#### 2015

## THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Justice)

# **Justice Legislation Amendment Bill 2015**

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### 2015

## THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Justice)

# **Justice Legislation Amendment Bill 2015**

### A Bill for

An Act to amend legislation about births, deaths and marriages, and for other purposes

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

## Part 1 Preliminary

2	1	Name of Act
3		This Act is the Justice Legislation Amendment Bill 2015.
4	2	Commencement
5 6		This Act commences on a day fixed by the Minister by written notice.
7 8		Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).
9  0  1		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 Legislation Act, s 77 (1)).
2  3  4		Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).
5	3	Legislation amended
6		This Act amends the following legislation:
7		Births, Deaths and Marriages Registration Act 1997
8		• Births, Deaths and Marriages Registration Regulation 1998
9		• Liquor Act 2010
20		• Parentage Act 2004.
21		Note This Act also amends other legislation (see sch 1).

## Part 2 Births, Deaths and Marriages Registration Act 1997

3 4	4		Notification of births Section 5
5			omit
6			mother
7			substitute
8			birth parent
9	5		New section 5 (8)
10			insert
11		(8)	In this section:
12 13			birth parent, of a child, means the person who gave birth to the child.
14 15	6		Registration of parentage order Section 16A (1)
16			after
17			section 26,
18			insert
19			or a corresponding parentage law,

7	Change of name entries in register Section 21 (2) (a) (i)
	substitute
	(i) if the person's birth is registered in the ACT—
	(A) alter the register by changing the person's name in the entry relating to the person's birth; or
	(B) if the applicant for registration of the change of name asks the registrar-general to note the change of name in the particulars of the person's birth— note the change of name in the entry relating to the person's birth; or
8	Section 21 (3)
	substitute
(3	) If the register is altered or the change of name is noted in the register under section 21 (2) (a) (i), any birth certificate issued by the registrar-general for the person must show the person's name as changed.
	<b>Example</b> a new birth certificate showing the new name or a notation on the reverse side of the birth certificate
	Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).
9	New division 4.1 heading
	before section 24, insert
Divisio	on 4.1 People with birth registered in the ACT

1 2	10	Application to alter register to record change of sex Section 24 (2)
3		omit 1st mention of
4		the child
5		substitute
6		a child
7 8	11	Evidence in support of application Section 25 (1), new notes
9		insert
10 11		Note 1 The Statutory Declarations Act 1959 (Cwlth) applies to the making of statutory declarations under ACT laws.
12 13 14		Note 2 It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).
15	12	New division 4.2
16		insert
16 17 18	Divisio	
17		n 4.2 ACT residents with birth registered
17 18	Divisio	ACT residents with birth registered elsewhere
17 18 19 20 21	Division 29A	ACT residents with birth registered elsewhere  Application for recognised details certificate  A person may apply to the registrar-general for a document that acknowledges a person's name and sex (a recognised details
17 18 19 20 21	Division 29A	ACT residents with birth registered elsewhere  Application for recognised details certificate  A person may apply to the registrar-general for a document that acknowledges a person's name and sex (a recognised details certificate) if—
17 18 19 20 21 22	Division 29A	ACT residents with birth registered elsewhere  Application for recognised details certificate  A person may apply to the registrar-general for a document that acknowledges a person's name and sex (a recognised details certificate) if—  (a) the person is at least 18 years old; and

1 2		(d) the person believes their sex to be the sex nominated in the application (the <i>altered sex</i> ), and—
3 4		(i) has received appropriate clinical treatment for alteration of the person's sex; or
5		(ii) is an intersex person.
6 7		Note $1$ If a form is approved under s 69 for an application, the form must be used.
8		Note 2 A fee may be determined under s 67 for an application.
9 0 1	(2)	The parents of, or a person with parental responsibility for, a child may apply to the registrar-general for a recognised details certificate for the child if—
2		(a) the child is domiciled or resident in the ACT; and
3		(b) the child's birth is registered in a place other than the ACT; and
5 6 7		(c) the parents, or person with parental responsibility, believe on reasonable grounds that a recognised details certificate for the child is in the best interests of the child; and
8		(d) the child—
9		(i) has received appropriate clinical treatment for alteration of the child's sex; or
21		(ii) is an intersex person.
22 23	(3)	However, an application under subsection (2) may be made by 1 parent if—
24 25		(a) the applicant is the only parent named in a register kept under a corresponding law or the law of any place outside Australia; or
26		(b) there is no other surviving parent of the child.
27 28	(4)	An application under this section must set out, or be accompanied by, the particulars prescribed by regulation.

1 2	29B	Evidence in support of application for recognised details certificate
3 4	(1)	An application under section 29A for a recognised details certificate for a person who is at least 18 years old must be accompanied by—
5 6		(a) a statutory declaration by a doctor, or a psychologist, certifying that the person—
7 8		(i) has received appropriate clinical treatment for alteration of the person's sex; or
9		(ii) is an intersex person; and
10		(b) documents confirming that—
11		(i) the person is domiciled or resident in the ACT; and
12 13		(ii) the person's birth is registered in a place other than the ACT; and
14		(c) any other documents and information prescribed by regulation.
15 16		Note 1 The Statutory Declarations Act 1959 (Cwlth) applies to the making of statutory declarations under ACT laws.
17 18 19		Note 2 It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).
20 21	(2)	An application under section 29A for a recognised details certificate for a child must be accompanied by—
22 23 24		(a) a statement signed by the parents of, or a person with parental responsibility for, the child stating that a recognised details certificate for the child is in the best interests of the child; and
25 26		(b) a statutory declaration by a doctor, or a psychologist, certifying that the child—
27 28		(i) has received appropriate clinical treatment for alteration of the child's sex; or

1			(ii) is an intersex person; and
2			(c) documents confirming that—
3			(i) the child is domiciled or resident in the ACT; and
4 5			(ii) the child's birth is registered in a place other than the ACT; and
6			(d) any other documents and information prescribed by regulation.
7		(3)	In this section:
8 9 10			<i>psychologist</i> means a person registered under the <i>Health Practitioner Regulation National Law (ACT)</i> to practise in the psychology profession (other than as a student).
11	29C		Issue of recognised details certificate
12 13		(1)	On receipt of an application under section 29A, the registrar-general must—
14			(a) issue a recognised details certificate; or
15			(b) refuse to issue the certificate.
16 17 18		(2)	The certificate must not state the applicant's former sex or former name (if any) unless the applicant has requested, in writing, that the information be included.
19 20 21 22		(3)	The registrar-general may, if the registrar-general considers it appropriate, include in the certificate any other information about the applicant's birth that the applicant has requested, in writing, be included.
23 24	29D		Effect of recognised details certificate and interstate recognised details certificate
25 26 27		(1)	A person to whom a recognised details certificate relates is, for the purposes of, but subject to, any territory law, a person of the sex stated in the certificate.

(2) A person to whom an interstate recognised details certificate relates is, for the purposes of, but subject to, any territory law, a person of 2 the sex stated in the certificate. 3 13 **Protection of privacy** 4 Section 44 5 omit 6 his or her 7 substitute 8 the person's 9 Confiscation of forged etc instruments 14 10 **Section 51 (2)** 11 12 omit his or her 13 substitute 14 15 the person's Certificate evidence 15 16 New section 65 (2A) 17 insert 18 (2A) An interstate recognised details certificate is, for the purposes of any 19 territory law, evidence that the person mentioned in it is of the sex 20 stated in the certificate. 21

Section 16

1 2	16	Regulation-m Section 70 (4)	aking power ), definition of <i>relevant child</i>	ren
3		substitute		
4 5			en—a child is a relevant child is about the child under—	f a parentage order
6		(a) the <i>Parent</i>	age Act 2004, section 26; or	
7		(b) a correspon	nding parentage law.	
8 9	17	Reviewable d Schedule 1, n		
10		insert		
	6A	29C	refuse to issue recognised details certificate	applicant
11	18	Dictionary, ne	ew definitions	
12		insert		
13 14 15		Territory relation	parentage law means a law of ng to parentage and includes a a corresponding parentage law.	
16 17		interstate recognised details certificate means a recognised details certificate (however described) issued under a corresponding law.		
18		recognised deta	tils certificate—see section 29A (	(1).

# Part 3 Births, Deaths and Marriages Registration Regulation 1998

3	19	New sec	tion 3
4		insert	
5	3	Dictional	ry
6		The dictio	nary at the end of this regulation is part of this regulation.
7 8 9		thi	ne dictionary at the end of this regulation defines certain terms used in is regulation, and includes references ( <i>signpost definitions</i> ) to other rms defined elsewhere.
10 11 12		sec	or example, the signpost definition 'birth parent—see the Act, ction 5 (8).' means that the term 'birth parent' is defined in that ction and the definition applies to this regulation.
13 14 15 16		the reg	definition in the dictionary (including a signpost definition) applies to e entire regulation unless the definition, or another provision of the gulation, provides otherwise or the contrary intention otherwise spears (see Legislation Act, s 155 and s 156 (1)).
17 18	20		ion of birth 4 (1) (g) and (h)
19		omit	
20		mother	
21		substitute	
22		birth parer	nt

2	21	Registration of births Section 5 (f)
3		omit
4		mother
5		substitute
6		birth parent
7	22	Section 5 (g)
8		substitute
9 10 11		(g) the place of birth of the birth parent of the child and the birth parent's date of birth or, if the date of birth is not known, the birth parent's age;
		on in pure or uge,
12	23	Section 5 (h)
	23	
12	23	Section 5 (h)
12 13	23	Section 5 (h)  omit
12 13 14	23	Section 5 (h)  omit father or other parent
12 13 14 15	23	Section 5 (h)  omit father or other parent substitute
12 13 14 15		Section 5 (h)  omit father or other parent substitute other parent (other than the birth parent)

1	25	Section 5 (m)
2		omit
3		male and any deceased female
4	26	New section 5 (2)
5		insert
6	(2	f) For subsection (1) (f) to (i)—
7		(a) the birth parent of a child may be described as the mother; and
8 9		(b) the other parent (other than the birth parent) may be described as the father.
10 11	27	Change of name entries in register—Act, s 21 Section 5A (f)
12		omit
13		mother
14		substitute
15		birth parent
16	28	Section 5A (g)
17		omit
18		father
19		substitute
20		other parent (other than the birth parent)

1 2	29	Application to alter register to record change of sex Section 6 (1) (b)
3		omit
4		mother
5		substitute
6		birth parent
7	30	Section 6 (1) (c)
8		omit
9		father
10		substitute
11		other parent (other than the birth parent)
4.0	24	Notification of double by funeral directors
12 13	31	Notification of deaths by funeral directors Section 9 (1) (j)
	31	
13	31	Section 9 (1) (j)
13 14	31	Section 9 (1) (j) omit
13 14 15	31	Section 9 (1) (j)  omit  mother
<ul><li>13</li><li>14</li><li>15</li><li>16</li></ul>	32	Section 9 (1) (j)  omit  mother  substitute
13 14 15 16 17		Section 9 (1) (j)  omit  mother  substitute  birth parent
13 14 15 16 17		Section 9 (1) (j)  omit  mother  substitute birth parent  Section 9 (1) (k)
13 14 15 16 17 18 19		Section 9 (1) (j)  omit  mother  substitute birth parent  Section 9 (1) (k)  omit

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1	33	New c	lictionary
2		insert	
3	Dictio	nary	
4	(see s 3)		
5 6		Note 1	The Legislation Act contains definitions and other provisions relevant to this regulation.
7		Note 2	For example, the Legislation Act, dict, pt 1 defines the following terms:
8			• Act
9			• civil partnership
10			• civil union
11			• must (see s 146).
12 13 14 15		Note 3	Terms used in this regulation have the same meaning that they have in the <i>Births, Deaths and Marriages Registration Act 1997</i> (see Legislation Act, s 148). For example, the following terms are defined in the <i>Births, Deaths and Marriages Registration Act 1997</i> , dict:
16			• birth
17			birth certificate
18			• child (see s 4)
19			• death
20			• parents

register.

birth parent—see the Act, section 5 (8).

21

22

1	Part 4	Liquor Act 2010
2	34	Definitions—div 9.3 Section 149, definition of <i>caution offence</i> , paragraph (g)
4		omit
5		age
6		substitute
7		identity
8	35	Section 209
9		substitute
10	209	What is a proof of identity card?—div 14.2
11		In this division:
12 13		<i>proof of identity card</i> , for a person, means a card that includes the following about the person:
14		(a) the name of the person;
15		(b) a photo of the person;
16		(c) the date of birth of the person.
17	36	Section 210 heading
18		substitute
19	210	Proof of identity cards

37	Section 210
	omit
	age
	substitute
	identity
38	Section 211 heading
	substitute
211	Offence—child or young person use false identification to obtain proof of identity card
39	Section 211 (b)
	omit
	age
	substitute
	identity
40	New part 22
	insert
Part 2	2 Transitional—proof of age cards
263	Meaning of commencement day—pt 22
	In this part:
	commencement day means the day the Justice Legislation Amendment Act 2015, section 34 commences.

1	264	Proof of age cards
2 3 4		A proof of age card issued under this Act, section 210 as in force before the commencement day is taken to be a proof of identity card issued under this Act.
5	265	Expiry—pt 22
6		This part expires 1 year after the commencement day.
7 8 9		Note Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see Legislation Act, s 88).
0	41	Dictionary, definition of <i>identification document</i> , subparagraph (a) (ii)
2		omit
3		age
4		substitute
5		identity
6	42	Dictionary, definition of interstate proof of age card
7		omit
8	43	Dictionary, new definition of interstate proof of identity card
20		insert
21 22		interstate proof of identity card means a document corresponding to a proof of identity card that has been issued under the law of a State.
23	44	Dictionary, definition of proof of age card
24		omit

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1	45	Dictionary	, new definition of	proof of identit	y card
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- 2 insert
- *proof of identity card*, for division 14.2 (Children and young people)—see section 209.

## Part 5

## Parentage Act 2004

2	46		Section 7
3			substitute
4 5	7		Presumptions arising from marriage, civil union or civil partnership
6 7 8		(1)	A child born to a person while the person is married or in a civil union or civil partnership is presumed to be a child of the person and the person's spouse, civil union partner or civil partner.
9 10 11 12		(2)	A child born to a person within 44 weeks after the death of the person's spouse, civil union partner or civil partner is presumed to be the child of the person and the person's spouse, civil union partner or civil partner who died.
13 14 15		(3)	A child born to a person within 44 weeks after the annulment of the person's purported marriage is presumed to be the child of the person and the person's purported spouse.
16 17 18 19 20 21		(4)	A child born to a person after the end of the person's marriage, civil union or civil partnership, but within 44 weeks after the person last separated from the person's spouse or partner in that marriage, civil union or civil partnership, is presumed to be the child of the person and the person's spouse or partner in that marriage, civil union or civil partnership.
22 23	47		Presumption arising from domestic partnership Section 8 (1)
24			omit
25			the woman
26			substitute
27			another person

page 20

1	48		Section 11		
2			substitute		
3	з <b>11</b>		Presumptions arising from procedure		
4 5		(1)	This section sets out presumptions that arise if a person undergoes a procedure as a result of which the person becomes pregnant.		
6 7		(2)	The person is conclusively presumed to be a parent of any child born as a result of the pregnancy.		
8 9 0		(3)	If the ovum used in the procedure was produced by another person, that other person is conclusively presumed not to be a parent of any child born as a result of the pregnancy.		
1 12 13		(4)	If the person undergoes the procedure with the consent of the person's domestic partner at the time of the procedure, the domestic partner is conclusively presumed to be a parent of any child born as a result of the pregnancy.		
5  6  7  8		(5)	If semen used in the procedure was produced by another person other than the person's domestic partner at the time of the procedure, the person who produced the semen is conclusively presumed not to be a parent of any child born as a result of the pregnancy.		
20 21 22		(6)	For subsection (4), a person is presumed to consent to the carrying out of a procedure in relation to the person's domestic partner, but the presumption is rebuttable.		
23		(7)	The presumptions set out in this section apply—		
24 25			(a) whenever the pregnancy happened and whether or not it resulted from a procedure carried out in the ACT; and		
26 27			(b) in relation to any child born as a result of the pregnancy, whether or not the child was born in the ACT.		

1 2 3		(8)	However, this section does not affect the vesting in possession or in interest of any property that happened before the commencement of this Act.		
4		(9)	In this section:		
5			procedure means—		
6			(a) artificial insemination; or		
7 8 9			(b) the procedure of transferring into the uterus of a person an embryo derived from an ovum fertilised outside the person's body; or		
10 11 12			(c) any other way (whether medically assisted or not) by which a person can become pregnant other than by having sexual intercourse with a person.		
13 14	49		Application for parentage declaration Section 15 (1) (b)		
15			omit		
16			that he or she is		
17	substitute				
18			to be		
19	50		Section 15 (1) (c)		
20			omit		
21			his or her		
22			substitute		

23

their

1 2	51	Annulment of parentage declaration Section 22 (4)
3		omit
4		he or she
5		substitute
6		each person
7 8	52	Definitions for div 2.5 Section 23, definition of <i>birth parent</i>
9		omit
10		woman
11		substitute
12		person
13	53	Section 23, definition of birth sibling
14		substitute
15 16		birth sibling, of a child, means any other child who is born as a result of the same pregnancy as the child.
17	54	Section 23, definition of <i>procedure</i>
18		substitute
19 20 21		<i>procedure</i> means the procedure of transferring into the uterus of a person an embryo derived from an ovum fertilised outside the person's body.

1	55	Section 23, definition of substitute parent agreement
2		omit
3		woman
4		substitute
5		person
6 7	56	Parentage order Section 26 (3) (c) (ii)
8		omit
9		his or her
10		substitute
11		their
12 13	57	Name of child Section 28
14		omit
15		his or her
16		substitute
17		their
18 19	58	Medical information Section 30 (3) (c) and (d)
20		omit
21		brother, sister, uncle or aunt
22		substitute
23		sibling or sibling of the parents

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1	59	Section 30 (3) (e)
2		omit
3		his or her
4		substitute
5		their
6 7	60	Children all of equal status Section 38 (1)
8		omit
9		his or her parents
10		substitute
11		the person's parents
12 13	61	Construction of instruments Section 39 (3) (b)
14		omit
15		he or she
16		substitute
17		the person
18	62	Section 39 (8), definition of exnuptial child
19		omit
20		father and mother
21		substitute
22		parents

## Schedule 1 Other amendments

2 (see s 3)

## Part 1.1 Casino Control Act 2006

4 5	[1.1]	paragraph (a)
6		omit
7		age
8		substitute
9		identity
10	[1.2]	Section 78, definition of <i>proof of age card</i>
11	[]	omit
12	[1.3]	Section 78, new definition of proof of identity card
13		insert
14 15		<i>proof of identity card</i> includes a document corresponding to a proof of identity card that has been issued under the law of a State.
16	[1.4]	Dictionary, definition of proof of age card
17		omit
18	[1.5]	Dictionary, new definition of proof of identity card
19		insert
20		proof of identity card—see section 78.

Part 1.2		Children and Young People Act 2008	
[1.6]	Section 87 paragraph	7 (4), definition of <i>document of identification</i> , (a) (ii)	
	omit		
	age		
	substitute		
	identity		
Part 1	1.3	Dangerous Substances (Explosives) Regulation 2004	
[1.7]	Dictionary	, definition of <i>identification papers</i> , example	
	omit		
	age		
	substitute		
	identity		
Part 1.4		Dangerous Substances (General) Regulation 2004	
[1.8]	Dictionary	, definition of <i>identification papers</i> , example	
	omit		
	age		
	substitute		
	identity		

Schedule 1 Part 1.5 Other amendments

Medicines, Poisons and Therapeutic Goods Regulation 2008

Amendment [1.9]

1 2 3	Part 1.	5 Medicines, Poisons and Therapeutic Goods Regulation 2008
4 5	[1.9]	Section 173 (2), definition of <i>photo identification</i> document, paragraph (c)
6		omit
7		age
8		substitute
9		identity
10	[1.10]	Section 173 (2), definition of proof of age card
11		omit
12	[1.11]	Section 173 (2), new definition of proof of identity card
13		insert
14		proof of identity card means a proof of identity card issued under—
15		(a) the <i>Liquor Act 2010</i> , section 210 (Proof of identity cards); or
16		(b) the law of a State, an external territory or New Zealand.

Part 1	.6 Race and Sports Bookmaking Act 2001
[1.12]	Section 72A (6), definition of <i>document of identification</i> , paragraph (a)
	omit
	age
	substitute
	identity
Part 1	.7 Road Transport (Driver Licensing) Act 1999
[1.13]	Section 34 etc
	omit
	age
	substitute
	identity
	in
	• section 34
	• section 36 (1)
	• section 37 (1) (c)
	• sections 39 and 40
[1.14]	Dictionary, definition of proof of age card
	omit

Schedule 1 Part 1.8 Other amendments

Part 1.8 Road Transport (Driver Licensing) Regulation 2000

Amendment [1.15]

[1.15]	Dictionary, new definition of proof of identity card		
	insert		
	proof of identity card means a proof of identity card issued under the Liquor Act 2010, section 210 (Proof of identity cards).		
Part 1	.8 Road Transport (Driver Licensing) Regulation 2000		
[1.16]	Sections 138AB (1) and 138B		
	omit		
	age		
	substitute		
	identity		
[1.17]	Dictionary, definition of proof of age card		
	omit		
[1.18]	Dictionary, new definition of proof of identity card		
	insert		
	<i>proof of identity card</i> , for part 8A (Protection of photographs and signatures)—see the Act. dictionary.		

# Part 1.9 Second-hand Dealers Regulation 2002

_		nogalation 2002
3	[1.19]	Section 6, definition of <i>photo identification document</i> , paragraph (f)
5		omit
6		age
7		substitute
8		identity
9	[1.20]	Schedule 2, part 2.1, item 6, column 2
10		omit
11		age
12		substitute
13		identity
14	[1.21]	Dictionary, definition of proof of age card
15		omit
16	[1.22]	Dictionary, new definition of proof of identity card
17		insert
18		proof of identity card means a proof of identity card issued under—
19		(a) the <i>Liquor Act 2010</i> , section 210 (Proof of identity cards); or
20		(b) the law of a State, an external territory or New Zealand.

Schedule 1 Part 1.10 Other amendments

Smoking in Cars with Children (Prohibition) Act 2011

Amendment [1.23]

Part 1	.10	Smoking in Cars with Children (Prohibition) Act 2011
[1.23]	Section 8 (apparagraph	4), definition of <i>identification document</i> , (b)
	omit	
	age	
	substitute	
	identity	
Part 1	.11	Tobacco Act 1927
[1.24]	Section 14 paragraph	(6), definition of document of identification, (a) (ii)
	omit	
	age	
	substitute	
	identity	
Part 1	.12	Totalisator Act 2014
[1.25]	Section 56 paragraph	(5), definition of <i>identification document</i> , (a) (ii)
	omit	
	age	
	substitute	
	identity	

## Part 1.13 Wills Act 1968

[1.26]	Section 28A heading
	substitute
28A	Devises to people who have altered their sex
[1.27]	Section 28A (1) (b)
	omit
	successfully undergoes sexual reassignment surgery
	substitute
	altered their sex
[1.28]	Section 28A (1)
	omit
	undergone the surgery
	substitute
	altered their sex
[1.29]	Section 28A (2)
	omit
	28A [1.27]

### **Endnotes**

### 1 Presentation speech

Presentation speech made in the Legislative Assembly on 19 November 2015.

### 2 Notification

Notified under the Legislation Act on

2015.

### 3 Republications of amended laws

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

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