

2000

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN
CAPITAL TERRITORY**

STATUTE LAW AMENDMENT BILL 2000

EXPLANATORY MEMORANDUM

**Circulated by the authority of
Gary Humphries MLA
Attorney-General**

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Background to the Bill

The objective of this Bill is to further the aim of ensuring that the ACT's statute book is of the highest standard. The Bill does so by amending and repealing Acts and regulations for statute law revision purposes only.

Under guidelines approved by the Government the essential criteria for the inclusion of amendments in the Bill are that the amendments are **minor** and **non-controversial**.

The ACT statute book is all ACT legislation taken as a body of law. A statute book that is well maintained significantly enhances access to legislation by making it easier to find in an up-to-date form and easier to read and understand.

Maintenance of the statute book is necessary for a number of reasons.

First, the law is consistently changing to reflect, for example, changes in society's values and technological change. The statute book needs to be updated to take account of these changes.

Second, the ACT statute book has been created over some 90 years from various sources. It includes United Kingdom and New South Wales laws predating the establishment of the Territory, pre self-government Commonwealth laws, New South Wales laws applied to the Territory by the Commonwealth before self-government and laws made by the Legislative Assembly (or under its authority) since self-government. Drafting practices, language usage, and printing formats and styles, have changed markedly over the years, and maintaining a minimum level of consistency requires review and amendment. Increasing the cohesion between legislation coming from different sources and enacted at different times can assist improved access to the law.

Third, the statute book is created by a complex mosaic of individual non-amending and amending items of legislation. An item of legislation is often thought of in isolation from other legislation. However, individual items of legislation are rarely self-contained and in fact interact with other items of legislation (and the common law). Changes to the law often generate the need for consequential amendments elsewhere. Unless these consequential amendments are found and made, the interaction between individual items of legislation can become confused and lead to legal uncertainty and reduced access to the law.

The proposal to develop a technical amendments program for ACT legislation arose out of the need to introduce greater flexibility in the drafting of amendments for statute law revision purposes and minimise the costs associated with keeping ACT legislation up-to-date. Statute Law Amendment Bills (and Portfolio Amendment Bills) are an important part of maintaining and enhancing the standard of ACT law. The Bills provide an opportunity to make amendments and repeals that, taken alone, would be of insufficient importance to justify separate legislation and are inappropriate to make using the *Legislation (Republication) Act 1996*. However, the cumulative effect of the amendments and repeals made through a technical amendments program can have a substantial impact on the overall quality of ACT law.

In the past only a small part of the Territory's legislation would be substantively amended during a particular year. In many cases, Territory legislation would not be amended for substantial periods. The general practice for amending legislation was to prepare a separate Bill (or regulations) that reflected the title of the item or items of legislation being amended. This is a costly and time consuming process. Although the process works well for amendments involving significant changes of policy, the process is not appropriate to handle the large number of minor changes needed to keep the ACT statute book up-to-date. The Legislative Assembly recognised this when it enacted the *Legislation (Republication) Act 1996* and authorised the Parliamentary Counsel to make editorial changes when republishing legislation.

The *Legislation (Republication) Act 1996* provides an excellent process for handling the myriad of editorial changes that do not justify amending legislation, especially changes to printing formats and styles, spelling changes and minor changes to standard provisions to reflect changed drafting practices. However, there are changes needed to keep the statute book up-to-date that cannot be handled through the republication process. For example, any change (however minor) that might change the legal effect of a provision would be unsuitable for the republication process. In addition, there are changes that might be implemented under the *Legislation (Republication) Act 1996* but are better referred to the Legislative Assembly for enactment to maintain confidence in the integrity of the statute book. These changes include the correction of minor errors, the updating of obsolete language and the omission provisions made redundant by amendments of the *Interpretation Act 1967*.

The Bill makes a range of technical law reform changes rather than substantive policy changes to various ACT laws to bring provisions up-to-date, repeal unnecessary legislation and make other amendments for statute law revision purposes. The Bill has been structured to assist the transparency of the amendments and repeals made by it. This is explained further in the notes on clauses.

The Bill will improve the quality of the ACT's statute book by amending and repealing Acts and regulations for statute law revision purposes.

Notes on clauses

Clause 1 Name of Act

This clause provides for the Act's name. When enacted, the Act may be cited using this name.

Clause 2 Commencement

Clause 2 deals with the Bill's commencement.

Subclause (1) provides that the Bill commences on the day notification of its enactment is notified in the Gazette. All repeals and all but a small number of amendments commence on this day.

Subclause (2) qualifies subclause (1) by providing that a date mentioned at the end of an amendment in a schedule has effect, or is taken to have had effect, as the amendment's commencement date. A commencement date is provided for the amendment of the *Gambling and Racing Control Act 1999* in Schedule 1 and a small number of amendments in Schedule 3 (eg the amendment of the *Gambling Legislation Amendment Act 1999*).

Clause 3 Purpose

Clause 3 states the Bill's purpose.

Clause 4 Amended Acts and regulations—schs 1-3

Clause 4 gives effect to the amendments made by Schedules 1 to 3.

Clause 5 Repealed Acts—schs 4-6

Subclause 5 (1) gives effect to the repeals made by Schedules 4 and 5.

Subclause 5 (2) declares that the repealed Acts mentioned in Schedule 6 are laws to which the *Interpretation Act 1967*, section 42 applies. The declaration removes any doubt that any residual legal effect that the repealed provisions mentioned in the Schedule may have is preserved after their repeal.

Schedule 1 Minor amendments

Schedule 1 is for minor, non-controversial amendments initiated by government agencies.

The Schedule contains only one minor amendment: an amendment for the *Gambling and Racing Control Act 1999* to remove any doubt about the term for which the chief executive of Gambling and Racing Commission may be appointed. The amendment is

explained by an explanatory note in the Schedule after the amendment. The amendment is backdated to the commencement of that Act to ensure the validity of the appointment of the chief executive of the Gambling and Racing Commission.

Schedule 2 Structural amendments

Schedule 2 is for non-controversial amendments initiated by the Parliamentary Counsel's Office relating to the *Interpretation Act 1967* and other Acts of 'general application' (such as the *Legislation (Republication) Act 1996* and the *Subordinate Laws Act 1989*) or otherwise affecting the structure of the statute book. The amendments ensure that the underlying structure of the statute book is kept under review and developed to reflect best practice.

Structural issues are particularly concerned with making the statute book more coherent and concise, and therefore more accessible. Strategies to achieve these objectives include such things as avoiding unnecessary duplication and the maximum degree of standardisation of legislative provisions consistent with policy requirements and operational needs.

The amendments included in this Schedule largely reflect the continuing review of the *Interpretation Act 1967* by the Parliamentary Counsel's Office. Improvements in the *Interpretation Act 1967* are an important strategy used by the office in maintaining and enhancing the quality of ACT legislation by shortening and simplifying legislation and ensuring improved consistency and coherence in the statute book.

Legislation can be shortened and simplified if repetition is avoided. The *Interpretation Act 1967* does this in at least 3 ways.

First, by providing standard definitions of commonly used words and expressions. Examples of this can be found in the dictionary to the Act (which lists a large number of words and expressions used ACT legislation) and sections 23 to 24A (which deal with the meaning of references to Territory, Minister and chief executive).

Second, by providing standard sets of provisions regulating aspects of the operation of all legislation. Examples of this are Part 2 (Notification, numbering and commencement of Acts) and Division 6 of Part 3 (Repeal, expiry, amendment and modification of Acts).

Third, by implying powers additional to those given expressly by an individual Act. Examples of this are the recently enacted provisions about appointments (see sections 28 and 28A inserted by the *Justice and Community Safety Legislation Amendment Act 2000 (No 2)*) and the provisions in Schedule 2 to this Bill about instruments under Acts. (see proposed sections 27B to 27G).

Shortening legislation results in less clutter and increased simplicity. Reliance on the standard provisions of the *Interpretation Act 1967* achieves simplification by eliminating the need to insert standard technical definitions and other provisions in

every Act. Awareness of these standard provisions is being promoted by the inclusion of notes in Acts drawing attention to them.

Because of the incremental way in which the statute book is altered by the enactment of new legislation, consistency and coherence can be difficult to maintain. For example, terms can be defined differently in different items of legislation even though no difference may have been intended. Apart from relieving the statute book of much of the detail with which it would otherwise be loaded, the *Interpretation Act 1967* has an important quality control function by promoting consistency in the form and language of the whole statute book. Increased consistency in form and language helps to promote greater coherence in the statute book and improves accessibility to legislation by removing needless variation in legislative provisions. Improvements to a standard provision of the *Interpretation Act 1967* operate automatically throughout the statute book wherever the provision applies.

In summary, the amendments of the *Interpretation Act 1967* in Schedule 3

- make it clear that a form can require that it be signed to be properly completed
- provide that giving a function to an entity gives the powers necessary and convenient to exercise the function
- remake and clarify provisions about the power to make instruments under Acts
- remake, and clarify the operation, of section 32, which deals with the liability of corporations to offences
- provide for the automatic repeal of amending and repealing provisions when they have commenced
- clarify various definitions
- include a number of standard definitions of terms used in ACT laws
- provide for the rearrangement of some provisions.

The amendments of the *Legislation (Republication) Act 1996* will enable notes in legislation, and references to provision headings, to be kept up-to-date. The amendment of the *Subordinate Laws Act 1989* omits a redundant provision and enables a commencement notice for an Act to be published in the Gazette on the same day as the enactment of the Act is notified in the Gazette.

Further information about each amendment in the Schedule is given in an explanatory note in the Schedule after the amendment.

Schedule 3 Technical amendments

Schedule 3 is of minor, technical amendments of legislation initiated by the Parliamentary Counsel's Office.

The amendments correct minor errors, omit redundant provisions and amendments, make other minor, technical changes. Most of the amendments arise out of the office's program for the republication of ACT laws.

The Schedule also include amendments relocating transitional provisions with possible ongoing operation from amending acts to the relevant Principal Acts. The amending Acts are repealed in Schedule 5.

Because of the number of minor amendments made by Schedule 3, an explanatory note about each of the amendments in the Schedule is included after the amendment.

Schedule 4 Repeal of amending Acts without substantive provisions

Schedule 4 repeals amending Acts enacted on or before 1 January 2000 that do not include substantive provisions, that is, they do no more than amend or repeal other laws.

The legal effect of the Acts repealed by the Schedule is saved by section 39 of the *Interpretation Act 1967*.

The Schedule is further explained in an explanatory note at the beginning of the Schedule.

Schedule 5 Repeal of amending Acts with substantive provisions that are no longer needed or are being relocated

Schedule 5 repeals amending Acts enacted on or before 1 January 2000 that contain substantive provisions (that is, non-amending or repealing provisions). The substantive provisions are usually of a transitional nature.

The legal effect of the Acts repealed by the Schedule is saved by section 39 and subsection 42 (1) of the *Interpretation Act*.

Nevertheless, non-amending or repealing provisions in the Acts that appear to have (or potentially have) ongoing practical operation are relocated to the relevant Principal Acts by amendments in Schedule 3. In some cases, the effect of the provisions has been expressly preserved by the making of a declaration under subsection 42 (1) of the *Interpretation Act 1967*.

The Schedule is further explained in an explanatory note at the beginning of the Schedule.

Schedule 6 Declared laws whose repeal does not end their effect

Under subsection 42 (1) of the *Interpretation Act 1967* the effect of a transitional or validating provision is not affected by its repeal. To remove any doubt about the application of the subsection, the provisions mentioned in this Schedule are declared to be laws to which section 42 applies (see subclause 5 (2)).

The Schedule is further explained in an explanatory note at the beginning of the Schedule.