

**1999**

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

**LAW REFORM (MISCELLANEOUS PROVISIONS) BILL 1999**

**EXPLANATORY MEMORANDUM**

**Circulated by authority of  
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Attorney-General**

## LAW REFORM (MISCELLANEOUS PROVISIONS) BILL 1999

### Overview

The Bill makes a range of technical law reform changes rather than substantive policy changes to various ACT laws to maintain currency, repeal outdated or unnecessary legislation and rectify irregularities. The Bill will improve the quality of the statute book of the Territory by amending and repealing Acts for the purpose of statute law reform.

### Notes on Clauses

#### Clause 1 Short title

This clause explains that when the Bill becomes an Act, it will be known as the *Law Reform (Miscellaneous Provisions) Act 1999*.

#### Clause 2 Commencement

The Bill, once enacted, will commence when a notice of the enactment is published in the Gazette.

#### Clause 3 Purpose

This clause sets out the reason why the Bill is being introduced.

#### Clause 4 Certain NSW Acts repealed - Schedule 1

This clause puts beyond doubt and makes express provision for the repeal of various New South Wales Acts mentioned in Schedule 1 that were in force in the ACT immediately before the commencement of this Act.

Approximately 690 old NSW Acts are repealed. The *New South Wales Acts Application Ordinance 1985* purported to repeal a large number of New South Wales Acts that were in force in the ACT. That Ordinance, however, was disallowed by the Senate on the ground, essentially, that it did not identify the laws being repealed. While the better view is that the repeals were effective, the status of these NSW Acts is called into question from time to time. It is proposed to remove any question about the status of the Acts by making express provision for their repeal. To overcome the objection made

in 1985 by the Senate and possible criticism in the Assembly, explicit repeal and a comprehensive list of the names of the Acts to be repealed is included in the Bill. The repeals will enable the remaining NSW Acts applying in the Territory to be identified with complete certainty for the first time.

#### **Clause 5 Other Acts repealed - Schedule 2**

This clause repeals various Acts mentioned in Schedule 2 which are either spent, dealt with by other legislation, of historical interest only, or archaic and potentially anti-competitive.

The clause also repeals a number of "shell" Acts which previously housed a number of New South Wales and Imperial Acts. The Acts will now apply as ACT Acts in their own right or be incorporated in other ACT Acts.

This clause also declares that the effect of the *Crimes Legislation (Status and Citation) Act 1992* and the laws set out in Schedule 2 to the *Imperial Acts (Substituted Provisions) Act 1986* will continue, despite their repeal.

#### **Clause 6 Acts amended - Schedule 3**

This clause gives effect to amendments in Schedule 3.

#### **Clause 7 Regulations amended - Schedule 4**

This clause gives effect to amendments in Schedule 4.

#### **Attachment**

Attached is an Overview of Amendments made by Schedules 3 & 4 in the Law Reform (Miscellaneous Provisions) Bill 1999.

## OVERVIEW OF AMENDMENTS

Listed below are changes to Acts (notes to some of the amendments are included at the end of the list) :

*Administration and Probate Act 1929* amended to incorporate provisions dealing with administrators of deceased estates (previously located in Imperial law), to remove spent provisions and to make statute revision amendments including amendments consequential on the making of the *Births, Deaths and Marriages Registration Act 1997*.

*Administrative Appeals Tribunal Act 1989* Chambers (see Note 'D') and Tribunals (see Note 'A').

*Administrative Decisions (Judicial Review) Act 1989* Chambers (see Note 'D' and statute revision amendments).

*Agents Act 1968* amended to correct provisions about identity cards and to remove a prohibition on the Agents Board from paying the costs associated with regulating travel agents.

*Associations Incorporation Act 1991* amended to rectify a reference to a wrong section and make an amendment consequential on the *Financial Sector Reform (ACT) Act 1999*.

*Building and Services Act 1924* The Act defines "services" to include a diverse range of services and products (from the provision of radio masts and receiving antennae, stoves and electrical devices, sewerage services and a garbage collection service). In 1988 the definition of service was consequentially amended to remove from the definition a reference to "the supply of water or electricity". This deletion is reversed to avoid arguments that the rights of the Territory in relation to associated infrastructure have been reduced. The archaic references in the definition to "aerial masts and fittings in connexion with wireless receivers" are replaced by the modern equivalent placing beyond any doubt the Territory's power to facilitate the provision of such services.

*Business Names Act 1963* ASIC (see Note 'B').

<i>Commonwealth Functions (Statutes Review) Act 1981 Part II</i>	repealed spent act (see note 'F').
<i>Consumer Affairs Act 1973</i>	Fair Trading Bureau (see Note 'C') and amendments which facilitate these changes.
<i>Consumer Credit (Administration) Act 1996</i>	Fair Trading Bureau (see Note 'C') and Tribunals (see Note 'A').
<i>Consumer Credit Act 1995</i>	Fair Trading Bureau (see Note 'C').
<i>Conveyancing and Law of Property Act 1898</i>	subsections 31-34, 39-42, 44, 47, 49-52, 66, 70-80 and 117 and ss.36(3) and 46(2) are repealed in full or part because they are archaic or of no application in the ACT; and statute revision amendments..
<i>Co-operative Societies Regulations</i>	ASIC (see Note 'B').
<i>Courts (Hire-purchase Agreements) Act 1963</i>	repealed spent act (see note 'F')
<i>Credit Act 1985</i>	Fair Trading Bureau (see Note 'C').
<i>Crimes Legislation (Status and Citation) Act 1992</i>	repealed spent act (see note 'F') - the Bill also contains a declaration making it clear that the effect of the 1992 Act continues, despite its repeal.
<i>Dangerous Goods Regulations</i>	amended to bring citation of the regulations into line with ACT drafting practices.
<i>Discrimination Act 1991</i>	amended to provide for the position of a Deputy Registrar so that s/he can delegate responsibilities and Tribunals (see Note 'A').
<i>Door-to-Door Trading Regulations</i>	Fair Trading Bureau (see Note 'C').
<i>Education Act</i>	consequential to the repeal of the <i>Maintenance Act 1968</i> .
<i>Evidence Act 1971</i>	a number of sections which deal solely with the Supreme Court are transferred to the <i>Supreme Court Act 1933</i> .
<i>Fair Trading Act 1992</i>	amended to allow for judicial recognition of a Code without having to resort to producing the original approved copy and approved copies of amendments and Fair Trading Bureau (see Note 'C').
<i>Fair Trading (Fuel Prices) Act 1993</i>	Fair Trading Bureau (see Note 'C').

<i>Freedom of Information Act 1989</i>	amended to reflect the change of name of the Ministerial Council for Corporations and ASIC (see Note 'B').
<i>Guardianship and Management of Property Tribunal Act 1991</i>	Tribunals (see Note 'A').
<i>Imperial Acts (Substituted Provisions) Act 1986</i>	repealed shell act (see note 'E').
<i>Imperial Acts Application Act 1986</i>	repealed shell act (see note 'E').
<i>Inebriates Act 1900 (NSW)</i>	Chambers (see Note 'D').
<i>Instruments Act 1933</i>	statute revision amendments.
<i>Insurance Levy Act 1998</i>	amended to permit the Director of Revenue Management to formally waive the need for an auditor's certificate where the total assessable portions of prescribed premiums are less than \$50,000 (this requirement was waived for the 1997/98 financial year which relieved the burden on small general insurers).
<i>Interpretation Act 1967</i>	<p>amended to update and clarify various provisions, including the following:</p> <ul style="list-style-type: none"> <li>• provide for Bills passed by the Assembly to be notified under an ACT enactment (the <i>Interpretation Act</i>) rather than under s.25 of the <i>Self-Government Act</i>;</li> <li>• simplify the commencement provisions in Bills including providing for the automatic commencement of Acts after 6 months;</li> <li>• clarify which provisions form part of Bills;</li> <li>• provide flexibility in the use of approved forms;</li> <li>• define a greater range of commonly used terms and allow for more flexibility in the use of definitions in legislation;</li> <li>• enable penalty provisions in legislation to be simplified;</li> <li>• clarify the effect of the repeal, expiry, amendment and modification of legislation;</li> </ul>

- provide for the automatic repeal of new amending Acts once they have commenced;
- simplify the citation of Acts;
- generally bring selected provisions up to date with greater use of examples and notes to illustrate their operation; and

to clarify sources of law in the Territory (as a result of the amendments and repeals made by the Bill, it will be possible to identify all NSW and Imperial Acts applying in the Territory as ACT law.

*Justices of the Peace Act 1989*

makes provision for the resignation of justices of the peace.

*Law Reform (Abolitions and Repeals) Act 1996*

repealed spent act (see note 'F').

*Law Reform (Miscellaneous Provisions) Act 1955*

amended to incorporate in a new Part, all of the provisions in Schedule 2 to the *Imperial Acts (Substituted Provisions) Act 1986* that cannot readily be incorporated in any other Act.

*Law Reform (Repeal of Laws) Act 1997*

repealed spent act (see note 'F').

*Legal Practitioners Act 1970*

amended to deal with the enrolment of New Zealand legal practitioners.

*Legislation (Republication) Act 1986*

amended to make it clear that collections of laws can be republished - it is intended to do this where, individually, the laws represent little more than fragments of the existing law.

*Magistrates Court Act 1930*

amended to remove an ambiguity with the use of the term 'court', to make consequential amendments to the repeal of the Maintenance Act and to make statute revision amendments.

*Magistrates Court (Civil Jurisdiction) Act 1982*

amended to update various references. And amended to:

- reflect the exclusion of the Court's jurisdiction for matters of \$10,000 or less arising under the *Residential Tenancies Act 1997*;

- remove the power of the Small Claims Court to make an order for costs for a party who has incurred out-of-pocket expenses in proceedings due to the action of another party;
- to remove an erroneous reference to the Registrar;
- to rectify the set-off amount to be consistent with the \$10,000 jurisdictional limit of the Court;
- to remove spent references.

*Maintenance Act 1968*

repealed as maintenance is now dealt with by the *Family Law Act 1975 (Cth)*.

*Meat Act 1931*

corrects a reference consequentially on *Public Health Act 1997*.

*Mediation Act 1997*

amended to replace the requirement that approved agencies and competency standards be declared in the regulations. This process is time consuming and costly and will be replaced with a provision enabling the Minister to make a disallowable instrument approving agencies and identifying the required competency standards.

*Mental Health (Treatment and Care) Act 1994 Tribunals* (see Note 'A').

*New South Wales Acts Act 1986*

repealed shell act (see note 'E').

*New South Wales Application Act 1984*

repealed shell act (see note 'E').

*Occupational Health and Safety Act 1989* Chambers (see Note 'D') and corrects the citation of various NSW Acts and regulations applying in the ACT.

*Partition Act 1900*

subsections 4(2) and 4(3) and ss.15 and 18 are repealed (these duplicate more current provisions in the *Magistrates Court Act 1930* and the *Supreme Court Act 1933*

*Pawnbrokers Act 1902 (NSW)*

amended to remove the existing burden on the industry hold a public auction for forfeited goods where the loan is over \$10. The amount has been increased to \$500 or over, in line with



	the monetary levels in the <i>Uncollected Goods Act 1996</i> .
<i>Printing and Newspapers Act 1961</i>	repealed as the Act is archaic and potentially anti-competitive.
<i>Remand Centre Regulations</i>	subreg 23(3) amended to make provision to allow the Minister (instead of the Attorney-General) to provide notice in accordance with subsection (1) to the Assembly on a quarterly basis.
<i>Residential Tenancies Act 1997</i>	Fair Trading Bureau (see Note 'C') and Tribunals (see Note 'A') and amended to: <ul style="list-style-type: none"> <li>• clarify that landlords and tenants can only submit one application for the release of bond money, without approval of the Registrar;</li> <li>• correct an error in s.34 which should read 14 working days rather than 10 working days to dispute an application to pay out bond;</li> <li>• make the jurisdiction of the Tribunal subject to s.48A of <i>the ACT (Self-Government) Act 1988</i> to avoid argument that s.115 is inconsistent with s.48A.</li> </ul>
<i>Sale of Motor Vehicles Act 1977</i>	amended to make it clear on the face of the Act that appropriate fees for the provision of all services under the Act can be imposed.
<i>Self-Government (Citation of Laws) Act 1989</i>	repealed spent act (see note 'F').
<i>Sexually Transmitted Diseases Act 1956</i>	Chambers (see Note 'D').
<i>Statute Law Revision (Penalties) Act 1994</i>	repealed spent act (see note 'F').
<i>Subordinate Laws Act 1989</i>	amended to effect technical improvements and consequential amendments made to the <i>Interpretation Act 1967</i> by the Bill.
<i>Supreme Court Act 1933</i>	amended to streamline fees and charges payable when documents are lodged for filing and streamline decisions for review and consequential amendments made to the <i>Administration and Probate Act 1929</i> by the Bill.

<i>Taxation Administration Act 1999</i>	to make a technical change to the delegation power.
<i>Tenancy Tribunal Act 1994</i>	Fair Trading Bureau (see Note 'C') and Tribunals (see Note 'A').
<i>Theatres and Public Halls Act 1928</i>	section 27 is repealed (it previously made it an offence to hold a public entertainment or public meeting on Christmas Day or Good Friday).
<i>Trustee Act 1925 -1942 (NSW)</i>	Chambers (see Note 'D') and to incorporate the provisions of Imperial laws.
<i>Tuberculosis Act 1950</i>	Chambers (see Note 'D') and minor changes to the power of the Court to allow an appeal.
<i>Uncollected Goods Act 1996</i>	amended to allow the Chief Executive Officer of any administrative unit to create positions, appoint persons with the functions of authorised officers and issue and recover identity cards.
<i>University of Canberra Act 1989</i>	ASIC (see Note 'B').
<i>Wills Act 1968</i>	amended to update references.
<i>Workers' Compensation Act 1951</i>	amended to correct incorrect references to provisions.

#### **Note 'A'**

It is proposed in the Bill to amend legislation concerning a number of Tribunals to provide a common set of standard provisions dealing with the administration and membership of tribunals to foster greater efficiency and flexibility.

#### **Note 'B'**

A number of Acts need to be amended to reflect the change of name of the Australian Securities and Investments Commission.

#### **Note 'C'**

A number of Acts need to be amended to reflect the change of name of the Consumer Affairs Bureau to the Office of Fair Trading to reflect the more diverse duties of that office to investigate complaints received from businesses as well as consumers.

#### **Note 'D'**

As a result of an amendment made some time ago to the *Supreme Court Act 1933*, it is necessary to remove references to the Supreme Court dealing with matters in chambers in the following Acts:

**Note 'E'**

A number of "shell" Acts (which are now essentially of historical interest only but which previously "housed" a number of New South Wales and Imperial Acts) are repealed and the Acts will apply as ACT Acts in their own right or be incorporated in other ACT Acts.

**Note 'F'**

The operation of a number of Acts are spent and are repealed.