

2025

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

ELEVENTH ASSEMBLY

BETTER REGULATION LEGISLATION AMENDMENT BILL 2025

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

**Presented by
Tara Cheyne MLA
Attorney-General
March 2025**

BETTER REGULATION LEGISLATION AMENDMENT BILL 2025

This explanatory statement relates to the *Better Regulation Legislation Amendment Bill 2025* as presented to the Legislative Assembly. It has been prepared to assist the reader of the Bill and to help inform debate on it. The statement is to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the amendments. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

OVERVIEW OF THE BILL

This Bill is an omnibus bill which amends the following Acts and Regulations:

- *Agents Act 2003* - strengthen provisions in relation to electronic records and how they are kept.
- *Architects Act 2004* – remove a provision which allows the Architects Board to require a complainant to verify all, or part of, a complaint via a statutory declaration.
- *Associations Incorporation Act 1991* - remove the requirement for rules, other than model rules, to specifically address how cheques are drawn and used by the association.
- *Cemeteries and Crematoria Act 2020* - remove 'or disinterment' from the definition of licensee receipt.
- *Domestic Animals Act 2000* – remove references to cheques and broadens the types of payment failures that may occur to include credit card transactions that are not honoured or are reversed or cancelled.
- *Domestic Animals Regulation 2001*- remove references to cheques and broadens the types of payment failures that may occur to include credit card transactions that are not honoured or are reversed or cancelled.
- *Electoral Act 1992* - remove specific references to payment methods for a candidate's nomination deposit.
- *Fair Trading (Motor Vehicle Repair Industry) Act 2010* - remove the obsolete industry advisory committee.
- *Security Industry Act 2003* - to insert a new provision to provide for the surrender of a security licence and to ensure that once a licensee voluntarily surrenders their licence, that licence is cancelled on the day stated by the commissioner for fair trading.
- *Waste Management and Resource Recovery Act 2016* - remove an obsolete power to require GPS devices to be fitted on registered waste transporting vehicles and require the waste manager to make information publicly available relating to the registers for licensed waste facilities and registered waste transporters.
- *Waste Management and Resource Recovery Regulation 2017* - prescribe the information required to be included on the waste facility licence register and to prescribe the information that must be made publicly available for licensed waste facilities and registered waste transporters.

The Bill also makes several minor and technical amendments to the legislation listed above. These are consequential to the amendments listed above or are minor changes to correct things such as out-of-date references and to improve readability.

CONSULTATION ON THE PROPOSED APPROACH

As the Bill is an omnibus bill to provide for minor and technical legislative amendments, consultation on the Bill was conducted internally with ACT Government directorates only. The amendments were developed in targeted consultation with the relevant ACT Government directorates and agencies.

Additionally, the ACT Electoral Commission and Architects Board, were consulted as relevant statutory bodies, regarding the amendments that fall under their responsibilities.

CLIMATE IMPACT

Not applicable.

CONSISTENCY WITH HUMAN RIGHTS

The Bill is not a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

Rights Engaged

The Bill engages the following rights under the *Human Rights Act 2004*:

- Recognition and equality before the law (section 8) (promoted);
- Right to privacy and reputation (section 12) (promoted and limited);
- Right to freedom of movement (section 13) (promoted);
- Right to freedom of expression (section 16) (promoted); and
- Rights in criminal proceedings (section 22) (promoted and limited).

Rights Promoted

Recognition and equality before the law (section 8)

Everyone is equal and has a right to recognition as a person before the law. Further, the law guarantees equal and effective protection against discrimination on any ground, including sex and gender. Updating the language in the *Fair Trading (Motor Vehicle Repair Industry) Act 2010* to be gender neutral, from 'he or she does' to 'they do', promotes recognition and protection for everyone.

Right to privacy (section 12) and Right to freedom of movement (section 13)

The Right to privacy protects individuals from unlawful or arbitrary interference with privacy, especially personal autonomy and private life, where individuals live their private life without government interference. The Right to freedom of movement entitles everyone to move freely within the ACT. This requires that procedural barriers should not be imposed arbitrarily on the free movement of people from or within public spaces.

The amendment to remove section 40 of the *Waste Management and Resource Recovery Act 2010* removes the power to require the tracking of registered waste transporters who violate provisions of that Act, i.e. if the waste transporter has already been convicted of an offence under the Act or if the waste manager has taken previous regulatory action to suspend or cancel the waste transporter registration. The power has never been used as waste regulation does not routinely use enforcement mechanisms in relation to waste transporter registrations and has never obtained a conviction for an offence or taken regulatory action that would precondition the current section 40 to apply.

This amendment promotes the right to privacy and the right to freedom of movement by removing the possibility of additional surveillance measures.

Freedom of expression (section 16)

The Right to freedom of expression as expressed in section 16 (2) of the *Human Rights Act 2004* includes the freedom to seek, receive and impart information. It is also upon public authorities to provide access to government held information. This right is further advanced by the *Freedom of Information Act 2016*.

Amendments to sections 25(4)(b) and 37(4)(b) of the *Waste Management and Resource Recovery Act 2016* promote this right by providing open access to the waste facility and waste transporter registers at no cost. Promoting access to government information is guaranteed as a right under the *Freedom of Information Act 2016*. Only a subset of information about service providers collected in the registers will be shared, which will include items of information such as the business name, telephone number and the email address associated with the business. Accordingly, these registers will compile public information for the benefit of the community and the amendments enable easy access to information to any member of the public.

Rights in criminal proceedings (section 22)

Section 22 (1) of the *Human Rights Act 2004* provides that everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law. Section 142 of the *Domestic Animals Act 2000* is amended by adding a specific defence to the existing offence in that section. Adding a new defence in the

provision is adding an additional safeguard to reduce the impact of the offence on rights in criminal proceedings.

Rights Limited

Right to privacy (section 12)

1. Nature of the right and the limitation (s28(a) and (c))

The Right to privacy and reputation (section 12) includes the protection of personal, confidential information or secure mail, phone and e-communications from unlawful or arbitrary interferences. The contents of the registers under the *Waste Management and Resource Recovery Act 2016* and *Waste Management and Resource Recovery Regulation 2017* provide for the publication of business address details and phone numbers. For some small businesses these details may also be the personal details of the licence or registration holder.

This right is guaranteed by the *Information Privacy Act 2014* that contains territory privacy principles that regulate the collection, use, disclosure and management of personal information by public authorities.

This right is limited by section 2.1(a)(iii) of Schedule 2 of the *Freedom of Information Act 2016* which prescribes factors favouring disclosure in the public interest.

2. Legitimate purpose (s28(b))

The legitimate purpose of the limitation on the right to privacy through publishing contact details is to ensure that businesses and members of the public can easily identify and contact a waste business that can lawfully deal with the waste that they are seeking to dispose of. This contributes to protecting human health and the environment.

The new amendment to the *Waste Management and Resource Recovery Regulation 2017* prescribes what information would be collected. This means businesses and members of the public do not need to go searching individually for those waste licence and registration holders.

3. Rational connection between the limitation and the purpose (s28(d))

Accessing the registers is an efficient way for someone to know who can lawfully deal with different types of waste. Without the registers being publicly available, including this potentially personal contact information, they would need to apply to the registrar each time to get a list, and a decision would then need to be made whether to provide access to the register.

4. Proportionality (s28 (e))

It is an unnecessary burden to require a decision to access information that is already available on other public business registers with the Australian Government,

e.g. the phone number and address associated with ABN/ACN. This change will not require the sharing of additional information to what is already publicly required by other schemes regulating businesses.

BETTER REGULATION LEGISLATION AMENDMENT BILL 2025

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the BETTER REGULATION LEGISLATION AMENDMENT BILL 2025. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

.....

Tara Cheyne MLA
Attorney-General

Clause Notes

Part 1 Preliminary

Clause 1 Name of Act

This clause provides that the name of the Act is the *Better Regulation Legislation Amendment Act 2025* (the Act)

Clause 2 Commencement

This clause provides for the commencement of the Act.

This clause provides that most of the provisions in this Act, other than parts 11 and 12, will commence on the 14th day after its notification day.

Clause 2 (2) provides that parts 11 and 12 of the Act (Waste Management amendments) will commence on a day fixed by the Minister by written notice. These amendments will commence when the instrument is made.

Note that section 79 of the *Legislation Act 2001* applies to the commencement of parts 11 and 12. This means that if these provisions have not commenced within 6 months beginning on the notification day, they automatically commence on the first day after that period.

Clause 3 Legislation amended

This clause identifies the Acts and Regulations that will be amended by this Act:

- *Agents Act 2003*
- *Architects Act 2004*
- *Associations Incorporation Act 1991*
- *Cemeteries and Crematoria Act 2020*
- *Domestic Animals Act 2000*
- *Domestic Animals Regulation 2001*
- *Electoral Act 1992*
- *Fair Trading (Motor Vehicle Repair Industry) Act 2010*
- *Security Industry Act 2003*
- *Waste Management and Resource Recovery Act 2016*
- *Waste Management and Resource Recovery Regulation 2017*

Part 2 Agents Act 2003

Clause 4 Audit of trust accounts Division 7.4 heading, note

This clause omits the note for the heading to Division 7.4. The note is unnecessary because the current definition of *licensed property agent* in section 101 applies to all of part 7 of the *Agents Act 2003* (the Agents Act).

Clause 5 What records must be kept Section 127 (5), new example

The existing section 127 (5) of the Agent's Act provides that a person commits an offence if the person is a licensed agent or a former licensed agent, has made a record under section 127 (1) of the Act or the Regulations, and does not keep the record for 5 years after the making of the record.

Clause 5 inserts an example of where an agent *does not keep* a record. The example given is where an electronic record has been made by a licensed agent and that record has been lost and no backup of the record was made. This example underlines the importance of licensed agents keeping backups of their electronic records.

Clause 6 Section 128 heading

This clause substitutes a new heading for section 128 "How records must be kept".

Clause 7 Section 128 (1) (b)

This clause substitutes a new subsection 128 (1) (b) in the Agents Act to include electronic forms of record keeping which must be immediately accessible by the agent at their main place of business.

Note that the records that must be kept are already provided for in section 127 of the Agents Act, and that list is not being amended by this Bill.

Part 3 Architects Act 2004

Clause 8 Further information about complaint etc Section 37 (1)

This clause makes a minor amendment to remove the ability of the Architect's Board to require a complainant to verify all or part of their complaint by statutory declaration. It is not current practice of the Architects Board to request verification via a statutory declaration.

The amended clause retains the power that the Board may at any time require the complainant to provide further information to the Board about the complaint.

This clause includes a new note that giving false or misleading information is an offence against the Criminal Code, section 338.

Part 4 Associations Incorporation Act 1991

Clause 9 Matters to be provided for in rules other than model rules, Schedule 1, item 9, column 3

This clause makes a minor amendment to remove the requirement for the rules of incorporated associations other than model rules to specifically address how cheques are drawn and used by the association. This makes it consistent with the model rules, which do not contain a provision about the drawing of cheques.

Part 5 Cemeteries and Crematoria Act 2020

Clause 10 Dictionary, definition of *licensee receipt*, paragraph (c)

This clause removes 'or disinterment' from the definition of *licensee receipt* in the Dictionary. The definition of *licensee receipt* is used to determine the amount that an operator is required to pay into the Perpetual Care Trust. Disinterment of cremated remains does not create an ongoing maintenance obligation and therefore should not be included in the definition of *licensee receipt*.

Part 6 Domestic Animals Act 2000

Clause 11 Offences against Act – application of Criminal Code etc, Section 4A, note 1

This clause amends *Note 1 Criminal Code* for section 4A to omit section 53CA (Carer must be given copy of control order) and substitute it with section 53CB (Control orders—carers).

Clause 12 Section 4A, note 1

This clause amends *Note 1 Criminal Code* for section 4A to omit section 72L (Offence—surrender of breeding licence).

Clause 13 Section 4A, note 1, new dot points

This clause amends *Note 1 Criminal Code* for section 4A to add references to the following sections:

- s 98 (Registration of accredited assistance animals)
- s 103 (Unregistered assistance animal trainers)
- s 106A (Unregistered assistance animal assessor)

- s 106E (Assistance animal allowed in public places and premises)
- s 106F (Falsely claiming animal is assistance animal)
- s 142 (Dishonoured etc credit card transactions)

Clause 14 Section 142

This clause substitutes a new section 142 of the *Domestic Animals Act 2000*. The new section removes specific references to cheques and retains references to credit card transactions.

The new section also broadens the type of payment failures that may occur in relation to a credit card transaction to include transactions that are not honoured, or are reversed or cancelled.

This amendment also updates the drafting of the offence to comply with the *Criminal Code 2002* (the Code). The Code came into effect after the Domestic Animals Act came into effect. This redrafting will make the elements of the offence and the defence clearer by separating them out into sub clauses.

The purpose of the relevant offence (now contained in new section 142 (3)) is to provide a consequence should a person not surrender their licence after a payment has failed once they have been issued the licence. The offence contains a process where the registrar may give written notice to surrender the licence after a payment failure. It is only an offence if the person does not then surrender their licence within seven days after the notice is received. This is to make sure that people do not receive the benefit of a certificate or licence under the *Domestic Animals Act 2000* that has not been properly paid for.

This may occur where a person applies to register their dog using a credit card to pay for the registration, and then they are issued with a registration certificate for the dog. The financial institution later dishonours, reverses or cancels the transaction. The registrar may then notify the person who registered their dog that the payment has failed and then give the person seven days to return the registration certificate. If they fail to comply, then the person may be charged with an offence under this provision.

The maximum penalty is 5 penalty units.

New section 143 (4) provides that subsection (3) does not apply if the person has a reasonable excuse. A note is included to note that the defendant has an evidential burden in relation to the matter mentioned in section 4. That is based on section 58 of the Criminal Code.

New section 145 (5) provides that in this section, the term *credit card* includes a debit card.

Clause 15 Dictionary, definition of *excluded offence*, paragraph (b) (iv)

This clause amends paragraph (b) (iv) of the definition of excluded offence to align with the amended heading for the amended section 142.

Part 7 Domestic Animals Regulation 2001

Clause 16 Section 24 heading

This clause substitutes the new heading “Dishonoured etc credit card transactions” for section 24.

Clause 17 Section 24 (1)

This clause substitutes a new section 24 (1) which provides for when a person pays a fee under the *Domestic Animals Act 2000* by credit card and that transaction is not honoured or is reversed or cancelled.

In these circumstances, new section 24 (1) (a) provides that the person is liable for any charge imposed on the Territory because of the payment failure as well as the amount of the credit card transaction.

It provides a discretionary power for the registrar to suspend the benefit that they had tried to pay for until a payment is successful.

This amendment retains subsection 24 (2) which contains the discretionary power of the registrar to waive liability under subsection (1) (a) for payment of the charge in cases of hardship.

Clause 18 Section 24 (2)

Section 24 (2) is amended to replace *bank charge* with the *charge imposed on the Territory* to capture all the charges that might be incurred because of a credit card transaction that is not honoured or is reversed or cancelled.

Clause 19 Section 24 (6), new definition of *credit card*

Section 24 (6) provides a new definition of *credit card* to include a debit card.

Part 8 Electoral Act 1992

Clause 20 Candidates to be nominated Section 105 (3) (b)

This clause makes a minor amendment to remove specific references to payment methods. This allows nominees to make the payment through any method that the ACT Electoral Commission accepts.

Part 9 Fair Trading (Motor Vehicle Repair Industry) Act 2010

Clause 21 Dictionary Section 3, note 1

Note 1 provides an example of a signpost definition which is referenced in the Dictionary at the end of the *Fair Trading (Motor Vehicle Repair Industry) Act 2010*.

Clause 22 amends the Note to substitute an example of a signpost definition currently relevant to this Act. The example provided now uses the signpost definition of *motor vehicle* from the dictionary of the *Sale of Motor Vehicles Act 1977*.

Clause 22 Advisory Committee Part 6

This clause removes Part 6 of the *Fair Trading (Motor Vehicle Repair Industry) Act 2010* which provides for the Motor Vehicle Repair Industry Advisory Committee. This body is not been convened and will not be utilised.

Clause 23 False or misleading representations Section 49 (1) (f)

This clause updates previously gendered language in accordance with drafting practice.

Clause 24 Approved forms Section 56

This clause removes section 56 as approved forms are not required under the *Fair Trading (Motor Vehicle Repair Industry) Act 2010*.

Clause 25 Dictionary, notes 1 and 2

This clause replaces existing notes 1 and 2 with a single note to explain that the Legislation Act contains definitions relevant to the *Fair Trading (Motor Vehicle Repair Industry) Act 2010* and to provide examples of those definitions.

Clause 26 Dictionary, *definitions of advisory committee, consumer and representative members*

This clause omits definition for these terms in the Dictionary following from the removal of Part 6 of the *Fair Trading (Motor Vehicle Repair Industry) Act 2010* (see clause 23).

Part 10 Security Industry Act 2003

Clause 27 Division 3.7A heading

This clause amends the heading of Division 3.7A to *Cancellation, suspension and surrender* to better align with the inclusion of new Section 29C in this Division that provides for the surrender of security licences (see clause 28).

Clause 28 New Section 29C

This clause inserts a new section 29C to provide for the surrender of a security licence.

Section 29C (1) provides that a licensee may surrender the licence by giving to the commissioner for fair trading written notice that the licence is being surrendered and the licence (if the licence has not already been given to the commissioner).

Under these circumstances, the licence is cancelled on the day stated by the commissioner after receiving the written notice and the licence. The commissioner must tell the former licensee in writing the day on which it was cancelled.

Section 29C (4) provides that a licence that is suspended may be surrendered under section 29C.

Part 11 Waste Management and Resource Recovery Act 2016

Clause 29 Register of waste facility licences Section 25 (4) and notes

This clause amends section 25 (4) of the *Waste Management and Resource Recovery Act 2016* (the Waste Act) to require the statutory waste manager to make the 'register of waste facility licenses' mentioned in section 25 (2), available to the public without charge.

Section 25 (4) (b) requires the waste manager to make the information that is prescribed by regulation (see clause 36) available to the public and prescribes the ways it may be made available.

This amendment promotes transparency of government processes and access to information for the general public.

Note 1 has been amended to note the application of the Territory privacy principles in relation to personal information held in the register. The engagement with human rights is addressed at page 3 of this Explanatory Statement.

Clause 30 Register of waste transporters, Section 37 (4) and notes

This clause amends section 37 (4) of the *Waste Management and Resource Recovery Act 2016* (the Waste Act) to require the statutory waste manager to make the 'register of registered waste transporters' mentioned in section 37 (2), available to the public without charge.

Section 37 (4) (b) requires the waste manager to make the information that is prescribed by regulation (see clause 41) available to the public and prescribes the ways in which it may be made available.

This amendment promotes transparency of government processes and access to information for the general public.

Note 1 has been amended to note the application of the Territory privacy principles in relation to personal information held in the register. The engagement with human rights is addressed at page 3 of this Explanatory Statement.

Clause 31 Sections 39 and 40

This clause removes sections 39 and 40 of the Waste Act, which currently provides the power to the waste manager to approve a global positioning system (GPS) tracking device to be fitted to a registered waste transporting vehicles in certain circumstances.

This provision has never been used in practice and the amendment reduces redundancy of sections in the Waste Act.

Clause 32 Making of proposed undertakings Section 96 (4), example 6

This clause omits example 6 which is no longer required following the removal of Sections 39 and 40 of the Waste Act.

Clause 33 Section 96 (4), examples (as amended)

This is an editorial amendment to relocate the examples after subsection 96 (4) (c).

Clause 34 Reviewable decisions Schedule 1, item 7

This clause omits item 7 which is no longer required following the removal of Sections 39 and 40 of the Waste Act.

Part 12 Waste Management and Resource Recovery Regulation 2017

This part provides the information that is prescribed by regulation for the public registers for waste facilities and registered waste transporters.

Clause 35 Information for licence application – Act, s 19 (2) (b) New section 6 (aa)

Section 6 of the *Waste Management and Resource Recovery Regulation 2017* (Waste Regulation) prescribes the information that must be provided as part of a waste facility licence application.

This clause inserts a new requirement for an applicant to provide the applicant's registered business name and any trading name, if the applicant operates the business under another name.

Clause 36 New Sections 7A and 7B

This clause adds a new section 7A to the Waste Regulation which prescribes information required to be included on the register of waste facility licences. This amendment complies with the power stated in section 25 of the Waste Act. Prior to this amendment to the regulation, information to be included on the register was not prescribed.

New section 7B prescribes the information that must be made available on the public register for waste facility licences in accordance with section 25 (4) (c) of the Waste Act.

Clause 37 Information for registration application – Act, s 31 (2) (b) New section 9 (aa)

This clause adds a new section 9 (aa) to provide that both the business name and trading names must be listed in the registration application if the applicant operates the business under another name.

Clause 38 Information for register of waste transporters – Act, s 37 (2) (a) New section 10 (aa)

This clause adds a new section 10 (aa) to provide that both the business name and trading names must be listed in the information for the register of waste transporters if the registered waste transporter operates the business under another name.

Clause 39 Section 10 (b)

This clause amends section 10 (b) to align the information prescribed in section 9 (b) about partners in a business partnership.

Clause 40 Section 10 (c) (ii)

This clause amends section 10 (c) (ii) to improve the grammar and make it clear that it is the person who presently has day-to-day control of the registered waste transporter's business.

Clause 41 New section 10 (g) and (h) etc

This clause prescribes two additional information requirements to be included in the register of waste transporters. These are the registered waste transporter's registration number and the end day of the registration.

It also adds a new section 10A to prescribe the elements of the waste transport register that must be made publicly available to align with section 37 (4) (b) of the Waste Act based on amendments by clause 30.

Clause 42 Dictionary, note 3

This clause adds new elements to note 3 which cross references items with meanings from the dictionary of the *Waste Management and Resource Recovery Act 2016*.

Clause 43 Dictionary, new definition of *registered business name*

This clause inserts a new definition of registered business name, which refers to the *Business Names Registration Act 2011* (Cwlth). This supports clarity for the information required in the registers.