

2018

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

RED TAPE REDUCTION LEGISLATION AMENDMENT BILL 2018

EXPLANATORY STATEMENT

**Presented by
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RED TAPE REDUCTION LEGISLATION AMENDMENT BILL 2018

This explanatory statement relates to the *Red Tape Reduction Legislation Amendment Bill 2018* (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 regularly review the ACT's regulatory settings so that they continue to be relevant and to address 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 with individual Directorates, agencies and other relevant stakeholders in the ACT community.

Overview

The Bill seeks to amend the following Acts, Regulations and Instruments:

- *Associations Incorporation Act 1991*;
- *Associations Incorporation Regulation 1991*;
- *Traders (Licensing) Act 2016*;
- *Traders (Licensing) Regulation 2017*;
- *Sale of Motor Vehicles Act 1977*;
- *Land Titles Act 1925*;
- *Nature Conservation Act 2014*;
- *Planning and Development Act 2007*;
- *Liquor Act 2010*;
- *Liquor Regulation 2010*;
- *Tobacco and other Smoking Products Act 1927*;
- *Tobacco and Other Smoking Products Regulation 2018*;
- *Casino Control Act 2006*;
- *Casino Control Regulation 2006*; and
- All Acts with references to the compulsory use of outdated communication methods.

The amendments address outdated requirements and reduce red tape by addressing duplication and providing greater clarity for ACT businesses, individuals and community organisations in achieving regulatory outcomes.

Human Rights

This Bill engages a number of rights under the *Human Rights Act 2004* (HRA) and have all been engaged through amendments to the *Associations Incorporation Act 1991*. These rights include:

- Section 12: Privacy and reputation – there is a limited exchange of personal information between members of associated incorporations, however, there are provisions in place with the Bill which strengthen the right to privacy through appropriate procedure for handling and dealing with personal information.
- Section 21: The right to fair trial – is engaged through offence provisions for conduct related to conflict of interest. These offence provisions are deemed proportionate to the policy objectives they set to achieve.
- Section 8: Recognition and equality before the law – an amendment is made to ensure that language in section 64 (2) (e) is non-discriminatory.

The right to recognition and equality before the law

Section 8 of the HRA provides that “everyone has the right to equal and effective protection against discrimination on any ground”. The Bill supports this right, including through its amendment to section 64 (2) (e) of the *Associations Incorporation Act 1991*. Clause 29 of this Bill replaces “suffers from mental or physical incapacity”; with “is not physically or mentally fit to exercise the functions of office”. Previously, the language used in this provision could be viewed as discriminatory towards persons with disabilities. Therefore, this amendment clarifies that a person’s physical or mental fitness for office is directly related to their ability to carry out the functions of the office.

Relevant factors for determining reasonable limits on human rights

Section 28 of the HRA provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Section 28(2) of the HRA provides that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including:

- a) The nature of the right affected;
- b) The importance of the purpose of the limitation;
- c) The nature and extent of the limitation;

- d) The relationship between the limitation and its purpose; and
- e) Any less restrictive means reasonable available to achieve the purpose the limitation seeks to achieve.

a) Nature of the rights affected

The right to privacy

The right to privacy under section 12 of the HRA protects people in the ACT from unlawful or arbitrary interference with their privacy. The term arbitrary interference in the right to privacy can extend to lawful interference, where interference may be lawful, but is unreasonable, unnecessary and the degree of interference is not proportionate to the need. This means that even lawful interference should be in accordance with the provisions, aims and objectives of the HRA and should be reasonable in the particular circumstances.

The legislative amendments to the *Associations Incorporation Act 1991* engage the right to privacy and reputation under section 12(a) of the HRA. There is a limited exchange of personal information between members of associated incorporations, however, there are provisions in place with the Bill which strengthen the right to privacy through appropriate procedure for handling and dealing with personal information.

The right to fair trial

Offences related to amendments in the Bill include offences for:

- Failure to disclose material personal interest (section 65, *Associations Incorporation Act 1991*); and
- Member present at a committee meeting and/or voting on a matter that the member has a material personal interest being considered at the committee meeting (section 65A, *Associations Incorporation Act 1991*).

These may be seen as engaging rights under the HRA in relation to criminal proceedings (presumption of innocence until proven guilty). Section 21(1) of the HRA provides that everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law.

b) Importance of the purpose of the limitation

Compliance with the provisions of the Bill is important to ensure the integrity of the regulatory framework for incorporated associations. The provisions in the Bill sit within a regulatory context and people and organisations who undertake activities in relation to incorporated associations will be aware of their responsibilities and obligations in relation to the *Associations Incorporation Act 1991*.

Right to privacy

The importance of the purpose of the limitation on the right to privacy is to ensure the appropriate management of documents and exchange of information needed for the governance incorporated associations. Personal contact details of members are required so that associations can readily communicate with their members effectively, while this may be seen as a limitation on the right to privacy, it is requirement for associations to keep these details confidential.

Right to fair trial

The limitation on rights to fair trial are important as it will make it clear that committee members cannot make improper use of their position or gain advantage for themselves or another person that is not in the best interest of the association.

c) Nature and extent of the limitation

The right to privacy

The proposed amendments in the Bill seek to strengthen the right to privacy by including provisions related to the protection of personal information for:

- Register of members (section 67) – defines what information is kept in the register of members;
- Inspection of register of members (section 67A) – stipulates that a committee must refuse a request to inspect the register of members to the extent that it would allow the member to access any personal information restricted under section 67B; and
- Restriction of access to personal information (section 67B) – allows a member of an incorporated association to restrict access to personal information of the member recorded in the register of members.

These provisions provide for a limited exchange of the personal information associated with being a member of an incorporated association. The amendments seek to limit the purpose for which this information can be used and to address the limitation on the right to privacy.

It should also be noted that documents lodged with the registrar-general, specifically within section 13A, are expected to be not available to the public. It is reasonably expected that any document lodged with the registrar-general relates to the governance and management of an associated incorporation (i.e. financial reports, committee meeting minutes) and will not contain any personal information (with the exception of documents lodged within the register of members). The manner in which the registrar-general keeps and uses this information provides protection for the rights to privacy of members listed in the register.

The right to fair trial

The offences arise in the regulatory context where the sanction of criminal penalties is justified by outcomes such as public safety, consumer confidence and ensuring that regulatory schemes are observed. The offences also arise in a context where defendants can reasonably be expected to know the requirements of the law. It is incumbent on committee members and members of incorporated associations to know and understand their regulatory requirements under the law.

The penalties for offences are within the normal range for these offences.

- The penalty for an offence under the amended section 65 – Disclosure of material personal interest, *Associations Incorporation Act 1991*, is held at a maximum 20 penalty units.
- The penalty for an offence under the amended section 65A – Matter on which committee member has material personal interest, *Associations Incorporation Act 1991*, is held at a maximum of 20 penalty units.

d) Relationship between the limitation and its purpose

The right to privacy

The purpose of the amendments in Section 13A of the *Associations Incorporation Act 1991* is necessary to clarify to members how information and documentation is managed by associations.

The right to fair trial

The Government considers that the offences contained in this Bill are relevant to the policy objectives of minimising the risk of harm to the community, which is demonstrably justifiable and reasonable. Applying offences to provisions within the Bill can be considered a reasonable limit set by law that will assist in achieving the policy objectives. 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.

The rationale is that persons who are members of a committee of an incorporated association would be aware of their duties and obligations to act with due care and diligence and to not gain material personal benefit.

A member of an association who is accessing non-public information held by an incorporated association would be aware of the reasonable expectation of privacy and that the use of personal information would be limited to use for communication directly relevant to the association.

e) Less restrictive means

It is not considered that there are any less restrictive means to achieve the purpose of the reforms.

Summary of amendments

Incorporated associations in the ACT

The Bill amends the *Associations Incorporation Act 1991* to clarify and modernise the regulatory requirements for associations, bringing the ACT's regulatory framework for associations more in line with other jurisdictions and the national regulatory framework for charities.

This Bill amends the current definition of pecuniary gain to clarify that an association is not acting for financial benefit simply because it engages in trade. This amendment does not change the current obligation on an association to only act in accordance with its objects and that members cannot benefit financially. The purpose of this amendment is to clarify the restrictions on trade and ensure the focus is on the association's purpose and governance, rather than the specific activity of trading which may be beneficial in furthering the association's purpose and thus providing further community benefits.

The Bill includes several amendments to reflect changes in how information is held and used since the Act was introduced. The Bill updates provisions in relation to requesting documents from the Registrar-General to reflect that information is now held electronically. References to addresses have also been updated to contact details to provide for email and other forms of contacting individuals. The Act will also be amended to provide an alternative to the use of a common seal, reflecting contemporary practices.

The Bill further streamlines reporting requirements for charities registered with the Australian Charities and Not-for-profit Commission (ACNC). While incorporated associations that are charities registered with the ACNC will still require a public officer located in the ACT, they will be exempted from having to report these changes directly to the ACT registrar-general.

The Bill seeks to provide greater clarity on governance matters for associations by including matters which currently are not in the *Associations Incorporation Act 1991* or by updating existing provisions. These include:

- A new provision to clarify process for resignation by a committee member;
- Updating the existing requirements on disclosure of interest in a contract by a member of a committee to provide a more comprehensive requirement for the disclosure of material personal interest;
- A requirement for associations to have dispute resolution procedures;
- New provisions outlining the duties of members of a Committee;

- Processes for managing access to information, including protections for privacy and improper use; and
- Clarifying that a person’s physical or mental fitness for office is directly related to their ability to carry out the functions of the office.

The inclusion of the duties of committee members makes it clear that committee members cannot make improper use of their position or gain advantage for themselves or another person that is not in the best interests of the association. While these are current obligations, it is considered beneficial to include them in the Act.

Currently, Part 5 (Accounts, Audit and Annual Returns) requires organisations to lodge audited financial statements within six months from the end of each financial year of the association with the registrar-general. ACT organisations registered with the ACNC are exempt from all of Part 5 of the *Associations Incorporation Act 1991* – there is no change to this exemption. Currently, the requirements for submitting audited financial statements are based on the size of the organisation with the different tiers prescribed in regulation.

The Bill replaces Part V with a new Part V (Recording keeping and reporting) that now includes the revenue thresholds, which are currently prescribed in regulation, to determine the size of an association for reporting purposes. The amendments also simplify the criteria used to determine reporting requirements by making annual revenue the sole criteria for determining a size of an organisation. The Bill includes a new provision that enables associations to apply for an exemption if a one-off change in annual revenue in one year places them in a different category. These amendments will make it clearer and simpler for associations to plan for and understand their reporting obligations.

The Bill includes amendments to reduce red tape for associations by allowing associations with annual revenue between \$400,000 and \$1 million to have the option of having their financial statements professionally reviewed as an alternative to an audit. This brings the requirement for medium-sized association in line with similar sized organisations registered with the ACNC. The Bill also expands the types of qualifications for an auditor, providing greater flexibility for incorporated associations in meeting regulatory requirements.

De-regulation of car market operators

The Bill removes references to car market operators from the *Traders (Licensing) Act 2016* and the *Sale of Motor Vehicles Act 1977*. A car market operator provides the land on which licensed second-hand motor vehicle dealers carry out business. Car market operators have ceased operating in the ACT for some time, with the advent of online second-hand car market websites and other means making it simpler for individuals to privately sell and exchange second-hand vehicles.

There are currently no car market operators licensed in the ACT with the last active car market operator licence expiring on 30 November 2011.

Removing references to obsolete processes and procedures within the *Land Titles Act 1925*

The Bill amends the *Land Titles Act 1925* (the LTA) by removing references to obsolete processes and procedures that may restrict the effectiveness of new map and plan submission systems and potentially confuse customers. This includes the removal of requirements for notices and applications made under the LTA to be published in Commonwealth and London Gazette.

These amendments will provide more efficient processes for industry by removing the requirement for maps and plans to be submitted, amended or viewed in person.

Reducing red tape and improving administrative processes within the *Nature Conservation Act 2014*

The Bill amends the *Nature Conservation Act 2014* to reduce duplication and clarify roles and responsibilities in relation to the listing of threatened species and the provision of conservation advices. Work to align the ACT lists with those of the Australian Government has identified areas of the Act which are either duplicated (listing of key threatened species) or could be further streamlined (conservation advices). Amending provisions relating to conservation advice will also streamline the decision making process to one Ministerial decision (still based on the advice of the scientific committee) without any loss in transparency.

Improving administrative processes within the *Planning and Development Act 2007*

The Bill amends the *Planning and Development Act 2007* (PADA) to allow the Minister, rather than the Executive, to give notice of the Executive's decision of whether or not to review the Planning Strategy, which is a requirement of Chapter 6 of the Act. The PADA also requires the Executive to consider whether the Planning Strategy needs to be reviewed, at least once every five years.

Transferring the notice requirement from the Executive to the Minister will streamline an administrative process in the PADA by removing the need for a second Minister (acting as the Executive) to sign the notification. The notice will still be required to be placed on the Legislation Register as a notifiable instrument.

Facilitation of alternative forms of authorised identification for the purchase of alcohol and tobacco products and entry into ACT licenced venues

The Bill amends the following Acts to facilitate the introduction of authorised alternative systems of identification:

- *Liquor Act 2010*;
- *Tobacco and Other Smoking Products Act 1927*; and
- *Casino Control 2006*.

Legislation will be amended to expand the definitions of identification document to include a further option of a form of identification to be prescribed in regulation. New subordinate legislation would provide for the Minister or a delegate to prescribe forms of identification that have been assessed as suitable for use in licensed venues, the casino and premises selling tobacco products. This provides the ability to provide for new forms of identification, including digital forms, which will provide greater choice for people required to prove their identity and/or age without reducing requirements for proof of identity.

Keypass ID is prescribed as a form of identification under the *Liquor Regulation 2010*, *Casino Control Regulation 2006* and the *Tobacco and other Smoking Products Regulation 2018*. The Digital form of Keypass ID referred to as 'Digital iD' is also covered under sections 4 and 10 of the *Electronic Transactions Act 2001* (the ETA).

Removing sole references to the compulsory use of outdated communications methods (such as fax and telex) across the statute book

The ETA was introduced to facilitate the use of electronic transactions, including providing for requirements under Territory law to give information in writing, to provide signatures, to produce a document or retain a document to be met in electronic form.

To provide for greater flexibility in choosing the most appropriate form of communication, including digital forms, this Bill will modernise references in legislation to out-dated forms of communication.

Legislation will be amended to remove the reference to telex machines in various pieces of legislation. A telex machine (or teleprinter exchange) is an out-of-date form of communication providing text-based messages, which has largely been superseded by email and other modern methods. Legislation will also be amended to remove and replace the requirement to send a fax where it is the sole option provided for communication, but not in those cases where it is one of a range of options provided.

For example, numerous pieces of legislation refer to the issuing of a warrant by a magistrate. Under urgent circumstances, magistrates must immediately fax a copy of the warrant to the applicant, if it is practicable to do so. If it is not practicable to do so, then the magistrate must

tell the applicant the terms, date and time of the warrant so that the applicant can fill in a warrant form which is then provided to the magistrate with the application. Replacing “fax” with “provide a written copy” would allow for the warrant to be provided via email or other electronic forms as set out in the ETA.

The purpose of these amendments is to broaden the range of communication that is available, rather than restrict the nature of communication. The ETA was introduced to facilitate electronic communication and provide for electronic forms of documents to meet the requirements of Territory law. These amendments will better reflect modern communication requirements across the statute book, which are already within the ETA.

CLAUSE NOTES

PART 1 **Preliminary**

Clause 1 **Name of Act**

This Act is the *Red Tape Reduction Legislation Amendment Act 2018*.

Clause 2 **Commencement**

This Act (other than the following provisions) commences 7 days after its notification day:

- Part 2 (*Associations Incorporation Act 1991*);
- Part 3 (*Associations Incorporation Regulation 1991*); and
- Schedule 1 (Other amendments).

Parts 2 and 3 commence on a day fixed by the Minister by written notice.

If Parts 2 and 3 have not commenced by 1 July 2019, they automatically commence on that day.

Schedule 1 commences on the 28th day after this Act's notification day.

The *Legislation Act 2001*, section 79 (Automatic commencement of postponed law) does not apply to Parts 2 and 3.

Clause 3 **Legislation amended**

This Act amends the following legislation:

- *Associations Incorporations Act 1991*;
- *Associations Incorporations Regulation 1991*;
- *Casino Control Act 2006*;
- *Casino Control Regulation 2006*;
- *Land Titles Act 1925*;
- *Liquor Act 2010*;
- *Liquor Regulation 2010*;
- *Nature Conservation Act 2014*;
- *Planning and Development Act 2007*;
- *Sale of Motor Vehicles Act 1977*;
- *Tobacco and other Smoking Products Act 1927*;

- *Traders (Licensing) Act 2016*;
- *Traders (Licensing) Regulation 2017*; and
- All Acts with references to the compulsory use of outdated communication methods (Schedule 1).

Clause 4 Tobacco and Other Smoking Products Regulation 2018—sch 2
Schedule 2 New Tobacco and Other Smoking Products Regulation

This clause creates the *Tobacco and Other Smoking Products Regulation 2018* (the Regulation) under the *Tobacco and Other Smoking Products Act 1927*. Under the Regulation, Australia Post Keypass ID card is prescribed as a document of identification. Australia Post Keypass ID card, for a person, means an identification issued by Australia Post that includes the following about the person:

- (a) The name of the person;
- (b) A photo of the person; and
- (c) The date of birth of the person.

The Digital form of Keypass ID referred to as ‘Digital iD’ is also covered under sections 4 and 10 of the *Electronic Transactions Act 2001*.

Part 2 Associations Incorporation Act 1991

Clause 5 Offences against Act—application of Criminal Code etc
Section 3A, note 1

This clause provides offence provisions under the Act through the application of Criminal Code. It notes the following offences against this Act:

- Section 63B (Disqualification from office—disqualified under other legislation);
- Section 65 (Disclosure of material personal interest);
- Section 65A (Matter on which committee member has material personal interest); and
- Section 74 (Review or audit accounts).

Clause 6 Section 4 heading

Clause 7 Section 4

Clause 8 Section 4 (b)

These clauses remove references to trade in the interpretation of pecuniary gain. Removing references to trade will clarify that an association is not acting for financial benefit simply because it engages in trade.

Clause 9 **Section 11 heading**
Clause 10 **Section 11 (1) and notes**

These clauses are updated to reflect that the process for accessing documents lodged with the registrar-general is to request, rather than inspect, copies of documents as this information is now held electronically. Note 2 is also amended to reflect change of terminology from address to contact details.

Clause 11 **Section 13A**

This clause replaces the term addresses with contact details to provide for different forms of communication and to ensure that all necessary details have provision for privacy. This amendment is designed to address potential privacy concerns that may arise from open access to the register. This section is also amended to replace references to inspection with request, consequent to the amendments in the previous clauses. Section 5 defines contact details.

Clause 12 **Sections 14 (2) and 15 (1)**

This clause follows on from the amendments in clauses 5 to 7 that remove references to trade.

Clause 13 **Applications for incorporation**
Section 18 (1) (a), note

This clause follows on from the changes made in clause 10 and replaces address with contact details. The note is also changed to further define that a publicly available address is required for the service of documents.

Clause 14 **Corporate identity**
Section 22 (b)

This clause removes the mandatory requirement for a common seal by replacing “must have a common seal” to “may have a common seal”. This amendment is consistent with the *Corporations Act 2001 (Cwlth)* which states that a company may have a common seal.

Clause 15 **Amalgamation of incorporated associations**
Section 26 (2) (a), note

This clause updates address to contact details. The note is also changed to further define that a publicly available address is required for the service of documents.

Clause 16 **Copies of documents for members**
New section 35 (1) (d)

This clause expands the list of documents a member can request to include a summary of the minutes of meetings of the committee. This change, which supports governance of the association by providing transparency to members, is balanced by the new section 35A that enables Committee to refuse access to documents that would be prejudicial to the interests of the association.

Clause 17 **New section 35A**

This clause allows for the committee to refuse access to documents if it is satisfied that allowing access to the document would be prejudicial to the interests of the association. The type of circumstances may include those where there would be a reasonable expectation of confidentiality.

This clause also explains that circumstances of why certain documents may be allowed or restricted may be stated in the rules of an incorporated association.

- Clause 18** **Name on association’s documents etc**
Section 41 (a)
- Clause 19** **Ratification of pre-incorporation contracts**
Section 43 (3) (b)
- Clause 20** **Relationship between association and members**
Section 48
- Clause 21** **Authentication and execution of documents**
Section 55 (1)

These clauses are follow-on amendments from section 22 (b) that made the common seal no longer mandatory.

Clause 22 **Section 55 (2)**

This clause is a follow-on amendment to common seals no longer being mandatory by providing for an alternative form of execution of documents. It also removes a common seal reference in the latter part of the section therefore creating section 55 (2A).

Clause 23 **Section 55 (4) (b)**

This clause is a follow-on amendment of common seals no longer being a mandatory requirement. It makes common seal requirements optional by inserting “if any” after “common seal” in this section.

Clause 24 **New section 55 (5)**

This clause inserts a subsection to clarify that in section 55 an officer does not include a person mentioned in the dictionary definition of officer.

Clause 25 **Validity of documents executed under common seal**
Section 56

These clauses make the requirement for a common seal optional by inserting “if any” after “common seal”. These clauses are follow-on amendments of the common seal no longer being mandatory.

Clause 26 **New division 4.1 heading**

This clause inserts a new heading to provide further clarity for public officer and committee requirements.

Clause 27 **Notice of public officer’s appointment or change of address**
Section 59 (2), note

This clause replaces address with contact details.

Clause 28 **New section 59 (3)**

This clause exempts incorporated associations that are registered charities with the Australian Charities and Not-for-profits Commission (ACNC) from the requirement to report changes to the registrar-general. This does not change the requirement for an association that is a registered charity with the ACNC to have a public officer in the ACT.

Clause 29 **Notice of changes in committee**
Section 62 (2), note 2

This clause replaces address with contact details.

Clause 30 **Vacancy in office of public officer**
Section 64 (2) (e)

This clause replaces “suffers from mental or physical incapacity” with “is not physically or mentally fit to exercise the functions of office”. This amendment ensures that this section is non-discriminatory and compliant with the *Human Rights Act 2004*.

Clause 31 **Section 65**

This clause replaces the existing section 65 which deals with disclosure of a committee’s member’s interest in a contract or proposed contract with a more comprehensive disclosure of material personal interest.

This clause also includes new provisions to provide for the resignation of a committee member (section 64A) and for dispute resolution procedures (section 65B), which are currently not in the Act. As provided for by the *Electronic Transactions Act 2001*, written notice includes digital forms of communication.

Section 65 and 65A retains and expands upon the existing obligation to disclose an interest in a contract or a proposed contract to include a requirement for disclosure of a material personal interest in any matter being considered by the committee. This provides greater clarity for associations in handling matters of material personal interest.

The Act currently provides a penalty provision (maximum 20 penalty units) for failure to disclose a committee member's interest. The new section 65 retains the same maximum penalty of 20 penalty units for committee members failing to disclose material personal interests.

Section 65B requires incorporated associations to have a procedure for dispute resolution. This provisions provides greater clarity for associations on the key governance matters that are to be included in their rules. Section 65C outlines principles, consistent with natural justice, for incorporated associations proposing to take disciplinary action against a member in respect of that member's status as a member of the association.

Clause 32 **Information from officers**
Section 66, note

This clause replaces address with contact details.

Clause 33 **New division 4.2**

Officers of an incorporated association currently have legal responsibilities to exercise care and diligence, act in good faith for the best interests of the organisation, to not make improper use of information or their office to gain advantage for the officer or another person. This clause incorporates these legal responsibilities into the Act as these are core requirements for the governance and management of the association.

Clause 34 **New division 4.3 heading**
Clause 35 **Section 67**

This clause creates a new division, Register of members. This provision recognises the use of the register of members as a means of communicating with members about matters related to the incorporated association. Section 67 is amended to expand what information the register of members captures to now include a person's contact details, anything required by the association's rules and anything else prescribed by regulation.

Section 67A provides for a process to assess requests to inspect the register of members to ensure no personal information is disclosed and the use of information is for a proper purpose. The committee may refuse requests if satisfied that it would allow a member to use information on the register for a purpose that was:

- Not directly related to the management or the purposes of the association; or
- Prohibited by the rules of the association; or
- Improper.

This clause also introduces privacy protections in relation to the Register of Members, under the new Section 67B.

Clause 36 **New division 4.4 heading**

This clause inserts a new division, Division 4.4 General Meetings, to further define provisions related to general meetings within the Act.

Clause 37 **Part 5 heading**

This clause replaces the Part 5 heading, Accounts, audit and annual returns, with Record keeping and reporting.

Clause 38 **New sections 70B and 70C**

This clause provides a new section (70B) to include the following:

- Updated definitions for an auditor;
- New definitions of a reviewer of financial statements; and
- The definitions of different sizes of an incorporated association according to their total revenue.

Currently organisations are required to provide audited financial statements based on the size of the organisation and whether their annual revenue is over a certain amount, as well as certain other criteria. There is no change to what defines a small, medium or large association in terms of annual revenue. This section maintains the same thresholds that are currently prescribed by regulation. The definition simplifies the process for reporting purposes by making annual revenue the sole criteria for determining the size of an organisation.

Section 70C is also created to provide conditions for the exemption from revenue thresholds.

Clause 39 **Accounting records**
Section 71 (b) (ii)

This clause provides further clarification for the auditing and review of accounting records by inserting reviewed before audited. This reflects commonly agreed terms for the preparation of financial statements and makes it clear that reference to audited statements is a reference to financial statements that are audited in accordance with recognised auditing statements.

Clause 40 **Presentation of statement to members**
Section 73 (1) (a)
Clause 41 **Section 73 (1) (b)**

These clauses further clarify references to audited statements to distinguish between different audit requirements.

Clause 42 **Section 73 (2)**

This clause provides is a consequential amendment to the changes made in section 76 and changes the audit requirements to a large association.

Clause 43 **Sections 74 and 75**

This clause replaces the existing sections 74 and 75, Audit of accounts and Auditor’s powers and duties, with updated sections to clarify the auditing requirements for different sizes of organisations.

There is no change to the requirement for preparation of financial statements by small associations however the new section refers to review rather than audit to more accurately reflect that the process is not an audit as commonly understood.

The section does change the requirement for financial statements for medium sized associations to provide an option for organisations to provide a professionally reviewed financial statement. This brings the requirement for reporting by medium sized associations in the ACT in line with the regulatory requirements for similar sized charities that report to the ACNC.

There is no change to the requirement for audited financial statements for large associations. These associations will still require audited financial statements.

Section 75 outlines the requirements for the preparation of the review reports for small and medium associations.

Clause 44 **Section 76 heading**

This clause changes the heading of section 76 from “Auditor of prescribed associations” to “Audit reports”.

Clause 45 **Section 76 (1)**

This clause changes section 76(1) to apply to the appointment of an auditor by a medium or large association to audit the association’s statement of accounts. These amendments are made to reflect the change of audit requirements in previous clauses.

Clause 46 **Section 76 (2) and (3)**

This clause amends language in this section to make the language consistent with the changes to audit requirements in previous clauses.

Clause 47 **Section 76 (3) (a) (iii) and (b)**

This clause changes the language in this section to better reflect the reference to the accounting standards.

Clause 48 **Section 76 (5) and (7)**

This clause amends language in this section to make the language consistent with the changes to audit requirements.

Clause 49 **Section 76 (8) and (9)**

This clause is amended to make the language consistent with the changes to audit requirements.

Clause 50 **Section 76 (10)**

This clause removes the current definition of an auditor as one that is prescribed under this section, consistent with the changes to Part V to clarify references to audit, and includes a new definition for accounting standard.

Clause 51 **Section 77 heading**

This clause changes the heading of Section 77 to reflect the change in auditing requirements.

Clause 52 **Section 77**

Clause 53 **Section 77**

Clause 54 **Annual returns**

Section 79 (1) (b)

Clause 55 **Section 79 (1) (c)**

These clauses amend these sections to reflect the change in auditing requirements.

Clause 56 **Section 79 (1) (e) (ii)**

Clause 57 **Winding-up by the court**
Section 90 (e)

These clauses remove references to trade. Removing references to trade will clarify that an association is not acting for financial benefit simply because it engages in trade.

Clause 58 **Property of defunct association**

Section 92 (2) (b) and (c) (ii)

Clause 59 **Cancellation of incorporation**

Section 93 (1) (f)

Clause 60 **Section 93 (1) (f)**

Clause 61 **Section 93 (1) (f)**

These clauses amend language and terminology to reflect the amendments made to auditing and review requirements.

Clause 62 **Section 109 heading**
Clause 63 **Section 109 (1)**

These clauses remove references to trade in the interpretation of pecuniary gain. Removing references to trade will clarify that an association is not acting for financial benefit simply because it engages in trade.

Clause 64 **Matters to be provided for in rules other than model rules**
Schedule 1, new item 4A

This clause inserts a further item to the table in schedule 1 relating to dispute resolution procedures.

Clause 65 **Schedule 1, item 5, column 3, new paragraph 2 (da)**

This clause adds provision in schedule 1 for resignation of a member of the committee.

Clause 66 **Schedule 1, item 9, column 3**

This clause make the requirement for a common seal optional by inserting “if any” after “common seal”.

Clause 67 **Schedule 1, new item 12**

This clause inserts a further item to the table in schedule 1 relating to the access to and copies of documents.

Clause 68 **Reviewable decisions**
Schedule 3, new items 4A and 4B

This clause adds further items within the table at schedule 3 for reviewable decisions.

Clause 69 **Dictionary, note 2**

This clause adds function to the list of definitions in note 2.

Clause 70 **Dictionary, new definitions**

This clause inserts definitions of small, medium and large Associations which are reflected by the different annual revenue tiers. The references to the definitions of auditor, reviewer and requirement statement reflect the amendments to record keeping and reporting requirements.

Clause 71 **Dictionary, definition of *trade***

This clause removes the definition of trade. Removing references to trade will address ambiguity in the Act to clarify that an association is not acting for financial benefit simply because it engages in trade.

Part 3 **Associations Incorporation Regulation 1991**

Clause 72 **Sections 10, 12 and 13**

This clause omits the following sections which have been consequently moved into the Act or Model Rules:

- Section 10 – Right of appeal of disciplined member;
- Section 12 – Constitution and membership; and
- Section 13 – Election of committee members.

PART 4 **Casino Control Act 2006**

Clause 73 **Definitions—div 5.7**
Section 78, definition of *document of identification*

This clause expands the definition of document of identification to allow for other documents to be prescribed by regulation.

PART 5 **Casino Control Regulation 2006**

Clause 74 **New section 7A**

This clause prescribes Australia Post Keypass ID document as a document of identification. Australia Post Keypass ID card, for a person, means an identity card issued by Australia Post that includes the following about the person:

- (a) The name of the person;
- (b) A photo of the person; and
- (c) The date of birth of the person.

The digital form of Keypass ID referred to as 'Digital iD' is also covered under sections 4 and 10 of the *Electronic Transactions Act 2001*. It is also noted that Australia Post Keypass ID may be in electronic form and references the *Legislation Act 2001* for the definition of a document.

PART 6 Land Titles Act 1925

**Clause 75 When applicant is not original grantee or any transactions registered
Section 22**

Clause 76 Section 22, new note

Clause 74 removes the requirement for applications made under the Act to be advertised in newspapers and is replaced with the requirement to give public notice, consistent with the definition and process for public notice in other ACT legislation. Clause 74 provides a note for the definition of public notice used in ACT legislation.

**Clause 77 When evidence of title imperfect
Section 23 (1)**

This clause removes the requirement for applications to be published in the Commonwealth Gazette, the London Gazette, in official Gazettes of each of the states or in any one or more of those Gazettes.

The new requirement is to give public notice of the application and for advertisements to be published in the official Gazettes of each of the states, at the times and intervals the registrar-general considers appropriate.

Clause 78 Section 23 (1), new note

This clause provides a note for the definition of public notice used in ACT legislation.

**Clause 79 Notice of application to be published
New section 24 (3)**

This clause provides a requirement for the registrar-general to give additional public notice of the notice of application.

**Clause 80 Memorial to be recorded on duplicate grant, certificate or instrument,
unless dispensed with
Section 50 (6)**

This clause provides the requirement for the party intending to register the dealing to also give public notice of the notice, as required (if at all) by the registrar-general.

**Clause 81 Lost grant or certificate
Section 62 (5)**

This clause provides the registrar-general with the option to, at least 14 days before issuing a new grant or certificate and at the expense of the applicant, give public notice of the registrar-general's intention to issue the grant or certificate.

- Clause 82** **Registrar-general may require map to be deposited**
Section 64 (1), note 2
- Clause 83** **Section 64 (2) to (6) and (8)**

These clauses remove the requirement of an approved form and template for maps or plans to be submitted. New software systems also enable the removal of sub-section 64 (2) to (6) and section 64 (8) which prescribe stationary requirements and the provision of duplicates when preparing a map and plan for submission.

- Clause 84** **Application—how made effective**
Section 98 (3)

This clause provides requirements for the registrar-general to give additional public notice of the offer and notes the definition of public notice used in ACT legislation.

- Clause 85** **Dictionary, definition of *daily newspaper***

This clause removes the definition of daily newspaper as the definition of public notice in the *Legislation Act 2001* incorporates its meaning.

PART 7 **Liquor Act 2010**

- Clause 86** **Dictionary, note 2**
Clause 87 **Dictionary, definition of *identification document***

These clauses expand the definition of identification document to also mean any other document prescribed by regulation. The term document is also added to the dictionary.

PART 8 **Liquor Regulation 2010**

- Clause 88** **New Section 34**

This clause prescribes Australia Post Keypass ID document as an identification document. Australia Post Keypass ID document, for a person, means an identity card issued by Australia Post that includes the following about the person:

- (a) The name of the person;
- (b) A photo of the person; and
- (c) The date of birth of the person.

The digital form of Keypass ID referred to as ‘Digital iD’ is also covered under sections 4 and 10 of the *Electronic Transactions Act 2001*. It is also noted that Australia Post Keypass ID may be in electronic form and references the *Legislation Act 2001* for the definition of a “document”.

PART 9 **Nature Conservation Act 2014**

Clause 89 **Definitions—pt 4.3**
Section 72A

This clause removes the definitions from this section of the Act and is a consequential amendment on the omission of sections 79B to 79H.

Clause 90 **What is a *key threatening processes list*?**
Section 75, definition of *key threatening processes list*, paragraph (a)

This clause removes section 79A Key threatening processes list and substitutes it with section 76 as a consequent amendment to relocation of 79A in clause 89.

Clause 91 **Key threatening processes list**
Section 79A

This clause relocates section “79A Key threatening processes list” to create a new section as section 76. The relocation of this section ensures that is section is no longer an orphan section from the removal of sections in clause 90.

Clause 92 **Section 79B to 79H**

This clause removes sections 79B to 79H to reduce duplication within the Act. These provisions are a duplication of more general assessment and listing provisions contained in the Act and do not serve any additional purpose.

Clause 93 **Nominations—scientific committee to carry out *listing assessment***
New section 85 (5) and (6)

This clause provides a provision for the scientific committee to give a listing assessment for an item to the Minister no later than 15 months after the end of the 4-week period, or public consultation period. However the Minister may extend the time for giving the listing under section 85 (5).

Clause 94 **Minister to decide whether to include, transfer or omit item**
Section 87 (1)

This clause removes the reference to conservation advice and replaces it with listing assessment. A conservation advice is a notifiable instrument. A conservation advice is a statement about the listed entity and its eligibility for listing. It can be provided to the Minister to support the listing but should not be finalised before an entity is listed. It needs to be able to be updated at any time.

A listing assessment provides advice to the Minister about the eligibility of the entity for listing. Much of the material included in the listing assessment will be included in the conservation advice.

Clause 95 **Section 87 (2), note**
Clause 96 **Sections 88 (2) (a), 89 (2) (a) and 90 (2) (a)**

These clauses are consequential amendments from Clause 26 and remove references to conservation advice and replaces them with listing assessment.

Clause 97 **Minister may include or transfer nationally threatened items without nomination**
Section 90A (3) (b)

This clause removes the reference to conservation advice and replaces it with “consider any recommendations of the scientific committee”. This is because a full assessment is not needed as that has been done by the Australian Government.

Clause 98 **Section 90C and 90D**

This Clause changes the responsibility at section 90C (1) to the scientific committee. Given that the Minister has approved the listing, the conservation advice is a formality that takes place after this approval.

This clause adds a provision for a conservation advice to be notified within 20 days of a Minister making a listing decision or at any time a change to the conservation advice is made. This clause also provides an exemption for a conservation advice for anything listed in the provisional category. A conservation advice is not needed for a provisional listing as the species is still being assessed.

The provisions from section 90D are consolidated into Section 90C as the scientific committee is doing all of the work and is responsible for final advice. The provision of a conservation advice is amended to stay with the scientific committee as the Minister’s oversight is not needed as long as the conservation advice is advisory only.

Clause 99 **Conservation advice—adopting advice for nationally threatened item**
Section 90E (2)

This clause changes the reference from Minister to scientific committee and ensures that the conservation advice is advisory only.

Clause 100 **Section 90E (2)**

This clause removes section 90C (2) and substitutes it with section 90C (3). This amendment is consequential to the amendment of section 90C.

Clause 101 **Section 90E (3)**

This clause provides for the scientific committee, rather than the Minister, to adopt an advice prepared by the Australian Government or a participating state for a nationally threatened item under this section.

Clause 102 **Conservation advice—scientific committee to review
Section 90F(2)**

This clause allows the scientific committee to make amendments to the advice rather than only being able to make recommendations to the conservator about the advice.

Clause 103 **Minister may make minor amendments
Section 94 (2) (b)**

This clause removes a reference to conservation advice as the conservation advice no longer informs the decision.

Clause 104 **Minor amendment—including similar species
Section 95 (2) and note**

Clause 105 **Minor amendment—omitting similar species
Section 96 (2) and note**

These clauses insert the provision to obtain and consider the advice of the scientific committee.

Clause 106 **Dictionary, definition of *listing assessment***

This clause is a consequence of the removal of section 79F and amends the definition of listing assessment.

Clause 107 **Dictionary, definition of *public consultation notice***

This clause is a consequential amendment on the omission of section 79E and amends the definition of public consultation notice.

PART 10 **Planning and Development Act 2007**

Clause 108 **Consideration of whether review of planning strategy necessary
Section 110 (3)**

This amendment allows the Minister to give notice of the Executive’s decision. This represents an administrative improvement and removes the need for a second Minister to sign the notifiable instrument.

PART 11	Sale of Motor Vehicles Act 1977
Clause 109	Information to be recorded in dealings register Section 16 (4) and (5)
Clause 110	Power to enter premises Section 70A (1) (b) (iii)
Clause 111	Dictionary, definition of <i>car market operator</i>
Clause 112	Dictionary, definition of <i>dealer</i>, paragraph (b) (iii)
Clause 113	Dictionary, definition of <i>wholesaler</i>

These clauses remove references to car market operator. Car market operators are no longer operating in the ACT and are therefore not required to be regulated.

PART 12	Tobacco and Other Smoking Products Act 1927
Clause 114	Supply of smoking product to under 18 year olds Section 14 (6)

This clause expands the definition of document of identification to also mean any other document prescribed by regulation. The definition of foreign driver licence has also been amended to align more closely with the definition of identification document in the *Liquor Act 2010* dictionary.

Clause 115	Dictionary, note 2
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This clause creates definitions for Australian driver licence, document and external territory.

PART 13	Traders (Licensing) Act 2016
Clause 116	Meaning of <i>trader</i> Section 7 (a)
Clause 117	Meaning of <i>car market operator</i> Section 8
Clause 118	Definitions—pt 20 Section 150, definition of <i>operational Act licence</i>, paragraph (a)
Clause 119	Dictionary, definition of <i>car market operator</i>

In conjunction with part 9, these clauses remove references to car market operator. Car market operators are no longer operating and are therefore not required to be regulated.

PART 14	Traders (Licensing) Regulation 2017
Clause 120	Transferable licences—Act, s 24 (1) Section 10 (a)
Clause 121	Notification of application in certain trader categories Section 11 (1) (a)
Clause 122	Dictionary, note 3

In conjunction with parts 9 and 11, these clauses remove references to car market operators. Car market operators are no longer operating and are therefore not required to be regulated.

Schedule 1 Other amendments

Part 1.1	Animal Diseases Act 2005
Part 1.2	Building Act 2004
Part 1.3	Children and Young People Act 2008
Part 1.4	Commercial Arbitration Act 2017
Part 1.5	Construction Occupations (Licensing) Act 2004
Part 1.6	Crimes Act 1900
Part 1.7	Crimes (Forensic Procedures) Act 2000
Part 1.8	Dangerous Goods (Road Transport) Act 2009
Part 1.9	Dangerous Substances Act 2004
Part 1.10	Drugs of Dependence Act 1989
Part 1.11	Electoral Act 1992
Part 1.12	Electricity Safety Act 1971
Part 1.13	Fair Trading (Australian Consumer Law) Act 1992
Part 1.14	Firearms Act 1996
Part 1.15	Fisheries Act 2000
Part 1.16	Food Act 2001
Part 1.17	Gas Safety Act 2000
Part 1.18	Gene Technology Act 2003
Part 1.19	Gene Technology (GM Crop Moratorium) Act 2004
Part 1.20	Hemp Fibre Industry Facilitation Act 2004
Part 1.21	Heritage Act 2004
Part 1.22	Independent Competition and Regulatory Commission Act 1997
Part 1.23	Legal Profession Act 2006
Part 1.24	Liquor Act 2010
Part 1.25	Medicines Poisons and Therapeutic Goods Act 2008
Part 1.26	Nature Conservation Act 2014
Part 1.27	Pest Plants and Animals Act 2005
Part 1.28	Planning and Development Act 2007
Part 1.29	Plant Diseases Act 2002
Part 1.30	Public Health Act 1997

Part 1.31	Public Unleased Land Act 2013
Part 1.32	Radiation Protection Act 2006
Part 1.33	Road Transport (Third-Party Insurance) Act 2008
Part 1.34	Sale of Motor Vehicles Act 1977
Part 1.35	Stock Act 2005
Part 1.36	Tree Protection Act 2005
Part 1.37	Utilities Act 2000
Part 1.38	Utilities (Technical Regulation) Act 2014
Part 1.39	Waste Management and Resource Recovery Act 2016
Part 1.40	Water and Sewerage Act 2000
Part 1.41	Water Resources Act 2007
Part 1.42	Work Health and Safety Act 2011

Amendments to these Acts remove fax where it is the sole option provided for communication, but not in those cases where it is one of a range of options provided. Amendments also remove the reference to telex. Telex (or ‘tele-printer exchange’) is an out-of-date form of communication providing text-based messages, which has largely been superseded by email and other modern methods.

Replacing fax with “provide a written copy” will allow for warrants to be provided via email or other electronic forms as set out in the *Electronic Transactions Act 2001*. The purpose of these amendments are to broaden the range of communication that is available, rather than restrict the nature of communication.