

**2001**

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

**LEGISLATION (ACCESS AND OPERATION) BILL 2000**

**GOVERNMENT AMENDMENTS**

**EXPLANATORY STATEMENT**

**Circulated by the authority of  
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Attorney-General**

## LEGISLATION (ACCESS AND OPERATION) BILL 2000

### Government Amendments—Explanatory statement

#### Amendment 1

This amendment changes the name of the Bill to the *Legislation Bill 2000*.

It was proposed to change the name of the Act when the remaining provisions of the *Interpretation Act 1967* were incorporated into the Act later this year. However, changing the name now would help to avoid confusion and remove the need to make a large number of consequential amendments.

#### Amendment 2

This amendment is a technical amendment to bring the language of clause 19 (8) more closely into line with clause 116 (3). Under the Bill registrable instruments are not, strictly speaking, ‘required to be notified’ (see cl 50 (1)). However, unless a registrable instrument is notified it cannot commence (see cl 61) and is, therefore, unenforceable (see proposed cl 50A).

#### Amendment 3

This amendment is consequential on proposed clause 50A (see amdt 15) and proposed revised clause 111 (see amdt 25).

#### Amendment 4

This amendment re-enacts (with minor, technical changes) the provisions about regulatory impact statements that were inserted into the *Subordinate Laws Act 1989* by the *Subordinate Laws Amendment Act 2000*. That Act was passed by the Legislative Assembly late last year after the presentation of this Bill.

The *Subordinate Laws Act 1989* is proposed to be repealed by the *Legislation (Access and Operation) (Consequential Provisions) Bill 2000*.

#### Amendment 5

This amendment is consequential on the insertion of proposed part 5.2A by amendment 14.

#### Amendment 6

This amendment is consequential on amendment 7.

#### Amendment 7

This amendment is a technical amendment that brings the language of clause 36 (1) more closely into line with the language currently used in provisions that confer power to make statutory instruments eg regulations. For example, the standard regulation making power is as follows:

#### Regulation-making power

The Executive may make regulations for this Act.

**Amendment 8**

This amendment is consequential on amendment 10.

**Amendment 9**

This amendment adds examples to clause 38 (2) to clarify the operation of the subclause.

Clause 38 (2) provides that the power to amend or repeal a statutory instrument is exercisable in the same way, and subject to the same conditions, as the power to make the instrument. The examples make it clear that:

- if the instrument is a disallowable instrument, an amendment or repeal of the instrument is also a disallowable instrument.
- if the instrument is a notifiable instrument, an amendment or repeal of the instrument is also a notifiable instrument.
- if notice of the making of the instrument must be published in a newspaper, notice of an amendment or repeal of the instrument must also be published in the newspaper.

**Amendment 10**

This amendment of clause 38 provides that the clause is subject to any provision of the Act or statutory instrument (the *authorising law*) that gives the power to make the statutory instrument concerned.

Although it is not common, Acts occasionally provide for a statutory instrument to be amended or repealed in a different way to the way in which the instrument is made. The amendment recognises this practice.

**Amendment 11**

This amendment replaces clause 39 with a new clause 39, in response to concerns raised by the Standing Committee on Justice and Community Safety (the *Scrutiny Committee*) in Scrutiny Report No 15 of 2000. The Scrutiny Committee was concerned that clause 39 “obstruct(s) ready access to the law” by failing to provide readers of a statutory instrument with access to a law or instrument, or a provision of a law or instrument, that is applied by the statutory instrument.

Subclause (1) has been revised to enable the Scrutiny Committee’s concerns to be dealt with in the following subclauses and to clarify the relationship between the clause and clause 90 (Meaning of references to a law or instrument generally). Under the replacement subclause a law or instrument, or a provision of a law or instrument, may be applied by a statutory instrument as in force from time to time only if certain conditions are met. First, the statutory instrument must expressly provide that the law, instrument or provision is applied from time to time. Second, if an instrument or provision of an instrument is applied, the authorising law must authorise the instrument or provision to be applied from time to time. The replacement subclause includes examples of these conditions.

Subclause (2) provides that, if a law or instrument (or a provision of a law or instrument) as in force at a particular time is applied by a statutory instrument, the text of the law, instrument or provision at that time is taken to be a notifiable instrument made under the statutory instrument.

Subclause (3) provides that, if a law or instrument (or a provision of a law or instrument) as in force from time to time is applied by a statutory instrument, the text of the things mentioned in the subclause are taken to be notifiable instruments made under the statutory instrument.

For example, if a statutory instrument applies an instrument as in force from time to time, the following are notifiable instruments:

- the applied instrument as in force at the time the statutory instrument is made;
- each amendment of the applied instrument;
- if the applied instrument is repealed and remade, the instrument as remade and each subsequent amendment.

Subclauses (2) and (3) adopt an option suggested by the Scrutiny Committee. However, the approach taken in the subclauses is novel. It is envisaged that there will be cases in which it will be inappropriate for the subclauses to apply, but at this stage it is not possible to identify comprehensively the cases that need to be excepted. They will need to be developed and refined over time. Accordingly, subclauses (4) and (5) except ACT laws (which will be notified in the legislation register) and allow laws and instruments to establish other exceptions on a case-by-case basis. The Scrutiny Committee will be able to scrutinise these exceptions as they are established and ensure that they are justified.

Subclause (6) sets out definitions for the clause. The definition of law of another jurisdiction picks up New Zealand and Norfolk Island laws in addition to Commonwealth and State laws (under the definition of *State* in the *Interpretation Act 1967*, a State includes the Northern Territory).

#### **Amendment 12**

This amendment makes it clear that clause 44 (Instrument may authorise determination of matter etc) applies to a state of mind eg the forming of an opinion or being satisfied. In a statutory instrument it is frequently necessary to make provision about a matter by requiring someone to form an opinion or be satisfied about something. For example, a statutory instrument may provide for courses or qualifications to be approved by an official, if the official is satisfied that they meet a specified standard.

#### **Amendment 13**

The opposition to clause 46 is in response to the Scrutiny Committee's concerns that it may not be appropriate to authorise a statutory instrument to provide for reconsideration or review of a decision made under the instrument, or the Act under which the statutory instrument is in force.

#### **Amendment 14**

This amendment inserts a new part 5.2A that deals with the making of certain statutory instruments about fees.

In the ACT most fees are determined by Ministers by disallowable instrument. New part 5.2A provides a standard set of provisions that will apply to the determination of fees. The part will enable the provisions about fees in individual Acts and statutory instruments to be simplified. In particular, it will be unnecessary to mention determined fees in every provision for which fees are determined.

Proposed new clause 47A sets out definitions used in the part.

Proposed new clause 47B clarifies the power to determine a fee for an Act or statutory instrument, and makes provision in relation to the determined fee, by *disallowable instrument*. Subclause (2) sets out how a fee may be determined and provides examples of the different methods of determining a fee. Subclause (3) lists the matters that must and may be provided for in a fee determination. Examples are also given for subclause (3). As a result of the clause, most fee details will be contained in the fee determination itself and not in the Act under which it is made. This will allow greater flexibility and enable the fee determination to deal comprehensively with the fees that are payable and details such as the person who must pay the fee, the person to whom the fee is payable, when the fee is payable and how it is to be paid. At the moment, many of these details are fragmented between the relevant Act and the fee determination.

Proposed new clause 47C provides that fees are payable in accordance with the fee determination, that fees are payable before a service is provided (unless the determination states otherwise), and that there is no obligation to provide a service if a fee has not been paid. This clause removes the need to repeat these provisions in each Act or statutory instrument under which fees are determined.

Proposed new clause 47D authorises regulations to prescribe provisions about the payment, collection and recovery of determined fees, the waiver, postponement or refund of fees, payment of fees by cheque and credit card and anything else covered by proposed new clause 47B. The clause will allow regulations, rather than individual fee determinations, to deal with certain standard matters about fees if that is more appropriate.

### **Amendment 15**

Although the Bill does not directly require a subordinate law, disallowable instrument or notifiable instrument (a *registrable instrument*) to be notified under the Bill, it is implicit in clause 61 (2) that the registered instrument cannot commence unless it is notified. However, the application of clause 61 (2) to the text of applied laws and instruments is unclear (see proposed new clause 39 (2) and (3)). This amendment, therefore, inserts a new clause 50A that provides that a registrable instrument (which will include the text of applied laws and instruments) is not enforceable by or against the Territory or anyone else unless it is notified. The clause is modelled on a similar provision in the Commonwealth *Legislative Instruments Bill 1996*.

### **Amendment 16**

Clause 61 (1) and (2) have been redrafted to correct minor syntactic errors and recognise in clause 61 (1) (b) that an Act may provide a later commencement for a registrable instrument. Examples have also been included for clause 61 (1) (b).

**Amendment 17**

Clause 61 (4) has been redrafted to correct minor syntactic errors and recognise in clause 61 (4) (b) that an Act may provide a later commencement for a statutory instrument that is not a registrable instrument.

**Amendment 18**

This amendment applies clause 79 (Insertion of provisions by amending law) to the relocation of provisions as well.

**Amendment 19**

This amendment of clause 82 makes it clear that, if a law authorises or requires the making of an appointment or statutory instrument by an entity and the law is amended, an appointment or statutory instrument made under the unamended law continues under the amended law, whether the appointment or instrument may be made under the amended law by the same entity or a different entity.

**Amendment 20**

This amendment inserts a new subclause to provide that clause 90 (Meaning of references to a law or instrument generally) applies except so far as the contrary intention appears. A contrary intention could exist if, for example, construing a reference to an applied statutory instrument as meaning the instrument as in force from time to time would contravene clause 39 (1).

**Amendment 21**

This amendment inserts a new subclause to make it clear that a reference to an Act or statutory instrument (or a provision) includes a reference to the laws and instruments applied, adopted or incorporated under the Act or statutory instrument (or provision) as permitted by clause 39.

**Amendment 22**

This amendment inserts a new subclause to provide that clause 93 (References in statutory instruments to *the Act*) applies except so far as the contrary intention appears. Although rare, there are cases where references in a statutory instrument to ‘the Act’ are references to an Act other than the Act under which the instrument is made or in force. For example, the *Workers’ Compensation Rules* are in force under the *Magistrates Court (Civil Jurisdiction) Act 1982*, but make provision for proceedings under the *Workers’ Compensation Act 1951*.

**Amendment 23**

This amendment is in response to concerns of the Scrutiny Committee that the editorial powers of the parliamentary counsel under clause 104 (Ambit of editorial amendments) could be extended by regulation. This amendment removes that possibility.

**Amendment 24**

This amendment is in response to concerns of the Scrutiny Committee that the parliamentary counsel’s power to delegate is too broad, given the parliamentary counsel’s powers under part 10.3 (Editorial changes). The amendment limits the power to delegate a power under that part to a deputy parliamentary counsel.

**Amendment 25**

Clause 111 (1) has been extended to provide that proposed clause 50A does not apply to registrable instruments made and notified in the Gazette before the commencement of the clause.

Clause 111 (2) provides that clause 50 and proposed clause 50A do not apply to any registrable instruments made before the commencement of the clause that were not required to be published or notified in the Gazette.

**Amendment 26**

This amendment is consequential on amendment 4.

**Amendment 27**

This amendment is consequential on amendment 4.

**Amendment 28**

This amendment is consequential on amendment 14.

**Amendment 29**

This amendment is consequential on amendment 4.

**Amendment 30**

This amendment is consequential on amendment 14.

**Amendment 31**

This amendment is consequential on amendments 4 and 14.