

2016

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

STATUTE LAW AMENDMENT BILL 2016

EXPLANATORY STATEMENT

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Background

The object of this bill is to continue to enhance the ACT's statute book to ensure that it is of the highest standard. The bill does this by amending Acts and regulations for statute law revision purposes only.

This bill forms part of the technical amendments program for ACT legislation. Under guidelines for the technical amendments program approved by the government, the essential criteria for the inclusion of amendments in the bill are that the amendments are minor or technical and non-controversial.

The development of a technical amendments program for ACT legislation was in response to the need for greater flexibility in the drafting of amendments for statute law revision purposes and to minimise costs associated with keeping ACT legislation up to date. Statute law amendment bills are an important part of maintaining and enhancing the standard of ACT law. They enable legislative amendments and repeals to be made that, taken alone, would generally be insufficiently important to justify separate legislation. The amendments are also inappropriate to make as editorial amendments under the *Legislation Act 2001*, chapter 11 (which provides for the republication of Acts and statutory instruments). However, the cumulative effect of the amendments and repeals made through a technical amendments program and statute law amendment bills can have a significant impact on the ACT statute book and the overall quality of ACT law.

The ACT statute book is all ACT legislation taken as a body of law. A statute book that is well maintained greatly enhances access to legislation by making it easier to find in an up-to-date form and easier to read and understand. Statute law amendment bills are an extremely useful vehicle for assisting the ongoing process of modernising the statute book. Laws need to be regularly kept up to date to reflect continuous technological and societal change.

The bill contains 3 schedules and has been structured to assist the transparency of the amendments made by it.

When enacted, this bill will help to improve the quality of the ACT's statute book by making it simpler, more consistent and more coherent, and will assist in keeping it up to date.

Clause 1 — Name of Act

This clause provides for the bill's name.

Clause 2 — Commencement

This clause provides that the Bill commences 14 days after the day it is notified under the *Legislation Act 2001*. This will enable the Parliamentary Counsel's Office to have up-to-date republications of the affected legislation ready for the legislation register on the day the amendments commence.

Clause 3 — Notes

This clause confirms that an explanatory note in the bill does not form part of the Act when it is enacted.

Clause 4 — Purpose of Act

This clause states the bill's purpose.

Clause 5 — Legislation amended—schs 1-3

This clause gives effect to the amendments made by schedules 1, 2 and 3.

Schedule 1 — Minor amendments

Schedule 1 provides for minor, non-controversial amendments initiated by government directorates and agencies. It contains amendments of the *Annual Reports (Government Agencies) Act 2004*, the *Financial Management Act 1996*, the *Lifetime Care and Support (Catastrophic Injuries) Act 2014* and the *Public Sector Management Act 1994*. Each amendment is explained in an explanatory note to the amendment.

Annual Reports (Government Agencies) Act 2004

The *Annual Reports (Government Agencies) Act 2004* (the AR(GA) Act) is amended to provide that Territory instrumentalities, and certain other bodies established under an Act and declared by the Minister (a declared body), must prepare annual reports. This Act was amended consequentially by the *Public Sector Management Amendment Act 2016*. Before the consequential amendments, the AR(GA) Act required these entities to prepare annual reports by including them in the definition of

public authority. Following the amendments, this term was replaced with **public sector body** and located in the *Legislation Act 2001*. However, the term did not include Territory instrumentalities or declared bodies. As there was no intention to reduce the reporting requirements for these entities, the AR(GA) Act is amended to reinstate reporting requirements for Territory instrumentalities and declared bodies.

Financial Management Act 1996

The *Financial Management Act 1996* (the FMA) is amended in schedule 1 to replace references to ‘generally accepted accounting principles’ with ‘accounting standards’. The dictionary definition of **generally accepted accounting principles** is omitted and a new definition of **accounting standards** is included in the dictionary. The new definition is based on the definition of **accounting standards** in the *Public Governance, Performance and Accountability Act 2013* (Cwlth), section 8, and is generally consistent with the definition of that term in equivalent legislation in other Australian jurisdictions. It is also consistent with the original intent of the language in the FMA and how it is interpreted and implemented in the ACT.

Lifetime Care and Support (Catastrophic Injuries) Act 2014

Amendments are made to the *Lifetime Care and Support (Catastrophic Injuries) Act 2014* (the LTCS Act), section 94 (1) to include the nominal defendant in the list of entities with whom the LTCS commissioner may exchange information about the treatment and care needs of a participant in the LTCS scheme. Other entities with whom the LTCS commissioner may exchange information include a licensed insurer under the *Road Transport (Third-Party Insurance) Act 2008*, a workers compensation insurer and the Default Insurance Fund under the *Workers Compensation Act 1951*, a hospital where the participant is receiving treatment and care for the participant’s injury, the NSW LCS authority and the CTP regulator.

The nominal defendant deals with compulsory third party claims in which the person at fault in a motor accident is uninsured or not identified, or if an unregistered vehicle permit is in force for the motor vehicle involved in the motor accident. Under section 16

of the LTCS Act, both the nominal defendant and a licensed insurer may lodge an LTCS application for an injured person. Therefore, the need for the LTCS commissioner to exchange information with the nominal defendant about a participant's treatment and care needs is the same as the need to exchange information with licensed insurers.

Although the LTCS commissioner may, under section 94 (1) (g), approve the nominal defendant as a person with whom information may be exchanged, for reasons of transparency and clarity for all parties who may be involved in an application under the LTCS Act, the Act, section 94 (1) is amended to include the nominal defendant.

The dictionary definition of **LTCS scheme** is amended to include people who have suffered a catastrophic injury arising out of, or in the course of, their employment. This is consequential on an amendment of section 7 (Purpose of Act) by the *Lifetime Care and Support (Catastrophic Injuries) Amendment Act 2016* to extend the indemnity insurance scheme provided by the Act to people who have suffered a catastrophic injury arising out of, or in the course of, their employment.

Public Sector Management Act 1994

The *Public Sector Management Act 1994* (the PSMA) is amended to include provisions to the same effect as certain provisions that were omitted by amendments under the *Public Sector Management Amendment Act 2016* (the PSM Amendment Act).

Under the *Legislative Assembly (Member's Staff) Act 1989*, as in force immediately before the commencement of the PSM Amendment Act, a returning Legislative Assembly Member's Staff (LAMS) officer could ask for a determination of the officer's classification and salary on returning to the public service. A returning LAMS officer means an officer who, while an officer, was employed under the *Legislative Assembly (Members' Staff) Act 1989* and has returned, or will return to work in the public service. New section 65A is added in the PSMA to allow a returning LAMS officer to ask for a determination of the officer's classification and salary on returning to the public service.

The PSMA, section 152 gives statutory office-holders and chief executive officers who employ staff under the PSMA certain management powers of the head of service under the PSMA. These employers were able to exercise the head of service's power to employ executives under the PSMA before amendments by the PSM Amendment Act. The definition of **management provision** in Section 152 (4) is amended to refer to part 4 of the PSMA, to give these employers the head of service's power to employ executives under the PSMA.

Similarly, under the PSMA, as in force immediately before the commencement of the PSM Amendment Act, Calvary Health Care ACT Limited was able to exercise certain powers of the head of service in relation to staff employed under the PSMA to work in the Calvary public hospital. New division 8.3 gives Calvary Health Care ACT Limited certain management powers of the head of service under the PSMA in relation to public hospital staff.

Schedule 2 — Structural amendments of Legislation Act

Schedule 2 is reserved for minor, non-controversial amendments of the *Legislation Act 2001* initiated by the Parliamentary Counsel's Office. These amendments reflect the process of continuous review and improvement of the operation of the Legislation Act.

Schedule 2 amends the Legislation Act to omit a redundant definition. The definition of **Lake Ginninderra**, in the dictionary, part 1, refers to the definition of the term in the *Lakes Act 1976*. However, the definition and related amendments were omitted from that Act by the *Planning, Building and Environment Legislation Amendment Act 2013 (No 2)*. This enabled Lake Ginninderra to be declared as a lake by notifiable instrument under the Lakes Act, section 5, consistent with the practice of declaring an area as a lake in the Territory, instead of describing its location using geographical bearings.

The Legislation Act, dictionary, part 1 is also amended by omitting the definition of ***CrimTrac*** and inserting a new definition of ***Australian Criminal Intelligence Commission***, which is the new entity created following the merger of the Australian Crime Commission and CrimTrac on 1 July 2016. The Australian Criminal Intelligence Commission is established under the *Australian Crime Commission Act 2002* (Cwlth).

A minor amendment is also made to the Legislation Act, section 38 to update language by omitting unnecessary words in line with current legislative drafting practice.

Schedule 3 — Technical amendments

Schedule 3 contains minor or technical amendments of legislation initiated by the Parliamentary Counsel's Office. Each amendment is explained in an explanatory note in the schedule.

The amendments include the correction of minor errors, updating language, adding notes, improving syntax, omitting redundant provisions and other minor changes to update or improve the form of legislation. In particular, various pieces of legislation are amended to reflect the change of entity from CrimTrac to the Australian Criminal Intelligence Commission.