

2018

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

**STATUTE LAW AMENDMENT BILL 2018
EXPLANATORY STATEMENT**

**Presented by
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Background

The object of the 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.

The 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 4 schedules and has been structured to assist the transparency of the amendments made by it.

When enacted, the 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.

Human rights implications

The bill has no identified human rights implications.

Clause 1 — Name of Act

This clause provides for the bill's name.

Clause 2 — Commencement

This clause provides that the bill (other than section 5, schedule 3, part 3.18 and schedule 3, part 3.20) 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.

Section 5 and schedule 3, part 3.18 (*Heavy Vehicle National Law (ACT) Act 2013*) are taken to have commenced on 1 July 2018. Part 3.18 omits a number of provisions of the *Heavy Vehicle National Law (ACT) Act 2013* which, because of amendments to the *Heavy Vehicle National Law (ACT)* by the *Heavy Vehicle National Law and Other Legislation Amendment Act 2018* (Qld), are redundant. The relevant provisions of the Queensland amendment Act commenced on 1 July 2018.

Schedule 3, part 3.20 (*Lakes Act 1976*) commences on the commencement of the *Lakes Amendment Act 2018*, section 32. The amendments in part 3.20 amend amendments made in the *Lakes Amendment Act 2018*, section 32 and cannot commence until that Act commences. The *Lakes Amendment Act 2018* commences on a day fixed by the Minister by written notice, but if the Act has not commenced within 12 months beginning on its notification day, it automatically commences on the first day after that period (i.e. 5 March 2019).

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.

Clause 6 — Legislation repealed—sch 4

This clause gives effect to the repeal made by schedule 4.

Schedule 1 — Minor amendments

Schedule 1 provides for minor, non-controversial amendments initiated by government directorates and agencies. It contains amendments of the *Freedom of Information Act 2016*, the *Health Act 1993*, the *Mental Health Act 2015*, the *Ombudsman Act 1989*, the *Public Health Act 1997*, the *Public Sector Management Act 1994*, the *Remuneration Tribunal Act 1995*, the *Road Transport (Alcohol and Drugs) Act 1977*, the *University of Canberra Act 1989* and the *Workers Compensation Act 1951*. Each amendment is explained in an explanatory note to the amendment.

Health Act 1993, Mental Health Act 2015, Public Health Act 1997 and Road Transport (Alcohol and Drugs) Act 1977

Schedule 1 amends the *Health Act 1993*, the *Mental Health Act 2015*, the *Public Health Act 1997* and the *Road Transport (Alcohol and Drugs) Act 1977* ('the Acts') to reflect the changed regulatory scheme for nurse practitioners under the *Health Practitioner Regulation National Law (ACT)*. In 2004, the *Nurse Practitioners Legislation Amendment Act 2004* amended the Acts to include references to 'authorised nurse practitioner' and definitions of **authorised nurse practitioner**, **nurse practitioner position** and **scope of practice**. The regulation of nurse practitioners has been taken over by the *Health Practitioner Regulation National Law (ACT)* in 2010 and the references and definitions in the Acts have become obsolete. Schedule 1 makes those amendments, including replacing instances of **authorised nurse practitioner** in the Acts with **nurse practitioner**.

Ombudsman Act 1989 and the Freedom of Information Act 2016

The functions of the ombudsman under Territory law have increased over the past few years as a consequence of amendments made to the *Ombudsman Act 1989* to introduce the reportable conduct scheme and the enactment of the *Freedom of Information Act 2016*. Schedule 1 amends the *Ombudsman Act 1989* to allow the

ombudsman to enter into arrangements with the head of service to use the services of a public servant or Territory facilities and to engage consultants and contractors. The Act, section 32 is amended to allow the ombudsman to delegate the ombudsman's functions to a member of the ombudsman's staff, including to the deputy ombudsman and consultants and contractors. Schedule 1 also contains technical amendments to omit obsolete references to an old delegation provision.

The *Freedom of Information Act 2016*, section 64 (2) is amended to update the delegation power of the ombudsman to a person mentioned in the *Ombudsman Act 1989*, section 32 as a consequence of amendments made to the *Ombudsman Act 1989*.

Public Sector Management Act 1994

The *Public Sector Management Act 1994*, section 152 gives certain statutory office-holders management powers of the head of service in relation to public servants on the office-holder's staff. Under subsection (3) (c), a public sector employer may delegate a function given to the public sector employer under section 152 to a staff member, an officer or employee, or the head of service. The section is amended to allow a public sector employer to also delegate a function to an SES member, which includes a director-general or an executive, if required.

An amendment is also made to section 152 to allow public sector employers to delegate to any person a function given to them under the *Public Sector Management Act 1994* or another Territory law.

The Act is further amended to clarify that a ***management provision*** under section 152 (4) includes management standards made under a provision in the Act mentioned in paragraphs (a) to (h). It also allows other management standards to be prescribed by the head of service under the Act, section 251 to be included as a ***management provision***.

Remuneration Tribunal Act 1995 and University of Canberra Act 1989

Amendments of the *Remuneration Tribunal Act 1995*, schedule 1, part 1.2 and the *University of Canberra Act 1989*, section 11 remove the power of the remuneration tribunal to determine the remuneration, allowances and other entitlements of a member of the University of Canberra council appointed under the *University of Canberra Act 1989*, section 11 (1) (d).

Workers Compensation Act 1951

Amendments of the *Workers Compensation Act 1951* reinstate an entitlement to compensation that was inadvertently removed by a previous amendment. Sections 39 and 40 provide that a worker who is incapacitated because of a compensable injury is entitled to receive weekly compensation following the initial incapacity date. Previously under sections 39 and 40, a worker who was at least 63 years old on the initial incapacity date was entitled to weekly compensation for up to 2 years after the initial incapacity date. This was based on the pension age being 65 years old. However, under the *Social Security Act 1991* (Cwlth), **pension age** is now variable and can be any age from 60 to 67 years old, depending on the date a person was born. The *Workers Compensation Amendment Act 2017* amended sections 39 and 40 so that a worker 'younger than the pension age by 2 years or less' was entitled to weekly compensation for up to 2 years after the initial incapacity date. However, the amendments failed to mention workers of pension age or older or for how long these workers were entitled to receive weekly compensation.

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. The bill does not provide for such amendments but the schedule heading is retained to preserve the usual numbering of schedule 3.

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.

Schedule 4 — Repeal of redundant or obsolete legislation

Schedule 4 repeals legislation that is redundant or obsolete and the bill repeals the *Health Regulation 2004*. The substance of the regulation deals with nurse practitioner positions and scopes of practice for nurse practitioners. However, nurse practitioners have been regulated under the *Health Practitioner Regulation National Law (ACT)* since 2010, meaning the *Health Regulation 2004* is no longer needed.