any function under this part,

**Explanatory note**

This amendment updates language and corrects a reference.



**[3.190] Section 130 (1)**

*omit*

section 15 (3) (b)

*substitute*

section 15

**Explanatory note**

This amendment is consequential on the amendment of section 17 made by this schedule.

**[3.191] Section 130 (1) (a)**

*omit*

Appointed

*substitute*

Non-public servant

**Explanatory note**

This amendment is consequential on the amendment of the heading to section 15B made by this schedule.

**[3.192] Section 130 (1) (c)**

*omit*

Appointed

*substitute*

Non-public servant

**Explanatory note**

This amendment is consequential on the amendment of the heading to section 15D made by this schedule.

**[3.193]      Section 133 (2)**

*substitute*

- (2) A determination may apply, adopt or incorporate an instrument or provision of an instrument as in force from time to time.

*Note 1*    The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or as at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

*Note 2*    A notifiable instrument must be notified under the Legislation Act.

**Explanatory note**

This amendment amends the subsection consequentially on the Legislation Act, section 47 (Statutory instrument may make provision by applying law or instrument) and brings the subsection into line with current drafting practice.

**[3.194]      Section 135 (1) (a)**

*omit*

performance of his or her functions for the purposes of this Act,

*substitute*

exercise of the officer's functions under this Act,

**Explanatory note**

This amendment updates language.

**[3.195]      Section 136**

*substitute*

**136    Acts and omissions of representatives**

- (1) In this section:

***representative***, of a person, means—

- (a) if the person is an individual—an employee or agent of the person; or

- (b) if the person is a corporation—an employee, agent or executive officer of the person.

*state of mind*, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.
- (2) An act done or omitted to be done on behalf of a person by a representative of the person is also taken to have been done or omitted to be done by the person if the representative was acting within the scope of the representative's actual or apparent authority.
  - (3) However, subsection (2) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
  - (4) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
    - (a) the act was done or omission was made by a representative of the person within the scope of the representative's actual or apparent authority; and
    - (b) the representative had the state of mind.
  - (5) An individual who is convicted of an offence cannot be punished by imprisonment for the offence if the individual would not have been convicted of the offence without subsection (2) or (4).

**Explanatory note**

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

**[3.196]      Dictionary, new notes**

*insert*

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

*Note 2*      In particular, the Legislation Act, dict, pt 1, defines the following terms:

- chief executive
- contravene
- doctor
- document
- exercise
- function
- public servant

**[3.197]      Dictionary, definition of *authorisation***

*substitute*

***authorisation*** means—

- (a) for a public health officer exercising a function under this Act—an authorisation given to the officer under section 12A (1) to exercise the function; and
- (b) for an authorised medical officer exercising a function under this Act—an authorisation given to the officer under section 14 (1) to exercise the function.

**Explanatory note**

This amendment updates language and corrects cross-references.

**[3.198]      Dictionary, definition of *authorised officer***

*substitute*

***authorised officer***, in relation to the exercise of a function under this Act, means—

- (a) the chief health officer; or
- (b) a public health officer authorised under section 12A (1) to exercise the function; or
- (c) an authorised medical officer authorised under section 14 (1) to exercise the function.

**Explanatory note**

This amendment updates language and corrects cross-references.

**[3.199] Dictionary, new definition of *connected***

*insert*

***connected*** with an offence, for part 5 (Inspection and analysis)—see section 75 (Definitions for pt 5).

**Explanatory note**

This amendment inserts a signpost definition in accordance with current drafting practice.

**[3.200] Dictionary, new definitions**

*insert*

***occupier***, for part 5 (Inspection and analysis)—see section 75 (Definitions for pt 5).

***offence***, for part 5 (Inspection and analysis)—see section 75 (Definitions for pt 5).

***processing***, of drinking water, for division 6B.1 (Drinking water)—see section 118B (Definitions for div 6B.1).

***processing***, of sewage, for division 6B.2 (Sewage)—see section 118H (Definitions for div 6B.2).

***sewerage utility***, for division 6B.2 (Sewage)—see section 118H (Definitions for div 6B.2).

***water distributor***, for division 6B.1 (Drinking water)—see section 118B (Definitions for div 6B.1).

*water supplier*, for division 6B.1 (Drinking water)—see section 118B (Definitions for div 6B.1).

*water utility*, for division 6B.1 (Drinking water)—see section 118B (Definitions for div 6B.1).

**Explanatory note**

This amendment inserts signpost definitions in accordance with current drafting practice.

## **Part 3.17 Public Health Regulations 2000**

### **[3.201] Regulation 7**

*omit*

**Explanatory note**

This amendment omits a definition that is inserted in the dictionary by another amendment made by this part.

### **[3.202] Regulation 9 (2) (b)**

*omit*

registered

**Explanatory note**

This amendment omits an unnecessary word. *Nurse* is defined in the Legislation Act, dictionary, part 1 to be a registered nurse under the *Nurses Act 1988*.

### **[3.203] Regulation 32**

*omit*

in writing

**Explanatory note**

This amendment omits unnecessary words. The Legislation Act, section 206 provides that an appointment must be made, or evidenced, in writing.

---

**[3.204] Regulation 32, new notes**

*insert*

*Note 1* For the making of appointments generally, see Legislation Act, pt 19.3.

*Note 2* A power to appoint a person to a position includes power to appoint a person to act in the position (see Legislation Act, s 209).

**Explanatory note**

This amendment inserts standard notes about appointments.

**[3.205] Regulation 33 (1), new note**

*insert*

*Note* A provision of a law that gives an entity (including a person) a function also gives the entity the powers necessary and convenient to exercise the function (see Legislation Act, s 196 (1) and dict, pt 1, defs *entity* and *function*).

**Explanatory note**

This amendment inserts a standard note.

**[3.206] Regulation 34**

*omit*

**Explanatory note**

The provision is no longer necessary because of the Legislation Act, section 196 (1). That section provides that a provision of a law that gives a function to an entity also gives the entity the powers necessary and convenient to exercise the function.

**[3.207] Regulation 35 (2)**

*substitute*

(2) A member must be appointed for a term of not longer than 2 years.

*Note* A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict , pt 1, def *appoint*).

**Explanatory note**

This amendment recasts the provision in accordance with current drafting practice.

**[3.208]      Regulation 38**

*omit*

**Explanatory note**

This amendment omits an unnecessary provision.

Existing subregulation 38 (1) is unnecessary because the Legislation Act, section 209 (1) provides that a power to make an appointment includes power to appoint a person to act in the position during a vacancy, whether or not an appointment had previously been made and during any periods when the person holding the position cannot exercise the functions of the position.

Existing subregulation 38 (2) is unnecessary because the Legislation Act, section 221 (1) provides that if a person acts in a position because it is vacant, the person may not act for more than 1 year after the position became vacant.

Existing subregulation 38 (3) is unnecessary because the Legislation Act, section 225 provides that anything done under an acting appointment is not invalid only because of a defect or irregularity in the appointment or because the occasion to act had not arisen.

**[3.209]      Regulation 39 (1) (a)**

*omit*

performance

*insert*

exercise

**Explanatory note**

*Exercise* a function is defined in the Legislation Act, dictionary, part 1 to include perform the function. It is the drafting term that is used now in relation to functions.

**[3.210]      Regulation 56 (2) (a)**

*omit*

the direction; or

*insert*

the direction;



**Explanatory note**

This amendment omits an unnecessary word.

**[3.211] Dictionary, new notes**

*insert*

*Note 1* The Legislation Act contains definitions and other provisions relevant to these regulations.

*Note 2* In particular, the following terms that are defined in the Legislation Act, dict, pt 1, are particularly relevant to these regulations:

- doctor
- function
- nurse

**Explanatory note**

This amendment inserts standard notes about definitions.

**[3.212] Dictionary, definitions of *authorised officer* and *authorised medical officer***

*substitute*

*authorised officer*—see the Act, dictionary.

*authorised medical officer*—see the Act, dictionary.

**Explanatory note**

This amendment updates definitions.

**[3.213] Dictionary, definition of *child care centre***

*insert*

*child care centre*—see the *Children and Young People Act 1999*, section 328.

**Explanatory note**

This amendment inserts in the dictionary a definition that was in section 7.

**[3.214]      Dictionary, definition of *doctor***

*omit*

**Explanatory note**

This amendment omits an unnecessary signpost definition.

**[3.215]      Dictionary, definition of *health practitioner***

*substitute*

*health practitioner* means a doctor or a nurse.

**Explanatory note**

This amendment updates the definition to use the expression ‘nurse’ rather than ‘nurse registered under the *Nurses Act 1988*’. *Nurse* is defined in the Legislation Act, dictionary, part 1 to be a registered nurse under the *Nurses Act 1988*.

**[3.216]      Dictionary, definition of *insanitary condition***

*substitute*

*insanitary condition*—see the Act, dictionary.

**Explanatory note**

This amendment updates a definition.

**[3.217]      Dictionary, new definition of *member***

*insert*

*member*, for division 3.2 (The management committee)—see section 30 (Meaning of *member* in div 3.2).

**Explanatory note**

This amendment inserts a signpost definition in accordance with current drafting practice.

**[3.218]      Dictionary, definition of *occupier***

*substitute*

*occupier*—see section 75.

**Explanatory note**

This amendment updates a definition.

**[3.219] Dictionary, definition of *registered nurse***

*omit*

**Explanatory note**

This amendment omits an unnecessary definition. The term ‘nurse’ is now used in the regulations (under other amendments made by this part). *Nurse* is defined in the Legislation Act, dictionary, part 1 to be a registered nurse under the *Nurses Act 1988*.

**[3.220] Dictionary, definition of *transmissible notifiable condition***

*substitute*

*transmissible notifiable condition*—see the Act, dictionary.

**Explanatory note**

This amendment updates a definition.

## **Part 3.18 Rehabilitation of Offenders (Interim) Regulations 2001**

**[3.221] Dictionary, definition of *drugs and poisons standard***

*substitute*

*drugs and poisons standard*—see the *Poisons and Drugs Act 1978*, dictionary.

**Explanatory note**

This amendment is consequential on the insertion of a new dictionary into the *Poisons and Drugs Act 1978* by another amendment in this schedule.

## **Part 3.19**                      **Remuneration Tribunal (Consequential Amendments) Act 1997 No 41**

### **[3.222]              Section 2**

*substitute*

#### **2              Commencement**

This Act commences on 24 September 1997.

(commencement: 24 September 1997)

#### **Explanatory note**

The commencement provision of this Act provided that section 1 (Short title) and section 2 (Commencement) commenced on the day on which the Act was notified in the Gazette and that the remaining provisions commenced as fixed by the Minister by notice in the Gazette or, in default, at the end of 6 months after the Act was notified in the Gazette.

The notice of commencement fixed 23 September 1997 as the date that the remaining provisions commenced. However, the commencement notice was notified in the Gazette of 24 September 1997. This amendment removes any doubt about when the Act commenced. This result is consistent with the provision now made by the Legislation Act, section 73 (3) (which is about the commencement of laws).

## **Part 3.20**                      **Road Transport (Alcohol and Drugs) Act 1977**

### **[3.223]              Section 4A (2), definitions of *foreshores, lake and licensed premises***

*omit*

section 4 (1)

*substitute*

dictionary

**Explanatory note**

This amendment is consequential on the insertion of a new dictionary into the *Lakes Act 1976* by another amendment in this schedule and the insertion of a new dictionary into the *Liquor Act 1975* by other legislation.

## **Part 3.21 Road Transport (Driver Licensing) Act 1999**

### **[3.224] Section 9**

*substitute*

#### **9 Security and disclosure of information in registers**

The road transport authority must ensure that information in the driver licence register or demerit points register is kept securely and disclosed only in accordance with this Act or another law in force in the ACT.

*Note 1* The Information Privacy Principles apply to the road transport authority. Principle 4 states requirements about the storage and security of personal information and principle 11 states when personal information may be disclosed by an agency (see *Privacy Act 1988* (Cwlth), s 14).

*Note 2* Access to the register may be sought under the *Freedom of Information Act 1989* (which also provides that certain information is exempt from disclosure).

**Explanatory note**

This amendment brings the section into line with the *Road Transport (General) Act 1999*, section 83E (which is about the written-off vehicles register), as follows:

- the section heading is revised to include a reference to the disclosure of information;
- the reference in the existing section to information in a register that is of a personal nature or that has commercial sensitivity for a person about whom it is kept is omitted and the obligations under the section applied to all information in the registers, which is arguably personal information;
- new notes about the *Privacy Act 1988* (Cwlth) and the *Freedom of Information Act 1989* are added.

**[3.225]      Sections 11 (2) and 28 (2)**

*omit*

for or with respect to

*substitute*

in relation to

**Explanatory note**

This amendment updates language consequent on the insertion of a new definition of *in relation to* into the Legislation Act, dictionary by another amendment.

**Part 3.22                      Road Transport (General) Act  
1999**

**[3.226]      Sections 11 (3) and 96 (2)**

*omit*

for or with respect to

*substitute*

in relation to

**Explanatory note**

This amendment updates language consequent on the insertion of a new definition of *in relation to* into the Legislation Act, dictionary by another amendment.

**[3.227]      Section 100, definition of *taxi***

*omit*

**Explanatory note**

This amendment omits a redundant definition. The term is defined in the dictionary to the Act.

**[3.228] Section 157**

*omit*

for or with respect to

*substitute*

in relation to

**Explanatory note**

This amendment updates language consequent on the insertion of a new definition of *in relation to* into the Legislation Act, dictionary by another amendment.

**Part 3.23 Road Transport (Public Passenger Services) Act 2001**

**[3.229] Section 7**

*substitute*

**7 Security and disclosure of information in registers**

The road transport authority must ensure that information in a register of accreditations or licences is kept securely and disclosed only in accordance with this Act or another law in force in the ACT.

*Note 1* The Information Privacy Principles apply to the road transport authority. Principle 4 states requirements about the storage and security of personal information and principle 11 states when personal information may be disclosed by an agency (see *Privacy Act 1988* (Cwlth), s 14).

*Note 2* Access to the register may be sought under the *Freedom of Information Act 1989* (which also provides that certain information is exempt from disclosure).

**Explanatory note**

This amendment brings the section into line with the *Road Transport (General) Act 1999*, section 83E (which is about the written-off vehicles register), as follows:

- the section heading is revised to include a reference to the security of information;

**Schedule 3**      Technical amendments  
**Part 3.24**      Road Transport (Safety and Traffic Management) Act 1999

Amendment [3.230]

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- the reference in the existing section to information in a register that is of a personal nature or that has commercial sensitivity for a person about whom it is kept is omitted and the obligations under the section applied to all information in the registers, which is arguably personal information;
- new notes about the *Privacy Act 1988* (Cwlth) and the *Freedom of Information Act 1989* are added.

**[3.230]      Sections 17 (3), 26 and 27**

*omit*

for or with respect to

*substitute*

in relation to

**Explanatory note**

This amendment updates language consequent on the insertion of a new definition of *in relation to* into the Legislation Act, dictionary by another amendment.

**[3.231]      Section 68**

*omit*

with respect to

*substitute*

in relation to

**Explanatory note**

This amendment updates language consequent on the insertion of a new definition of *in relation to* into the Legislation Act, dictionary by another amendment.



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## **Part 3.24**                      **Road Transport (Safety and Traffic Management) Act 1999**

### **[3.232]            Sections 5A (5) and 5B (5), new notes**

*insert*

*Note*      Automatic licence disqualification applies to an offence against this section (see *Road Transport (General) Act 1999*, s 63).

#### **Explanatory note**

This amendment inserts new notes about a related provision in the *Road Transport (General) Act 1999*.

### **[3.233]            Sections 10K (4), 17 (1), 24 (1) and 36 to 43**

*omit*

for or with respect to

*substitute*

in relation to

#### **Explanatory note**

This amendment updates language consequent on the insertion of a new definition of *in relation to* into the Legislation Act, dictionary by another amendment.

## **Part 3.25**                      **Road Transport (Vehicle Registration) Act 1999**

### **[3.234]            Section 11**

*substitute*

#### **11      Security and disclosure of information in register**

The road transport authority must ensure that information in the registrable vehicles register is kept securely and disclosed only in accordance with this Act or another law in force in the ACT.

*Note 1*    The Information Privacy Principles apply to the road transport authority. Principle 4 states requirements about the storage and security of personal information and principle 11 states when personal information may be disclosed by an agency (see *Privacy Act 1988* (Cwlth), s 14).

*Note 2*    Access to the register may be sought under the *Freedom of Information Act 1989* (which also provides that certain information is exempt from disclosure).

**Explanatory note**

This amendment brings the section into line with the *Road Transport (General) Act 1999*, section 83E (which is about the written-off vehicles register), as follows:

- the section heading is revised to include a reference to the security of information;
- the reference in the existing section to information in the register that is of a personal nature or that has commercial sensitivity for a person about whom it is kept is omitted and the obligations under the section applied to all information in the register, which is arguably personal information;
- new notes about the *Privacy Act 1988* (Cwlth) and the *Freedom of Information Act 1989* are added.

**[3.235]      Sections 14 (2), 15 and 29 (3)**

*omit*

for or with respect to

*substitute*

in relation to

**Explanatory note**

This amendment updates language consequent on the insertion of a new definition of *in relation to* into the Legislation Act, dictionary by another amendment.

---

## **Part 3.26**                      **Smoke-free Areas (Enclosed Public Places) Act 1994**

### **[3.236]            Section 8 (2) (a)**

*substitute*

- (a) satisfied that—
- (i) smoking is to be prohibited in not less than 75% of the public area of the restaurant; and
  - (ii) the restaurant is fitted with equipment capable of maintaining air quality in accordance with Australian Standard 1668.2; and

(commencement: the day after this Act's notification day)

#### **Explanatory note**

This amendment removes a technical deficiency in the Act arising from inconsistencies between provisions of the Act. Section 10 (e) imposes a statutory condition on a certificate of exemption for a restaurant that smoking is prohibited in not less than 75% of the public area of the restaurant. However, section 8 (2), which deals with what the Minister must be satisfied about before granting an exemption, does not reflect this condition. This means that the Minister could be required to grant an exemption for a restaurant that could not comply with the condition in section 10 (e), but could then revoke the exemption under section 12 (1) for breach of the condition. This amendment corrects this anomaly.

### **[3.237]            Section 8 (3) (a) (ii)**

*substitute*

- (ii) is clearly defined in the application and is (or, if the application is approved, will be) a clearly defined area in the licensed premises; and

(commencement: the day after this Act's notification day)

#### **Explanatory note**

This amendment clarifies a possible ambiguity. Under existing section 8 (3) (a) (ii) the Minister must not grant an exemption certificate for licensed premises unless the part of the premises to which the application relates is a 'clearly defined area'. The amendment makes it clear that the area must be clearly defined in the application (so the Minister has

the information needed to decide the application) and that the area must be a clearly defined area in the licensed premises (so the provisions of the Act can operate with certainty in relation to the exemption).

**[3.238]      Section 10 (e)**

*substitute*

- (e) if the certificate is for a restaurant—smoking is prohibited in not less than 75% of the public area of the restaurant;
- (f) if the certificate is for licensed premises—smoking is prohibited in not less than 50% of the public area of the premises;

(commencement: the day after this Act's notification day)

**Explanatory note**

This amendment removes a technical deficiency in the Act arising from inconsistencies between provisions of the Act. The technical deficiency corrected by this amendment is the reverse of the technical deficiency corrected by the amendment of section 8 (2) (a) made by another amendment in this schedule.

Section 8 (3) (a) (i) requires the Minister to grant an exemption for licensed premises if, among other things, the Minister is satisfied that the part of the premises to which the application relates is not greater than 50% of the public area of the premises. However, section 10, which deals with the conditions of an exemption, does not reflect this requirement. This means that the Minister cannot revoke the exemption for noncompliance with the requirement after the exemption is granted, thus making the requirement ineffective. The amendment corrects this anomaly.

**[3.239]      New section 20 (aa)**

*insert*

- (aa) under section 10A (2) to refuse to vary an exemption; or

(commencement: the day after this Act's notification day)

**Explanatory note**

This amendment is consequential on the insertion of new section 10A by an amendment in schedule 1 and provides for review of a decision under section 10A (2) to refuse to vary an exemption.

**[3.240] Section 20**

*renumber paragraphs when Act next republished under Legislation Act 2001*

(commencement: the day after this Act's notification day)

**Explanatory note**

This amendment is consequential on the insertion of new section 20 (aa).

**[3.241] Section 21 (1) (a)**

*after*

section 8 (1)

*insert*

or 10A (2)

(commencement: the day after this Act's notification day)

**Explanatory note**

This amendment is consequential on the insertion of new section 10A by an amendment in schedule 1 and provides for written notice of a decision under section 10A (2) to be given to the applicant.

## **Part 3.27 Statute Law Amendment Act 2002 No 30**

**[3.242] Part 3.45**

*omit*

(commencement: 17 September 2002)

**Explanatory note**

This amendment omits amendments of the *Low-alcohol Liquor Subsidies Act 2000*. The Act expired before the commencement of the *Statute Law Amendment Act 2002*. The amendment is backdated to the day the amendments commenced.

## Part 3.28                      Tobacco Regulations 1991

### [3.243]                      Regulation 4 (4), example 2

*omit*

700cm<sup>2</sup>

*substitute*

7 000cm<sup>2</sup>

#### **Explanatory note**

This amendment corrects an error in an example.

### [3.244]                      Regulation 4 (4), example 3

*omit*

5m<sup>2</sup>

*substitute*

6 000cm<sup>2</sup>

#### **Explanatory note**

This amendment corrects an error in an example.

## Part 3.29                      Utilities Act 2000

### [3.245]                      Section 37 (1)

*insert*

*Note*      Under s 52, the ICRC must prepare a written notice of a grant of a licence. The notice is a notifiable instrument.

#### **Explanatory note**

This amendment inserts a note alerting the reader to the obligation in section 52.

---

**[3.246] Section 37 (4)**

*insert*

*Note* Under s 52, the ICRC must prepare a written notice of a refusal of a licence. The notice is a notifiable instrument.

**Explanatory note**

This amendment inserts a note alerting the reader to the obligation in section 52.

**[3.247] Section 38 (1)**

*insert*

*Note* Under s 52, the ICRC must prepare a written notice of a variation of a licence. The notice is a notifiable instrument.

**Explanatory note**

This amendment inserts a note alerting the reader to the obligation in section 52.

**[3.248] Section 39 (1)**

*insert*

*Note* Under s 52, the ICRC must prepare a written notice of an exemption from a condition of a licence. The notice is a notifiable instrument.

**Explanatory note**

This amendment inserts a note alerting the reader to the obligation in section 52.

**[3.249] Section 40 (1)**

*insert*

*Note* Under s 52, the ICRC must prepare a written notice of a transfer of a licence. The notice is a notifiable instrument.

**Explanatory note**

This amendment inserts a note alerting the reader to the obligation in section 52.

**[3.250] Section 40 (4)**

*insert*

*Note* Under s 52, the ICRC must prepare a written notice of a refusal to agree to transfer a licence. The notice is a notifiable instrument.

**Explanatory note**

This amendment inserts a note alerting the reader to the obligation in section 52.

**[3.251]      Section 41 (1)**

*insert*

*Note*      Under s 52, the ICRC must prepare a written notice of a surrender of a licence. The notice is a notifiable instrument.

**Explanatory note**

This amendment inserts a note alerting the reader to the obligation in section 52.

**[3.252]      Section 42 (2)**

*insert*

*Note*      Under s 52, the ICRC must prepare a written notice of a revocation of a licence. The notice is a notifiable instrument.

**Explanatory note**

This amendment inserts a note alerting the reader to the obligation in section 52.

**[3.253]      Section 45 (1)**

*insert*

*Note*      Under s 52, the ICRC must prepare a written notice of a determination of annual licence fees. The notice is a notifiable instrument.

**Explanatory note**

This amendment inserts a note alerting the reader to the obligation in section 52.

**[3.254]      Section 52 (1)**

*substitute*

- (1) ICRC must prepare a written notice of each of the following matters as soon as possible after it happens:
- (a) the grant of a utility licence under section 37 (Grant);
  - (b) the refusal of a utility licence under section 37 (Grant);
  - (c) the variation of a utility licence under section 38 (Variation);



- (d) an exemption from compliance with a utility licence condition under section 39 (Exemption from licence condition);
- (e) ICRC's agreement to the transfer of a utility licence under section 40 (Transfer);
- (f) ICRC's refusal to agree to the transfer of a utility licence under section 40 (Transfer);
- (g) the surrender of a utility licence under section 41 (Surrender);
- (h) the revocation of a utility licence under section 42 (Revocation);
- (i) the determination of an annual licence fee for a utility under section 45 (Determination of fee).

**Explanatory note**

This amendment inserts section references for each matter and reorders the paragraphs.

## **Part 3.30                      Workers Compensation Act 1951**

### **[3.255]              Section 77**

*renumber subsections when Act next republished under Legislation Act 2001*

**Explanatory note**

This amendment is consequential on the insertion of section 77 (3A) by an amendment in schedule 1.

### **[3.256]              Section 115**

*omit*

employer or insurer

*substitute*

insurer or employer

**Explanatory note**

This amendment makes the references to employer and insurer consistent throughout the section. This removes any doubt that certain actions by an employer do not affect the employer's liability and certain actions by an insurer do not affect the insurer's liability.

**[3.257] Section 120 note**

*substitute*

*Note 1* An injured worker may give notice of an injury by making an entry in a register of injuries (see s 92).

*Note 2* Section 124 (No notice or defective or inaccurate notice) contains an exception to this regulation.

**Explanatory note**

This amendment inserts an extra note in section 120 to make clear the affect of an earlier section that might otherwise be overlooked.

**[3.258] Section 182 (1)**

*omit*

part

*substitute*

chapter

**Explanatory note**

This amendment corrects an error of the description of the area of the Act where section 182 is located.

**[3.259] Section 188 (2)**

*omit*

authorised

*substitute*

appointed

**Explanatory note**

This amendment corrects a misdescription of how an inspector becomes an inspector.

**[3.260] Dictionary, new definition of *inspector***

*insert*

*inspector* means an inspector appointed under section 188 (1).

**Explanatory note**

This amendment inserts a definition for a previously undefined term used in the Act.

## Schedule 4 Repeal of redundant or obsolete UK Acts and related Acts

(see s 6)

### Explanatory note for sch 4

#### Historical introduction

The establishment of the colony of NSW in 1788 required that a body of laws be immediately applicable to it. It was an accepted common law principle that, on the establishment of a new colony, the laws of the UK (both the common law and statutes) would automatically apply to it. This principle was subject to the qualification that the laws only applied so far as they were applicable to the conditions of the new colony.

However, there were some doubts about the applicability of UK law in NSW because of the unusual nature of the colony. These doubts were finally laid to rest when the UK parliament passed the *Australian Courts Act 1828* 9 Geo 4 c 83.

Apart from their application because of the *Australian Courts Act 1828*, some UK Acts applied because they were expressed to apply to NSW (the *Australian Courts Act 1828* is itself an example of this) or because their subject matter indicated that they were necessarily intended to apply. UK laws applying in this way were said to apply by paramount force.

When the area that makes up the ACT was separated from NSW, the same principles about application of laws applied. Under the *Seat of Government (Acceptance) Act 1909* (Cwlth), section 6, laws in force in the area on 31 December 1910 continued in force in the ACT. These laws consisted of the common law, any UK statutes that applied to the colony of NSW on its establishment and had not been repealed, any UK statutes passed by the UK parliament applying to NSW by paramount force and any statutes passed by the NSW legislature.

In 1971 the Commonwealth Attorney-General referred to the then Law Reform Commission of the Australian Capital Territory (the *ACTLRC*) ‘a review of the Imperial Acts that still apply in the Australian Capital Territory with a view to recommending—

- (a) which of those Acts in their application to the Australian Capital Territory should be repealed;
- (b) which should continue to apply in the Territory; and
- (c) which should be replaced by legislation in a more modern form.’

In 1973 the ACTLRC published their *Report on the Imperial Acts in Force in the Australian Capital Territory and Supplementary Report* (the **ACTLRC report**). The ACTLRC commented that it ‘relied greatly’ on the work of Sir Leo Cussen, Judge of the Supreme Court of Victoria (whose work culminated in the *Imperial Acts Application Act 1922* (Vic)) and the *Report of the Law Reform Commission of NSW on the Application of Imperial Acts* (the **NSWLRC report**), published in 1967. The recommendations made in the NSWLRC report were implemented with very few amendments in the *Imperial Acts Application Act 1969* (NSW).

Following the ACTLRC report, the Commonwealth made 3 ordinances for the ACT (later renamed as Acts by the *Self-Government (Citation of Laws) Act 1989* (Cwlth)): the *Imperial Acts (Substituted Provisions) Act 1986* (the **Substituted Provisions Act**), the *Imperial Acts Application Act 1986* (the **Application Act**) and the *Imperial Acts (Repeal) Act 1988* (the **Repeal Act**).

The Substituted Provisions Act, section 3 (1) repealed 31 UK Acts in their application in the ACT as laws of the ACT and enacted corresponding provisions that were to have effect as ACT laws.

The Application Act, section 4 (4) by implication continued in force in the ACT as laws of the ACT 16 UK Acts (in whole or part). The Application Act, section 5 (1) amended 28 UK Acts in their application in the ACT and reproduced their text in that Act, schedule 3.

The Repeal Act, section 3 (2) provided in effect that UK Acts then in force in the ACT (other than the UK Acts continued in force under the Application Act) cease to be in force in the ACT.

This schedule continues the process of reviewing former UK and NSW laws and repealing those that are no longer needed.

## **Part 4.1 Administration of Justice Acts**

### **Explanatory note**

These Acts regulate procedures for actions on bonds. A bond requires a person to pay a certain amount on the nonobservance of a condition. The Acts allow a plaintiff to assign an action for breach of a bond and to include all breaches in an action brought by the plaintiff even if an action for a breach has been assigned. The Acts also contain provisions about payment or recovery once judgment in an action for breach has been given.

Because the Acts only deal with procedural matters, the ACTLRC report recommended that the Acts be repealed, but that the effect of the *Administration of Justice Act 1696*, section 8 and the *Administration of Justice Act 1705*, sections 12 and 13 be preserved.

The ACTLRC did not favour the NSW approach contained in the *Imperial Acts Application Act 1969* (NSW). Two complicated provisions (sections 33 and 34) were substituted for sections 8, 12 and 13. Instead, the ACTLRC recommended that the UK

approach be adopted. The *Supreme Court of Judicature (Consolidation) Act 1925* (UK), section 99 (1) (g) gave power to the repeal certain enactments by rules of court. This power was exercised in 1957 by *Rules of the Supreme Court* (UK), order 53G rule 1. Rule 1 (1) repealed sections 8, 12 and 13, and rule 1 (2) set out a new, straightforward procedure.

Accordingly, the *Imperial Acts Application Act 1986* itself (in s 4 (1)) repealed the provisions of the *Administration of Justice Act 1696* other than section 8 and the provisions of the *Administration of Justice Act 1705* other than sections 12 and 13. The 1986 Act also provided for the delayed commencement of the provisions (s 4 (2) and (3)) that repealed sections 8, 12 and 13. However, section 4 (2) and (3) were not commenced before the 1986 Act was repealed by the *Law Reform (Miscellaneous Provisions) Act 1999* No 66. As a result, sections 8, 12 and 13 remained in force.

Repeal of the Administration and Justice Acts will enable the effect of sections 8, 12 and 13 to be preserved in the *Supreme Court Rules*, the appropriate place for procedural matters of the kind dealt with in the Administration of Justice Acts.

The delayed commencement of this repeal is to allow time for the *Supreme Court Rules* to be amended.

*Administration of Justice Act 1696* 8 and 9 Will 3 c 11

*Administration of Justice Act 1705* 4 and 5 Anne c 16

(commencement: a day fixed by the Minister by written notice)

*Note* If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

## **Part 4.2 Australian Courts Act 1828**

### **Explanatory note**

NSW began its existence as a British penal colony in 1788. The assumption at the time was that UK Acts and the common law would apply in the colonies, but there were doubts about the applicability of UK law in NSW because of the unusual nature of the colony. These doubts were finally laid to rest when the UK parliament passed the *Australian Courts Act 1828* 9 Geo 4 c 83. This Act provided, among other things, that all laws and statutes in force in England on 25 July 1828 that were applicable to the conditions in NSW were taken to be in force in NSW (s 24).

The area that now forms the ACT once formed part of NSW. The laws of that State therefore applied in the area before it was surrendered to the Commonwealth. Under the *Seat of Government (Acceptance) Act 1909* (Cwlth), section 6, any law in force (including UK Acts) in the area that now forms the ACT on 31 December 1910 continues in force in

the ACT. The *Imperial Acts Application Act 1986* (Cwlth), section 5 (1) amended 28 UK Acts in their application in the ACT and reproduced their text in that Act, schedule 3. The *Australian Courts Act 1828* was 1 of those 28 Acts.

The *Australian Courts Act 1828* is, therefore, ‘no more than a matter of history in the Australian Capital Territory’ (ACTLRC report, at p 52), and, as recommended by the ACTLRC, can be repealed.

It will, however, be available in the repealed Acts part of the ACT legislation register (see [www.legislation.act.gov.au](http://www.legislation.act.gov.au)).

*Australian Courts Act 1828* 9 Geo 4 c 83

## Part 4.3                      British Law Ascertainment Act 1859

### Explanatory note

The long title of this Act states that it is an ‘Act to afford facilities for the more certain ascertainment of the law administered in one part of Her Majesty’s Dominions when pleaded in the courts of another part’.

The Act allowed a court hearing a case in one part of the British Empire (the *originating court*) to ask a court in another part of the Empire (the *other court*) what the law (applicable to the agreed facts of the case) as administered in that part would be (s 1). The Act applied if the originating court thought that acting under the Act was necessary or expedient for the proper disposal of the case (s 1).

The rest of the Act deals with the procedure once the other court has given its opinion about the applicable law (s 2 and 3 (1)), and provides that once the procedure has been followed, the originating court must apply the opinion to the facts of the case (s 3 (2)) or submit the opinion to the jury with the other facts of the case (s 3 (3)).

Apart from being of historical interest, the *British Law Ascertainment Act 1859* has no continuing relevance in the ACT. The law dealing with proof of foreign law that applies in the ACT is the *Evidence Act 1995* (Cwlth), section 174 (Evidence of foreign law), section 175 (Evidence of law reports of foreign countries) and section 176 (Questions of foreign law to be decided by judge).

*British Law Ascertainment Act 1859* 22 and 23 Vic c 63

## Part 4.4 Colonial Courts of Admiralty Act 1890

### Explanatory note

This Act gave the ACT Supreme Court admiralty jurisdiction. Admiralty jurisdiction deals with a person's right of action for personal injury or damage to property caused by the maritime fault of the owner or operator of a ship. The jurisdiction is civil only.

The *Colonial Courts of Admiralty Act 1890* replaced the old system of Imperial Vice-Admiralty courts that had existed as Imperial courts separate from the ordinary court system. Section 2 (1) gives every court in a British possession that is a court of admiralty (a *colonial court of admiralty*) jurisdiction under the Act. A court is a colonial court of admiralty if it is declared under the Act to be a colonial court of admiralty. If there is no declaration, a court is taken to be a colonial court of admiralty if the court has unlimited civil jurisdiction. The ACT Supreme Court has unlimited civil jurisdiction (see the *Supreme Court Act 1933*, s 20 and the Self-Government Act, s 48A).

The jurisdiction of a colonial court of admiralty is the same as the admiralty jurisdiction of the High Court of England (s 2 (4)).

The Act came into force in NSW on 1 July 1911. As such, the jurisdiction given to the ACT Supreme Court by the then *Seat of Government Supreme Court Act 1933* (Cwlth) (now the *Supreme Court Act 1933*), section 11 (a) did **not** include the jurisdiction given by the *Colonial Courts of Admiralty Act 1890* (UK) to the NSW Supreme Court on or after 1 July 1911. Section 11 (a) gave the ACT Supreme Court the same original jurisdiction that the NSW Supreme Court had on 31 December 1910.

Instead, the ACT Supreme Court, as a court of unlimited civil jurisdiction, was given admiralty jurisdiction directly under the Act as a colonial court of admiralty.

However, it is not necessary to retain this Act because admiralty jurisdiction is also given to the ACT Supreme Court by the *Admiralty Act 1988* (Cwlth), part 2. That Act repealed the *Colonial Courts of Admiralty Act 1890* so far as it was part of the law of a Commonwealth or an external Territory.

*Colonial Courts of Admiralty Act 1890* 53 and 54 Vic c 27



## Part 4.5 Colonial Laws Validity Act 1865

### Explanatory note

The law inherited from England that applied in NSW (see pt 4.2 (Australian Courts Act 1828), explanatory note) was subject to change in 2 ways. First, the UK Parliament could legislate for NSW (that is, pass legislation intended to extend not only to the UK but also to NSW). Second, the NSW colonial legislature could amend the inherited law. The extent of this amending power was a matter of considerable dispute, and a number of colonial enactments were declared invalid because they had infringed a fundamental principle of English law.

The confusion about local legislation was largely clarified by the *Colonial Laws Validity Act 1865* (UK), sections 2 and 3. Section 2 declared ‘absolutely void and inoperative’ any colonial law that was repugnant to the provisions of any UK legislation extending to the colony. Section 3 provided that, in the absence of conflict, no colonial law could be impeached because of its ‘repugnancy to the Law of England’. However, the rules that the UK Parliament could still legislate for Australian States and that a State could not legislate so as to repeal or amend UK legislation extending to the State were not removed until the *Australia Act 1986* (UK and Cwlth).

The *Statute of Westminster 1931* (UK), section 2 (1) provides that the *Colonial Laws Validity Act 1865* does not apply to any law made by the Commonwealth Parliament after 3 September 1939.

Apart from being of historical interest, the *Colonial Laws Validity Act 1865* has no continuing relevance in the ACT. Whether an ACT law is valid depends, broadly speaking, on the Commonwealth Constitution and the Self-Government Act, not the *Colonial Laws Validity Act 1865*.

Once repealed, the *Colonial Laws Validity Act 1865* will be available in the repealed Acts part of the ACT legislation register (see [www.legislation.act.gov.au](http://www.legislation.act.gov.au)).

*Colonial Laws Validity Act 1865* 28 and 29 Vic c 63

## **Part 4.6**                      **Courts (Colonial) Jurisdiction Act 1874**

### **Explanatory note**

The wording of this Act was described as ‘obscure’ by the ACTLRC in its report (see p 11). Only 1 substantive provision (s 3) remains in force. Section 3 provides that a person convicted by a colonial court of an offence on the high seas in breach of an Imperial Act should be punished as if the offence had been against a law of the colony.

It is not clear what technical legal problem the Act was remedying. However, because of the changed status of former UK Acts applying in the ACT (which are now ACT rather than Imperial laws), it is highly unlikely that the Act has any present application in the ACT. In any case, when the repeals made by this schedule commence, there will no longer be any offences in the ACT to which the Act could apply. The Act will, therefore, be redundant.

*Courts (Colonial) Jurisdiction Act 1874 37 and 38 Vic c 27*

## **Part 4.7**                      **Demise of the Crown Acts**

### **Explanatory note**

Under the *Interpretation Act 1967* (repealed), section 65 all former UK Acts in force in the ACT immediately before 10 November 1999 (including these Acts) became, for all purposes, laws made by the ACT Legislative Assembly. This completed the process of making former UK Acts fully into ACT laws.

Because they are ACT laws, the Legislation Act, section 84 (Saving of operation of repealed and amended laws) applies to them. Section 84 (1) (a) provides that the repeal or amendment of an ACT law does not revive anything not in force or existing when the repeal or amendment takes effect.

This means that the Demise of the Crown Acts mentioned below can be repealed, because their repeal does not revive the common law rules relating to the demise of the Crown that these Acts abolished.

However, to remove any doubt, section 6 (2) of this Act declares the Acts to be laws to which the Legislation Act, section 88 ((Repeal does not end transitional or validating effect etc) applies.

It should be noted that the *Demise of the Crown Act 1760* (UK) is a ‘reserved law’ that cannot be amended or repealed by the Legislative Assembly (see the Self-Government Act, s 34 (4) and (5) and sch 5, pt 3).

*Demise of the Crown Act 1547* 1 Edw 6 c 7

*Demise of the Crown Act 1702* 1 Anne c 2

*Demise of the Crown Act 1707* 6 Anne c 41

*Demise of the Crown Act 1901* 1 Edw 7 c 5

## Part 4.8 Former UK Acts (Interpretation) Act 1988

### Explanatory note

The *Former UK Acts (Interpretation) Act 1988* is a former Commonwealth ordinance that became an Act enactment on self-government. The purpose of the Act is to assist in the interpretation of former UK Acts.

This schedule repeals 15 former UK Acts in addition to the Administration of Justice Acts (that never became former UK Acts). There are only 14 former UK Acts still in force in the ACT (see sch 2 of this Act, the amendment of the Legislation Act, sch 1, pt 1.1). The *Former UK Acts (Interpretation) Act 1988* has no relevant application to the remaining former UK Acts. Accordingly, it is no longer needed and can be repealed.

*Former UK Acts (Interpretation) Act 1988* No 94

## Part 4.9 Merchant Shipping Act 1894

### Explanatory note

The *Merchant Shipping Act 1894* (UK) was a consolidation of the various Merchant Shipping Acts that had already been passed in the UK.

The *Merchant Shipping Act 1894* (UK), at least in part, extended to the ACT as part of the law of the ACT of its own force immediately before 3 September 1939 (the date the *Statute of Westminster 1931* (UK) came into force for Australian law). The Act had not ceased to so extend to the ACT before 12 January 1987 (the commencement of the *Imperial Acts Application Ordinance 1986*). Accordingly, the Act (as amended by other Imperial Acts before 3 September 1939) became an applied Imperial Act for the 1986 Ordinance.

The Act includes the following matters (pt 1 is dealt with below):

- masters and sailors (pt 2)—including competency, and other matters relating to sailors (engagement, wages, welfare, discipline etc)
- passengers and emigrant ships (pt 3)—including equipment, and number of passengers
- fishing boats (pt 4)
- safety (pt 5)—including distress signals and unseaworthiness
- special shipping inquiries and courts (pt 6)
- delivery of goods (pt 7)
- liability of shipowners (pt 8)
- wreck and salvage (pt 9)
- pilotage (pt 10)
- lighthouses (pt 11).

Because the ACT is landlocked, there is no need for the ACT to have legislation about these aspects of maritime law, as the legislation has no practical application in the ACT.

In any event, the Commonwealth has legislated extensively in the area of maritime law. The main Commonwealth Act is the *Navigation Act 1912*. That Act deals with most of the matters mentioned above. Other Commonwealth Acts include the *Historic Shipwrecks Act 1976*, the *Crimes at Sea Act 2000*, the *Admiralty Act 1988* (about admiralty and maritime jurisdiction), the *Limitation of Liability for Maritime Claims Act 1989*, the *Australian Maritime Safety Authority Act 1990*, the *Carriage of Goods by Sea Act 1991*, the *Seafarers Rehabilitation and Compensation Act 1992* and the *Lighthouses Act 1911*.

The only part of the *Merchant Shipping Act 1894* that could have practical application in the ACT is part 1. Part 1 deals with registration, transfer of registration and mortgage of a registered ship or share in a ship.

However, the *Shipping Registration Act 1981* (Cwlth), deals with these matters. Accordingly, that Act repealed the *Merchant Shipping Act 1894* (UK), part 1 so far as it was part of the law of the Commonwealth. The rest of the *Merchant Shipping Act 1894* (UK) (so far as it was a law of the Commonwealth or an external Territory) was repealed by the *Statute Stocktake Act 1999* (Cwlth).

*Merchant Shipping Act 1894* 57 and 58 Vic c 60

## Part 4.10 Offences at Sea Act 1536

### Explanatory note

Under medieval law all offences committed at sea were within the jurisdiction of the High Court of Admiralty and not the common law courts. The High Court of Admiralty applied civil law rather than the common law. Accordingly, before the 16<sup>th</sup> century, offences such as piracy were dealt with according to the civil law in the High Court of Admiralty.

The *Offences at Sea Act 1536* (UK) provided a new means of trial for ‘all treasons, felonies, robberies, murders and confederacies’ committed within the jurisdiction of the Admiral. They were to be tried by special commissioners using common law procedures, including prosecution by indictment and trial by jury.

The Act became part of the law of NSW on the establishment of the colony, but it is doubtful whether it survived a series of 19<sup>th</sup> century UK Acts that effectively transferred admiralty jurisdiction to the courts of the Australian colonies (see Australian Law Reform Commission, Report No 48 on Criminal Admiralty Jurisdiction and Prize, 1990, pp 7-10).

The *Offences at Sea Act 1536* has not been necessary since at least 1979 when the *Crimes at Sea Act 1979* (Cwlth) was enacted as part of a cooperative scheme involving the Commonwealth, the States and the Northern Territory for offshore criminal jurisdiction. That scheme has recently been replaced by a cooperative scheme of which the *Crimes at Sea Act 2000* (Cwlth), forms part. In any event, the lack of coastal waters prevents the ACT from having any substantial legal or jurisdictional links with anything that may happen at sea.

*Offences at Sea Act 1536* 28 Hen 8 c 15

## Part 4.11 Piracy Acts

### Explanatory note

The Acts repealed by this part are former UK Acts that deal with piracy and related offences at sea. The Acts are in archaic terms. All the Acts are now redundant, because piracy is now dealt with comprehensively by Commonwealth law.

In 1992 the *Crimes Act 1914* (Cwlth) was amended by the *Crimes Legislation Amendment Act 1992* (Cwlth) (the **1992 amendment Act**), which inserted a new part (pt 4) about piracy. The part applies to acts of piracy on the high seas, in the coastal sea of Australia, and everywhere else that is not within the territorial jurisdiction of Australia or a foreign country (acts committed within the territorial jurisdiction of a country are generally subject to the laws of the country). Other Commonwealth legislation relevant to piracy includes the *Crimes (Ships and Fixed Platforms) Act 1992* (Cwlth).

The 1992 amendment Act also repealed some (but not all) of the Piracy Acts so far as they were ‘part of the law of the Commonwealth or a Territory’. It is not completely clear

whether that Act had the effect of repealing the Acts, so far as they were part of the law of the ACT. However, the better view is that the 1992 amendment Act was not effective to repeal the Piracy Acts so far as they were part of ACT law because by then the Self-Government Act had already converted these former UK Acts into ACT enactments. Accordingly, it remains necessary to repeal the Piracy Acts.

*Piracy Act 1698* 11 Will 3 c 7

*Piracy Act 1717* 4 Geo 1 c 11

*Piracy Act 1721* 8 Geo 1 c 24

*Piracy Act 1744* 18 Geo 2 c 30

## **Part 4.12 Piracy Punishment Act 1902**

### **Explanatory note**

This Act is a former NSW Act that became part of ACT law on the establishment of the ACT.

The Act deals with the punishment for offences of piracy. Among other things, the Act substitutes imprisonment for the death penalty provided under the *Offences at Sea Act 1536* and the Piracy Acts repealed by this schedule.

The Act will be redundant on the repeal of those Acts by this schedule.

*Piracy Punishment Act 1902* No 69

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## Schedule 5      Repeal of other redundant or obsolete Acts

(see s 6)

### Explanatory note for sch 5

This schedule repeals 2 Acts that are no longer needed.

The *Insane Persons and Inebriates (Committal and Detention) Act 1936* facilitated the commitment of ACT residents to NSW health institutions under the *Lunacy Act 1898* (NSW) and the *Inebriates Act 1900* (NSW). These NSW Act have been repealed in their application to the ACT and accordingly the *Insane Persons (Committal and Detention) Act 1936* is no longer needed.

The *Mental Health Act 1962* also makes provision in relation to the admission and detention of ACT residents in NSW institutions. Its provisions have been superseded by the *Mental Health (Treatment and Care) Act 1994*. Part 5A of that Act provides for the interstate application of mental health laws and orders and allows for regulations to be made recognising corresponding laws of other jurisdictions. These regulations are currently being prepared.

*Insane Persons and Inebriates (Committal and Detention) Act 1936*  
No 39

*Mental Health Act 1962* No 5

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## Endnotes

### Republication of amended laws

- 1 For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

### Penalty units

- 2 The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

*[Presentation speech made in Assembly on 14 November 2002]*

I certify that the above is a true copy of the Statute Law Amendment Bill 2002 (No 2) which was passed by the Legislative Assembly on 10 December 2002.

Clerk of the Legislative Assembly

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