



Australian Capital Territory

Statute Law Amendment Act 2004

A2004-42

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Australian Capital Territory

Statute Law Amendment Act 2004

A2004-42

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

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

1 Name of Act

This Act is the *Statute Law Amendment Act 2004*.

2 Commencement

- (1) This Act commences 14 days after its notification day.

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

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

- (3) In this section:

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

Example

An amendment followed by ‘(commencement: 12 July 2003)’ means that the amendment is taken to have commenced on 12 July 2003.

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

3 Purpose

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

4 Notes

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

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

5 Legislation amended—schs 1-3

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

Schedule 1 Minor amendments

(see s 5)

Part 1.1 Drugs of Dependence Act 1989

[1.1] Section 78 (2) (d)

omit

cocaine, pentazocine or pethidine

substitute

cocaine, fentanyl, pentazocine or pethidine

Explanatory note

This amendment allows the supply of fentanyl (in addition to cocaine, pentazocine and pethidine) to dentists. Fentanyl is used for providing short-term pain relief in dental treatment.

[1.2] Section 160 (1), definition of *exempt person*, paragraph (d)

omit

cocaine, pethidine or pentazocine

substitute

cocaine, fentanyl, pentazocine or pethidine

Explanatory note

This amendment allows dentists to possess fentanyl (in addition to cocaine, pentazocine and pethidine) for the treatment of patients. Fentanyl is used for providing short-term pain relief.

[1.3] Section 164 (4) (e)

omit

cocaine, pethidine or pentazocine

substitute

cocaine, fentanyl, pentazocine or pethidine

Explanatory note

This amendment allows dentists to sell fentanyl (in addition to cocaine, pentazocine and pethidine) as part of their treatment of patients. Fentanyl is used for providing short-term pain relief.

[1.4] Section 170 (3) (b) (i)

omit

cocaine, pethidine, or pentazocine

substitute

cocaine, fentanyl, pentazocine or pethidine

Explanatory note

This amendment allows dentists to administer fentanyl (in addition to cocaine, pentazocine and pethidine) as part of their treatment of patients. Fentanyl is used for providing short-term pain relief.

Part 1.2 Interactive Gambling Act 1998

[1.5] Section 14 (1), penalty

substitute

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

Explanatory note

This amendment corrects a typographical error. Section 14 (1) imposes a penalty of 200 penalty units and imprisonment for 2 months instead of 2 years. The amendment brings the

penalty provision into line with other provisions of the Act that impose a maximum penalty of 200 penalty units and a term of imprisonment or both.

Part 1.3 Land (Planning and Environment) Act 1991

[1.6] Section 186C (2) (b) (i)

substitute

- (i) the conservator; and

Explanatory note

This amendment corrects an unintended consequential amendment made when the planning and land authority was established. Section 186C originally provided that a rural lease could only be granted, transferred or varied if the Minister or someone authorised by the Minister had signed a land management agreement. The Executive Director of Environment ACT was authorised to sign these agreements.

When the planning and land authority was established, the Act was amended to assign many of the functions exercised by the Minister to the planning and land authority. However, section 186C (2) was amended so that the planning and land authority was required to sign the land management agreements. This amendment restores the previous position by providing that the conservator, (who is the Executive Director of Environment ACT), can sign land management agreements under section 186C (2). *Conservator* is defined in the dictionary as the conservator of flora and fauna. This position is established under the *Nature Conservation Act 1980* and is responsible for various nature conservation and land management functions.

[1.7] Section 282A (4)

substitute

- (4) If the conservator decides to vary a land management agreement under a provision of the agreement mentioned in section 186C (3), the conservator must give written notice of the decision to the other party to the agreement.

Explanatory note

Section 282A (4) requires notice of a decision by the planning and land authority under section 186C (3) to vary a land management agreement (other than by agreement between the parties) to be given to the other party to the agreement. This amendment is related to the amendment of

section 186C (2) (b) (i) and restores the previous position by requiring the conservator rather than the planning and land authority to give notice to the other party to a land management agreement.

Part 1.4 Magistrates Court Act 1930

[1.8] Section 120

omit

If an authorised person

substitute

- (1) If an authorised person

Explanatory note

This amendment is consequential on the insertion of a new subsection by the next amendment.

[1.9] New section 120 (2)

insert

- (2) To remove any doubt, an authorised person may not serve an infringement notice on a person under this section for an offence after the end of the time within which a prosecution may be brought for the offence.

Note For the time within which a prosecution must be begun, see Legislation Act, s 192.

Explanatory note

Section 120 deals with the service of infringement notices for offences generally. The amendment makes it clear that an infringement notice cannot be served under the section for an offence that cannot be prosecuted. This is implicit in the nature of an infringement notice scheme and in the provisions of the *Magistrates Court Act 1930*, part 8. For example, section 118 (1) provides ‘the purpose of this part is to create a system of infringement notices ... *as an alternative to prosecution*’ (emphasis added). However, the point is not expressly dealt with in the part. The amendment will put the matter beyond doubt by expressly providing that infringement notices may not be served for ‘stale’ offences.

[1.10] New section 131B (7A)

insert

- (7A) To remove any doubt, an authorised person may not serve an infringement notice on a person under this section for an offence after—
- (a) if regulations under subsection (7) prescribe a period for the offence—the end of the prescribed period; or
 - (b) in any other case—the end of the time within which a prosecution may be brought against the person for the offence.

(commencement: the later of the commencement of the *Litter Act 2004*, section 29 or 14 days after the day this Act is notified)

Explanatory note

Section 131B (which is proposed to be inserted by the *Litter Bill 2003*) deals with the service of infringement notices for offences involving a vehicle on a responsible person for the vehicle. The amendment makes it clear that an infringement notice cannot be served under the section for an offence that cannot be prosecuted.

Under section 131B (7) the regulations may provide that an infringement notice for an offence may only be served under section 131B within the prescribed period after the day the offence was committed. The effect of section 131B (7) is reflected in the subsection inserted by the amendment.

[1.11] Section 131B

renumber subsections when Act next republished under Legislation Act

(commencement: the later of the commencement of the *Litter Act 2004*, section 29 or 14 days after the day this Act is notified)

Explanatory note

This amendment provides for the consequential renumbering of subsections.

[1.12] New section 134 (6)

insert

- (6) To remove any doubt, subsection (2) does not permit the administering authority to lay an information against a person for an offence after the end of the time within which, apart from this section, a prosecution may be brought against the person for the offence.

Note For the time within which a prosecution must be begun, see Legislation Act, s 192.

Explanatory note

This amendment makes it clear that this section does not provide for an extended period within which a prosecution for an offence may be brought. The Legislation Act, section 192 limits the time for bringing prosecutions for minor summary offences to 1 year after the day of the commission of the offence unless ‘a Territory law provides for another period’.

The *Magistrates Court Act 1930*, section 134 (2) provides that an administering authority ‘may’ lay an information against a person for an offence for which an infringement notice has been served within 60 days after being given a notice disputing liability is received.

The better view is that the word ‘may’ in this context indicates that the laying of an information is discretionary rather than mandatory (see Legislation Act, section 146 (1)) and does not empower the laying of an information within the 60-day period after the 1-year period for bringing a prosecution has ended. This view is supported by section 134 (5) which has the effect that a prosecution for an offence must be begun within 60 days after the receipt of a notice disputing liability for the offence.

The amendment will put the matter beyond doubt by expressly providing that the section does not permit the laying of an information after the end of the 1-year period.

Part 1.5 Poisons Act 1933

[1.13] New section 16 (2A)

insert

- (2A) Subsections (1) and (2) do not apply in relation to the sale or supply of a restricted substance to, or the dispensing of a restricted

substance for, a person (or someone else for whom the person is acting) if—

- (a) the substance is a designated restricted substance under section 16A (Supply of certain restricted substances by pharmacists in emergencies); and
- (b) the person is a person to whom section 16A applies; and
- (c) the sale, supply or dispensing is in accordance with that section.

(commencement: the later of the commencement of the *Nurse Practitioners Legislation Amendment Act 2004*, part 6 or 14 days after the day this Act is notified)

Explanatory note

This amendment inserts a new section 16 (2A) consequent on the insertion of a new section 16A by another amendment. The amendments in this part amend section 16 as it is proposed to be amended by the *Nurse Practitioners Legislation Amendment Bill 2003*.

[1.14] Section 16

renumber subsections when Act next republished under Legislation Act

(commencement: the later of the commencement of the *Nurse Practitioners Legislation Amendment Act 2004*, part 6 or 14 days after the day this Act is notified)

Explanatory note

This amendment provides for the consequential renumbering of subsections.

[1.15] New section 16A

insert

16A Supply of certain restricted substances by pharmacists in emergencies

- (1) This section applies if a pharmacist is satisfied that—
 - (a) a person is undergoing treatment essential to the person's health or well being; and
 - (b) a designated restricted substance has previously been prescribed for the treatment by a doctor or dentist; and
 - (c) the person is in immediate need of the substance for continuation of the treatment; and
 - (d) because of an emergency affecting the person, it is not practicable for the person to obtain a prescription for the substance from a doctor or dentist.
- (2) The pharmacist may supply the designated restricted substance to the person if—
 - (a) the quantity supplied is not more than that required for 3 days treatment; or
 - (b) if the kind of substance supplied is a liquid, aerosol, cream, ointment or anovulant tablet that is contained in a standard pack—the standard pack is the smallest standard pack in which that kind of liquid, aerosol, cream, ointment or anovulant tablet is generally available.
- (3) In this section:

designated restricted substance means a restricted substance that is not—

 - (a) an anabolic steroid; or
 - (b) a benzodiazepine; or

- (c) a restricted substance prescribed under the regulations for this definition.

supply includes sell and dispense.

(commencement: the later of the commencement of the *Nurse Practitioners Legislation Amendment Act 2004*, part 6 or 14 days after the day this Act is notified)

Explanatory note

This amendment allows a pharmacist to supply a small quantity of certain prescription medicines to a person without a doctor's or dentist's prescription if an emergency makes it impractical for the person to obtain a prescription for the medicine. The need for a provision of this kind was highlighted by the January 2003 bushfires. The amendment does not authorise the supply of drugs of dependence that are controlled under the *Drugs of Dependence Act 1989*.

Schedule 2 Structural Amendments

(see s 5)

Part 2.1 Legislation Act 2001

[2.1] Section 19 (13), new definition of *repealed*

insert

repealed includes lapsed and expired.

Explanatory note

This amendment includes a new definition of *repealed* based on the definition of that term in section 82. The amendment makes it clear that lapsed and expired Acts and statutory instruments may be included on the ACT legislation register.

[2.2] Section 60 (2)

omit

The parliamentary counsel is authorised

substitute

The parliamentary counsel may

Explanatory note

This amendment simplifies language.

[2.3] New section 60 (4)

insert

- (4) If the name of a registrable instrument is added or amended under this section, the parliamentary counsel may make a corresponding change to any explanatory statement or regulatory impact statement for the instrument.

Explanatory note

This amendment makes it clear that, if the parliamentary counsel adds a name to, or amends the name of, a registrable instrument, the parliamentary counsel may also make consequential changes to the instrument's explanatory statement or regulatory impact statement. As noted by the Standing Committee on Legal Affairs (performing the duties of a Scrutiny of Bills and Subordinate Legislation Committee), discrepancies between instruments and their explanatory documentation may cause confusion to people when tracking legislation on the register. The consistent naming of instruments and their explanatory documentation assists access to the law.

[2.4] New section 60A

insert

60A Correction of name of explanatory statement etc

- (1) This section applies if an explanatory statement or regulatory impact statement for a registrable instrument—
 - (a) does not include the instrument's number or name in an appropriate place; or
 - (b) includes a reference to the instrument's number or name that is incorrect.
- (2) The parliamentary counsel may, before entering the statement in the register—
 - (a) include the instrument's number or name in an appropriate place in the statement; or

(b) correct the reference to the instrument's number or name.

Explanatory note

This amendment makes it clear that the parliamentary counsel may add or correct instrument numbers and names in explanatory statements and regulatory impact statements. As noted by the Standing Committee on Legal Affairs (performing the duties of a Scrutiny of Bills and Subordinate Legislation Committee), discrepancies between instruments and their explanatory documentation may cause confusion to people when tracking legislation on the register. The consistent naming of instruments and their explanatory documentation assists access to the law.

[2.5] Section 65 (1)

omit

after it is presented

insert

after the day it is presented

Explanatory note

This amendment expressly provides that, in working out the period within which notice of a disallowance motion must be given for a subordinate law or disallowable instrument, the day on which the law or instrument is presented to the Legislative Assembly is not counted. The amendment is in accordance with current drafting practice and reflects the present position under the Legislation Act, section 151 (2) and (3) (b).

[2.6] Section 65 (3)

omit

after the notice

substitute

after the day the notice

Explanatory note

This amendment expressly provides that, in working out the period within which a disallowance notice for a subordinate law or disallowable instrument must be dealt with, the day on which the law or instrument is presented to the Legislative Assembly is not counted. The amendment is in accordance with current drafting practice and reflects the present position under the Legislation Act, section 151 (2) and (3) (b).

[2.7] Section 68 (2)

omit

after it is presented

substitute

after the day it is presented

Explanatory note

This amendment expressly provides that, in working out the period within which notice of an amendment motion must be given for a subordinate law or disallowable instrument, the day on which the law or instrument is presented to the Legislative Assembly is not counted. The amendment is in accordance with current drafting practice and reflects the present position under the Legislation Act, section 151 (2) and (3) (b).

[2.8] Section 68 (4)

omit

after the notice

substitute

after the day the notice

Explanatory note

This amendment expressly provides that, in working out the period within which an amendment motion for a subordinate law or disallowable instrument must be dealt with, the day on which the law or instrument is presented to the Legislative Assembly is not counted. The amendment is in accordance with current drafting practice and reflects the present position under the Legislation Act, section 151 (2) and (3) (b).

[2.9] Section 72, definition of *law*

substitute

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

Explanatory note

This amendment includes all statutory instruments in the definition of ***law*** for chapter 8 (Commencement and exercise of powers before commencement). At present a number of

provisions of the chapter apply to statutory instruments that are not subordinate laws or disallowable instruments, but the following sections do not apply:

- section 75 (Commencement of naming and commencement provisions on notification day)
- section 78 (Separate commencement of amendment)
- section 79 (Automatic commencement of postponed law)
- section 79A (Commencement of amendment of uncommenced law)
- section 80 (References to *commencement* of law)
- section 81 (Exercise of powers between notification and commencement).

There is no reason in principle why these sections should not apply (with any necessary changes) to statutory instruments such as notifiable instruments. There is considerable advantage to users of ACT legislation in having the provisions of the chapter apply as consistently as possible to all statutory instruments.

[2.10] Section 73 (5) (a)

omit

on notification day

Explanatory note

This amendment is consequential on the change to the heading to section 75 made by the next amendment.

[2.11] Section 75 heading

substitute

75 Commencement of naming and commencement provisions

Explanatory note

This amendment is consequential on the changed scope of the section because of the insertion of new section 75 (2A) by the next amendment.

[2.12] New section 75 (2A)

insert

- (2A) In the application of this section to a statutory instrument that is not a registrable instrument, a reference to the instrument's **notification day** is a reference to the day after the day it is made or, if it is required under an Act or statutory instrument to be approved (however described) by the Executive, a Minister or any other entity, the day after the day it is approved.

Explanatory note

This amendment provides for the modified operation of the section for instruments that do not have a notification day because they are not required to be notified. The subsection is modelled on section 73 (4) (a) and section 75A (2) and is consequential on the revised definition of **law** inserted into section 72 by another amendment.

[2.13] Section 75

renumber subsections when Act next republished under Legislation Act

Explanatory note

This amendment provides for the consequential renumbering of subsections.

[2.14] Section 75B (1)

omit

Explanatory note

This amendment is consequential on the revised definition of **law** inserted into section 72 by another amendment.

[2.15] Section 75B

renumber subsections when Act next republished under Legislation Act

Explanatory note

This amendment provides for the consequential renumbering of subsections.

[2.16] Section 77 (1), (2) and (3)

omit

or notifiable instrument

Explanatory note

This amendment is consequential on the revised definition of *law* inserted into section 72 by another amendment.

[2.17] Section 77 (3)

omit

or instrument

Explanatory note

This amendment is consequential on the revised definition of *law* inserted into section 72 by another amendment.

[2.18] Section 77 (4) (a)

omit

or statutory instrument

Explanatory note

This amendment is consequential on the revised definition of *law* inserted into section 72 by another amendment.

[2.19] Section 79 (4), new definition of *law*

insert

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

Explanatory note

This amendment is consequential on the revised definition of *law* inserted into section 72 by another amendment.

Section 79 provides for the automatic commencement of a ‘law’ that does not commence on its notification day because a law postpones its commencement until a day or time fixed or determined by a commencement notice. Section 11 defines a *commencement notice* as a

statutory instrument that fixes or otherwise determines the commencement of ‘an Act, subordinate law, disallowable instrument or notifiable instrument’. The definition of *law* inserted by this amendment reflects the definition of *commencement notice* in section 11.

[2.20] Section 81 (4) (b)

substitute

- (b) for any other appointment or statutory instrument—the day after the day it is made or, if it is required under an Act or statutory instrument to be approved (however described) by the Executive, a Minister or any other entity, the day after the day it is approved.

Explanatory note

This amendment makes 2 changes to the paragraph.

First, the amendment brings the commencement of non-registrable instruments (that is, instruments not required to be notified on the ACT legislation register) under section 81 (4) into line with the commencement of registrable instruments. Under the amendment the commencement for a non-registrable instrument will be the day after the instrument is made (or, if it is required to be approved by an entity after making, the day after it is approved).

The law generally does not recognise parts of days. In theory, it is therefore presently possible for a non-registrable instrument to operate retrospectively by default from the time of making (or approval) back to the first moment of the day it is made (or approved). The amendment will prevent this result.

However, a non-prejudicial provision of a non-registrable instrument may commence on or before the day it is made (or approved) if the instrument clearly indicates that it is to commence retrospectively (see Legislation Act, s 75B and s 76 (1)). By contrast, a prejudicial provision of a non-registrable instrument may commence on or before the day it is made (or approved) only if the Legislation Act, section 76 (2) is displaced by, or under authority given by, an Act.

A similar amendment of the Legislation Act, section 73 (General rules about commencement) was made by the *Statute Law Amendment Act 2003 (No 2)*.

Second, the amendment deals expressly with instruments that are required to be approved after making. The commencement of such instruments operates from the day after the day of approval rather than the day after the day of making. In this respect the amendment brings the paragraph into line with the Legislation Act, section 73 (4) (a) and section 75A (2) (see also proposed sections 75 (2A) and 89 (8A) inserted by other amendments in this schedule).

[2.21] New section 81 (5A)

insert

- (5A) In the application of this section to a statutory instrument that is not a registrable instrument, a reference to the instrument being *notified* is a reference to the instrument being made or, if it is required under an Act or statutory instrument to be approved (however described) by the Executive, a Minister or any other entity, to the instrument being approved.

Explanatory note

This amendment provides for the modified operation of the section for instruments that are not notified. The amendment is consequential on the revised definition of *law* inserted into section 72 by another amendment.

[2.22] Section 81

renumber subsections when Act next republished under Legislation Act

Explanatory note

This amendment provides for the consequential renumbering of subsections.

[2.23] Section 82, definition of *law*

substitute

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

Explanatory note

This amendment includes all statutory instruments in the definition of *law* for chapter 9 (Repeal and amendment of laws). At present a number of provisions of the chapter do not generally apply to statutory instruments that are not subordinate laws or disallowable instruments. With one exception (for which an amendment is provided below), there is no reason why the chapter should not apply generally to statutory instruments such as notifiable instruments. There is considerable advantage to users of ACT legislation in having a consistent set of provisions about repeal and amendment applying to all statutory instruments. In addition, application of provisions such as section 89 (Automatic repeal of certain laws and provisions) will assist in avoiding unnecessary clutter of redundant instruments on the ACT legislation register.

[2.24] Section 82, definition of *repeal*

omit

expiry

substitute

expire

Explanatory note

This amendment corrects the syntax of the definition.

[2.25] New section 84A (3A)

insert

(3A) In this section:

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

Explanatory note

This amendment is consequential on the revised definition of ***law*** inserted into section 82 by another amendment. The amendment inserts a definition of ***law*** for the section to avoid any possible implication that a law other than an Act or subordinate law may create an offence.

[2.26] Section 84A

renumber subsections when Act next republished under Legislation Act

Explanatory note

This amendment provides for the consequential renumbering of subsections.

[2.27] Section 89 (8)

omit

or instrument

Explanatory note

This amendment is consequential on the revised definition of ***law*** inserted into section 82 by another amendment.

[2.28] New section 89 (8A)

insert

- (8A) In the application of subsection (8) to a statutory instrument that is not a registrable instrument, a reference to the instrument's ***notification day*** is a reference to the day after the day it is made or, if it is required under an Act or statutory instrument to be approved (however described) by the Executive, a Minister or any other entity, the day after the day it is approved.

Explanatory note

This amendment provides for the modified operation of section 89 (8) for instruments that do not have a notification day because they are not required to be notified. Proposed section 89 (8A) is modelled on section 73 (4) (a) and section 75A (2) and is consequential on the revised definition of ***law*** inserted into section 82 by another amendment.

[2.29] Section 89

renumber subsections when Act next republished under Legislation Act

Explanatory note

This amendment provides for the consequential renumbering of subsections.

[2.30] Section 89 (11), definition of *amending law*, paragraph (g)

omit

or statutory instrument

Explanatory note

This amendment is consequential on the revised definition of ***law*** inserted into section 82 by another amendment.

[2.31] Section 89 (11), definition of *amending provision*

omit

or statutory instrument

Explanatory note

This amendment is consequential on the revised definition of *law* inserted into section 82 by another amendment.

**[2.32] Section 89 (11), definition of *amending provision*,
paragraph (a)**

omit

or instrument

Explanatory note

This amendment is consequential on the revised definition of *law* inserted into section 82 by another amendment.

[2.33] Section 91 (8)

omit

subordinate law or disallowable instrument

substitute

statutory instrument

Explanatory note

This amendment is consequential on the revised definition of *law* inserted into section 82 by another amendment.

[2.34] Section 91 (8)

omit

, instrument

Explanatory note

This amendment is consequential on the revised definition of *law* inserted into section 82 by another amendment.

[2.35] Section 93 (10)

omit

subordinate or disallowable instrument

substitute

statutory instrument

Explanatory note

This amendment is consequential on the revised definition of *law* inserted into section 82 by another amendment.

[2.36] Section 93 (10)

omit

, instrument

Explanatory note

This amendment is consequential on the revised definition of *law* inserted into section 82 by another amendment.

[2.37] Section 107 heading

substitute

107 Definitions for ch 11

Explanatory note

This amendment is consequential on the insertion of a new definition into the section by the next amendment.

[2.38] Section 107, new definition of *republication*

insert

republication means a republication of a law.

Explanatory note

This amendment inserts a definition of *republication* that was inadvertently omitted by earlier amendments.

[2.39] Dictionary, part 1, new definitions

insert

chief solicitor means the chief solicitor under the *Government Solicitor Act 1989*.

Court of Appeal means the Court of Appeal constituted under the *Supreme Court Act 1933*.

independent competition and regulatory commission means the Independent Competition and Regulatory Commission for the Australian Capital Territory established under the *Independent Competition and Regulatory Commission Act 1997*.

infringement notice includes an infringement notice under the *Magistrates Court Act 1930* or the *Road Transport (General) Act 1999*.

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

Explanatory note

This amendment inserts definitions that will apply across the ACT statute book. In particular, the new definition of *infringement notice* is inclusive and will assist readers by drawing attention to the most important Acts under which infringement notices are issued.

[2.40] Dictionary, part 1, definition of *notification*, paragraph (b)

omit

statutory

substitute

registrable

Explanatory note

This amendment corrects a minor error.

[2.41] Dictionary, part 1, definition of *repeal*, paragraph (b)

omit

application,

substitute

application

Explanatory note

This amendment omits an unnecessary comma.

[2.42] Dictionary, part 1, definition of *repeal*, paragraph (b) (as amended)

relocate and renumber as paragraph (ca)

Explanatory note

This amendment places the paragraph in a more appropriate sequence in the definition.

[2.43] Dictionary, part 1, definition of *repeal*, new paragraph (cb)

insert

- (cb) for an Act or statutory instrument (or a provision of it)—any other implied repeal; and

Explanatory note

This amendment extends the meaning of *repeal* by including any form of implied repeal of an Act or statutory instrument that is not covered by paragraph (b) (which is relocated and renumbered as paragraph (ca) by another amendment). That paragraph provides that repeal includes abrogate or limit in effect. An implied repeal also happens when a law provides inconsistently with an existing law in a way that indicates that the earlier law is no longer to have effect.

[2.44] Dictionary, part 1, definition of *repeal*

renumber paragraphs when Act next republished under Legislation Act

Explanatory note

This amendment provides for the consequential renumbering of paragraphs.

[2.45] Dictionary, part 1, new definition of *resident judge*

insert

resident judge means a resident judge under the *Supreme Court Act 1933*.

Explanatory note

This amendment inserts a new definition that will apply across the ACT statute book.

Schedule 3 Technical amendments

(see s 5)

Part 3.1 Administration (Interstate Agreements) Act 1997

[3.1] Section 7

substitute

7 Consultation about agreements

- (1) A Minister proposing to participate in a negotiation for an interstate agreement must, if practicable, comply with subsection (3).
- (2) A Minister participating in a negotiation for an interstate agreement must, if subsection (3) has not been complied with, comply with the subsection as soon as practicable in relation to the negotiation.
- (3) The Minister must consult with the following committees about the issues to be considered in the negotiation:
 - (a) a standing committee of the Legislative Assembly nominated by the Speaker for the purpose;
 - (b) the legal affairs committee.
- (4) If a standing committee of the Legislative Assembly has been nominated under subsection (3) (a) for a negotiation, it is sufficient for subsection (3) (b) if the Minister consults with the legal affairs committee when it is performing the duties of a scrutiny of bills and subordinate legislation committee so far as its terms of reference as such a committee are relevant.
- (5) In participating in the negotiation, the Minister must have regard to any recommendation made by a relevant committee following the consultation.

(6) In this section:

legal affairs committee means the standing committee of the Legislative Assembly responsible for performing the duties of a scrutiny of bills and subordinate legislation committee.

Explanatory note

This amendment updates the reference to the legal affairs committee and brings the section more closely into line with current drafting practice.

Part 3.2 Associations Incorporation Act 1991

[3.2] Section 74 (3)

omit

the Australian Society of Certified Practising Accountants

substitute

CPA Australia

Explanatory note

This amendment updates the name of the body.

Part 3.3 Australian Capital Tourism Corporation Act 1997

[3.3] Section 3

substitute

2 Dictionary

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

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

For example, the signpost definition '*business plan*, in relation to a financial year, for part 4 (Management)—see section 20.' means that the term 'business plan' is defined in that section and the definition applies to the part.

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. The definitions in existing section 3 are included in the new dictionary that is inserted by another amendment.

[3.4] Section 6

substitute

6 Powers of corporation

The corporation has the same capacity as an individual.

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

Explanatory note

This amendment omits section 6 (1). It states that the corporation has power to do all things necessary and convenient to be done in connection with the performance of its functions. This is unnecessary because the Legislation Act, s 196 states that a provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function.

[3.5] Section 8

substitute

8 Constitution

The corporation consists of the following members:

- (a) 7 members appointed under section 9 (1);
- (b) the chief executive officer;
- (c) a public servant appointed under section 9 (5).

Explanatory note

This amendment remakes existing section 8 (1) consequent on the omission of schedule 1 by another amendment. The schedule provides for the appointment of the members mentioned in section 8 (a).

This amendment also omits section 8 (2). It provides that the functions of the corporation are not affected by a vacancy in the corporation. This is unnecessary because the Legislation Act, section 199 (5) provides that the exercise of a function is not affected only because of vacancies in the body's membership.

[3.6] Sections 9 and 10

substitute

9 Appointment of members

- (1) The Minister must appoint 7 people as members (the *appointed members*) of the corporation.

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

Note 2 Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

- (2) Before appointing an appointed member, the Minister must consider the suitability of the person for appointment having regard to the person's expertise and knowledge.

- (3) An appointed member must not be appointed for a term of longer than 3 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*).

- (4) An appointed member holds the position on the conditions not provided by this Act or another Territory law that are stated in the instrument of appointment.
- (5) The Minister must also appoint a public servant as a member of the corporation.

10 Chairperson and deputy chairperson

- (1) The Minister must appoint a member to be the chairperson of the corporation.
- (2) The members must elect another member to be the deputy chairperson of the corporation.

Explanatory note

Existing section 10 applies the provisions of schedule 1 to the appointment of the members mentioned in section 8 (a). The section is made redundant by the omission of the schedule by another amendment. New section 9 remakes schedule 1, clause 1 and clause 2 (1), (2), (3) (b) and (4) in accordance with current drafting practice.

Existing section 9 is remade as new section 10. A reference to the appointment of the chairperson being 'in writing' is removed because the Legislation Act, section 206 provides that an appointment must be made, or evidenced, by writing signed by the appointer.

Existing section 11, which is omitted by the next amendment, is remade in accordance with current drafting practice as new section 9 (5)

The amendment also inserts standard appointment notes.

[3.7] Section 11

substitute

11 Ending of appointments

- (1) The Minister may end the appointment of an appointed member for—
 - (a) misbehaviour; or
 - (b) physical or mental incapacity.
- (2) The Minister must end the appointment of an appointed member if the member—
 - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
 - (b) is absent, except on leave, for 3 consecutive meetings; or
 - (c) contravenes section 15 (Disclosure of interest) without reasonable excuse; or
 - (d) is convicted in Australia or elsewhere of an offence punishable by imprisonment for 1 year or longer.

Note A person's appointment also ends if the person resigns (see Legislation Act, s 210).

Explanatory note

This amendment omits existing section 11 consequent on new section 9 (5) which is inserted by the previous amendment. New section 11 remakes schedule 1, clause 5 in accordance with current drafting practice. The schedule is omitted by another amendment.

[3.8] Section 15 (1)

omit

pecuniary

substitute

financial

Explanatory note

This amendment updates language.

[3.9] Sections 16 and 17

substitute

16 Appointment of chief executive officer

- (1) The chief executive must appoint a public servant as the chief executive officer of the corporation.

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

- (2) If, immediately before the commencement of this section, the duties of an office in the public service included exercising the functions of the chief executive officer, then, until the chief executive makes an appointment under subsection (1) in relation to the office, a public servant for the time being exercising the duties of the office is the chief executive officer.
- (3) Subsection (2) is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (4) Subsections (2) and (3) and this subsection expire 1 year after the day this section commences.

17 **Functions of chief executive**

The functions of the chief executive are to manage the corporation's affairs in accordance with the general directions of the corporation.

Explanatory note

This amendment removes the requirement that the chief executive must create and maintain an office for the registrar 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.

The amendment includes transitional arrangements that operate until a new appointment is made.

This amendment also brings these provisions more closely into line with current drafting practice, including inserting a standard note about appointments.

[3.10] Section 18

substitute

18 **Staff**

The corporation's staff are to be employed under the *Public Sector Management Act 1994*.

Explanatory note

This amendment brings this section into line with current drafting practice and is consequential on the omission of the definition of *Public Sector Management Act* by another amendment.

[3.11] Section 20 heading

substitute

20 **Meaning of *business plan* for pt 4**

Explanatory note

This amendment is consequent on the next amendment. Definition provisions with only a single defined term refer to the term in the heading under current drafting practice.

[3.12] Section 20, definition of *Financial Management Act*

omit

Explanatory note

This amendment omits a definition of *Financial Management Act* consequent on other amendments made below.

[3.13] Section 22 (1) (a)

omit

Financial Management Act

substitute

Financial Management Act 1996

Explanatory note

This amendment is consequent on the omission of the definition of *Financial Management Act* from section 20.

[3.14] Section 25

substitute

25 Application of Financial Management Act, pt 8

- (1) Funds must not be invested, or money borrowed, for the purposes of the corporation except in accordance with the *Financial Management Act 1996*, part 8 (Financial provisions relating to Territory authorities).
- (2) Subsection (1) does not limit the application of the *Financial Management Act 1996*, part 8 in relation to the corporation.

Explanatory note

This amendment is consequent on the omission of the definition of *Financial Management Act* from section 20 and updates the section in line with current drafting practice.

[3.15] Section 28 (2)

substitute

Note For the meaning of *quarter*, see the Legislation Act, dict, pt 1.

Explanatory note

This amendment omits a definition of *quarter* and consequentially adds an explanatory note. The term is defined in the Legislation Act, dictionary, part 1.

[3.16] Section 28

renumber subsections when Act next republished under Legislation Act

Explanatory note

This amendment provides for the consequential renumbering of subsections.

[3.17] Section 30

relocate and renumber as section 31

Explanatory note

This amendment places the section in its preferable sequence.

[3.18] Section 31

relocate and renumber as section 30

Explanatory note

This amendment places the section in its preferable sequence.

[3.19] Schedule 1

omit

Explanatory note

Existing section 10, which is omitted by another amendment, applies the provisions of schedule 1 to the appointment of the members mentioned in section 8 (a). Amendments above incorporate the substance of schedule 1, clause 1, clause 2 (1), (2), (3) (b) and (4) and clause 5. The remaining provisions of the schedule are redundant for the reasons mentioned below.

- Clause 2 (3) (a) provides that the instrument of appointment must state the period of appointment. The Legislation Act, section 206 (2) provides that, if a law provides for a

maximum period of appointment, the period of appointment must be stated in the instrument of appointment.

- Clause 2 (5) provides that a former appointed member is eligible for reappointment. The Legislation Act, section 208 provides that a person may be reappointed to a position if the person is eligible to be appointed to the position. A note to this effect is included after new section 9 (3) which is inserted by another amendment above.
- Clause 3 provides for appointed members' remuneration. This is unnecessary because new section 9 (4) provides for conditions of appointment to be made under another Act which includes the *Remuneration Tribunal Act 1995*.
- Clause 4 provides for the resignation of appointed members. This is unnecessary, because the Legislation Act, section 210 provides that a person's appointment also ends if the person resigns. A note to this effect is inserted in new section 11.
- Clause 6 provides for acting appointments. It is no longer necessary because—
 - the Legislation Act, section 209 (1) provides that a power to make an appointment includes the power to make an acting appointment during vacancies and when the holder of the position is not available; and
 - the Legislation Act, section 209 (2) provides that a power to appoint a person to act is exercisable in the same way, and is subject to the same conditions, as the power to make the appointment; and
 - the bar on acting for longer than 1 year is contained in the Legislation Act, section 221 (1); and
 - the Legislation Act, section 225 states that an acting appointment is not affected by a defect etc.

[3.20] 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:

- appoint
- financial year

- Legislative Assembly
- public servant
- quarter
- sitting day.

appointed member—see section 9 (1).

business plan, in relation to a financial year, for part 4 (Management)—see section 20.

corporation means the Australian Capital Tourism Corporation.

member means a member of the corporation.

Explanatory note

This amendment inserts a dictionary and standard dictionary notes.

Part 3.4 Births, Deaths and Marriages Registration Regulations 1998

[3.21] Regulation 1

substitute

1 Name of regulations

These regulations are the *Births, Deaths and Marriages Registration Regulations 1998*.

Explanatory note

This amendment brings the naming provision of the regulations into line with current drafting practice.

Part 3.5 **Confiscation of Criminal Assets Act 2003**

[3.22] Section 222 (1)

omit everything before paragraph (a), substitute

- (1) If the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is executed, the occupier or other person may ask a police officer who seizes—

Explanatory note

This amendment corrects an error of syntax.

Part 3.6 **Crime Prevention Powers Act 1998**

[3.23] Section 1

substitute

1 Name of Act

This Act is the *Crime Prevention Powers Act 1998*.

Explanatory note

This amendment brings the naming provision of the Act into line with current drafting practice.

[3.24] Section 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 terms used in this Act.

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

3 Notes

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

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

Explanatory note

This amendment adds standard dictionary and notes provisions. The definitions in the definitions section omitted by this amendment are inserted into a new dictionary by another amendment.

[3.25] 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:

- police officer
- property.

public place means—

- (a) any street, road, public park or reserve; or
- (b) any building, premises or other place that the public is entitled to use or that is open to, or used by, the public, whether on payment of money or otherwise.

violent conduct means—

- (a) violence to, or intimidation of, a person; or

(b) damage to property.

Explanatory note

This amendment adds a dictionary consequential on the omission of the definition section (section 3) by another amendment.

Part 3.7 Custodial Escorts Act 1998

[3.26] Section 1

substitute

1 Name of Act

This Act is the *Custodial Escorts Act 1998*.

Explanatory note

This amendment brings the naming provision of the Act into line with current drafting practice.

[3.27] Section 3

substitute

2 Dictionary

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

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

Note 2 A definition in the dictionary (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. The definitions in the definitions section omitted by this amendment (other than the definition of *chief police officer*) are inserted into a new dictionary by another amendment. ‘Chief police officer’ is defined in the Legislation Act, dictionary, part 1.

[3.28] Section 4

substitute

4 Escorts—appointment

- (1) The administrator may appoint a person to be an escort.

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).

- (2) The administrator must not appoint a police officer to be an escort without the chief police officer’s approval.

Explanatory note

This amendment updates the appointment section by removing the words ‘in writing’ because the Legislation Act, section 206 provides that an appointment must be made, or evidenced, by writing signed by the appointer.

The amendment also inserts standard appointment notes.

[3.29] Section 8

substitute

8 Functions under other laws

- (1) The functions of an escort under this Act are additional to those provided under any other Territory law.
- (2) This Act does not limit the powers of a police officer, or custodial officer, who is also an escort.

Explanatory note

This amendment brings the section more closely into line with current drafting practice. The Legislation Act, dictionary, part 1 defines *function* to include ‘power’ and *under* to include ‘by’.

[3.30] 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 police officer
- entity
- function
- judge
- law, of the Territory
- magistrate
- police officer
- sentence administration board
- under.

administrator means the administrator under the *Remand Centres Act 1976*.

arrested person means—

- (a) a person who has been arrested by a police officer, whether under a warrant or otherwise; or
- (b) a person who is in the custody of a police officer after being arrested by someone else for an offence; or
- (c) a person who has been arrested or apprehended under a warrant, direction or order to secure the person's attendance at a court.

court includes—

- (a) a judge, magistrate or coroner (including a deputy coroner); and
- (b) the sentence administration board; and
- (c) any other entity having power to compel the attendance of witnesses.

custodial officer means a custodial officer under the *Remand Centres Act 1976*.

escort means a person appointed under section 4.

Explanatory note

This amendment adds a dictionary consequential on the omission of the definition section (section 3) by another amendment. The definitions have been updated in accordance with current drafting practice. Coroners have been dealt with expressly in the definition of **court**. They previously came under paragraph (c) of that definition.

Part 3.8 Drugs of Dependence Act 1989

[3.31] Section 6 (1) (e) (iii)

substitute

- (iii) of an offence in Australia or a foreign country punishable on conviction by a fine of at least 100 penalty units (or an equivalent amount) or by imprisonment for a period of at least 1 year;

Explanatory note

This amendment updates language and converts an amount to penalty units.

[3.32] Section 11 (1) (a) (iii)

substitute

- (iii) of an offence in Australia or a foreign country punishable on conviction by a fine of at least 100 penalty units (or an equivalent amount) or by imprisonment for a period of at least 1 year; or

Explanatory note

This amendment updates language and converts an amount to penalty units.

[3.33] Section 20 (1) (e) (iii)

substitute

- (iii) of an offence in Australia or a foreign country punishable on conviction by a fine of at least 100 penalty units (or an equivalent amount) or by imprisonment for a period of at least 1 year;

Explanatory note

This amendment updates language, omits a redundant reference to ‘or’ at the end of the provision and converts an amount to penalty units.

[3.34] Section 25 (1) (a) (iii)

substitute

- (iii) of an offence in Australia or a foreign country punishable on conviction by a fine of at least 100 penalty units (or an equivalent amount) or by imprisonment for a period of at least 1 year; or

Explanatory note

This amendment updates language and converts an amount to penalty units.

[3.35] Section 52 heading

substitute

52 Application of pt 5

Explanatory note

This amendment corrects a minor error in the heading.

[3.36] Section 56 heading

substitute

56 Definitions for pt 6

Explanatory note

This amendment corrects a misdescription in the section's heading.

[3.37] Section 66 (7)

omit

appointment

substitute

appoint

Explanatory note

This amendment corrects a grammatical error.

[3.38] Section 75

omit

Explanatory note

This amendment removes a transitional provision which has fulfilled its function.

[3.39] Sections 96 and 97 (3)

omit

they control

substitute

the person controls

Explanatory note

This amendment corrects a grammatical error.

[3.40] Section 120 (4) (c)

after

disposed

insert

of

Explanatory note

This amendment corrects a grammatical error.

[3.41] Section 123 (6) (a) and (b)

omit

; and

substitute

; or

Explanatory note

This amendment brings language into line with current drafting practice.

[3.42] Section 127 (1) (a)

omit

officer

substitute

offender

Explanatory note

This amendment corrects a misdescription of a person.

[3.43] Section 152 (1)

omit

it believes

substitute

the Minister believes

Explanatory note

This amendment corrects an error.

[3.44] References to *medical practitioner*

omit

medical practitioner

substitute

doctor

in

- section 3 (1), definition of *intern*
- section 3 (1), definition of *treatment centre*, paragraph (c)
- section 56, definition of *medical practitioner*
- section 57 (1)
- section 59
- section 59A

- section 60 (2)
- section 61
- section 62 (1) (b)
- section 63 (1) (f)
- section 64
- section 65, definition of *medical practitioner*
- section 66 (3)
- section 67 (a)
- section 78 (2) (c)
- section 79 (2) (a) (iii) and (b)
- section 80
- section 84 (1), definition of *medical practitioner*
- section 84 (2)
- section 86 (1)
- section 95, definition of *prescribed person*, paragraph (d)
- section 100 (2) (e)
- section 102 (2) (d)
- section 102A (1) (b) (vi)
- section 102B (1) (b) (vi)
- section 113
- section 115 (1)
- section 117 (1) (e)
- section 118 (b)
- section 120 (4) (a) (i)
- section 160 (1), definition of *exempt person*, paragraph (c) (i)
- section 164 (4) (b) and (f)
- section 166 (2)
- section 167 (1), definition of *authorised person*
- section 167 (5)
- section 169 (3)
- section 170 (1) (b) and (3) (a) and (c) (i)

- section 171 (4) (d)
- section 173 (6) (b)
- section 178 (1), definition of *prescribed premises*, paragraph (d).

Explanatory note

This amendment updates the reference to medical practitioner in accordance with current drafting practice. *Doctor* is defined in the Legislation Act, dictionary, part 1.

Part 3.9 Food Act 2001

[3.45] Section 49 (5) (b)

omit

sought

substitute

issued

Explanatory note

This amendment corrects a minor misdescription.

[3.46] Section 50 (5) (b)

omit

(*warrant form*)

substitute

(the *warrant form*)

Explanatory note

This amendment brings the form of the definition into line with current drafting practice.

[3.47] Section 52 (7)

omit

subsection (5)

substitute

subsection (6)

Explanatory note

This amendment corrects a cross-reference.

[3.48] Section 84 (2) (b)

omit

food be kept

substitute

food must be kept

Explanatory note

This amendment inserts a missing word.

[3.49] Section 131

omit

this section

substitute

section 101 (Procedure for taking action in relation to registration)

Explanatory note

This amendment corrects a minor error. Section 131 provides that the renewal or amendment of the registration of a food business under section 93 or section 97 does not affect action in relation to the registration of the food business under 'this section'. Action in relation to the registration of food business is, in fact, taken under section 101.

[3.50] Section 145 (1), definition of *person to whom this section applies*

substitute

person to whom this section applies means—

- (a) a person who is or has been an authorised officer; or
- (b) anyone else who has exercised a function under this Act.

Explanatory note

This amendment corrects an error in the structure of the definition.

[3.51] Section 146 (5) (b)

before

ends

insert

or finding of guilt

Explanatory note

This amendment insets missing words into a provision about the publication of a notice after an appeal from a conviction or finding of guilty has ended.

Part 3.10 Gas Pipelines Access Act 1998

[3.52] Sections 3 and 4

substitute

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.

4 Terms used in Gas Pipelines Access (A.C.T.) Law

A term used in the Gas Pipelines Access (A.C.T.) Law has the same meaning in this Act.

Explanatory note

This amendment adds a standard notes provision. It also brings section 4 (currently section 3) into line with current drafting practice by using ‘term’ instead of ‘word or expression’. This amendment also omits a section (current section 4) made redundant by the Legislation Act, section 121 (Binding effect of Acts).

[3.53] Section 8 (1), definition of *local regulator*, paragraph (b)

substitute

- (b) in relation to a distribution pipeline—the independent competition and regulatory commission.

Explanatory note

This amendment simplifies the paragraph relying on the definition of the commission inserted into the Legislation Act, dictionary, part 1 by another amendment.

[3.54] Section 12 (2)

substitute

- (2) The code registrar may delegate those functions to any person.

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 and adds a standard note about delegations. The Legislation Act, section 232 requires a delegation to be made by signed writing. The Legislation Act, section 234 allows the delegation of any part of functions that may be delegated.

[3.55] 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
- Commonwealth
- give
- law
- State.

Part 3.11 **Independent Competition and Regulatory Commission Act 1997**

[3.56] Section 5 (1)

substitute

- (1) The Independent Competition and Regulatory Commission for the Australian Capital Territory is established.

Explanatory note

This amendment corrects an omission that happened when the Independent Pricing and Regulatory Commission was renamed the Independent Competition and Regulatory Commission. The *Independent Competition and Regulatory Commission Amendment Act 2000* made amendments reflecting the changed name. However, section 5 (1) was not amended. This amendment brings the subsection into line with those amendments.

[3.57] New section 5 (5) and (6)

insert

- (5) To remove any doubt, the name of the commission is taken to have been changed to the Independent Competition and Regulatory Commission for the Australian Capital Territory by the *Independent Competition and Regulatory Commission Amendment Act 2000*.

- (6) This subsection and subsection (5) expire on the day this subsection commences.

Explanatory note

This amendment inserts a provision to remove any doubt that the *Independent Competition and Regulatory Commission Amendment Act 2000* was effective to change the name of the commission, even though section 5 (1) was not amended by that Act.

Part 3.12 Interactive Gambling Act 1998

[3.58] Section 3, definitions of *agent*, *authorised game*, *business associate* and *executive associate*

omit

Explanatory note

This amendment omits definitions that are replaced by signpost definitions in a dictionary in accordance with current drafting practice. The dictionary is inserted by another enactment.

[3.59] Section 3, definitions (as amended)

relocate to dictionary

Explanatory note

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

[3.60] Section 3, remainder

substitute

2 Dictionary

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

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

For example, the signpost definition ‘*disqualified person*—see section 18B.’ means that the term ‘disqualified person’ is defined in that section.

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

[3.61] Section 9 (1) (b)

omit

(including the law as amended or substituted from time to time)

Explanatory note

This amendment omits unnecessary words. The Legislation Act, section 102 provides that a reference to a law (including the law of a State or another Territory) includes the law as amended or remade.

[3.62] Section 9 (3)

substitute

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

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

Explanatory note

This amendment omits the words ‘and any instrument amending or revoking such a declaration’ because the Legislation Act, section 46 provides that if a declaration is a disallowable instrument then any amendment or repeal of the declaration is also a disallowable instrument.

[3.63] Section 11 (1)

omit

instrument of approval

substitute

authorisation

Explanatory note

This amendment updates language.

[3.64] Section 29 (2), definition of *entity*

omit

Explanatory note

This amendment omits a definition that is now redundant. The Legislation Act, dictionary, part 1 defines *entity* to include an unincorporated body and a person (including a person occupying a position).

[3.65] Section 30 (1)

omit

(1) In deciding

substitute

In deciding

Explanatory note

This amendment is consequential on the omission of section 30 (2).

[3.66] Section 30 (2)

omit

Explanatory note

This amendment omits a subsection that defines ‘entity’. The definition is now redundant. The Legislation Act, dictionary, part 1 defines *entity* to include an unincorporated body and a person (including a person occupying a position).

[3.67] Section 44 (1), new notes

insert

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).

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 adds standard notes about appointments.

[3.68] Section 82 (2)

omit

and due

Explanatory note

This amendment omits unnecessary words.

[3.69] Section 82 (3)

omit

that is due

substitute

that is payable

Explanatory note

This amendment updates language.

[3.70] Section 121 (3)

substitute

- (3) If the claimant receives a claim result notice, the claimant must make any request to the commission under subsection (2) within 10 days after the day the claimant receives the notice.

Note If a form is approved under the Control Act, s 53D for an application under this subsection, the form must be used.

Explanatory note

This amendment removes the reference to a request having to be in the approved form. The *Gambling and Racing Control Act 1999*, section 53D permits a form to be approved for a request. If a form is approved, that section requires the form to be used.

[3.71] Section 146 (2)

omit

peruse

substitute

inspect

Explanatory note

This amendment updates language.

[3.72] 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:

- ACT
- administrative appeals tribunal

- contravention
- Corporations Act
- entity
- indictable offence
- individual
- person
- State
- the Territory.

agent—see section 6.

ancillary gambling agreement, for division 7.9 (Ancillary and related agreements)—see section 112.

approved place, for division 7.6 (Gambling records)—see section 103.

authorised game—see section 10.

business associate—see section 4.

executive associate—see section 4.

exempt gambling record, for division 7.6 (Gambling records)—see section 103.

exempted provider, for division 2.5 (Exemption schemes)—see section 21.

exemption scheme, for division 2.5 (Exemption schemes)—see section 21.

interactive gambling tax, for part 6 (Licence fees and tax)—see section 81.

key person—see section 5.

key relationship—see section 5.

primary decision, for part 8 (Administrative review)—see section 140.

public office, for division 7.6 (Gambling records)—see section 103.

related agreement, for division 7.9 (Ancillary and related agreements)—see section 112.

reviewable decision, for part 8 (Administrative review)—see section 140.

Explanatory note

This amendment inserts a dictionary, signpost definitions (in line with current drafting practice) and standard dictionary notes.

Part 3.13 **Interactive Gambling Regulations 1998**

[3.73] Regulation 3, definitions

relocate to dictionary

Explanatory note

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

[3.74] Regulation 3, remainder

substitute

2 Dictionary

The dictionary at the end of these regulations is part of these regulations.

Note 1 The dictionary at the end of these regulations defines certain terms used in these regulations.

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

3 **Notes**

A note included in these regulations is explanatory and is not part of these regulations.

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.

[3.75] Regulation 4

omit

section 3

substitute

dictionary

Explanatory note

This amendment is consequential on the insertion of a dictionary in the Act by another amendment and the relocation of the definitions in section 3 to the dictionary.

[3.76] Regulation 12 (2)

omit

subsection

substitute

subregulation

Explanatory note

This amendment corrects a reference to a provision name.

[3.77] Regulations 12 (3) and 12A (1) and (4)

omit

section

substitute

regulation

Explanatory note

This amendment corrects references to provision names.

[3.78] Regulation 18 (3)

omit

commissioner

substitute

commission

Explanatory note

This amendment omits a reference to ‘commissioner’ and substitutes a reference to ‘commission’. Under the *Gambling and Racing Control Act 1999*, section 6 the functions of the gaming and racing commission include administering the gaming laws (including the *Interactive Gambling Act 1998* and the *Interactive Gambling Regulations 1998*).

[3.79] New dictionary

insert

Dictionary

(see reg 2)

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

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

- ACT
- Commonwealth

Schedule 3 Technical amendments
Part 3.14 Limitation Act 1985

Amendment [3.80]

- document
- financial year
- GST
- lawyer
- month.

Explanatory note

This amendment inserts a dictionary and standard dictionary notes.

Part 3.14 Limitation Act 1985

[3.80] Section 36 (5) (a)

omit

than

Explanatory note

This amendment corrects a typographical error in a reference to the section heading for section 16B.

Part 3.15 Magistrates Court (Agents Infringement Notices) Regulations 2003

[3.81] Regulations 10 (a) and 11 (a)

omit

and

substitute

or

Explanatory note

This amendment brings language into line with current drafting practice.

Part 3.16 **Occupational Health and Safety (Manual Handling) Regulations 1997**

[3.82] Regulation 1

substitute

1 Name of regulations

These regulations are the *Occupational Health and Safety (Manual Handling) Regulations 1997*.

Explanatory note

This amendment brings the naming provision of the regulations into line with current drafting practice.

[3.83] Regulation 3

substitute

2 Dictionary

The dictionary at the end of these regulations is part of these regulations.

Note 1 The dictionary at the end of these regulations defines certain terms used in these regulations.

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

3 Notes

A note included in these regulations is explanatory and is not part of these regulations.

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

Explanatory note

This amendment replaces regulation 3 with standard dictionary and notes provisions. The definitions (other than *the Act*) are inserted into a new dictionary that is inserted by another amendment. The definition *the Act* is redundant because of the Legislation Act, section 105 (References in statutory instruments to *the Act*).

[3.84] New dictionary

insert

Dictionary

(see reg 2)

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

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

- penalty unit (see s 133).

Note 3 Terms used in these regulations have the same meaning that they have in the *Occupational Health and Safety Act 1989* (see Legislation Act, s 148). In particular, the following terms are defined in the *Occupational Health and Safety Act 1989*, dict:

- employee
- employer
- health and safety representative
- involved union.

manual handling means any activity requiring the use of force exerted by a person to lift, lower, push, pull, carry or otherwise move, hold or restrain any animate or inanimate object.

person in control means a person mentioned in the Act, section 29 (1).

representative on health and safety issues, in relation to an employee, means—

- (a) if there is a health and safety representative selected under the Act, section 40 for a designated work group that includes the employee—the health and safety representative; or
- (b) if there is no health and safety representative, but there is an involved union for the designated work group—a representative of an involved union; or
- (c) if there is no health and safety representative and no involved union, and more than 1 employee is required to carry out the relevant manual handling task—an employee nominated by those employees.

Explanatory note

This amendment inserts a dictionary and standard dictionary notes. The definitions have been brought more closely into line with current drafting practice.

Part 3.17 Sale of Motor Vehicles Act 1977

[3.85] Dictionary, definition of *qualified accountant*, paragraph (a)

omit

the Australian Society of Certified Practising Accountants; or

substitute

CPA Australia; or

Explanatory note

This amendment updates the name of the body.

Part 3.18 Tertiary Accreditation and Registration Act 2003

[3.86] Section 103 (2)

omit

authority

substitute

council

Explanatory note

This amendment corrects a misdescription of the relevant body.

Part 3.19 Utilities Act 2000

[3.87] Dictionary, definition of *owner*, paragraph (c)

substitute

(c) for a unit under the *Unit Titles Act 2000*—the unit owner;

Explanatory note

This amendment updates the Act reference and terminology.

Part 3.20 **Victims of Crime (Financial Assistance) Regulations 1998**

[3.88] Regulation 1

substitute

1 Name of regulations

These regulations are the *Victims of Crime (Financial Assistance) Regulations 1998*.

Explanatory note

This amendment brings the naming provision of the regulations into line with current drafting practice.

[3.89] Regulation 3

substitute

2 Dictionary

The dictionary at the end of these regulations is part of these regulations.

Note 1 The dictionary at the end of these regulations defines certain terms used in these regulations.

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

3 Notes

A note included in these regulations is explanatory and is not part of these regulations.

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

Explanatory note

This amendment replaces regulation 3 with standard dictionary and notes provisions. The definitions (other than *director*) are inserted into a new dictionary that is inserted by another amendment. The definition of *director* is no longer needed because of another amendment.

[3.90] Regulation 3A

omit

legal practitioner

substitute

lawyer

Explanatory note

This amendment replaces a reference to ‘legal practitioner’ with a reference to ‘lawyer’ in line with current drafting practice. *Lawyer* is defined in the Legislation Act, dictionary, part 1.

[3.91] Regulation 4 (1) (a) and (2)

omit

director

substitute

director of corrective services

Explanatory note

This amendment replaces references to ‘director’ with references to ‘director of corrective services’. *Director of corrective services* is defined in the Legislation Act, dictionary, part 1.

[3.92] Regulation 4 (3) (h)

substitute

- (h) contain a statement to the effect that, under regulation 5, the appropriate court officer may, on application by the person, fix a later date for payment of the levy; and

Explanatory note

This amendment omits an unnecessary word ('due') and corrects a reference to a defined term ('appropriate court officer').

[3.93] Regulation 4 (3) (j)

omit

due date

substitute

date for payment

Explanatory note

This amendment is consequential on amendments of regulations 4 (3) (h) and 5.

[3.94] Regulation 5

omit

due

Explanatory note

This amendment omits an unnecessary word.

[3.95] New dictionary

insert

Dictionary

(see reg 2)

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

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

- lawyer
- Magistrates Court
- registrar
- Supreme Court
- the Territory.

appropriate court officer means—

- (a) for levy imposed in relation to an offence dealt with by the Supreme Court—the registrar of the Supreme Court; or
- (b) for levy imposed in relation to an offence dealt with by the Magistrates Court—the registrar of the Magistrates Court.

levy means a levy imposed under the Act, section 68 (1).

Explanatory note

This amendment inserts a dictionary and standard dictionary notes.

Part 3.21 Water Resources Act 1998

[3.96] Section 1

substitute

1 Name of Act

This Act is the *Water Resources Act 1998*.

Explanatory note

This amendment brings the naming provision of the Act into line with current drafting practice.

[3.97] Section 4, definition of *authority*

substitute

authority means the environment protection authority.

Explanatory note

This amendment omits words made redundant by the definition of *environment protection authority* in the Legislation Act, dictionary, part 1 and updates the authority's name.

[3.98] Section 4, definition of *waterway*, paragraph (b)

substitute

- (b) the stormwater system or any other channel formed (whether in whole or part) by altering or relocating a waterway mentioned in paragraph (a); or

Explanatory note

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

[3.99] Section 4, definitions (as amended)

relocate to dictionary

Explanatory note

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

[3.100] Section 4, remainder

substitute

4 Dictionary

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

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

For example, the signpost definition ‘*connected*, for part 8 (Enforcement)—see section 54.’ means that the term ‘connected’ is defined in that section and the definition applies to that part.

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)).

4A 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.

[3.101] Section 13, new note

insert

Note This section commenced on 11 December 1998.

Explanatory note

The section refers to the grant of rights before the commencement of the section. This amendment inserts a note to assist uses to identify the relevant date.

[3.102] Section 15

substitute

15 Delegation

The authority may delegate the authority’s functions under this Act to a public employee.

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 ‘by instrument’ have been omitted because the Legislation Act, section 232 provides that a delegation must be made, or evidenced, in writing;

- the word ‘functions’ has been substituted for the word ‘powers’ because the Legislation Act, dictionary, part 1, defines function to include powers and function is the term now used in legislation;
- the words ‘other than this power of delegation’ have been omitted because the Legislation Act, section 236 provides that the appointer must not delegate the appointer’s power to delegate.

This amendment also adds a standard note about delegations.

[3.103] Section 27, new note

insert

Note Section 13 commenced on 11 December 1998.

Explanatory note

The section refers to the grant of rights after the commencement of section 13. This amendment inserts a note to assist users to identify the relevant date.

[3.104] Section 28 (4)

substitute

- (4) The power of the authority to allocate water must be exercised by public auction or public tender or, if either method is unsuccessful, by private contract.

Explanatory note

This amendment omits a reference to a repealed section (section 81) and brings the language of the subsection more closely into line with current drafting practice.

[3.105] Section 28 (7)

substitute

- (7) The Minister or the authority may grant an allocation under this section only if provision is made for the allocation in the management plan.

Explanatory note

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

[3.106] Section 29

omit

, as the case requires,

Explanatory note

This amendment omits unnecessary words.

[3.107] Section 33 (4)

omit

Nothing in subsection (3) shall be construed as authorising

substitute

Subsection (3) does not authorise

Explanatory note

This amendment updates language.

[3.108] Section 33 (5) (a)

omit

power or authority

substitute

function

Explanatory note

This amendment changes a reference to ‘power or authority’ to ‘function’. **Function** is defined in the Legislation Act, dictionary, part 1 to include authority, duty and power.

[3.109] Section 33 (5) (b)

omit

power or

Explanatory note

This amendment omits an unnecessary reference to the word ‘power’. **Function** is defined in the Legislation Act, dictionary, part 1 to include authority, duty and power.

[3.110] Section 35 (9), new note

insert

Note Section 13 commenced on 11 December 1998.

Explanatory note

The subsection refers to the grant of rights after the commencement of section 13. This amendment inserts a note to assist users to identify the relevant date.

[3.111] Section 54

substitute

54 Definitions for pt 8

In this part:

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

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

offence includes an offence that there are reasonable grounds for believing has been, is being, or will be committed.

premises includes vacant land.

Explanatory note

This amendment brings the form of 2 definitions presently in section 54 into line with current drafting practice and updates language.

[3.112] Section 69 (7)

substitute

- (7) This section does not affect the operation of the *Land (Planning and Environment) Act 1991*.

Explanatory note

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

[3.113] Section 70 (4)

omit

due

substitute

payable

Explanatory note

This amendment updates language.

[3.114] Section 72

omit

date on which it is due and payable

substitute

day it is payable

Explanatory note

This amendment updates language.

[3.115] Section 76 (3)

omit

powers

substitute

functions

Explanatory note

This amendment changes a reference to ‘powers’ to ‘functions’. *Function* is defined in the Legislation Act, dictionary, part 1 to include authority, duty and power.

[3.116] Section 77 (2)

substitute

- (2) If the authority makes a decision mentioned in subsection (1) in relation to an application, licence or permit, the authority must give written notice of the decision to the applicant or the holder of the licence or permit.

Explanatory note

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

[3.117] Section 78 (3)

omit

Explanatory note

This amendment omits a redundant subsection. The subsection relates to section 71 which was omitted by the *Legislation (Consequential Amendments) Act 2001*.

[3.118] Section 78

renumber subsections when Act next republished under Legislation Act

Explanatory note

This amendment is consequential of the omission of a subsection by the preceding amendment.

[3.119] Section 78A (2), new note

insert

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

Explanatory note

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

[3.120] Section 80

omit

Explanatory note

This amendment omits a redundant section about review of the Act.

[3.121] New dictionary

insert

Dictionary

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
- administrative appeals tribunal
- chief fire control officer
- Commonwealth
- environment protection authority
- fire commissioner
- fire brigade
- function
- notifiable instrument (see s 10)
- police officer
- public employee
- State

- the Territory
- writing.

connected, for part 8 (Enforcement)—see section 54.

offence, for part 8 (Enforcement)—see section 54.

premises, for part 8 (Enforcement)—see section 54.

Explanatory note

This amendment inserts a dictionary, signpost definitions (in line with current drafting practice) and standard dictionary notes.

Part 3.22 Workers Compensation Act 1951

[3.122] Dictionary, definition of *recognised auditor*, paragraph (c)

substitute

(c) a member of CPA Australia;

Explanatory note

This amendment updates the name of the body.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 1 April 2004.

2 Notification

Notified under the Legislation Act on 11 August 2004.

3 Republications of amended laws

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

I certify that the above is a true copy of the Statute Law Amendment Bill 2004, which was passed by the Legislative Assembly on 3 August 2004.

Clerk of the Legislative Assembly

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