

2000

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Justice and Community Safety)

Legislation (Access and Operation) Bill 2000

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2000

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Justice and Community Safety)

Legislation (Access and Operation) Bill 2000

A BILL

FOR

An Act about legislation

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

CHAPTER 1—PRELIMINARY

PART 1.1—GENERAL

5 **1 Name of Act**

This Act is the *Legislation (Access and Operation) Act 2000*.

2 Commencement

This Act commences on a day fixed by the Minister by notice in the Gazette.

5 *Note 1* The provisions of an Act providing for its name and commencement automatically commence on the date of notification of the Act (see *Interpretation Act 1967*, s 10B—that section is to be replaced by s 63 of this Act).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see *Interpretation Act 1967*, s 10C (1)—that subsection is to be replaced by s 65 of this Act).

10 *Note 3* If a provision has not commenced within 6 months beginning on the date of notification of the Act, it automatically commences on the first day after that period (see *Interpretation Act 1967*, s 10E (2)—that provision is to be replaced by s 67 of this Act).

3 Dictionary

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

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

For example, the signpost definition '*disallowable instrument*—see section 9.' means that the expression disallowable instrument is defined in section 9.

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

4 Notes

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

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

(2) In this section:

note includes material enclosed in brackets in section headings.

30 *Note* For comparison, a number of sections of this Act contain bracketed notes in their headings drawing attention to equivalent or comparable (though not necessarily identical) provisions of other Acts. Abbreviations in the notes include the following:

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- EA: *Evidence Act 1971* (the operation of this Act is affected by the *Evidence Act 1995* (Cwlth))
 - IA: *Interpretation Act 1967* (as proposed to be amended by the *Statute Law Amendment Bill 2000* and the *Statute Law Amendment Bill 2000 (No 2)*)
 - 5 • LRA: *Legislation (Republication) Act 1996* (as proposed to be amended by the *Statute Law Amendment Bill 2000*)
 - SLA: *Subordinate Laws Act 1989* (as proposed to be amended by the *Statute Law Amendment Bill 2000*).
- (3) Subsection (2) and this subsection expire 2 years after this section
10 commences.

5 Objects

- (1) The main object of this Act is to make legislation more accessible.
- (2) This is to be achieved particularly by—
- 15 (a) encouraging access to legislation through the Internet, while maintaining access to printed legislation; and
 - (b) restating the law about the making, publication and operation of legislation, improving its structure and content, and simplifying its provisions where practicable; and
 - 20 (c) assisting users of legislation to find, read, understand and use legislation by—
- (i) facilitating the shortening and simplifying of legislation; and
 - (ii) promoting consistency in the form and language of legislation; and
 - 25 (iii) facilitating the updating and republication of legislation to ensure its ready availability.

6 Application of Act

This Act applies to all Acts and statutory instruments.

PART 1.2—BASIC CONCEPTS

7 Meaning of *Act* generally (IA dict, def of *Act*, par (a))

(1) An *Act* is an Act of the Legislative Assembly.

(2) An *Act of the Legislative Assembly* is a law (however described or named) made by the Legislative Assembly under the Self-Government Act.

(3) A reference to an *Act* includes a reference to a provision of an Act.

Note 1 Section 17 deals with former Commonwealth enactments, and former NSW and UK Acts, that have become ACT Acts.

Note 2 Section 86 deals with reference to laws in general terms.

10 8 Meaning of *subordinate law* (IA dict, def of *subordinate law* and SLA s 6 (19), def of *subordinate law*, par (a))

(1) A *subordinate law* is a regulation, rule or by-law (whether or not legislative in nature) made under—

(a) an Act; or

15 (b) another subordinate law; or

(c) power given by an Act or subordinate law and also power given otherwise by law.

(2) A reference to a *subordinate law* includes a reference to a provision of a subordinate law.

20 9 Meaning of *disallowable instrument* (SLA s 10 (1) and 6 (19), def of *subordinate law*)

(1) A *disallowable instrument* is—

(a) a statutory instrument (whether or not legislative in nature) that is declared to be a disallowable instrument by an Act, subordinate law or another disallowable instrument; or

25

(b) a determination of fees or charges by a Minister under an Act or subordinate law.

(2) A reference to a *disallowable instrument* includes a reference to a provision of a disallowable instrument.

10 Meaning of *notifiable instrument*

(1) A *notifiable instrument* is a statutory instrument (whether or not legislative in nature) that is declared to be a notifiable instrument by an Act, subordinate law, disallowable instrument or another notifiable instrument.

5 *Note* Section 116 (Status of certain instruments as notifiable instruments) declares certain statutory instruments that are required or permitted to be published or notified in the Gazette to be notifiable instruments.

(2) A reference to a *notifiable instrument* includes a reference to a provision of a notifiable instrument.

10 **11 Meaning of *commencement notice***

(1) A *commencement notice* is a statutory instrument that fixes or otherwise determines the commencement of an Act, subordinate law, disallowable instrument or notifiable instrument.

15 (2) A reference to a *commencement notice* includes a reference to a provision of a commencement notice.

12 Meaning of *registrable instrument*

(1) A *registrable instrument* is—

- (a) a subordinate law; or
- (b) a disallowable instrument; or
- 20 (c) a notifiable instrument; or
- (d) a commencement notice.

(2) A reference to a *registrable instrument* includes a reference to a provision of a registrable instrument.

25 **13 Meaning of *statutory instrument*** (IA dict, def of *statutory instrument*)

(1) A *statutory instrument* is an instrument (whether or not legislative in nature) made under—

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

(2) A **statutory instrument** includes a subordinate law, disallowable instrument, notifiable instrument and commencement notice.

(3) A reference to a **statutory instrument** includes a reference to a provision of a statutory instrument.

5 **14 Meaning of *instrument*** (IA dict, def of *instrument*)

(1) An **instrument** is any writing or other document.

Note *Writing* is defined in the *Interpretation Act 1967*, dictionary.

(2) A reference to an **instrument** includes a reference to a provision of an instrument.

10 **15 Meaning of *authorised republication***

(1) An **authorised republication** is a republication of a law authorised by the parliamentary counsel under this Act.

(2) A reference to an **authorised republication** includes a reference to a provision of an authorised republication.

15 (3) In this section:

law—see section 95 (Meaning of *law* in ch 10).

16 Meaning of *provision* (IA dict, def of *provision*)

A **provision** of an Act or instrument is any words or anything else that forms part of the Act or instrument.

20 *Examples of provisions consisting of groups of words—*

Sections, subsections, paragraphs, subparagraphs, sub-subparagraphs, examples.

Examples of provisions consisting of groups of other provisions—

Chapters, parts, divisions, subdivisions, schedules.

25 *Note* The *Interpretation Act 1967*, sections 11H and 12 deal with the matters that are and are not part of an Act.

PART 1.3—SOURCES OF LAW IN THE TERRITORY

Notes on sources of law

Note 1 The laws in force in the Territory consist of the written law and various unwritten laws known as the principles and rules of common law and equity.

- 5 *Note 2* The written law of the Territory consists primarily of laws, known as Acts, made by the Legislative Assembly. It also includes regulations, rules of court and other legislative instruments made under specific powers given by Acts. (Written laws made under an Act are commonly called ‘subordinate’ or ‘delegated’ legislation.)

- 10 *Note 3* Before self-government, ordinances made by the Governor-General under the *Seat of Government (Administration) Act 1910* (Cwlth) were the main form of legislation made for the Territory. Most of the ordinances in force at self-government have been converted into Acts (see s 34 of the Self-Government Act). However, the Governor-General has power to make ordinances for the Territory on a limited number of topics (see s 12 of the *Seat of Government (Administration) Act 1910* (Cwlth)).

- 15 *Note 4* The written laws in force in the Territory also include the Commonwealth Constitution, Commonwealth Acts, and regulations and other legislative instruments made under Commonwealth Acts. As a general rule, Commonwealth Acts and legislative instruments apply in the ACT in the same way as they apply in other parts of Australia. Commonwealth Acts and instruments prevail over the Acts made by the Legislative
20 Assembly to the extent to which they are inconsistent (see s 28 of the Self-Government Act).

- Note 5* Certain Acts of New South Wales and the United Kingdom also formed part of the written laws in force in the Territory. Because of section 65 of the *Interpretation Act 1967* (now repealed), these are now taken to be laws made by the Legislative Assembly as
25 if they had been enacted by the Assembly. These Acts are listed in Schedule 1.

17 References to Acts include references to former Cwlth enactments etc (IA s 7A, dict, def of *Act*, par (b) and def of *enactment*)

- 30 (1) A reference to an *Act* includes a reference to a former Commonwealth enactment.

(2) Without limiting subsection (1), a reference to an Act includes a reference to a former NSW Act or former UK Act mentioned in Schedule 1.

(3) In this section:

- 35 *former Commonwealth enactment* means a Commonwealth Act or ordinance, a New South Wales Act or Imperial Act that is—

(a) an enactment within the meaning of the Self-Government Act because of section 34 of that Act; or

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- (b) an enactment because of subsection 10 (3) or 12 (2) or (3) of the *A.C.T. Self-Government (Consequential Provisions) Act 1988* (Cwlth).

CHAPTER 2—ACT LEGISLATION REGISTER AND WEB SITE

18 ACT legislation register

(1) The parliamentary counsel must establish and maintain a register of Acts and statutory instruments (the *ACT legislation register*).

5 (2) The register must be kept in the form of, or as part of, 1 or more computer databases.

19 Contents of register

(1) The ACT legislation register must contain the following parts:

10 part 1—authorised republications of laws as in force from time to time

part 2—Acts as made

part 3—subordinate laws as made

part 4—disallowable instruments as made

part 5—commencement notices as made

15 part 6—notifiable instruments as made

part 7—notifications of Acts

part 8—notifications of subordinate laws

part 9—notifications of disallowable instruments

part 10—notifications of commencement notices

20 part 11—notifications of notifiable instruments

part 12—notifications of amendments of subordinate laws and disallowable instruments made by the Legislative Assembly.

25 (2) However, if the parliamentary counsel considers it likely to be useful to users of the register, the parliamentary counsel may establish additional parts of the register.

(3) Without limiting subsection (2), additional parts of the register may be established under that subsection for—

(a) a particular kind of registrable instrument; or

- (b) statutory instruments that are not registrable instruments; or
- (c) Commonwealth laws that apply in or in relation to the Territory;
or
- (d) bills, explanatory memoranda for bills, and amendments of bills,
5 presented to the Legislative Assembly; or
- (e) superseded versions of authorised republications; or
- (f) repealed Acts and statutory instruments.

(4) The parliamentary counsel may enter material in additional parts of the register established under subsection (2).

10 *Note* The following sections of the Act deal with the entry of material in other parts of the register:

- section 28 (Notification of Acts)
- section 50 (Notification of registrable instruments)
- section 57 (Notification of amendments made by resolution of Assembly)
- 15 • section 96 (Republication in register).

(5) If a law entered in part 1 of the register is amended, the parliamentary counsel must replace the version of the law entered in the part with a version of the law as amended.

20 (6) If a law entered in part 1 of the register is repealed, expires or, for a subordinate law or disallowable instrument, is disallowed by the Legislative Assembly, the parliamentary counsel must omit the version of the law entered in the part.

25 (7) If the parliamentary counsel considers it likely to be useful to users of the register to enter information (in any form) in any part of the register, the parliamentary counsel may enter the information at any time.

Example

The parliamentary counsel may enter guides and indexes to the register or particular parts of the register.

30 (8) If an Act passed by the Legislative Assembly, or a registrable instrument made, before the commencement of this Act is not required to be notified under this Act, the parliamentary counsel may enter the text of the Act or instrument in the appropriate part of the register.

Note Under sections 110 (Application of s 50) and 111 (Application of s 28) an Act or registrable instrument is not required to be notified under this Act if the passing of the Act,

or the instrument or making of the instrument, was notified in the Gazette before the commencement of those sections.

5 (9) The parliamentary counsel may correct any mistake, error or omission in the register subject to the requirements (if any) of the regulations.

(10) In this section:

amended includes modified.

law—see section 95 (Meaning of *law* in ch 10).

20 Prompt registration

10 The parliamentary counsel must ensure that anything the parliamentary counsel is required to do in relation to the register is done promptly.

21 Approved web site

15 (1) The parliamentary counsel must approve an Internet site, and may approve additional Internet sites, for this Act.

(2) The parliamentary counsel may enter into agreements or arrangements to ensure that users can authenticate an approved web site or the material accessible on an approved website.

22 Access to registered material at approved web site

20 (1) The parliamentary counsel must ensure, as far as practicable, that a copy of the material in each part of the register is accessible at all times on an approved web site.

(2) Access is to be provided without charge by the Territory.

CHAPTER 3—AUTHORISED VERSIONS AND EVIDENCE OF ACTS AND STATUTORY INSTRUMENTS

23 Authorisation of versions by parliamentary counsel (LRA s 8)

5 The parliamentary counsel may authorise printed or electronic
versions of an Act, statutory instrument or republication.

24 Authorised electronic versions (LRA s 20, s 22, s 23)

(1) A version of an Act, statutory instrument or republication accessible
at an approved web site is an authorised version.

10 (2) Any other electronic version of an Act, statutory instrument or
republication authorised by the parliamentary counsel is an authorised
version.

Example of another electronic version

A version on a CD-ROM.

(3) It is presumed, unless the contrary is proved—

- 15 (a) that an Internet site purporting to be an approved web site is an
approved web site; and
- (b) that a version of an Act, statutory instrument or republication
accessible at an approved web site has been authorised by the
parliamentary counsel under this Act; and
- 20 (c) that any other electronic version of an Act, statutory instrument or
republication purporting to have been authorised by the
parliamentary counsel was authorised by the parliamentary
counsel under this Act; and
- (d) that an authorised electronic version of the Act or statutory
25 instrument correctly shows the Act or instrument; and
- (e) that an authorised electronic version of a republication of a law
correctly shows the law as at the republication date.

(4) In this section:

law—see section 95 (Meaning of *law* in ch 10).

25 Authorised printed versions (LRA ss 6-9, ss 20-23)

(1) A version of an Act, statutory instrument or republication printed by authority of the government of the Territory and authorised by the parliamentary counsel is an authorised version.

5 (2) It is presumed, unless the contrary is proved—

- (a) that a printed version of an Act, statutory instrument or republication purporting to have been printed by authority of the government of the Territory was so printed; and
- 10 (b) that a printed version of an Act, statutory instrument or republication purporting to have been authorised by the parliamentary counsel was authorised by the parliamentary counsel under this Act; and
- (c) that an authorised printed version of an Act or statutory instrument correctly shows the Act or instrument; and
- 15 (d) that an authorised printed version of a republication of a law correctly shows the law as at the republication date.

(3) In this section:

law—see section 95 (Meaning of *law* in ch 10).

26 Judicial notice of certain matters (EA ss 8–10A, s 10C)

20 (1) Proof is not required about—

- (a) the passing of a proposed law by the Legislative Assembly or its notification in the register or the Gazette; or
- 25 (b) the making, or notification or publication in the register or the Gazette, of a subordinate law, disallowable instrument, notifiable instrument, commencement notice or any other statutory instrument; or
- (c) the approval (however described) of a statutory instrument by the Executive, a Minister or any other entity; or
- 30 (d) the provisions of an Act, subordinate law, disallowable instrument, notifiable instrument, commencement notice or any other statutory instrument; or

- (e) the commencement of an Act, subordinate law, disallowable instrument, notifiable instrument, or any other statutory instrument; or
- 5 (f) the presentation of a subordinate law, disallowable instrument or any other statutory instrument to the Legislative Assembly; or
- (g) anything done or not done by or in the Legislative Assembly in relation to a subordinate law, disallowable instrument or any other statutory instrument; or
- 10 (h) changes made under Chapter 10 (Republication of Acts and statutory instruments); or
- (i) the authorisation of a republication under this Act, the provisions of an authorised republication or the republication date of an authorised republication.

15 (2) A court or tribunal may inform itself of anything mentioned in subsection (1) in any way it considers appropriate.

Examples of ways that may be appropriate

- 1 Using a version of an Act downloaded from an approved web site using the Internet.
- 2 Using information obtained from an approved web site using the Internet.
- 20 3 Using an authorised printed version of a republication.

(3) However, the court or tribunal must consider whether the source it intends to use appears to be a reliable source of information.

(4) For subsection (3), an authorised version of an Act, statutory instrument or republication is a reliable source of information.

25 (5) This section does not limit any other law providing how a court or tribunal may be informed about a matter mentioned in subsection (1).

CHAPTER 4—NUMBERING AND NOTIFICATION OF ACTS

27 **Numbering of Acts** (IA s 9)

The Acts passed in each year are to be numbered as nearly as practicable in the order in which they are passed.

5 28 **Notification of Acts** (IA s 8)

(1) If a proposed law is passed by the Legislative Assembly, the Speaker must ask the parliamentary counsel to notify the making of the law.

10 (2) If the Speaker asks the parliamentary counsel to notify the making of the proposed law, the parliamentary counsel must—

- (a) notify the making of the law in the register; or
- (b) if that is not practicable or a copy of the material in a relevant part of the register is not accessible at 1 or more approved web sites when the law is to be notified—notify the making of the law in the
15 Gazette.

(3) If the Speaker asks the parliamentary counsel to notify the making of the proposed law on a particular day, the parliamentary counsel must notify the making of the law on that day unless it is impracticable to do so.

(4) The making of the proposed law is notified in the register by—

- 20 (a) entering in part 7 of the register a statement that the law has been passed by the Legislative Assembly; and
- (b) entering the text of the law in part 2 of the register.

(5) The making of the proposed law is notified in the Gazette by publishing in the Gazette a statement—

- 25 (a) that the law has been passed by the Legislative Assembly; and
- (b) of the place or places where copies of the law can be purchased.

(6) If the making of the proposed law is notified in the Gazette—

- 30 (a) copies of the law must be available for purchase on the day of publication (the *Gazette date*), or as soon as practicable after the Gazette date, at the place, or each of the places, stated in the Gazette; and

- (b) the parliamentary counsel must later notify the making of the law in the register and include with the statement entered in part 7 of the register a statement that the making of the law was notified in the Gazette on the Gazette date.
- 5 (7) If on the Gazette date no copies of the law are available for purchase at the place, or any of the places, stated in the Gazette, the parliamentary counsel must give the Minister a statement—
- (a) that copies of the law were not available; and
- (b) explaining why they were not available.
- 10 (8) The Minister must present the statement to the Legislative Assembly within 6 sitting days after the Gazette date.

29 References to *enactment* or *passing* of Acts (IA s 10F)

In an Act or statutory instrument, a reference to the *enactment* or *passing* of an Act is a reference to the making of the Act having been notified in the register or the Gazette.

15

30 References to *notification* of Acts

- (1) In an Act or statutory instrument, a reference to the *notification* of an Act is a reference to the making of the Act having been notified in the register or the Gazette.
- 20 (2) If an Act is notified in the Gazette and later notified in the register, the Act is taken to have been notified when it is notified in the Gazette.

CHAPTER 5—MAKING, NOTIFICATION AND NUMBERING OF STATUTORY INSTRUMENTS

PART 5.1—GENERAL

31 Meaning of *matter* in ch 5 (IA s 27B)

5 In this Chapter:

matter, in relation to a statutory instrument, includes circumstance,
person, place and purpose.

32 Presumption of validity (EA s 10C (2) (e))

10 It is presumed, unless the contrary is proved, that all conditions and
steps required for the making of a statutory instrument have been satisfied
and carried out.

33 Exercise of regulation-making power (SLA s 3)

15 (1) If an Act authorises or requires the Executive to make regulations, it
is sufficient if the regulations are signed by any 2 Ministers who are
members of the Executive.

(2) Regulations are taken to be made when they are signed by the
second Minister who is a member of the Executive.

PART 5.2—MAKING OF STATUTORY INSTRUMENTS

34 Power to make statutory instruments (IA s 26 (1), s 27C)

- 5 (1) If an Act or statutory instrument gives a power that can be exercised by making an instrument, the Act or statutory instrument gives power to make the instrument.

Example

10 An Act gives a Minister power to approve codes of practice, but does not require the approval to be in writing or to be given by a particular instrument. The power can be exercised by giving a written approval. The Act, therefore, gives power to make an instrument, namely, a written approval.

- (2) If an Act or statutory instrument gives power to make an instrument, the power may be exercised from time to time.

35 Statutory instruments to be interpreted not to exceed powers under authorising law (SLA s 9 (3))

- 15 (1) A statutory instrument is to be interpreted as operating to the full extent of, but not to exceed, the power given by the Act or statutory instrument under which it is made (the *authorising law*).

- 20 (2) Without limiting subsection (1), if a provision of a statutory instrument would, apart from this section, be interpreted as exceeding power—

- (a) the provision is valid to the extent to which it does not exceed power; and
- (b) the remainder of the instrument is not affected.

Example 1

- 25 Part 4 of the *Agriculture Services Determination 2001* exceeds the determination-making power given by the *Agriculture Services Act 2000*. The other provisions of the determination are within power.

The determination (apart from Part 4) operates effectively. Part 4 is treated as if it did not form part of the determination and is disregarded.

- 30 *Note to example 1* The kind of interpretation indicated in example 1 is known as a divisible interpretation of the determination.

Example 2

The *Goats Regulations 2001* are made under the *Goats Act 2001*. Regulation 39 of the *Goats Regulations 2000* seeks to impose rules about the care of ‘animals’, but the Act only gives power to make regulations about goats.

- 5 Section 39 is read restrictively (‘read down’) as if it mentioned goats. In other words, the regulation is effective but treated as if it applied only to goats.

Note to example 2 The kind of interpretation indicated in example 2 is known as a distributive interpretation of the regulations.

- 10 (3) Without limiting subsection (1), if the application of a provision of a statutory instrument to a matter would, apart from this section, be interpreted as exceeding power, the provision’s application to other matters is not affected.

Example

- 15 The *Community Safety Order 2001* is expressed to apply to all members of the community without qualification although it is in fact made under the *Building Industry (Safety) Act 2000*. That Act is restricted in its operation to the building industry. The order is cast in such wide terms that it cannot be interpreted divisibly or distributively. However, the order applies to entities such as XYZ Constructions Pty Ltd because it is a company in the construction industry.

- 20 (4) This section is in addition to any provision of the statutory instrument or authorising law.

36 Power to make statutory instruments generally (SLA s 2A)

- 25 (1) If an Act or statutory instrument (the *authorising law*) authorises or requires the making of a statutory instrument under the authorising law or another Act or statutory instrument (the *other law*), the power authorises a statutory instrument to be made with respect to any matter that—

- (a) is required or permitted to be prescribed by the authorising law or other law; or
30 (b) is necessary or convenient to be prescribed for carrying out or giving effect to the authorising law or other law.

- (2) Subsection (1) applies to the authorising law even though the authorising law—

- (a) only authorises the making of a statutory instrument for or for the purposes of the authorising law; or
35 (b) also authorises or requires the making of a statutory instrument about a particular matter.

- (3) Power given by the authorising law to make a statutory instrument about a particular matter does not limit power given by the authorising law or other law to make a statutory instrument (whether or not of the same kind) about any other matter, except so far as the authorising law otherwise expressly provides.

37 Power to make rules of court (IA s 27I)

The power of an entity to make rules of court in relation to a court includes power to make rules of court for any Act, subordinate law or disallowable instrument that requires or permits anything to be done, in relation to the court, by rules of court.

38 Power to make instrument includes power to amend or repeal (IA s 27D)

- (1) Power given under an Act or statutory instrument to make a statutory instrument includes power to amend or repeal the instrument.
- (2) The power to amend or repeal the instrument is exercisable in the same way, and subject to the same conditions, as the power to make the instrument.

39 Statutory instrument may make provision by applying another instrument (SLA s 8)

- (1) If an Act, subordinate law or disallowable instrument (the *authorising law*) authorises or requires the making of a statutory instrument about a matter, a statutory instrument made under the authorising law may make provision about the matter by applying, adopting or incorporating (with or without change)—
- (a) provisions of any of the following as in force at a particular time or from time to time:
- (i) an Act, subordinate law or disallowable instrument;
 - (ii) a Commonwealth Act, or any regulations, rules, ordinance or disallowable instrument under a Commonwealth Act;
 - (iii) a State Act, or any regulations or rules under a State Act; or
- (b) any other instrument, or anything in any other instrument, as in force at a particular time.
- (2) This section does not limit any provision of the authorising law.

(3) In this section:

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

5 **40 Power to make instrument includes power to make different provision for different categories etc (IA s 27E)**

(1) Power given under an Act or statutory instrument to make a statutory instrument includes power—

- 10 (a) to make different provision with respect to different matters or different classes of matters; or
- (b) to make an instrument that applies differently by reference to stated exceptions or factors.

15 (2) Without limiting subsection (1), power given under an Act or statutory instrument to make a statutory instrument about particular matters includes power to make a statutory instrument about any 1 or more of the matters or a particular class of the matters.

(3) For this section, a class may consist of a single matter.

41 Single instrument may exercise several powers or satisfy several requirements (IA s 27F)

20 (1) Power given under an Act or statutory instrument may be exercised with any other power to make a single instrument—

- (a) whether or not the powers are exercised in relation to separate provisions, some of the same provisions, or all of the provisions, of the instrument; or
- 25 (b) whether or not the other powers are given under the same Act or statutory instrument, another Act or statutory instrument or any other Territory law.

(2) A statutory instrument is taken—

- 30 (a) to be made under each power given under Territory law under which it could be made; and
- (b) to satisfy each requirement under Territory law that it could satisfy.

(3) Without limiting subsection (2), that subsection applies to an instrument even though—

- 5 (a) it is stated to be made under a particular Territory law (the *authorising law*) or a particular provision of the authorising law; and
- (b) it is stated to be made for a particular Territory law (the *requiring law*) or a particular provision of the requiring law.

42 Relationship between authorising law and instrument dealing with same matter (IA s 27G)

10 If an Act or statutory instrument (the *authorising law*) gives power to make a statutory instrument about a matter, the instrument may make provision with respect to a particular aspect of the matter even though provision is made by the authorising law in relation to another aspect of the matter or in relation to another matter.

15 **43 Instrument may make provision in relation to land by reference to map etc (IA s 27GA)**

(1) This section applies if an Act or statutory instrument authorises or requires provision to be made by statutory instrument in relation to land or waters.

20 (2) Provision may be made by reference to—

- (a) a particular map or plan held by an entity; or
- (b) a particular entry in a register kept by an entity;

if the map, plan or register is available for inspection by members of the public, whether or not on payment of a fee.

25 **44 Instrument may authorise determination of matter etc (IA s 27GB)**

(1) This section applies if an Act or statutory instrument (the *authorising law*) authorises or requires provision to be made about a matter by statutory instrument.

30 (2) A statutory instrument made under the authorising law may make provision about the matter by authorising or requiring the matter, or any aspect of the matter, to be determined, applied or regulated, or anything to

be done in relation to the matter, by a stated entity, whether or not from time to time.

Example

5 If an Act provides that an application is to be in a prescribed form, regulations made under the Act may provide that the form is to be that approved by the Minister.

45 Instrument may prohibit (IA s 27GC)

10 If an Act or statutory instrument authorises or requires a matter to be regulated (however described) by statutory instrument, the power may be exercised by prohibiting by statutory instrument the matter or any aspect of the matter.

46 Instrument may provide for reconsideration etc (IA s 27GD)

(1) A statutory instrument may provide for the reconsideration or review of, or a right of appeal against, a decision made under—

- (a) the statutory instrument; or
- 15 (b) the Act or statutory instrument under which the statutory instrument is made or in force.

(2) For subsection (1), a statutory instrument that is a subordinate law may give jurisdiction to any court, tribunal or other entity.

(3) In this section:

20 *decision* includes a failure to make a decision, whether or not within a particular time.

47 Instrument may require the making of statutory declaration (IA s 27H)

25 (1) If an Act or statutory instrument (the *authorising law*) gives power to make a statutory instrument, the instrument may require the making of a statutory declaration.

(2) Subsection (1) applies—

- (a) whether or not the authorising law authorises or requires penalties to be prescribed by instrument; and
- 30 (b) if the authorising law authorises or requires penalties to be prescribed by instrument—irrespective of the level of penalties that may be prescribed.

PART 5.3—NUMBERING AND NOTIFICATION OF REGISTRABLE INSTRUMENTS

48 Numbering (SLA s 4 (1))

5 (1) The registrable instruments registered in each year must be
numbered by the parliamentary counsel in the order in which they are
registered.

(2) However, the parliamentary counsel may—

- 10 (a) allocate different kinds of statutory instruments to different series
for numbering purposes; or
- (b) add distinguishing letters to numbers to indicate the kind of
statutory instrument.

Examples

15 1 The parliamentary counsel may number subordinate laws, disallowable
instruments, commencement notices and other registrable instruments in different series.

2 The parliamentary counsel could add the letters 'SL' to the numbers of registered
subordinate laws, the letters 'DI' to the numbers of registered disallowable instruments and
the letters 'CN' to the numbers of registered commencement notices.

20 (3) Also, the regulations may provide that this section does not apply to
a notifiable instrument of a kind prescribed under the regulations.

49 Correction of name of registrable instrument

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

- 25 (a) includes a year that is not the year in which the instrument was
made; or
- (b) is the same as another registrable instrument that has been, or is to
be, notified under this Act; or
- (c) includes a number that is not consecutive with other registrable
instruments that have been notified under this Act; or
- 30 (d) does not include a number that would give the instrument a unique
name.

Example of paragraph (c)

5 A registrable instrument has the name 'XYZ Amendment Rule 2000 (No 5)'. Registrable instruments with the names 'XYZ Amendment Rule 2000 (No 1)', 'XYZ Amendment Rule 2000 (No 2)' and 'XYZ Amendment Rule 2000 (No 3)' have already been notified under the Act

Example of paragraph (d)

A registrable instrument has the name 'XYZ Amendment Rule 2000 (No)'.

10 (2) The parliamentary counsel is authorised, before notifying the registrable instrument under this Act, to amend the instrument's name to bring it into line with current drafting practice.

(3) If the name of a registrable instrument is amended under this section, the instrument has effect for all purposes as if the instrument were made with the name as amended.

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

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

20 (2) If the maker of, or appropriate person for, a registrable instrument asks the parliamentary counsel to notify the instrument and complies with the requirements (if any) prescribed under the regulations, the parliamentary counsel must—

(a) notify the instrument in the register; or

25 (b) if that is not practicable or a copy of the material on a relevant part of the register is not accessible at 1 or more approved web sites when the instrument is to be notified—notify the instrument in the Gazette.

(3) The registrable instrument is notified in the register by—

(a) entering in the appropriate part of the register a statement that the instrument has been made; and

30 (b) entering the text of the instrument in the relevant part of the register.

(4) The registrable instrument is notified in the Gazette by—

(a) publishing the text of the instrument in the Gazette; or

(b) publishing in the Gazette a statement—

- (i) that the instrument has been made; and
- (ii) of the place or places where copies of the instrument can be purchased.

5 (5) If the registrable instrument is notified in the Gazette, the parliamentary counsel must later notify the instrument in the register and include with the statement entered in the appropriate part of the register a statement that the instrument was notified in the Gazette on a stated date.

10 (6) If the registrable instrument is notified in the Gazette by publishing the statement mentioned in paragraph (4) (b), copies of the instrument must be available for purchase on the day of the publication (the *Gazette date*), or as soon as practicable after the Gazette date, at the place, or each of the places, stated in the Gazette.

15 (7) If on the Gazette date no copies of the registrable instrument are available for purchase at the place, or any of the places, stated in the Gazette, the parliamentary counsel must give the Minister a statement—

- (a) that copies of the law were not available; and
- (b) explaining why they were not available.

20 (8) The Minister must present the statement to the Legislative Assembly within 6 sitting days after the Gazette date.

(9) The regulations may provide that paragraph (3) (a) does not apply to a disallowable instrument or notifiable instrument of a kind prescribed under the regulations.

(10) In this section:

25 *appropriate part*, of the register, means—

- (a) for a subordinate law, other than an excepted registrable instrument—part 8; and
- (b) for a disallowable instrument, other than an excepted registrable instrument—part 9; and
- 30 (c) for a commencement notice, other than an excepted registrable instrument—part 10; and
- (d) for a notifiable instrument, other than an excepted registrable instrument—part 11; and

- (e) for an excepted registrable instrument—the appropriate additional part of the register established under subsection 19 (3) (Contents of register).

appropriate person, for a registrable instrument, means—

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

excepted registrable instrument means a registrable instrument to which an additional part of the register established under subsection 19 (3) applies.

15 **relevant part**, of the register, means—

- (a) for a subordinate law, other than an excepted registrable instrument—part 3; and
- (b) for a disallowable instrument, other than an excepted registrable instrument—part 4; and
- 20 (c) for a commencement notice, other than an excepted registrable instrument—part 5; and
- (d) for a notifiable instrument, other than an excepted registrable instrument—part 6; and
- 25 (e) for an excepted registrable instrument—the appropriate additional part of the register established under subsection 19 (3).

51 References to *notification* of registrable instruments

30 (1) In an Act or statutory instrument, a reference to the *notification* of a registrable instrument is a reference to the instrument having been notified in the register or Gazette.

(2) If a registrable instrument is notified in the Gazette and later notified in the register, the instrument is taken to have been notified when it is notified in the Gazette.

CHAPTER 6—PRESENTATION, AMENDMENT AND DISALLOWANCE OF SUBORDINATE LAWS AND DISALLOWABLE INSTRUMENTS

5 *Note* In this Chapter, a reference to a subordinate law or disallowable instrument includes a reference to a provision of a subordinate law or disallowable instrument (see s 8 (2) and s 9 (2)).

52 Presentation (SLA s 6 (1) (c), (6), (8), and s 10)

10 (1) A subordinate law or disallowable instrument must be presented to the Legislative Assembly within 6 sitting days after its notification day.

(2) If a subordinate law or disallowable instrument is not presented under subsection (1), it is taken to be repealed.

53 Disallowance (SLA s 6 (7), (7A), (8), and s 10)

15 (1) This section applies if notice of a motion to disallow a subordinate law or disallowable instrument is given in the Legislative Assembly within 6 sitting days after it is presented to the Assembly.

(2) If the Legislative Assembly passes a resolution to disallow the subordinate law or disallowable instrument, it is taken to be repealed.

20 (3) For this Chapter, the Legislative Assembly is taken to have passed a resolution to disallow the subordinate law or disallowable instrument if, at the end of 6 sitting days after the notice is given—

(a) the notice has not been withdrawn and the motion has not been called on; or

25 (b) the motion has been called on and moved, but has not been withdrawn or otherwise disposed of.

54 Revival of affected laws (SLA s 6 (9), and s 10)

(1) This section applies if—

30 (a) a subordinate law or disallowable instrument (the *disallowed law*) is taken to be repealed under section 52 (Presentation) or 53 (Disallowance); and

(b) the disallowed law repealed or amended an Act or statutory instrument (the *affected law*); and

(c) the repeal or amendment has commenced.

5 (2) The affected law is revived, from the beginning of the day after the disallowed law is taken to have been repealed, as if the disallowed law had never been made.

55 Making of instrument same in substance within 6 months after disallowance (SLA s 6 (10), (16), and s10)

10 (1) This section applies if a subordinate law or disallowable instrument (the *disallowed law*) is disallowed under section 53 (Disallowance).

(2) A subordinate law or disallowable instrument the same in substance must not be made within 6 months after the disallowance unless the Legislative Assembly has—

(a) rescinded the resolution that disallowed the disallowed law; or

15 (b) by resolution, approved the making of—

(i) a subordinate law or disallowable instrument in those terms; or

(ii) a subordinate law or disallowable instrument the same in substance as the disallowed law.

20 (3) A subordinate law or disallowable instrument made in contravention of this section is void.

56 Amendment by resolution of Assembly (SLA s 6 (7A), (11), (13)-(15), (17), (18), and s 10)

(1) In this section:

25 *amendment* does not include an amendment that would have the effect of waiving or changing any fee, charge, penalty or other amount payable to the Territory.

disallowable instrument does not include a determination of fees or charges by a Minister under an Act or subordinate law.

30 (2) This section applies if notice of a motion to amend a subordinate law or disallowable instrument is given in the Legislative Assembly within 6 sitting days after it is presented to the Assembly.

(3) If the Legislative Assembly passes a resolution to amend the subordinate law or disallowable instrument, it is amended accordingly.

(4) For this Chapter, the Legislative Assembly is taken to have passed a resolution to amend the subordinate law or disallowable instrument if, at the end of 6 sitting days after the notice is given—

(a) the notice has not been withdrawn and the motion has not been called on; or

(b) the motion has been called on and moved, but has not been withdrawn or otherwise disposed of.

(5) An amendment under this section has effect for all purposes as if it had been made by an Act.

(6) Without limiting subsection (5), the following sections apply to the amendment as if it had been made by an Act:

(a) section 61 (General rules about commencement);

(b) section 71 (Consequences of amendment of statutory instrument by Act).

57 Notification of amendments made by resolution of Assembly (SLA s 6 (12), and s 10)

(1) If a subordinate law or disallowable instrument (the *amended law*) is amended under section 56 (Amendment by resolution of Assembly), the Speaker must ask the parliamentary counsel to notify the amendment.

(2) If the Speaker asks the parliamentary counsel to notify the amendment, the parliamentary counsel must—

(a) notify the amendment in the register; or

(b) if that is not practicable or a copy of the material in part 12 of the register is not accessible at 1 or more approved web sites when the amendment is to be notified—notify the amendment in the Gazette.

(3) If the Speaker asks the parliamentary counsel to notify the amendment on a particular day, the parliamentary counsel must notify the amendment on that day unless it is impracticable to do so.

(4) The amendment is notified in the register by entering in part 12 of the register—

(a) a statement that the amendment of the amended law has been made by the Legislative Assembly; and

5 (b) the text of the amendment.

(5) The amendment is notified in the Gazette by publishing in the Gazette—

(a) a statement that the amendment of the amended law has been made by the Legislative Assembly; and

10 (b) the text of the amendment.

(6) If the amendment is notified in the Gazette, the parliamentary counsel must later notify the amendment in the register and include with the statement entered in part 12 of the register a statement that the amendment was notified in the Gazette on a stated date.

15 (7) If the amendment is notified in the Gazette and later notified in the register, the amendment is taken to have been notified when it was notified in the Gazette.

58 Making of amendment restoring effect of law within 6 months after amendment (SLA s 6 (10), (16), and s 10)

20 (1) This section applies if a subordinate law or disallowable instrument (the *amended law*) is amended under section 56 (Amendment by resolution of Assembly).

(2) A subordinate law or disallowable instrument the same in substance as the amended law before the amendment (the *earlier law*) must not be
25 made within 6 months after the making of the amendment unless the Legislative Assembly has—

(a) rescinded the resolution that made the amendment; or

(b) by resolution approved the making of—

30 (i) a subordinate law or disallowable instrument in those terms; or

(ii) a subordinate law or disallowable instrument the same in substance as the earlier law.

(3) A subordinate law or disallowable instrument made in contravention of this section is void.

59 Effect of dissolution or expiration of Legislative Assembly on notice of motion (SLA s 6 (7B), and s 10)

5 (1) This section applies if—

- (a) notice of motion to disallow or amend a subordinate law or disallowable instrument is given in the Legislative Assembly within 6 sitting days after the instrument is presented to the Assembly; and
- 10 (b) within 6 sitting days after the notice is given, the Assembly is dissolved or expires; and
- (c) at the time of the dissolution or expiry—
 - (i) the notice has not been withdrawn and the motion has not been called on; or
 - 15 (ii) the motion has been called on and moved but has not been withdrawn or otherwise disposed of.

(2) For this Chapter, the subordinate law or disallowable instrument is taken to have been presented to the Legislative Assembly on the first sitting day of the Assembly after the next general election of members of the
20 Assembly.

CHAPTER 7—COMMENCEMENT AND EXERCISE OF POWERS BEFORE COMMENCEMENT

60 Meaning of *law* in ch 7

In this Chapter:

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

61 General rules about commencement (IA s 10, SLA s 6 (1) (b))

(1) An Act commences on—

- 10 (a) its notification day; or
(b) if the Act provides for a different date or time of commencement—that date or time.

(2) A subordinate law, disallowable instrument or notifiable instrument commences on—

- 15 (a) its notification day; or
(b) if the instrument provides for a later date or time of commencement—that date or time; or
(c) if an Act provides for an earlier date or time of commencement—that date or time; or
20 (d) if the instrument, under authority given by an Act, provides for an earlier date or time—that date or time.

(3) Without limiting subsection (2), if a subordinate law, disallowable instrument or notifiable instrument is notified on a day after the day or time provided by the instrument for its commencement, and paragraph (2) (c) or 25 (d) does not apply to the instrument—

- (a) the instrument is valid; but
(b) the instrument commences on its notification day.

(4) A statutory instrument that is not a registrable instrument commences on—

- 5 (a) 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 it is approved; or
- (b) if the instrument provides for a later date or time of commencement—that date or time; or
- (c) if an Act provides for an earlier date or time of commencement—that date or time; or
- 10 (d) if the instrument, under authority given by an Act, provides for an earlier date or time—that date or time.

(5) This section is subject to the following sections:

- (a) section 63 (Commencement of naming and commencement provisions on notification day);
- 15 (b) section 64 (Non-prejudicial provision may commence retrospectively);
- (c) section 67 (Automatic commencement of postponed law).

62 Time of commencement (IA s 10A)

20 If a law commences on a day, it commences at the beginning of the day.

63 Commencement of naming and commencement provisions on notification day (IA s 10B)

- (1) The provisions of a law providing for its name and commencement automatically commence on its notification day.
- 25 (2) This section applies to a law despite anything in the law unless it expressly provides that this section does not apply.

64 Non-prejudicial provision may commence retrospectively (SLA s 7)

- 30 (1) A statutory instrument may provide that a non-prejudicial provision of the instrument commences retrospectively.

(2) This section applies to a non-prejudicial provision of a statutory instrument only if the instrument clearly indicates that the provision is to commence retrospectively.

Example

- 5 The instrument provides that a non-prejudicial provision is ‘taken to have commenced’ at an earlier date or time.

(3) In this section:

10 ***non-prejudicial provision*** means a provision that does not operate to the disadvantage of a person (other than the Territory or a Territory authority or instrumentality) by—

- (a) adversely affecting the person’s rights; or
- (b) imposing liabilities on the person.

65 Commencement by commencement notice (IA s 10C)

15 (1) If a law is expressed to commence on a day fixed or otherwise determined by a notice—

- (a) a single day, or a time on a single day, may be fixed or determined; or
- (b) different days or times may be fixed or determined for different provisions.

20 *Example*

The *Hypothetical Act 2001* is expressed to commence on a day to be fixed by the Minister by notice. Unless the Act has commenced automatically in accordance with section 67 (Automatic commencement of postponed law), any of the following arrangements for commencement would be possible:

- 25 (a) a notice could fix a single day (eg 5 June 2001) for the entire Act to commence;
- (b) a notice could fix a time on a single day (eg 8 pm on 5 June 2001) for the entire Act to commence;
- (c) a notice could fix different days or times for the different provisions of the Act to commence (eg Parts 7 and 9 and Schedule 4 commence on 5 June 2001, Part 11 commences at 5 pm on 30 June 2001, and the remaining provisions of the Act
30 commence on 1 July 2001).
- (d) a notice could fix a single day (eg 5 June 2001) or a time on a single day (eg 8 pm on 5 June 2001) for the provisions of the Act not already commenced to come into operation.

(2) If the day or time fixed by a commencement notice for the commencement of an Act happens before the notification day of the notice—

(a) the notice is valid; but

5 (b) the Act commences on the notification day of the notice.

66 Separate commencement of amendments (IA s 10D)

An amendment made by a provision of a law may be given a separate commencement, whether or not the provision is self-contained.

Examples

10 1 Each paragraph of a provision of an amending law may be given a separate commencement.

2 Each item in a schedule to an amending law may be given a separate commencement.

67 Automatic commencement of postponed law (IA s 10E)

15 (1) If a postponed law has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period.

Example

20 The *Hypothetical Act 2001* was notified on 5 July 2001 and was expressed to commence on a day to be fixed by the Minister by notice. If the Act had not commenced by notice on or before 4 January 2002, it would automatically commence on 5 January 2002.

(2) This section applies to a postponed law unless a law expressly states it does not apply.

(3) In this section:

25 *enact* includes make.

notification day, for a postponed law, means the notification day of—

(a) if the postponed law is a law—the law; or

(b) if the postponed law is a provision of a law—the law that enacts the provision.

30 *postponed law* means a law or provision of a law that does not commence on the notification day because a law postpones its

commencement until a day or time fixed or determined by a commencement notice.

68 References to *commencement* of law (IA s 11)

5 In a law, a reference to the *commencement* of the law, or another law (the *law concerned*), is a reference to—

- (a) if the provisions of the law concerned (other than those providing for its name and commencement) commence, or are required to commence, on a single day or at a single time—the commencement of the remaining provisions; or
- 10 (b) if paragraph (a) does not apply and the reference is in a provision of the law concerned—the commencement of the provision; or
- (c) in any other case—the commencement of the relevant provision of the law concerned.

15 **69 Exercise of powers between notification and commencement (SLA s 5)**

(1) This section applies to a power to make an appointment or a statutory instrument, or to do anything else, in the following situations:

- (a) the power is given by a law (the *authorising law*) that has been notified but does not commence on the law's notification day;
- 20 (b) the power is given by a law (the *authorising law*) as amended by another law (the *amending law*) and both laws have been notified, but either or both of them do not commence on their notification days.

25 (2) The power may be exercised at any time even though the authorising law, or the authorising and amending laws (or either of them), is not in force at the time.

(3) Also, anything else may be done under the power at any time for the purpose of bringing, or in relation to bringing, the authorising law, or the authorising law as amended by the amending law, into operation.

30 (4) If an appointment or statutory instrument made under this section declares that this subsection applies to it, then, unless the appointment or instrument commences on a different date or at a different time under another provision of this Chapter, the appointment or instrument commences on—

- (a) for an appointment or statutory instrument that is a registrable instrument—the notification day of the instrument; or
 - (b) for any other appointment or statutory instrument—the day it is made.
- 5 (5) In any other case, an appointment or statutory instrument made under this section commences on the latest of the following:
- (a) the commencement of the authorising law or, if paragraph (1) (b) applies and the amending law commences after the authorising law, the commencement of the amending law;
 - 10 (b) on the day or at the time the appointment or instrument would have commenced if it had not been made under this section.

CHAPTER 8—REPEAL AND AMENDMENT OF LAWS

PART 8.1—GENERAL

70 Definitions for ch 8 (IA s 37)

In this Chapter:

5 *amend* includes modify.

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

repeal includes expiry.

10 71 Consequences of amendment of statutory instrument by Act (SLA s 8A)

If an Act amends a statutory instrument, the instrument may be amended or repealed as if the amendment had been made by another statutory instrument of that kind.

72 Saving of operation of repealed and amended laws (IA s 41)

15 (1) The repeal or amendment of a law does not—

(a) revive anything not in force or existing when the repeal or amendment takes effect; or

(b) affect the previous operation of the law or anything done, begun or suffered under the law; or

20 (c) affect an existing right, privilege or liability acquired, accrued or incurred under the law.

(2) An investigation, proceeding or remedy in relation to an existing right, privilege or liability under the law may be begun, exercised, continued or completed, and the right, privilege or liability may be enforced
25 and any penalty imposed, as if the repeal or amendment had not happened.

(3) Without limiting subsections (1) and (2), the repeal or amendment of a law does not affect—

(a) the proof of anything that has happened; or

(b) any right, privilege or liability saved by the law.

(4) This section does not limit any other provision of this Chapter and is in addition to any provision of the law by which the repeal or amendment is made.

(5) In this section:

5 *liability* includes liability to penalty for an offence against the law.

penalty includes punishment and forfeiture.

privilege includes immunity.

right includes capacity, interest, status and title.

PART 8.2—REPEAL

73 When repeal takes effect (IA s 38)

5 If a law is repealed on a day, the law continues in force until the end of the day and the repeal takes effect at midnight on the day.

74 Repealed and amended laws not revived on repeal of repealing and amending laws (IA s 39)

(1) If a law (the *first law*) is repealed by another law (the *other law*), the first law is not revived merely because the other law is repealed.

10 Examples

1 Act A repeals Act B. Act A is repealed. The repeal of Act A does not revive Act B.

2 Act A repeals Act B. Act A is automatically repealed under section 77 of this Act (Automatic repeal of certain laws and provisions). The repeal of Act A does not revive Act B.

20 (2) If a law (the *first law*) is amended by another law (the *other law*), the continuing operation of the amendments made by the other law is not affected merely because the other law is repealed and, in particular, the first law is not revived in the form in which it was in before the amendments took effect merely because of the repeal.

Examples

1 Act A amends Act B. Act A is repealed after it has commenced by a later Act C. The amendments made by Act A continue to operate, even though Act A has been repealed.

25 2 Act A amends Act B. Act A is automatically repealed under section 77 of this Act. The amendments made by Act A continue to operate, even though Act A has been repealed.

(3) This section does not limit any other provision of this Chapter and is in addition to any provision of the law by which the repeal is made.

30 (4) In this section:

amended does not include modified.

law includes a rule of the common law (including equity).

Examples

- 1 A common law offence.
- 2 A common law rule of practice or procedure.
- 3 A right to equitable relief.

5 **75 Commencement not undone if repealed (IA s 40)**

(1) If a provision of a law providing for the commencement of the law is repealed after the law has commenced, the repeal of the provision does not affect the continuing operation of the law.

10 (2) If a commencement notice providing for the commencement of a law is repealed after the law has commenced, the repeal of the notice does not affect the continuing operation of the law.

(3) This section does not limit any other provision of this Chapter and is in addition to any provision of the law by which the repeal is made.

76 Repeal does not end transitional or validating effect etc (IA s 42)

15 (1) If a law—

- (a) declares something for a transitional purpose (whether or not the law is expressed to be made for that purpose); or
- (b) validates something that is or may otherwise be invalid; or
- 20 (c) declares something for a purpose that is consequential on a declaration mentioned in paragraph (a) or a validation mentioned in paragraph (b) (whether or not the law is expressed to be made for a purpose of that kind);

the declaratory or validating effect of the law does not end merely because of the repeal of the law.

25 *Example of paragraph (a)*

A provision stating that an existing licence under a repealed Act is taken to be a licence of a particular kind under another Act and authorising the imposition of conditions under the other Act.

Example of paragraph (b)

30 A provision declaring an instrument to have been validly made and acts done in reliance on the instrument to have been validly done.

Example of paragraph (c)

A provision stating that an instrument that is declared valid is taken to have been amended in a particular way.

5 (2) If a law (the *savings law*) declares a law (the *declared law*) to be a law to which this section applies—

(a) the effect of the declared law does not end merely because of its repeal; and

(b) the effect of the savings law does not end merely because of its repeal.

10 (3) A declaration may be made for subsection (2) about a law whether or not the Act is a law to which subsection (1) applies.

(4) A declaration made for subsection (2) about a law does not imply that, in the absence of a declaration about it, another law is not a law to which this section applies.

15 (5) This section does not limit any other provision of this Chapter and is in addition to any provision of the law by which the repeal is made.

77 Automatic repeal of certain laws and provisions (IA s 43)

(1) An amending law is automatically repealed on the day after all of its provisions have commenced.

20 (2) An appropriation Act is automatically repealed on the last day of the financial year for which it makes appropriations.

(3) An amending provision of a law is automatically repealed on the day after all of the amendments and repeals made by it (or to which it relates) have commenced.

25 (4) A commencement provision of a law is automatically repealed on the day after all of the provisions of the law have commenced.

(5) A commencement notice is automatically repealed on the day after the day, or the last of the days, fixed or otherwise determined by the notice for the commencement of a law.

30 (6) A repeal under this section has effect for all purposes, including, for example, any other provisions of this Chapter about repeals.

(7) This section does not limit any other provision of this Chapter.

(8) In this section:

amending law means a law that consists only of provisions of the following kinds:

- (a) for an Act—the Act's long title;
- 5 (b) for an Act—the Act's preamble (if any);
- (c) a provision about the law's name;
- (d) a provision about the law's commencement;
- (e) a provision about the purposes of the law or any of its provisions;
- 10 (f) a provision about the effect of notes;
- (g) a provision providing for the amendment or repeal of a law or statutory instrument (including a provision identifying the amended or repealed law or statutory instrument);
- 15 (h) a provision declaring a law to be a law to which section 76 (Repeal does not end transitional or validating effect etc) applies;
- (i) a provision about the renumbering of a law;
- 20 (j) a provision authorising or requiring something to be done under Chapter 10 (Republication of Acts and statutory instruments).

amending provision, of a law, means a provision of the law that only amends or repeals a law or statutory instrument, and includes any other provision (for example, a schedule) of the law that only identifies the law or instrument amended or repealed.

25 **appropriation Act**—see the *Financial Management Act 1996*, section 3.

commencement provision, of a law, means a provision of the law that only provides for the commencement of the law.

Example 1

The *Hypothetical Amending Act 2002* repeals and amends a number of Acts. The Act contains the following provisions:

- a long title
- 5 • a provision about the Act's name
- a provision about the Act's commencement
- repealing provisions (that is, a provision stating that the Act repeals the Acts mentioned in Schedule 1 and a schedule (Schedule 1) setting out the names of the repealed Acts)
- 10 • amending provisions (that is, a provision stating that the Act amends the Acts mentioned in Schedule 2 and a schedule (Schedule 2) setting out the amended Acts and the amendments made to them)
- a provision about the application of section 76 (Repeal does not end transitional or validating effect etc) of this Act to a provision being repealed
- 15 • a provision requiring an amended Act (the *XYZ Act 1990*) to be renumbered under Chapter 10 in the next authorised republication of the *XYZ Act 1990*.

The Act contains no other provisions. 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
20 April 2002. Under subsection (1), the *Hypothetical Amending Act 2002* is automatically repealed on 13 April 2002.

Example 2

The *Example Act 2001* contains provisions establishing a new licensing scheme. It also amends several Acts and repeals others. Because it contains the scheme provisions, it is
25 not an amending law covered by subsection (1).

PART 8.3—AMENDMENT

78 Law and amending laws to be read as one (IA s 44)

A law and all laws amending it are to be read as one.

79 Insertion of provisions by amending law (IA s 45)

5 (1) This section applies if a law (the *amending law*) amends another law (the *amended law*) by inserting any of the following provisions, and does not exactly specify the position in the amended law where it is to be inserted:

10 (a) a chapter, part, division, subdivision, section or subsection (an *inserted chapter, part, division, subdivision, section or subsection*);

(b) a paragraph (an *inserted paragraph*);

(c) a subparagraph (an *inserted subparagraph*);

(d) a sub-subparagraph (an *inserted sub-subparagraph*);

15 (e) a definition (an *inserted definition*);

(f) any other provision (a *miscellaneous inserted provision*).

(2) An inserted chapter, part, division, subdivision, section or subsection is inserted in the appropriate numerical or alphanumerical position in the amended law.

20 (3) An inserted paragraph is inserted in the appropriate alphabetical position in the amended law.

(4) An inserted subparagraph is inserted in the appropriate numerical or alphanumerical position in the amended law.

25 (5) An inserted sub-subparagraph is inserted in the appropriate alphabetical position in the amended law.

(6) An inserted definition is inserted in the appropriate alphabetical position (worked out on a letter-by-letter basis) in a series of definitions in the amended law.

30 (7) A miscellaneous inserted provision is inserted in the appropriate position in the amended law.

(8) In applying this section to a subordinate law or disallowable instrument or to a provision of a schedule to an Act, a reference to a section or subsection is a reference to an equivalent provision of the law, instrument or schedule.

5 (9) In working out the appropriate position where a provision is to be inserted in the amended law, regard may be had to the following:

- (a) the provision number or letter;
- (b) the heading of the relevant amending provision of the amending Act;
- 10 (c) any other amendments in the amending law including the order of amendments;
- (d) anything else in the amending law or amended law;
- (e) current ACT legislative drafting practice.

Examples

15 1 If a part numbered '3' is to be inserted into an amended law with an existing sequence of parts 'Part 1—Part 2—Part 4', inserted Part 3 is inserted between Parts 2 and 4.

20 2 If a division numbered '2.2A' is to be inserted into an amended law with an existing sequence of divisions in Part 2 'Division 2.1—Division 2.2—Division 2.3', inserted Division 2.2A is inserted between Divisions 2.2 and 2.3.

3 If a section numbered '6AA' is to be inserted into an amended law with an existing sequence of sections 'section 6—section 6A—section 6B', inserted section 6AA is inserted between sections 6A and 6B.

25 4 If a section numbered '7A' is to be inserted, by an amending section headed 'new section 7A, Division 2.2', into an amended law with an existing sequence 'section 7 [in Division 2.2]—Division 2.3 [heading]—section 8', inserted section 7A is inserted between section 7 and the heading to Division 2.3 (that is, at the end of Division 2.2).

30 5 If a section numbered '7A' is to be inserted, by an amending section headed 'new section 7A, Division 2.3', into an amended law with an existing sequence 'section 7 [in Division 2.2]—Division 2.3 [heading]—section 8', inserted section 7A is inserted between the heading to Division 2.3 and section 8 (that is, at the beginning of Division 2.3).

80 Amendment to be made wherever possible (IA s 46)

If a law amends another law—

- (a) by omitting a word; or
- 35 (b) by substituting a word for another word; or

(c) by inserting a word before or after a particular word;

the amendment is to be made wherever possible in the other law unless the law otherwise expressly provides

5 **81 Provisions included in another provision for amendment purposes (IA s 46A)**

(1) This section applies for the purpose of amending a law.

(2) The heading to a chapter, part, division, subdivision, schedule, dictionary, section or any other provision of the law forms part of the provision to which it is a heading.

10 (3) An example at the end of a provision of the law is part of the provision unless the example is expressed in a way that indicates that it applies only to another provision.

(4) A note at the end of a provision of the law is taken, for this section, to be part of the provision unless the note is expressed in a way that
15 indicates that it applies only to another provision.

(5) However, a note in a law is not, for any other purpose, part of the law.

Note The *Interpretation Act 1967*, section 12 (Material that is not part of an Act) deals with the status of notes.

20 (6) A penalty at the end of a subsection of the law—

(a) is part of the subsection unless the penalty is expressed in a way that indicates that it applies only to other subsections of the section; or

(b) if the penalty is expressed in a way that indicates that it applies
25 only to other subsections—is part of the section.

(7) A penalty at the end of a section of the law that is not divided into subsections is part of the section.

(8) The word ‘and’, ‘or’ or ‘but’, or a similar word, at the end of a paragraph, subparagraph, sub-subparagraph or another provision of the law
30 is part of the provision.

(9) In working out whether an example or note is at the end of a provision of the law, any penalty is to be disregarded, and, for an example, any note is to be disregarded.

Note According to current legislative drafting practice, examples, notes and penalties to a provision are arranged in the following order at the end of provisions:

- 1 penalty (first)
- 2 examples
- 5 3 notes (last).

(10) In applying this section to a subordinate law or disallowable instrument or to a provision of a schedule to an Act, a reference to a section or subsection is a reference to an equivalent provision of the law, instrument or schedule.

10 **82 Continuance of appointments etc made under amended provisions (IA s 47)**

(1) This section applies if—

(a) a law expressly or impliedly authorises or requires—

- (i) the making of an appointment or statutory instrument; or
- 15 (ii) the delegation of a function; or
- (iii) the doing 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
- 20 (ii) the function may be delegated; or
- (iii) the thing may be done.

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

(3) In this section:

amend includes omit and re-enact in the same law (with or without changes), but does not include omit and re-enact in another law.

83 Status of modifications (IA s 48)

30 If a law is modified by another law, the law operates as modified but the modification does not amend the text of the law.

84 Relocated provisions (IA s 49)

(1) This section applies if a provision of a law is relocated (with or without changes) to a different place in the same law or to a different law.

5 (2) The operation or meaning of the provision is not affected merely because of the provision's relocation.

(3) Without limiting subsection (2), if before its relocation the provision was to be interpreted in a particular way, it is to be interpreted in that way in its new location.

Example

10 If a provision of an Act is to be interpreted as if it were a law consolidating the provisions of other laws and it is relocated into another Act, it is to be interpreted in the same way in its new location.

(4) However, the provision has effect subject to any changes made to it.

CHAPTER 9—REFERRING TO LAWS

85 References to a law include law containing reference (IA s 50 (2))

- 5 (1) In a law, a reference in general terms to a law of the same kind includes a reference to the law itself.

Example

10 Section 27 of the *ABC Act 2001* gives a power to confiscate property under certain circumstances. Section 93 of the same Act provides ‘If an Act authorises the confiscation of property, the owner of the property has a right of appeal to the Magistrates Court.’ The right of appeal under section 93 also applies to the power given by section 27.

- (2) In this section:

law means an Act, subordinate law or disallowable instrument.

86 Referring to laws in general terms (IA s 50 (1))

- (1) Every Act may be referred to by the word *Act* alone.

15 *Example*

A former New South Wales Act that applies in the ACT as a Territory Act may be referred to using its NSW short title, eg ‘*Truck Act 1900*’. In other words, it is not necessary to add words such as ‘of the State of New South Wales in its application in the Territory’.

- 20 (2) Every statutory instrument may be referred to using words to describe the kind of instrument alone.

87 Referring to particular Acts (IA s 51)

- (1) An Act may be referred to by—

- (a) the name the Act gives to itself; or
- (b) the year when it was enacted and its number.

- 25 (2) A Commonwealth Act may be referred to—

- (a) by the name the Act gives to itself; or
- (b) in any other way sufficient in a Commonwealth Act for referring to a Commonwealth Act;

30 together with a reference to the Commonwealth (or an abbreviation of the Commonwealth).

(3) An Act or ordinance of a State or another Territory may be referred to—

- (a) by the name the Act or ordinance gives to itself; or
- (b) in any other way sufficient in an Act or ordinance of the State or other Territory for referring to such an Act or ordinance;

5

together with (unless it is a former NSW Act) a reference to the State or other Territory (or an abbreviation of it).

(4) A UK Act may be referred to—

- (a) by the name the Act gives to itself; or
- (b) in any other way sufficient in a UK Act for referring to a UK Act;

10

together with (unless it is a former UK Act) a reference to the United Kingdom (or an abbreviation of the United Kingdom).

88 Referring to statutory instruments (IA s 52, SLA s 4 (2))

(1) A statutory instrument (including a subordinate law or disallowable instrument) may be referred to by—

15

- (a) any name the instrument gives to itself; or
- (b) if the instrument was numbered under this Act or another Territory law—the year when it was made and its number, together with a reference (if necessary) to the kind of instrument;

20

or

(c) reference to—

- (i) if the instrument was notified in the register under this Act—the date when it was notified in the register, together with a reference to the Act or statutory instrument under which it was made; or

25

- (ii) if the instrument was published or notified in the Gazette before the commencement of this Act—the number, date and pages of the Gazette where it was published or notified; or

30

- (iii) for any instrument—the date when it was made, together with a reference to the Act or statutory instrument under which it was made.

(2) An instrument made or in force under a Commonwealth Act, or under an instrument made or in force under a Commonwealth Act, may be referred to—

- (a) by any name the instrument gives to itself; or
- 5 (b) in another way sufficient in a Commonwealth Act for the referring to such an instrument;

together with a reference to the Commonwealth (or an abbreviation of the Commonwealth).

(3) An instrument made or in force under an Act or ordinance of a State or another Territory, or under an instrument made or in force under such an Act or ordinance, may be referred to—

- (a) by any name the instrument gives to itself; or
- (b) in another way sufficient in an Act or ordinance of the State or other Territory for referring to such an instrument;

15 together with (unless it is a New South Wales instrument applying in the Territory) a reference to the State or other Territory (or an abbreviation of it).

(4) An instrument made or in force under a UK Act, or under an instrument made or in force under a UK Act, may be referred to—

- 20 (a) by any name the instrument gives to itself; or
- (b) in another way sufficient in a UK Act for referring to such an instrument;

together with (unless it is a UK instrument applying in the Territory) a reference to the United Kingdom (or an abbreviation of the United Kingdom).

89 Referring to provisions of laws or instruments (IA s 53)

(1) A provision of a law or instrument may, if appropriate, be referred to by reference to the provision of the law or instrument in which it is contained.

30 Example

Paragraph (b) in subsection (2) of section 10 of an Act may be cited by reference to the section and subsection, that is, as section 10 (2) (b).

(2) In this section:

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

law means—

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

90 Meaning of references to a law or instrument generally (IA s 54)

(1) In an Act or statutory instrument, a reference to a law or instrument includes a reference to the following:

- 10 (a) the law or instrument as originally made, and as amended from time to time since it was originally made;
- (b) if the law or instrument has been repealed and remade (with or without changes) since the reference was made—the law or instrument as remade, and as amended from time to time since it was remade;
- 15 (c) if a relevant provision of the law or instrument has been omitted and remade (with or without changes) in another law or instrument since the reference was made—the other law or instrument as in force when the provision was remade, and as amended from time to time since the provision was remade.
- 20

(2) In an Act or statutory instrument, a reference to a provision of a law or instrument includes a reference to the following:

- (a) the provision as originally made, and as amended from time to time since it was originally made;
- 25 (b) if the provision has been omitted and remade (with or without changes and whether in the law or instrument or another law or instrument) since the reference was made—the provision as remade, and as amended from time to time since it was remade.

(3) In this section:

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

law means—

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

make includes enact.

5 **91 References to laws and instruments with amended names**
 (IA s 55)

(1) If the name of a law or instrument is amended, a reference in an Act or statutory instrument to the name includes a reference to the name as amended.

10 (2) In this section:

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

law means—

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

92 References to laws include references to instruments under laws
 (IA s 55A)

20 (1) In an Act or statutory instrument a reference (either generally or specifically) to an Act or statutory instrument, or to a provision of an Act or statutory instrument, includes a reference to the statutory instruments made or in force under the Act, instrument or provision.

25 (2) In an Act or statutory instrument a reference (either generally or specifically) to an Act, ordinance or statutory instrument of another jurisdiction, or to a provision of an Act, ordinance or statutory instrument of another jurisdiction, includes a reference to the statutory instruments made or in force under the Act, ordinance, instrument or provision.

(3) In subsection (2):

another jurisdiction means the Commonwealth, a State or another Territory.

statutory instrument means an instrument (whether of a legislative or administrative nature) made or in force under the Act, ordinance or statutory instrument concerned.

93 References in statutory instruments to *the Act* (IA s 55B)

- 5 In a statutory instrument, a reference to *Act* or *the Act*, without mentioning a particular Act, is a reference to the Act under which the instrument is made or in force.

94 References to repealed laws (IA s 55C)

- 10 (1) If an Act or statutory instrument refers to a law as repealed, the reference is a reference to the law as in force immediately before it was repealed.

Example

A reference to the 'repealed *XYZ Act 2000*' is a reference to the *XYZ Act 2000* immediately before it was repealed.

- 15 (2) In this section:

law means—

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

CHAPTER 10—REPUBLICATION OF ACTS AND STATUTORY INSTRUMENTS

PART 10.1—GENERAL

95 Meaning of *law* in ch 10 (LRA s 5, def of *law* and s 8 (2))

5 In this Chapter:

law means an Act or statutory instrument, whether or not it has been amended, and includes—

- (a) a collection of 2 or more Acts or statutory instruments; or
- 10 (b) an agreement or other instrument that has the force of law or is in, or attached to, an Act or statutory instrument.

96 Republication in register

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

15 (2) Subsection (1) does not limit the ways in which the parliamentary counsel may republish a law.

97 Republications may be published with other information

20 The parliamentary counsel may publish information not required by this Chapter with a printed or electronic version of an authorised republication if the parliamentary counsel considers that the information is likely to be useful to users of the republication.

98 Collections (LRA s 19A)

(1) If the parliamentary counsel authorises under this Act the republication of 2 or more laws in a collection, this Chapter applies to each of the laws in the collection as if it were republished separately.

25 (2) Subsection (1) does not prevent the use of—

- (a) a single contents for the collection; or
- (b) information applying to 2 or more laws in the collection.

PART 10.2—SUBSTANTIVE AMENDMENTS MADE BY LAWS

99 Incorporation of amendments (LRA s 10)

(1) This section applies to a law if the law has been amended by another law by the omission, insertion, substitution, renumbering or relocation of provisions.

(2) An authorised republication of the law must show the law as amended by all amendments that commenced on or before the day stated on the republication as the republication date.

(3) An authorised republication of the law may also incorporate necessary consequential amendments, whether of punctuation, numbering or another kind.

(4) This section does not prevent an authorised republication of the law showing the law as it would be amended by amendments that have not commenced on or before the republication date if the republication indicates, in a suitable place, that the amendments have not commenced.

100 Reference to amending laws (LRA s 11 (1))

An authorised republication of a law that shows the law as amended must include, in a suitable place, a reference to the law by which each amendment was made.

101 Provisions not republished or relocated (LRA s 12)

(1) This Part does not require—

- (a) every provision of a law to be shown in an authorised republication of the law; or
- (b) each provision of a law to be shown in an authorised republication of the law in the place in the law where it was located when the provision was made.

(2) If a provision of a law is not shown in an authorised republication, the republication must indicate that fact in a suitable place.

(3) If a provision of a law is shown in an authorised republication in a different place in the law to the place where it was located when the provision was made, the republication must indicate that fact in a suitable place.

PART 10.3—EDITORIAL CHANGES

102 Authorisation for parliamentary counsel (LRA s 13, s 19)

5 In preparing a law for republication, the parliamentary counsel is authorised—

- (a) to make editorial amendments and other textual amendments of a formal nature that the parliamentary counsel considers desirable to bring the law into line, or more closely into line, with current drafting practice; and
- 10 (b) to make other editorial changes by way of format, layout or printing style, or in any other presentational respect, that the parliamentary counsel considers desirable to bring the law into line, or more closely into line, with current drafting practice.

103 Amendments not to change effect (LRA s 14)

15 This Part does not permit the making of an amendment of a law that would change the effect of the law.

104 Ambit of editorial amendments (LRA s 15)

(1) An *editorial amendment* of a law is an amendment that—

- (a) corrects a typographical error; or
- 20 (b) corrects or updates a reference to a law, position, entity, place or thing; or
- (c) goes only to a matter of spelling, punctuation, grammar or syntax or the use of conjunctives and disjunctives; or
- (d) changes the name of the law or of a provision of the law; or
- 25 (e) numbers or renumbers a provision of the law; or
- (f) changes the order of definitions or other provisions of the law; or
- (g) replaces a reference to a provision of a law with a different form of reference to the provision; or

- (h) changes the way of referring to or expressing a number, year, date, time, amount of money, penalty, quantity, measurement, or other matter, idea or concept; or
 - 5 (i) replaces a word indicating gender or that could be taken to indicate gender in accordance with current legislative drafting practice; or
 - (j) replaces a reference to the Queen, the King or the Crown with a reference to the Sovereign or the Territory; or
 - (k) omits—
 - 10 (i) the enacting words or the law-making words (including any signatures); or
 - (ii) a provision that consists only of a description of how the law is arranged into groups of provisions; or
 - 15 (iii) a provision that has expired, the operation of which is exhausted or spent or that is otherwise obsolete or redundant; or
 - (l) omits, inserts or changes a referential expression; or
 - (m) inserts, omits or changes a note; or
 - (n) updates a reference to the heading to a provision; or
 - 20 (o) is a kind prescribed under the regulations; or
 - (p) is consequential on any other editorial amendment (whether made to that law or another law).
- (2) In this section:
- 25 *law* includes a law of the Commonwealth, a State, another Territory or a foreign country.

105 Legal effect of editorial changes (LRA s 16)

- 30 (1) A law that is amended or otherwise changed under this Part in preparing an authorised republication of the law has effect for all purposes, on and after the republication date, as if the changes had been made by an Act that commenced on the republication date.

(2) Without limiting subsection (1), section 71 (Consequences of amendment of statutory instrument by Act) applies to an amendment made under this Part as if the amendment had been made by an Act.

5 (3) This section is subject to section 103 (Amendments not to change effect).

106 Reference to editorial amendments (LRA s 17)

If a law is amended under this Part in preparing an authorised republication of the law, the republication must indicate that fact in a suitable place.

CHAPTER 11—MISCELLANEOUS

107 Delegation by parliamentary counsel

The parliamentary counsel may delegate all or any of the parliamentary counsel's powers under this Act to a public servant.

5 108 References to Subordinate Laws Act 1989 etc

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

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

15 109 Regulation-making power

The Executive may make regulations for this Act.

CHAPTER 12—TRANSITIONAL

110 Application of s 28

(1) Section 28 (Notification of Acts) does not apply to an Act passed by the Legislative Assembly before the commencement of this section if the
5 passing of the Act has been notified in the Gazette before the commencement.

(2) This section expires 6 months after it commences.

111 Application of s 50

(1) Section 50 (Notification of registrable instruments) does not apply
10 to a registrable instrument made before the commencement of this section if the instrument, or the making of the instrument, has been published or notified in the Gazette before the commencement.

(2) This section expires 6 months after it commences.

112 Application of s 57

(1) Section 57 (Notification of amendments made by resolution of
15 Assembly) does not apply to an amendment made before the commencement of this section if the amendment has been notified in the Gazette before the commencement.

(2) This section expires 6 months after it commences.

20 113 Transitional regulations

(1) The regulations may prescribe savings or transitional matters necessary or convenient to be prescribed because of the enactment of this Act or the *Legislation (Access and Operation) (Consequential Provisions) Act 2000*.

(2) Without limiting the scope of subsection (1), the regulations may
25 prescribe matters necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act instead of—

(a) the provisions of the *Legislation (Republication) Act 1996* or the *Subordinate Laws Act 1989*; or

30 (b) the provisions of the *Interpretation Act 1967* in force immediately before the commencement of this section.

(3) Regulations made for this section must not be taken to be inconsistent with this Act so far as they can operate concurrently with this Act.

5 (4) This section does not limit section 114 (Modification of ch 12's operation).

(5) This section expires 1 year after it commences.

114 Modification of ch 12's operation

10 (1) The regulations may modify this Chapter to make provision with respect to any matter that is not, or not adequately, dealt with in this Chapter.

(2) This section expires 1 year after it commences.

115 Status of certain instruments as disallowable instruments

15 (1) This section applies to a statutory instrument that is declared under an Act or statutory instrument to be a disallowable instrument for the *Subordinate Laws Act 1989*, whether or not for or for the purposes of section 10 of that Act.

(2) The statutory instrument is a disallowable instrument for this Act.

(3) Subsections (1) and (2) are a law to which section 76 (Repeal does not end transitional or validating effect etc) applies.

20 (4) This section expires 3 years after it commences.

116 Status of certain instruments as notifiable instruments

25 (1) This section applies to a statutory instrument (other than a subordinate law, disallowable instrument or commencement notice, or a statutory instrument of a kind prescribed under the regulations for this section) if—

- (a) the instrument is required or permitted under an Act or statutory instrument to be published or notified in the Gazette; or
 - (b) the making or approval (however described) of the instrument is, or particulars (the *required particulars*) of the instrument (however described) are, required or permitted under an Act or statutory instrument to be published or notified in the Gazette; or
 - (c) the instrument is a form approved (however described) under an Act, subordinate law or disallowable instrument.
- 30

- (2) The statutory instrument is a notifiable instrument for this Act.
- (3) Despite anything in any other Act or any statutory instrument, the statutory instrument, the making or approval (however described) of it, or the required particulars, need not be notified or published in the Gazette.
- 5 (4) Subsection (3) does not affect the requirement to notify the making of the statutory instrument in accordance with section 50 (Notification of registrable instruments).
- (5) However, section 50 applies to the statutory instrument with the modifications (if any) prescribed under the regulations.
- 10 (6) Subsections (1) to (5) are a law to which section 76 (Repeal does not end transitional or validating effect etc) applies.
- (7) This section expires 3 years after it commences.
- 117 Compliance with authorisation or requirement to do something by notice in Gazette (IA s 27A)**
- 15 (1) If a provision of an Act or statutory instrument authorises or requires something to be done by notice in the Gazette (however the provision is expressed), it is sufficient if it is done by an instrument.
- (2) Subsection (1) does not affect the requirement to notify the making of the statutory instrument in accordance with section 50.
- 20 (3) However, if the instrument is a notifiable instrument because of section 116 (Status of certain instruments as notifiable instruments), subsection (5) of that section applies to the instrument.
- (4) Subsections (1) to (3) are a law to which section 76 applies.
- (5) This section expires 3 years after it commences.
- 25 **118 Status of republications under the Legislation (Republication) Act 1996**
- (1) An Act or subordinate law republished under the *Legislation (Republication) Act 1996* is taken to have been authorised by the parliamentary counsel under this Act.
- 30 (2) Subsection (1) is a law to which section 76 applies.
- (3) This section expires 3 years after it commences.

SCHEDULE 1

(See s 17)

ACTS INCLUDED IN SOURCES OF LAW OF THE TERRITORY

**PART 1—FORMER NSW AND UK ACTS TREATED
AS ACTS OF THE LEGISLATIVE ASSEMBLY**

column 1 item	column 2 citation (if provided by the Act) or subject matter	column 3 year (if not provided in the citation), number or date of royal assent and original jurisdiction
1	Magna Carta	(1297) 25 Edw. 1, c 29 (UK)
2	Due process of law	(1351) 25 Edw. 3, St. 5 c 4 (UK)
3	Due process of law	(1354) 28 Edw. 3 c 3 (UK)
4	Due process of law	(1368) 42 Edw. 3 c 3 (UK)
5	Free access to courts	(1400) 2 Hen. 4 c 1 (UK)
6	Offences at sea	(1536) 28 Hen. 8 c 15 (UK)
7	Demise of the Crown	(1547) 1 Edw. 6 c 7 (UK)
8	Actions for trespass or slander	(1623) 21 Jas. 1 c 16 (UK)
9	The Petition of Right	(1627) 3 Chas. 1 c 1 (UK)
10	The Bill of Rights	(1688) 1 Will. and Mary, Sess. 2 c 2 (UK)
11	Piracy	(1698) 11 Will. 3 c 7 (UK)
12	The Act of Settlement	(1700) 12 and 13 Will. 3 c 2 (UK)
13	Legal proceedings not affected by demise of Crown	(1702) 1 Anne c 2 (UK)
14	Use of Crown seals not affected by demise of Crown	(1707) 6 Anne c 41 (UK)
15	Piracy	(1717) 4 Geo. 1 c 11 (UK)
16	Piracy	(1721) 8 Geo. 1 c 24 (UK)
17	Set-off of debts	(1729) 2 Geo. 2 c 22 (UK)
18	Set-off of debts	(1735) 8 Geo. 2 c 24 (UK)
19	Piracy	(1744) 18 Geo. 2 c 30 (UK)
20	<i>Royal Marriages Act 1772</i>	12 Geo. 3 c 11 (UK)
21	<i>Australian Courts Act 1828</i>	9 Geo. 4 c 83 (UK)

SCHEDULE 1—continued

column 1 item	column 2 citation (if provided by the Act) or subject matter	column 3 year (if not provided in the citation), number or date of royal assent and original jurisdiction
22	<i>Foreign Tribunals Evidence Act 1856</i>	19 and 20 Vic. c 113 (UK)
23	<i>Evidence by Commission Act 1859</i>	22 Vic. c 20 (UK)
24	<i>British Law Ascertainment Act 1859</i>	22 and 23 Vic. c 63 (UK)
25	<i>Colonial Laws Validity Act 1865</i>	28 and 29 Vic. c 63 (UK)
26	<i>Courts (Colonial) Jurisdiction Act 1874</i>	37 and 38 Vic. c 27 (UK)
27	<i>Public Instruction Act 1880</i>	43 Vic. No 23 (NSW)
28	<i>Evidence by Commission Act 1885</i>	48 and 49 Vic. c 74 (UK)
29	<i>Colonial Courts of Admiralty Act 1890</i>	53 and 54 Vic. c 27 (UK)
30	<i>Merchant Shipping Act 1894</i>	57 and 58 Vic. c 60 (UK)
31	<i>Contractors' Debts Act 1897</i>	1897 No 29 (NSW)
32	<i>Conveyancing and Law of Property Act 1898</i>	1898 No 17 (NSW)
33	<i>Landlord and Tenant Act 1899</i>	1899 No 18 (NSW)
34	<i>Partition Act 1900</i>	1900 No 24 (NSW)
35	<i>Inebriates Act 1900</i>	1900 No 32 (NSW)
36	<i>Truck Act 1900</i>	1900 No 55 (NSW)
37	<i>Judgment Creditors' Remedies Act 1901</i>	1901 No 8 (NSW)
38	<i>Defamation Act 1901</i>	1901 No 22 (NSW)
39	<i>Conveyancing and Law of Property (Supplemental) Act 1901</i>	1901 No 37 (NSW)
40	<i>Forfeiture of Leases Act 1901</i>	1901 No 66 (NSW)
41	<i>Games Wagers and Betting-houses Act 1901</i>	1902 No 18 (NSW)
42	<i>Demise of the Crown Act 1901</i>	1 Edw. 7 c 5 (UK)
43	<i>Arrest on Mesne Process Act 1902</i>	1902 No 24 (NSW)

SCHEDULE 1—continued

column 1 item	column 2 citation (if provided by the Act) or subject matter	column 3 year (if not provided in the citation), number or date of royal assent and original jurisdiction
44	<i>Dedication by User Limitation Act 1902</i>	1902 No 46 (NSW)
45	<i>Common Carriers Act 1902</i>	1902 No 48 (NSW)
46	<i>Innkeepers' Liability Act 1902</i>	1902 No 64 (NSW)
47	<i>Pawnbrokers Act 1902</i>	1902 No 66 (NSW)
48	<i>Piracy Punishment Act 1902</i>	1902 No 69 (NSW)
49	<i>Public Roads Act 1902</i>	1902 No 95 (NSW)
50	<i>Anglican Church of Australia Constitutions Act 1902</i>	24 December 1902 (NSW)
51	<i>Fertilizers Act 1904</i>	1904 No 33 (NSW)
52	<i>Apportionment Act 1905</i>	1905 No 2 (NSW)
53	<i>Forfeiture and Validation of Leases Act 1905</i>	1905 No 8 (NSW)
54	<i>Free Education Act 1906</i>	1906 No 12 (NSW)
55	<i>Gaming and Betting Act 1906</i>	1906 No 13 (NSW)
56	<i>Second-hand Dealers and Collectors Act 1906</i>	1906 No 30 (NSW)
57	<i>Inebriates (Amendment) Act 1909</i>	1909 No 2 (NSW)
58	<i>Defamation (Amendment) Act 1909</i>	1909 No 22 (NSW)

SCHEDULE 1—continued

**PART 2—NSW ACTS APPLIED BY ACTS OF THE TERRITORY AND
TREATED AS ACTS OF THE LEGISLATIVE ASSEMBLY**

column 1 item	column 2 citation of NSW Act	column 3 Act of the Territory by which previously applied
1	<i>Scaffolding and Lifts Act 1912</i>	<i>Scaffolding and Lifts Act 1957</i>
2	<i>Anglican Church of Australia Trust Property Act 1917</i>	<i>Anglican Church of Australia Trust Property Act 1928</i>
3	<i>Conveyancing Act 1919</i>	(a) <i>Conveyancing Act 1951</i> (b) <i>Law of Property (Miscellaneous Provisions) Act 1958</i> (c) <i>Trustee Act 1957</i>
4	<i>Trustee Act 1925</i>	<i>Trustee Act 1957</i>
5	<i>Anglican Church of Australia Constitution Act 1961</i>	<i>Anglican Church of Australia Trust Property Act 1928</i>
6	<i>Dangerous Goods Act 1975</i>	<i>Dangerous Goods Act 1984</i>

Note The written law of the Territory also includes the following Acts that may not be amended or repealed by the Assembly (see the Self-Government Act, s 34):

- Life, Fire and Marine Insurance Act 1902* (NSW)
- Demise of the Crown Act 1760* (UK)
- Naval Prize Act 1864* (UK)
- Naval Prize (Procedure) Act 1916* (UK)
- Prize Act (1939)* (UK)
- Prize Courts Act 1894* (UK)
- Prize Courts Act 1915* (UK)
- Prize Courts (Procedure) Act 1914* (UK)
- Territorial Waters Jurisdiction Act 1878* (UK).

DICTIONARY

(See s 3)

Act—see the following sections:

- (a) section 7 (Meaning of *Act* generally);
- (b) section 17 (References to Acts include references to former Cwlth enactments etc).

amend, for Chapter 8 (Repeal and amendment of laws)—see section 70 (Definitions for ch 8).

approved web site means an Internet site approved under section 21 (Approved web site).

authorised republication—see section 15 (Meaning of *authorised republication*).

commencement, of an Act or statutory instrument—see section 68 (References to *commencement* of law).

commencement notice—see section 11 (Meaning of *commencement notice*).

current legislative drafting practice means the legislative drafting practices from time to time used in the Parliamentary Counsel's Office.

disallowable instrument—see section 9 (Meaning of *disallowable instrument*).

editorial amendment, of a law—see section 104 (Ambit of editorial amendments).

enactment, of an Act—see section 29 (References to *enactment* or *passing* of Acts).

former NSW Act means a NSW Act mentioned in Schedule 1.

former UK Act means a UK Act mentioned in Schedule 1.

instrument—see section 14 (Meaning of *instrument*).

law—

- (a) for Chapter 7 (Commencement and exercise of powers before commencement)—see section 60 (Meaning of *law* in ch 7); and

DICTIONARY—continued

(b) for Chapter 8 (Repeal and amendment of laws)—see section 70 (Definitions for ch 8); and

(c) for Chapter 10 (Republication of Acts and statutory instruments)—see section 95 (Meaning of *law* in ch 10).

5 ***making***, of a statutory instrument, means the signing, sealing, approval or other endorsement of the instrument by the entity authorised or required to make it.

notifiable instrument—see section 10 (Meaning of *notifiable instrument*).

10 ***notification***—

 (a) of an Act—see section 30 (References to *notification* of Acts); and

 (b) of a statutory instrument—see section 51 (References to *notification* of registrable instruments).

15 ***notification day***, for an Act or statutory instrument, means the day the Act or instrument is notified.

parliamentary counsel means the person performing the duties of Parliamentary Counsel in the public service.

20 ***passing***, of an Act—see section 29 (References to *enactment* and *passing* of Acts).

provision—see section 16 (Meaning of *provision*).

referential words means words that identify a provision as a provision, or part of a provision, of the Act, statutory instrument or provision in which they appear.

25 ***Examples***

 1 of this Act

 2 of this section

 3 hereof

 4 said.

30 ***register*** means the ACT legislation register.

DICTIONARY—continued

registrable instrument—see section 12 (Meaning of *registrable instrument*).

repeal, for Chapter 8 (Repeal and amendment of laws)—see section 70 (Definitions for ch 8).

5 **republication** means a republication of a law with the meaning of section 95 (Meaning of *law* in ch 10).

republication date, for an authorised republication, means the date stated in the republication as the republication date.

10 **statutory instrument**—see section 13 (Meaning of *statutory instrument*).

subordinate law—see section 8 (Meaning of *subordinate law*).

tribunal includes any entity that is authorised to hear, receive and examine evidence.