

**2016**

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

**RED TAPE REDUCTION LEGISLATION AMENDMENT BILL 2016**

**EXPLANATORY STATEMENT**

**Presented by  
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Chief Minister**

## RED TAPE REDUCTION LEGISLATION AMENDMENT BILL 2016

This explanatory statement relates to the Red Tape Reduction Legislation Amendment Bill 2016 (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill to understand the policy rationale and the scope of the amendments 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 Bill is supported by stakeholder engagement through a consultative body, the Regulatory Reform Panel; as well as consultation individually with Directorates, agencies and other relevant stakeholders in the ACT community.

### Overview

The Bill seeks to amend the following Acts and Regulations:

1. *University of Canberra Act 1989*
2. *Financial Management Act 1996 (modifications of)*
3. *Gaming Machine Act 2004*
4. *Security Industry Act 2003*
5. *Liquor Act 2010*
6. *Charitable Collections Act 2003*
7. *Agents Act 2003*
8. *Public Unleased Land Act 2013*
9. *Aboriginal and Torres Strait Islander Elected Body Act 2008*
10. *Fair Trading (Motor Vehicle Repair Industry) Act 2010*
11. All Acts requiring the production of statutory declarations (see Appendix A)
12. All Acts requiring complaints to be made in writing as well as signed by the complainant (see Appendix B)

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

- providing support and greater flexibility to the University of Canberra in undertaking significant development;
- streamlining the liquor licensing renewal process;

- reducing the reporting burden on incorporated associations that are also charities;
- easing the administrative pressure on new agent licensees with respect to submitting trust-account details;
- enabling advertising of lotteries approved under the *Lotteries Act 1964* by gaming facilities, including ‘exempt lotteries’;
- removing conflicting provisions regarding licensing for security industry workers;
- modernising fair trading legislation by updating definition of accessories for vehicle sales, and defining high voltage electric-vehicle batteries as integral to the electric-powered car;
- enabling more streamlined digital service delivery by removing requirements in several Acts for the production of statutory declarations; and
- facilitating the public’s access to government by removing requirements from several Acts for complaints to be provided in writing and signed by the complainant.

## **A. Policy Initiatives**

### **1. University of Canberra**

The Bill amends the *University of Canberra Act 1989* to remove a disincentive to third parties considering participating in the formation of a company, or the establishment of a joint venture, with the University of Canberra (UC). The amendments also lessen UC's administrative burden and reflect the university's status as a mature and professional institution. The Bill achieves this through amendments to the University of Canberra Act that see alterations to overly prescriptive provisions related to the content of the memorandum or articles of association of UC-controlled companies, and the submission of reports, returns and statements to the Treasurer.

Secondly, the Bill contains modifications to the *Financial Management Act 1996 (FMA)* in its application to the University of Canberra that simplify the undertaking, by UC, of a range of activities. Under the modified provisions, UC will only have to apply for Treasurer approval of its joint venture and company-related activities where these are significant in nature. Also, automatic approval will be given to such significant events and activities unless notified otherwise within 30 days. These new processes will enable appropriate financial oversight to Government without hindering UC's operations.

The proposed amendments address UC's concerns about unnecessary regulatory burden, without unacceptably changing the risks for the ACT Government in its oversight and responsibility for the financial governance framework of UC.

### **2. Signed Complaints**

The Bill includes amendments to various requirements in legislation regarding complaints to be submitted in writing and signed by the complainant. The majority of ACT legislation does not stipulate the form in which complaints must be made. However, there are several Acts that do so, for example, the *Liquor Act 2010* and the *Construction Occupations (Licensing) Act 2004*. All Acts being amended are shown in Appendix B.

Removing this requirement will facilitate the public's access to government by enabling complaints to be made electronically, thereby providing a simpler and more convenient complaints process. Making it easier for complainants to lodge a complaint will enable greater Government scrutiny and responsiveness concerning possible breaches of the relevant Acts.

### **3. Statutory Declarations**

The Bill includes amendments to streamline legislation for removing the need for a statutory declaration in a variety of instances. For example, a number of Fair Trading and Registrar General application processes require statutory declarations to be completed and witnessed by an authorised person before the application can be accepted. As an example, the *Fair Trading (Motor Vehicle Repair Industry) Act 2010*, the *Charitable Collections Act 2003*, and the *Pawnbrokers Act 1902*, all require a signed statutory declaration to be provided with an application for a replacement licence in the event that it was lost or stolen.

The requirement under the Statutory Declarations Act for statutory declarations to be countersigned by an authorised witness before submission creates an unnecessary administrative burden on the applicant, as authorised witnesses may not be readily available at the point of lodgement. Furthermore, the requirements for authorised witnesses render statutory declarations incompatible with the development of online processing.

Amendments removing legislative requirements for statutory declarations to be completed for occupational licensing applications will streamline the application process and allow applications to be completed and processed in digital format. This will enable the transition to online application processing in line with the objectives of the Simpler Business Licensing initiative.

The statutory declaration will be replaced by a standard declaration relating to the applicant's information. While the penalty for a false or misleading declaration under the Statutory Declarations Act will no longer apply, it will still be an offence under the *Criminal Code 2002* to give false or misleading information to the Territory.

### **4. Agents Trust Accounts**

The Bill includes amendments to the *Agents Act 2003* to reduce administrative pressure on licensed real estate, business, and stock and station agents when establishing a trust account at an authorised deposit-taking institution. Whereas these licensees were required to submit details of these accounts to the Commissioner for Fair Trading within two business days of becoming licensed, the amendments will require the time frame to be seven business days.

This two day period presents significant administrative pressure, particularly on individual licensees who wish to operate their own business as they are involved in the task of setting an agency business up. The seven day window does not compromise consumer protection.

### **5. Charitable Collections**

This Bill amends the *Charitable Collections Act 2003* to reduce the reporting burden on incorporated associations that also hold charitable collection licences by aligning the periods within which they must submit a report to the Director General.

The differences in reporting times under this Act presents an administrative burden on a number of incorporated associations in the ACT that also are licensed to operate charitable collections, as they are required to produce two sets of financial reports with significantly differing reporting timelines. Aligning the reporting period for these licensee groups will enable these associations to synchronise their reporting requirements, negating the need to create two sets of financial reports at varying times.

## **6. Advertising of Approved Lotteries**

The Bill amends the *Gaming Machine Act 2004* to allow approved lotteries, including exempt lotteries, to be advertised on licensed premises – both internally and externally – provided the signage of the lottery does not refer to gaming machines.

It is an offence under section 152 of the Gaming Machine Act to display an external sign advertising gaming machines or promoting a gambling activity on the licensed premises. Restricting external signage is part of a package of harm minimisation strategies to reduce the harm experienced by some people from gaming machines.

The definition of a ‘gambling activity’ includes lotteries and promotions that have been approved under the *Lotteries Act 1964*. This gives rise to the situation where a gaming machine licensee has received approval to advertise a lottery or promotion under the Lotteries Act, but will be committing an offence if this promotion is displayed on external windows or can be seen from outside the premises. However, it will be legal for the gaming machine licensee to advertise the lottery on a billboard a short distance from their premises.

The anomaly between the two Acts is not seen as clear or consistent by licensees.

This is a minor amendment that can be addressed in this Bill.

## **7. Sale of Motor Vehicles**

The Bill amends the *Sale of Motor Vehicles Act 1977* to modernise the definition of ‘accessory’ to include a number of fittings in addition to ‘a car radio, sound-reproducing equipment or an air conditioning unit fitted to the vehicle’.

The Bill also makes provision for the high voltage battery of the electric-powered vehicle (including all-electric-powered vehicle and hybrid-powered vehicle) to be considered an integral part of the vehicle and therefore not an accessory for the purposes of the warranty attached to the sale of the vehicle. This type of battery may represent a significant cost to consumers.

## **8. Security Industry**

The Bill amends the *Security Industry Act 2003* to remove the requirement for a security employee applicant to be employed by a master licence holder in order to become eligible to receive a security license. This amendment therefore eliminates an circular requirement in which an individual cannot be employed by a master security license holder unless he already holds a security license, and simultaneously cannot obtain a security license unless he is already employed by a master security license holder. The amendment addresses this issue, providing a simpler application process for those wishing to enter into the security industry in the ACT.

To ensure that security employee licence holders do not exceed their licence conditions, there is an additional amendment to include a provision to state that employees must work for a master licence holder to enable action to be taken for breaches.

## **9. Liquor License Renewal**

The Bill amends the *Liquor Act 2010* (the Liquor Act) so that a renewal application for a liquor license can be lodged at any point before the current licence expires. The current licence will continue in force until a decision is made on the renewal application.

Prior to this amendment, the Liquor Act required an application for renewal of a licence to be lodged at least 30 days before the licence expires. This mandatory deadline was overly prescriptive given that the existing legislation also already provides for a licence to remain in force until a decision is made on the renewal application.

The Commissioner for Fair Trading currently has the power to extend the time for making an application for renewal, though the applicant must apply in writing for this to be considered. This imposes an administrative burden on both the applicant and the regulator that would be unnecessary if the 30 day deadline for renewal applications is removed.

## **10. Consequential Amendments and Technical Corrections**

The Bill makes a minor amendment to the *Public Unleased Land Act 2013* to clarify that renewals of public unleased land permits can be granted for a maximum of three years. This was a technical oversight in the drafting of amendments as a result of the *Red Tape Reduction Legislation Amendment Act 2015* (the Amendment Act).

As a consequence of amendments to the *Electoral Act 1992* that formed part of the Red Tape Reduction Legislation Amendment Act, a consequential amendment to the *Aboriginal and Torres Strait Islander Elected Body Act 2008* is required.

An amendment to the *Fair Trading (Motor Vehicle Repair Industry) Act 2010* will remove the requirement for motor vehicle repairers to display a licence in line with previous amendments applicable to pawnbrokers, second-hand dealers and motor vehicle sales businesses.

### **Human Rights**

The Human Rights Unit of the Justice and Community Safety Directorate deems the Cabinet Copy of the Red Tape Reduction Legislation Amendment Bill 2016 compatible with the *Human Rights Act 2004*.



## CLAUSE NOTES

### **Clause 1                      Name of Act**

This Act is the *Red Tape Reduction Legislation Amendment Act 2016*.

### **Clause 2                      Commencement**

This Act commences on the 14<sup>th</sup> 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 – schs 1-4**

This Act amends the following legislation:

- *Aboriginal and Torres Strait Islander Elected Body Act 2008*
- *ACT Teacher Quality Institute Act 2010*
- *Adoption Regulation 1993*
- *Agents Act 2003*
- *Architects Act 2004*
- *Associations Incorporation Act 1991*
- *Births, Deaths and Marriages Registration Act 1997*
- *Building Act 2004*
- *Casino Control Act 2006*
- *Cemeteries and Crematoria Regulation 2003*
- *Charitable Collections Act 2003*
- *Children and Young People Act 2008*
- *Civil Law (Wrongs) Act 2002*
- *Civil Unions Act 2012*
- *Community Title Act 2001*
- *Construction Occupations (Licensing) Act 2004*
- *Cooperatives Act 2002*
- *Cooperatives Regulation 2003*
- *Dangerous Substances Act 2004*
- *Domestic Relationships Act 1994*

- *Duties Act 1999*
- *Electoral Act 1992*
- *Environment Protection Act 1997*
- *Fair Trading (Motor Vehicle Repair Industry) Act 2010*
- *Financial Management ACT 1986*
- *Firearms Act 1996*
- *Gambling and Racing Control Act 1999*
- *Gaming Machine Act 2004*
- *Land Titles Act 1925*
- *Legal Profession Act 2006*
- *Liquor Act 2010*
- *Magistrates Court Act 1930*
- *Medicines, Poisons and Therapeutic Goods Act 2008*
- *Nature Conservation Act 2014*
- *Pawnbrokers Act 1902*
- *Payroll Tax Act 2011*
- *Planning and Development Act 2007*
- *Public Health Regulation 2000*
- *Public Trustee Act 1985*
- *Public Unleased Land Act 2013*
- *Racing Act 1999*
- *Registration of Deeds Act 1957*
- *Road Transport (Public Passenger Services) Regulation 2002*
- *Road Transport (Third-Party Insurance) Act 2008*
- *Sale of Motor Vehicles Act 1977*
- *Security Act 2003*
- *Totalisator Act 2014*
- *Trustee Act 1925*
- *Unclaimed Money Act 1950*
- *University of Canberra Act 1989*
- *Unit Titles Act 2001*
- *Veterinary Surgeons Act 2015*
- *Veterinary Surgeons Regulation 2015*

- *Work Health and Safety Act 2011*
- *Workers Compensation Act 1951*

## **SCHEDULE 1 – University of Canberra Act 1989**

<b>Clause 1.1</b>	<b>Section 35 Heading</b>
<b>Clause 1.2</b>	<b>New section 35 (2A)</b>
<b>Clause 1.3</b>	<b>Section 37 (1)</b>
<b>Clause 1.4</b>	<b>Section 37 (3)</b>
<b>Clause 1.5</b>	<b>Section 38</b>

These clauses amend the legislation to ease the burden of establishing a corporation or joint venture in which UC has a controlling interest. The amendments remove certain reporting requirements placed on UC with respect to such corporations and joint ventures, such as the provision of reports to the Treasurer that have already been lodged with the Australian Securities and Investments Commission (ASIC). It also removes the requirement of submitting summaries of operations and financial statements as part of UC's annual report.

Instead, the Minister or Treasurer has the discretion to ask UC for financial information about the corporation or joint venture that is otherwise not publicly available where two conditions are met – namely: where the provision of the information is necessary to protect the Territory's interests, and the information relates to a matter of significance.

### **Clause 1.6      New schedule 2**

The heading in the Act has been revised to be consistent with current drafting practice.

### **Clause 2.1      Section 98      (Modification of Financial Management Act 1996 – Limitations on authorities forming corporations etc)**

This clause amends section 98 of the Financial Management Act 1996 (FMA), as it applies to UC. Under this modified section 98, UC will now only be required to seek Treasurer approval to the purchase of, or subscription for, securities in a corporation, and to the formation of a corporation, where this is considered to be a significant activity or event.

The amended section 98 also provides that, where the Treasurer has not decided whether to approve the relevant event or activity within 30 days after receiving notice about it, the Treasurer is taken to have given the approval.

The section further clarifies that section 58 of the FMA (which has been amended in its application to UC under the University of Canberra Act) does not apply to the activities listed in section 98(1), whether or not they are significant activities or events.

**Clause 2.2      Section 99      (Modification of Financial Management Act 1996 – Limitations on authorities taking part in joint ventures and trusts)**

Similarly to clause 2.1 (with respect to section 98 of the FMA), this clause amends section 99 of the FMA, as it applies to UC.

Under this modified section 99, UC will now only be required to seek Treasurer approval to a joint venture or trust where the joint venture or trust is considered to be a significant activity or event.

The amended section 99 also provides that, where the Treasurer has not decided whether to approve UC's participation in the joint venture or trust within 30 days after receiving notice about it, the Treasurer is taken to have given the approval.

The section further clarifies that section 58 of the FMA does not apply to the activities listed in section 99(1), whether or not they are significant activities or events.

**SCHEDULE 2 – Amendments relating to signed complaints**

**Part 2.1      Architects Act 2004**

**Clause 2.1      Section 35 (1) (b) and (c)**

**Part 2.2      Children and Young People Act 2008**

**Clause 2.2      Section 352H (2) (b) and (c)**

**Part 2.3      Construction Occupations (Licensing) Act 2004**

**Clause 2.3      Section 118 (1) (b) and (c)**

**Part 2.4      Firearms Act 1996**

**Clause 2.4      Section 266 (2) (a)**

**Part 2.5      Liquor Act 2010**

**Clause 2.5      Section 177 (1) (b) and (c)**

**Part 2.6      Planning and Development Act 2007**

**Clause 2.6      Section 341 (1) (b) and (c)**

**Part 2.7      Veterinary Surgeons Act 2015**

**Clause 2.7      Section 53 (1) (b)**

**Clause 2.8      Section 53 (3)**

The clauses in Schedule 2 remove the requirement across various Acts for a signature on a complaint.

**Schedule 3      Amendments relating to statutory declarations**

**Parts 3.1 to 3.50**

**Clauses 3.1 to 3.228**

These clauses remove the requirement for a statutory declaration and substitute the requirement for a 'statement'. A statement can be produced without a signature of the individual producing the statement.

Where applicable, an amendment is inserted stating that it is an offence to make a false statement, give false or misleading information or produce a false or misleading document.

Some clauses make amendments to require certain additional information under certain circumstances.

**Schedule 4      Other Amendments**

**Part 4.1      Aboriginal and Torres Strait Islanders Elected Body Act 2008**

**Clause 4.1      Schedule 1, modification 1.74**

This clause makes a minor technical amendment to part 1.5 of Schedule 1 of the *Aboriginal and Torres Strait Islanders Elected Body Act 2008* as a consequence to an amendment in the Amendment Act that made an unnecessary numbering modification to the Electoral Act 1992.

**Part 4.2      Agents Act 2003**

The Bill amends the *Agents Act 2003* to increase from 2 business days to 7 business days the time by which licensed real estate, business, and stock and station agents, after becoming licensed, must submit details of trust accounts to the Commissioner for Fair Trading.

**Part 4.3      Charitable Collections Act 2003**

#### **Clause 4.4      Section 48 (3), except examples and notes**

This clause amends the timelines by which incorporated associations must submit a report to the Director General for a charitable collection. For a charitable collection license lasting 1 year or less, it is 120 days after the license ends. For a charitable collection license lasting longer than 1 year, it is 120 days after the license ends, or within 120 days after the end of each 12-month period for which the license is in force.

#### **Part 4.4          Fair Trading (Motor Vehicle Repair Industry) Act 2010**

##### **Clause 4.5      Section 29**

This clause amends the *Fair Trading (Motor Vehicle Repair Industry) Act 2010* to remove the provision in which a license or copy of a license is displayed in a prominent place at the premises where business is carried on. This provision is considered an unnecessary burden.

#### **Part 4.5          Gaming Machine Act 2004**

##### **Clause 4.6      Section 152 (3), new definition of *advertising***

##### **Clause 4.7      Section 152 (3), definition of *gambling activity***

These clauses amend the *Gaming Machine Act 2004* by adding a definition of advertising to clarify that it is still an offence to have external signs advertising gaming machines or promoting a gambling activity, even if the advertisement is contained within another ad promoting something other than gambling and gaming activities. This, however, does not include advertising lotteries, including exempt lotteries, which is permitted. The definition of a gambling activity is amended in order that approved lotteries may be advertised inside or outside of a licensed premises.

#### **Part 4.6          Liquor Act 2010**

##### **Clause 4.8      Section 42 (2) (b)**

This amendment omits the requirement in the *Liquor Act 2010* that a renewal application is lodged 30 days before the current liquor license expires.

#### **Part 4.7          Public Unleased Land Act 2013**

##### **Clause 4.9      Section 73 (1)**

The Bill extends from 2 years to 3 years the length of time during which a renewed public unleased land permit may be held. This is a technical correction to drafting on the

Amendment Act.

**Part 4.8      Sale of Motor Vehicles Act 1977**

**Clause 4.10    Section 25 (2) (a) (i)**

This amendment excludes a high voltage battery used in a motor vehicle powered by electricity (either all-electric-powered or hybrid-powered) from the definition of an accessory in the *Sale of Motor Vehicles Act 1977*. As a consequence of this, the high voltage battery used in a motor vehicle powered by electricity falls under the warranty of the electric vehicle sold.

**Clause 4.11    Section 25 (2) (a) (i), new example**

This clause provides a new example of a battery used to power a motor vehicle with an electric motor.

**Clause 4.12    Dictionary, definition of *accessory***

This amendment introduces new fittings to be defined as ‘accessories’ for the purpose of exclusion from the warranty of a vehicle sold in the ACT. The expanded list reflects the evolution and expansion in the type of vehicle accessories, such as computerised navigation systems and MP3 and MP4 players and docks.

**Part 4.9      Security Industry Act 2003**

**Clause 4.13    Section 17 (5)**

**Clause 4.14    New Section 17 (5A)**

**Clause 4.15    Section 24 (1)**

These clauses remove the requirement in the *Security Industry Act 2003* that a person already be an employee of a master security license holder in order to obtain a security license.

**Part 4.10      Security Industry Regulation 2003**

**Clause 4.16    New section 9C**

This amendment requires that it is a condition of the security license holder that, to carry out security activity, he or she be employed by a master security license holder. Also, contravention of this requirement is a ground for occupational discipline and an offense.

#### **Clause 4.17    Dictionary, note 3**

This clause adds into the Regulation’s Dictionary the terms *employee license* and *master temporary visitor license*, and explains that they hold the same meaning as they do the in the Security Industry Act 2003.



**Appendix A – All Acts and legislative instruments with reference that require the production of statutory declarations**

1. *ACT Teacher Quality Institute Act 2010*
2. *Adoption Regulation 1993*
3. *Agents Act 2003*
4. *Architects Act 2004*
5. *Associations Incorporation Act 1991*
6. *Births, Deaths and Marriages Registration Act 1997*
7. *Building Act 2004*
8. *Casino Control Act 2006*
9. *Cemeteries and Crematoria Regulation 2003*
10. *Charitable Collections Act 2003*
11. *Children and Young People Act 2008*
12. *Civil Law (Wrongs) Act 2002*
13. *Civil Unions Act 2012*
14. *Community Title Act 2001*
15. *Construction Occupations (Licensing) Act 2004*
16. *Cooperatives Act 2002*
17. *Cooperatives Regulation 2003*
18. *Dangerous Substances Act 2004*
19. *Domestic Relationships Act 1994*
20. *Duties Act 1999*
21. *Electoral Act 1992*
22. *Environment Protection Act 1997*
23. *Fair Trading (Motor Vehicle Repair Industry) Act 2010*
24. *Gambling and Racing Control Act 1999*
25. *Gaming Machine Act 2004*
26. *Land Titles Act 1925*
27. *Legal Profession Act 2006*
28. *Liquor Act 2010*
29. *Magistrates Court Act 1930*
30. *Medicines, Poisons and Therapeutic Goods Act 2008*

31. *Nature Conservation Act 2014*
32. *Pawnbrokers Act 1902*
33. *Payroll Tax Act 2011*
34. *Planning and Development Act 2007*
35. *Public Health Regulation 2000*
36. *Public Trustee and Guardian Act 1985*
37. *Public Unleased Land Act 2013*
38. *Racing Act 1999*
39. *Registration of Deeds Act 1957*
40. *Road Transport (Public Passenger Services) Regulation 2002*
41. *Road Transport (Third-Party Insurance) Act 2008*
42. *Sale of Motor Vehicles Act 1977*
43. *Totalisator Act 2014*
44. *Trustee Act 1925*
45. *Unclaimed Money Act 1950*
46. *Unit Titles Act 2001*
47. *Veterinary Surgeons Act 2015*
48. *Veterinary Surgeons Regulation 2015*
49. *Work Health and Safety Act 2011*
50. *Workers Compensation Act 1951*

**Appendix B – All Acts requiring that complaints be made in writing as well as signed by the complainant**

1. *Architects Act 2004*
2. *Children and Young People Act 2008*
3. *Construction Occupations (Licensing) Act 2004*
4. *Firearms Act 1996*
5. *Liquor Act 2010*
6. *Planning and Development Act 2007*
7. *Veterinary Surgeons Act 2015*