

2015

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

RED TAPE REDUCTION LEGISLATION AMENDMENT BILL 2015

EXPLANATORY STATEMENT

**Presented by
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Chief Minister**

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This explanatory statement relates to the Red Tape Reduction Legislation Amendment Bill 2015 (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Legislative Assembly.

Background

This Bill is part of a regular series of Red Tape Reduction Legislation Amendment Bills (the Bills) designed to address regulatory requirements that add unnecessary administrative and compliance costs for business, the community and government. The Bills are the means to reform those legislative requirements that are not significant enough in their own right to justify standalone legislation.

The development of the Bills is supported by stakeholder engagement through a consultative body, the Regulatory Reform Panel (previously known as the Red Tape Reduction Panel).

Overview

The Bill seeks to amend the following Acts and Regulations through an omnibus amendment to:

1. *References in the Statute Book* to newspaper advertising of government notices.
2. *Public Sector Management Act 1994*
3. *Hawkers Act 2003*
4. *Public Unleased Land Act 2013*
5. *Workers Compensation Act 1951*

The proposed amendments reduce red tape and provide better regulatory outcomes to the businesses and community by:

- allowing public notices to be made by the most effective means;
- aligning license requirements for the sale of goods on public unleased land under a single Act;
- reducing the need to reapply for permits to use public unleased land; and
- reducing reporting requirements on workers compensation for employers.

The proposed amendments also support the establishment of Access Canberra by permitting functions under Territory laws to be exercised by the head of Access Canberra. A one-stop-shop regulatory agency will help reduce red tape for business and events by providing a single point of contact for regulatory approvals.

A. Policy Initiatives

1. Public Notices

The Bill amends the various references in ACT legislation that specifically requires a public notice must be advertised in a newspaper to allow for selection of the most effective means of communication of achieving public notification. The amendments ensure the continued public awareness of Government notices but allows for online communication through an ACT Government website as a means to notify the public.

This is consistent with the Government's Digital Canberra Action Plan to increase people's access to information using their preferred channel and to improve the delivery of government services by enhancing digital services.

The amendments will allow any combination of published newspaper notices and online notices that are appropriate. Publication of notices in newspapers will continue to play an important part in the communication of public information but the amendments will create other options where appropriate. All changes to current arrangements will be carefully managed.

2. Access Canberra Functions

The Bill includes amendments to the *Public Sector Management Act 1994* that support the establishment of Access Canberra as a one-stop-shop regulatory agency for business and events. The amendments allow for ministerial determination of functions for Access Canberra, their exercise and delegation.

3. Hawkers Act

The Bill includes proposed amendments to streamline legislation for licensing the use of public unleased land.

The primary purpose of the *Public Unleased Land Act 2013* is to ensure the appropriate use of public land. The proposed amendments repeal the *Hawkers Act 2003* and include the licensing of hawkers as part of the Public Unleased Land Act.

Requirements for hawkers will remain but duplication between the two Acts will be removed.

The Hawkers Act applies to people that sell or offer to sell goods on public land that are carried on their person or on a vehicle. Under the Hawkers Act a person must hold a hawker's licence if trading on public land in the same location for longer than 30 minutes. Hawking is also restricted by distance (of 180 metres) from a similar commercial premise.

4. Public Unleased Land Act Permits

Proposed amendments within the Bill extend the maximum period for permits under the Public Unleased Land Act from two years to three years.

This is consistent with the *Justice and Community Safety Legislation (Red Tape Reduction No.1 - Licence Periods) Amendment Act 2013* which amended a number of Acts to extend the maximum length of various licence periods, and amendments in the *Red Tape Reduction Act 2014*.

5. Reporting of Wages for Workers Compensation Insurance Purposes

The Bill would remove a requirement under Section 159 of the *Workers Compensation Act 1951* for Territory employers to provide a six monthly statement to their insurer advising of the number of territory workers employed by the employer, the number of paid and unpaid workers, total wages paid to Territory workers and the approximate amount of time each worker worked for the employer.

The proposed amendments would instead require regular reporting on an annual basis and apply to an employer that has a compulsory insurance policy for a period of longer than 12 months. To ensure the currency of information for regulatory purposes, employers will need to report significant changes in their estimated wages. The proposed amendments also adjust the period that a Certificate of Currency is valid, from six months to 12 months.

The proposed amendment to the *Workers Compensation Act* will remove the requirement for approximately 70,000 insurance compliance transactions each year.

Human Rights

Offences related to amendments in the Bill for hawking under *Public Unleased Land Act 2013* and reporting under the *Workers Compensation Act 1951* include strict liability offences. A strict liability offence under section 23 of the *Criminal Code 2002* means that there are no fault elements for the physical elements of the offence to which strict liability applies. Essentially, this means that conduct alone is sufficient to make the defendant culpable. However, under the *Criminal Code*, all strict liability offences will have a specific defence of mistake of fact. Subclause 23(3) of the *Criminal Code* makes it clear that other defences may still be available for use in strict liability offences.

Strict liability offences do not have a mental element, or mens rea. However, the actus reus, the physical actions, do have a mental element of their own, for example, voluntariness. For this reason, the general common law defences of insanity and automatism still apply, as they go towards whether a person has done something voluntarily, as well as whether they intended to do the act.

The strict liability offences arise in the regulatory context where for reasons such as public safety, and the interest in ensuring that regulatory schemes are observed, the sanction of criminal penalties is justified. The offences also arise in a context where a defendant can reasonably be expected, because of his or her professional involvement, to know the requirements of the law. Subsequently, the mental or fault element can justifiably be excluded. The rationale is that employers or people who carry out business as a hawker (as opposed to members of the general public) can be expected to be aware of their duties and obligations to the wider public.

The use of strict liability offences for hawkers under the Public Unleased Land Act can be justified on the basis that offences will apply to people who choose to engage in regulated activity on public land and are on notice that they are operating in a regulated context. In terms of offences for employers notifying insurers under Workers Compensation Act, it is important that the integrity of workers compensation arrangements be maintained through the provision of information on a timely basis. Accordingly, the Government believes that the use of strict liability offences contained in this Bill is relevant to the policy objectives of minimising the risk of harm to the community, which is demonstrably justifiable and reasonable.

While the inclusion of strict liability limits the range of defences that may be available for a person accused of an offence to which it applies, a number of defences remain open to the accused, depending on the particular facts of each case. Section 23 (1) (b) of the *Criminal Code 2002* provides a specific defence to strict liability offences of mistake of fact. Section 23(3) of the Criminal Code provides that other defences may also be available for use for strict liability offences.

The inclusion of strict liability clauses for lesser offences in the Bill will support the application of an infringement notice scheme. Infringement notice schemes minimise the cost of litigation for the Territory while offering registrants a choice concerning whether to accept a lesser penalty without admitting the offence or to remain liable to prosecution.

This is a regulatory Bill and people and companies who undertake activities under a permit will be aware of their responsibilities and obligations in relation to the permit or licence. Compliance with the provisions of the Bill is important to ensure the safety and access to the community of public unleased land and the integrity of workers compensation arrangements. The penalty units for all strict liability offences in the Bill are within the acceptable range for a strict liability offence.

In respect of the use of strict liability offences in the Bill, a number of rights contained in the *Human Rights Act 2004* are engaged.

Section 28 of the *Human Rights Act 2004* provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society.

The Bill's aim in reducing regulatory burden while achieving greater protection of the community standards can be justified in a free and democratic society. The community expects that despite what types of business people engage themselves, to be operating in a community acceptable standard. Applying strict liability to employers for not reporting incorrect information to insurers, after the employer becomes aware of the incorrect information, under the Workers Compensation Act and for hawkers under the Public Unleased Land Act can be considered a reasonable limit set by law that will assist in achieving the policy objective.

The necessity of this approach has resulted in a carefully considered position in relation to proportionality. An individual's rights and freedoms have, in some cases, been slightly fettered on the basis that it is in the wider public interest that the businesses be properly regulated. Any restrictions or impositions applied to individual rights have been chosen on the basis that they are necessary and that they represent the least restrictive approach possible in order to achieve the policy objective.

CLAUSE NOTES

Clause 1 **Name of Act**

This Act is the *Red Tape Reduction Legislation Amendment Act 2015*.

Clause 2 **Commencement**

This Act commences on the 14th day after its notification day.

Note: The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Clause 3 **Legislation amended**

This clause gives effect to the amendments to legislation made in the schedules to this Act.

Clause 4 **Legislation repealed**

This clause gives effect to the repeal of legislation related to the operation of the *Hawkers Act 2003* by this Act.

SCHEDULE 1 – Amendments relating to public notification

Part 1.42 **Legislation Act 2001 (and various Acts)**

Clause 1.137 **Dictionary, part 1, definition of daily newspaper**

Clause 1.138 **Dictionary, part 1, new definition of public notice**

These clauses amend the Legislation Act to provide arrangements for public notices that include notices in a daily newspaper as well as dated notices on an ACT Government website. This new definition allows for the additional communication channels for public notices, promoting their effectiveness. Public notices through daily newspapers will continue wherever they are an appropriate means of communication.

Schedule 1 in this Bill replaces notice requirements in various Acts requiring publication in a daily newspaper with requirements to provide public notice. This will allow the option of publishing a notice on an ACT Government website where appropriate.

Part 1.54 Public Health Act 1997

Clause 1.189 Section 118D (4)

Clause 1.190 Section 118J (4)

Failure to provide specified public notices under the Public Health Act may be subject to a maximum penalty of 2,000 penalty units.

SCHEDULE 2 – Amendments relating to Access Canberra

Part 2.1 Public Sector Management Act 1994

Clause 2.1 New division 3.6

This clause inserts a new Division 3.6 – Exercise of certain functions by head of Access Canberra - into the *Public Sector Management Act*. The new Division 3.6 enables the Chief Minister to declare, by a notifiable instrument, specific Director-General functions which may be exercised by the Head of Access Canberra (however this position is described).

The establishment of Access Canberra in December 2014 via the Administrative Arrangements resulted in policy and legislative responsibilities being separated from the entity administering the legislation. The new Division 3.6 enables greater transparency of the functions exercised by Access Canberra, and streamlines the process for delegating functions to Access Canberra officers who require them to carry out their duties.

To ensure functions are only declared which Access Canberra might reasonably require, the application of this division is restricted in subsection 37A (1) to those Director-General functions which are under a law dealing with a matter relevant to Access Canberra. Subsection (8) defines a ‘relevant matter’ as a matter to which the Chief Minister is responsible, and relates to Access Canberra in an administrative arrangement made under the *Australian Capital Territory (Self-Government) Act 1988 (Cth)*.

Subsection 37A (3) clarifies the Head of Access Canberra is authorised to exercise a declared function.

Subsections 37A (4) and 37A (5) authorise the Head of Access to delegate any declared function to a person, to the extent permitted by other Territory laws.

Subsection 37A (6) clarifies that the declaration, the delegation or exercise of a declared function does not limit the Director-General’s ability to also exercise the function. To support clear accountabilities, Access Canberra will utilise non-legislative mechanisms to settle with the Director-General the circumstances in which declared functions will be exercised by Access Canberra staff.

Subsection 37A (7) limits the potential for the validity of the exercise of a declared function to be challenged only on the basis of the declaration being defective or irregular.

Subsection 37A (8) defines the terms 'Access Canberra', the position of 'Head' of Access Canberra, and 'relevant matter' for this section.

SCHEDULE 3 – Other Amendments

Part 3.1 **Legislation Regulation 2003**

Part 3.2 **Nature Conservation Act 2014**

These parts are consequential amendments from the repeal of the Hawkers Act.

Part 3.3 **Public Unleased Land Act 2013**

Clause 3.3 **Section 9A**

Clause 3.4 **Section 41 (1), new example**

These clauses define and include the carrying on of a business of a hawker within the requirements for a permit for the use of unleased public land. The definition includes a person carrying on an itinerant business selling goods or services carried by the person or from a vehicle used by the person.

Clause 3.5 **Section 43 (5)**

This clause establishes that it will not be an offence for a person carrying on of a business of a hawker where they are not 30 minutes at a time in a single location and at least 180 metres away from the sale of similar goods or services at commercial premises.

Clause 3.6 **Section 59 (2)**

This clause extends the maximum period of a permit to three years under the Public Unleased Land Act.

Clause 3.7 **New section 99A**

This clause carries over from the Hawkers Act the strict liability offence for hawkers obstructing the free movement of people or vehicles or endangering the safety of the public.

Where an offence is committed, it is a strict liability offence with a maximum penalty of 30 penalty units.

Clause 3.8 **New part 21**

This part provides for the transitioning of licences under the Hawkers Act to permits under the Public Unleased Land Act. The transitional arrangements are available for three years matching the terms of licences under the Hawkers Act.

Part 3.4 **Workers Compensation Act 1951**

Clause 3.9 **Section 8 (3) (b)**

This clause is a consequential amendment from the omitting section 159.

Clause 3.10 **New section 155A**

This clause requires an employer to notify to the insurer in writing where there is a significant understatement of total wages (more than \$500,000 for a particular period). Notification is required to be provided within 30 days of the employer becoming aware of the incorrect information.

Failure to report is a strict liability offence with a maximum penalty of 50 penalty units.

Clause 3.11 **Section 159**

This removes the requirement for employers to report salary and wage details to insurers on a six-monthly basis. Sections 155, 156, 157, 158 and new section 155A will operate to ensure employers are providing accurate salary and wage details to insurers.

Clause 3.12 **Section 160 (3) (a)**

Consequential amendment from the omitting section 159.

Clause 3.13 **Section 160 (3) (c)**

This amendment allows an insurer to issue a Certificate of Currency for a period of up to 12 months – up from the previous limit of six months.

Clause 3.14 **Section 162 (3) (d)**

Clause 3.15 **Section 163 (1)**

Clause 3.16 **Section 190 (6) (f)**

Clause 3.17 **Section 200A (1) (f)**

Clause 3.18 **Section 202 (1)**

These clauses make consequential amendments to requirements for information for insurers recognising that section 159 has been omitted.