ACT Parliamentary Counsel's Office

Legislation Act
Explanatory Material

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Legislation Act Explanatory Material

Introduction

This document has been prepared to provide access to additional information about provisions of the *Legislation Act 2001* (the LA). The document consolidates the explanatory material presented to the Legislative Assembly when the LA was enacted and amended. The primary source material for the document is explanatory statements and explanatory notes presented to the Legislative Assembly.

The document follows the structure and section numbering of republication number 107 of the LA (effective 1 September 2016).

In some cases the entry for a section notes that the provision is purely formal or that no explanatory material could be located for the section.

Under most section headings in the document there are references to Act numbers (for example A2001-14, A2002-11). These are references to the Act numbers that amend the provision. Paragraph numbering in this document is not sequential as it reflects the numbering in the extracted explanatory material.

Users who require additional information may access the primary source material available on the legislation register: http://www.legislation.act.gov.au and the endnotes for the LA.

The document has been prepared by the ACT Parliamentary Counsel's Office primarily for internal use. The Parliamentary Counsel's Office makes this document available on the understanding that users exercise their own skill and care in relation to its use.

Chapter 1 Preliminary

(A2001-14)

A2001-14 inserted the chapter. The explanatory statement provides:

Purpose of Bill

6. The Bill would give the ACT an advanced system for making its legislation accessible sooner and more widely. It would establish an electronic statute book (the ***ACT legislation register***), containing authorised versions of ACT Acts and statutory instruments, and make it accessible without charge on the Internet.

7. It would change the emphasis in publishing legislation from printed to electronic form, although printed copies would still be available, and could be produced more efficiently, on demand, from the register.

8. On the register, the following material would be available continually:

a) authorised republications of Acts and statutory instruments as in force from time to time;

b) each of the following, as enacted or made—Acts, subordinate laws, disallowable instruments, approved forms, commencement notices and other statutory instruments presently required to be published or notified in the Gazette (Approved forms are not presently required to be published or notified in the Gazette.);

c) notifications of the following—

i) the making of Acts, subordinate laws, disallowable instruments, approved forms, commencement notices and other statutory instruments presently required to be published or notified in the Gazette;

ii) amendments of subordinate laws or disallowable instruments by the Legislative Assembly.

9. The register could also contain (or provide links to) related material such as Bills (and amendments of Bills) presented to the Legislative Assembly, explanatory memoranda for Bills, superseded versions of authorised republications, repealed legislation and other material useful to legislation users. Assistance for users would be provided in the form of user guides, indexes, pointers to the responsible Government agencies, and so on.

10. The Bill would bring together in a single Act all the ‘machinery of government’ law relating to the various stages of the legislation ‘life cycle’, ie making (for statutory instruments), notification, commencement, publication, presentation and disallowance (for subordinate laws and disallowable instruments), amendment, republication and repeal. The intention is to make the law easier to find and understand. At present, it is scattered through several Acts and is not easy to

find, let alone use. The Legislation (Access and Operation) (Consequential Provisions) Bill (the ***Consequential Provisions Bill)*** would omit the relevant provisions from those Acts.

11. The Bill would also deal with the following related matters:

a) sources of law in the Territory;
b) numbering of items of legislation;
c) exercise of powers under uncommenced provisions;
d) evidentiary value of authorised, electronic and printed versions of legislation;
e) references to laws.

12. With the publication on the register (***registration***) of the authorised text of Acts and statutory instruments, there would be no further need for the current, short form notices in the Gazette. Registration would replace gazettal (except as a temporary emergency measure). Although the Bill contains transitional provisions to enable registration to replace gazettal, it is proposed that all ACT Acts and subordinate laws will be reviewed and amended as necessary to bring them fully into line with the new legislative framework (for example, changing non-disallowable statutory instruments required to be notified in the Gazette into registrable instruments and making approved forms notifiable instruments). A Bill to make the necessary consequential amendments will be presented to the Legislative Assembly as early as possible in 2001.

13. Apart from the 'machinery of government' law relating to the various stages of legislation, it has also been necessary to bring together the corresponding provisions dealing with various kinds of instruments that will also be registered. In restating various provisions scattered throughout the *Interpretation Act 1967* and the *Subordinate Laws Act 1989* it has become clear that there is a lack of coherence in these provisions as well as anomalies, gaps and uncertainties affecting the making of instruments through which much of the day-to-day activity of government is carried on. It is undesirable that there should be any doubt about the legal effect in routine matters of government and it is certainly desirable that the relevant rules be systematised and made more accessible. Apart from these substantive issues, some of the restated provisions are based on much older provisions which have been little revised for many years. The opportunity has therefore been taken, wherever possible, to restate these in simpler, up-to-date language more in keeping with current legislative practice.

14. It is also proposed that another Bill would be prepared and presented later in 2001. The Bill would amend the Legislation (Access and Operation) Act to include the remaining provisions of the *Interpretation Act 1967* in a remade form. The remaining provisions would provide a comprehensive, up-to-date set of provisions for the interpretation of ACT legislation. This would bring all the key provisions about ACT legislation into a single Act.

Part 1.1 General

Section 1 Name of Act

This section is a formal provision indicating the name of the Act.

The LA was first introduced to the Legislative Assembly as the Legislation (Access and Operation) Bill 2000.

The name of the Bill was amended by a government amendment introduced on 1 March 2001.

(A2001-14 – government amendment 1)

> **Amendment 1**
> This amendment changes the name of the Bill to the *Legislation Bill 2000*.
> It was proposed to change the name of the Act when the remaining provisions of the *Interpretation Act 1967* were incorporated into the Act later this year. However, changing the name now would help to avoid confusion and remove the need to make a large number of consequential amendments

Section 2 Dictionary

This section (initially s 3) is a formal provision indicating the status of the dictionary.

Renumbered by A2002-11.

Section 2A Notes

This section (initially s 4) is a formal provision indicating the status of notes.

Renumbered by A2002-11.

Section 3 Objects

This section was initially s 5.

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> 16. The main object of the Bill, and supporting strategies, are set out in clause 5. The intention is to make legislation more accessible by significantly improving present arrangements with a 3-pronged approach as follows:

a) encouraging access to authorised, electronic versions of legislation on approved Internet sites, while maintaining access to authorised, printed legislation;
b) restructuring, restating and simplifying the relevant 'machinery of government' law dealing with the 'life cycle' of legislation to make it more accessible and easier to understand;
c) assisting users to find, read, understand and use legislation by—
i) facilitating the shortening and simplifying of legislation; and
ii) promoting consistency in the form and language of legislation; and
iii) facilitating the updating and republication of legislation to ensure its ready availability.

17. Legislation is shortened and simplified, and consistency in the form and language of legislation is promoted, particularly through reliance on standard provisions dealing comprehensively with the legislation 'life cycle'. The updating and republication of legislation is facilitated by the electronic publication of legislation and the provisions of the Bill that deal with the republication of Acts and statutory instruments.

(A2002-11)

The section was expanded and renumbered by A2002-11. The explanatory statement provides:

Background

...2 Under the Public Access to Law project—
(a)...(e)...
(f) most of the provisions dealing with the 'life cycle' of ACT legislation have been clarified updated, simplified where practicable, and brought together in a single Act (the *Legislation Act 2001*).

3 The 'life cycle' of legislation includes the making (where relevant), notification, commencement, tabling and disallowance (where relevant), operation, interpretation, proof, republication, amendment and repeal of legislation and instruments made under legislation.

Clause 4
23 Proposed chapter 14 would enlarge the existing scope of the Legislation Act by including provisions about the interpretation of Acts and statutory instruments (that is, instruments made under Acts). Clause 4, therefore, revises Legislation Act, section 5 to reflect this enlarged scope of the Act as amended (see proposed subsections (2) (c) (iii) and (3). The opportunity has also been taken to spell out in greater detail the scope of the Act generally (see proposed subsection (3)). The amendment does this by introducing the concept of the 'life cycle' of legislation as a convenient, shorthand term for the area of the Legislation Act's operation.

Clause 5
24 The proposed renumbering of sections 3, 4 and 5 is intended to allow new sections to be inserted in part 1.1 and at the same time keep, as far as possible, the normal numbering of

provisions. Under the Legislation Act, section 89 (4), section 2 (Commencement) has already been repealed.

Section 4 Application of Act

This section was initially s 6.

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

18. Clause 6 sets out the Bill's application. The Bill applies to all Acts and all kinds of statutory instruments, whether legislative or administrative (eg regulations, rules and by-laws, disallowable instruments, commencement notices and all other instruments made under Acts or statutory instruments that are required or permitted to be published or notified in the Gazette). ***Act*** is defined in clause 7 and ***statutory instrument*** is defined in clause 13.

(A2002-11)

A2002-11 renumbered and remade the section. The explanatory statement provides:

Clause 6
Proposed sections 4, 5 and 6
25 This clause remakes existing section 6 as section 4 and inserts new sections 5 and 6. Proposed sections 4, 5 and 6 are intended to clarify the relationship between the Legislation Act and other Acts and statutory instruments. Proposed section 4 describes, in general terms, the relationship between the Legislation Act and the statute book as a whole...

26 Proposed section 4 differs from existing section 6 in 2 ways. First, section 4 (1) expressly provides that the Act applies to itself. This confirms, for example, that provisions such as Legislation Act, section 97 apply to the Legislation Act itself in the same way as they apply to other Acts. The effect of section 97 (1) is that if an Act refers generally to 'an Act' the reference includes the Act itself. Some examples of this confirmed operation of section 4 are as follows:

- the Legislation Act may be republished under chapter 11 (Republication of Acts and statutory instruments)
- the requirements of chapter 7 (Presentation, amendment and disallowance of subordinate laws and disallowable instruments) apply to regulations made under the Legislation Act itself.

27 Second, section 4 (2) is included to emphasise the fundamental significance of the Legislation Act to the ACT statute book as a whole. It is not simply that the Legislation Act (like interpretation Acts in other jurisdictions) enables enactments to be shortened (and simplified) because of the definitions and other provisions it contains. Bills and instruments (particularly those prepared in the Parliamentary Counsel's Office) are always drafted with the provisions of the Legislation Act in mind. In effect, the Legislation Act does not simply operate into the future

in its relationship with other Acts and instruments, it also reaches back, as it were, to the very earliest stages of the drafting process. No ACT Act or statutory instrument can be properly understood in isolation from the Legislation Act.

28 The examples to section 4 (2) are intended to illustrate some of the possible ways in which the Legislation Act complements other Acts and instruments. The relationship may arise from a simple definition (see example 1) or it may be a network of provisions supporting administrative arrangements such as fees for an Act (see example 2). In both cases, the Legislation Act may be seen as reaching out across the statute book and intersecting with every ACT Act and statutory instrument.

29 Section 4 (3) identifies the section as a 'determinative provision' (see proposed section 6 discussed below).

(A2006-42)

A2006-42 made minor amendment to the examples and notes in s 4. The explanatory notes are as follows:

The example relates to the determination of fees under an Act. Fee determinations are disallowable instruments (see s 9 (1) (b)). This amendment omits words that are now redundant because of the effect of the Legislation Act, section 42 (2) which requires disallowable instruments to be in writing.

This amendment includes new note 1 to assist users of the Act.

Section 5 Determinative and non-determinative provisions

(A2002-11)

A2002-11 inserted the section. The explanatory statement provides:

Purpose
7 The Bill continues the process of bringing together, clarifying, updating and, where practicable, simplifying the legislation dealing with the 'life cycle' of ACT legislation. Most of the enhancements made by the Bill are of a technical nature. There are however, 3 noteworthy issues relating to statutory interpretation dealt with by the Bill.

8 First, the Bill deals more fully with the status of Legislation Act provisions, particularly their application and displacement. Some of the provisions of the Act will be declared to be 'determinative' provisions. The idea, essentially, is that these provisions will deal with subjects of such importance to our system of government and law that they should not be readily set aside under other legislation (for example, the requirement that newly-made laws should be publicly notified). Traditionally rules of this kind have been set down in interpretation legislation subject to displacement if a 'contrary intention' is found in another Act. The problem is that in some cases it may be easy to 'find' a contrary intention where none was intended by the legislature.

9 In seeking to protect these important principles, the Bill recognises that the Legislative Assembly cannot bind successor Assemblies except through constitutionally entrenched provisions under the Self-Government Act, section 26. In other words, the Legislation Act is subject to amendment and repeal by the Legislative Assembly, and that the Assembly is free to choose the form of that amendment or repeal. On the other hand, the preservation of important values embodied in the Legislation Act requires that certain provisions of the Act should not be lightly set aside.

10 In addition, as the Legislation Act underpins the ACT statute book and ACT legislative drafting practice, the achievement of legislative policy with a reasonable degree of certainty is based, at least in part, on the ability of policy developers, drafters, law makers and users of legislation to be able to rely on provisions of the Legislation Act with confidence. If important provisions of the Legislation Act cannot be relied on in drafting, enacting and interpreting ACT legislation, the contribution that the Legislation Act can make to the simplification and accessibility of ACT laws will not be realised.

...

Clause 6

Proposed sections 4, 5 and 6

25 This clause...inserts new sections 5 and 6. Proposed sections 4, 5 and 6 are intended to clarify the relationship between the Legislation Act and other Acts and statutory instruments...Proposed section 5 defines the concepts of ‘determinative’ and ‘non-determinative’ provisions.

...

Proposed section 5 Determinative and non-determinative provisions

30 This proposed section defines the concepts of determinative and non-determinative provisions. These concepts are used in proposed section 6. The definitions of ***determinative provision*** and ***non-determinative provisions*** in proposed is identified, and may only be identified, by express declaration. See, for example, proposed section 4 (3), which provides:

(3) This section is a determinative provision.

This will make the task of identifying determinative provisions an easy one. A determinative provision will always contain a provision like proposed section 4 (3). To assist Legislation Act users, a note referring to sections 5 and 6 appears next to each of these provisions (other than in section 6 itself).

Section 6 Legislation Act provisions must be applied

(A2002-11)

A2002-11 inserted the section. The explanatory statement provides:

Clause 6

Proposed sections 4, 5 and 6

25 This clause ... inserts new sections 5 and 6.Proposed sections 4, 5 and 6 are intended to clarify the relationship between the Legislation Act and other Acts and statutory instruments...Proposed section 6 uses these concepts to provide a rule about the interaction between particular provisions

of the Legislation Act and those of other Acts and statutory instruments. It should, however, be noted that the provisions of the Legislation Act apply to itself (see next paragraph).

...

Proposed section 6 Legislation Act provisions must be applied

31 Proposed section 6 uses the concept of determinative and non-determinative provisions to define further the relationship between the Legislation Act and the rest of the ACT statute book.

32 Proposed section 6 (1) provides that a provision of the Legislation Act must be applied to an Act or statutory instrument, in accordance with the terms of the provision, except so far as it is displaced. The subsection complements the provision made by section 4 (2) that Acts and statutory instruments are taken to be made on the basis that they operate in conjunction with this Act.

33 There are several features of section 6 (1) that should be noted. First, the subsection uses mandatory, and not directory language, to express the Legislative Assembly's intention embodied in it (see Legislation Act, section 146 (2)). Second, although the subsection would normally be relevant to Acts other than the Legislation Act, the subsection must also be applied to the Legislation Act itself (see Legislation Act, sections 4 (1) and 97 (1)). Third, the reference in section 6 (1) to a provision of the Legislation Act being applied in accordance with its terms is a reference to the fact that the provision may not, in its terms, be applicable to the Act or statutory instrument to which it is sought to be applied. The reference is not intended to suggest that the provisions of proposed chapter 14 (Interpretation of Acts and statutory instruments) do not apply to Legislation Act provisions and, in particular, that Legislation Act provisions are not to be read in the context of the Legislation Act as a whole (see proposed section 141). Finally, the subsection acknowledges that Legislation Act provisions may be displaced either completely or partly. However, except so far as they are displaced, they must be applied in accordance with their terms. When, how, and the extent to which, a Legislation Act provision may be displaced is dealt with in the following provisions of section 6.

34 Traditionally, interpretation Acts have contained provisions laying down rules that are expressed to be subject to a 'contrary intention'. In other words, the rule in an interpretation Act is intended to apply presumptively unless another law contains a provision indicating that the interpretation Act provision is not intended to apply in a particular case. In the past, some provisions of the *Interpretation Act 1967* have been expressed to be subject to a contrary intention while others have made no reference to the matter. More recently, the Interpretation Act has been amended to remove the scattered references to contrary intention and insert the following general provision:

Displacement of Act by contrary intention

This Act applies to an Act except so far as the contrary intention appears in this Act or the Act concerned. Section 6 is intended to build on this practice and move another stage forward.

35 A number of existing provisions of the Legislation Act imply that more is required to displace their operation than for other provisions. For example, contrast section 146 (4) and (5) (Meaning

of ***may*** and ***must***). Section 146 (5) indicates that the application of the section to certain laws and instruments is subject to a ‘contrary intention’. On the other hand, section 146 (4) provides that it applies to other laws unless the law ‘expressly provides’ that section 146 does not apply. Similar language is used in other provisions (see, for example, sections 44 (3), 47 (1) (b) (i), 47 (4)(b), 75 (2), 79 (2), 84A (4), 92, 132 (4), 133 (2), 179 (3), 231 (2) and 236 (2)). Further analysis of these provisions suggests that reliance on ‘express’ provision alone would unjustifiably narrow the appropriate scope for displacement having regard to the concept of parliamentary sovereignty.

36 Accordingly, section 6 (2) provides for the displacement of a determinative provision expressly or by ‘manifest contrary intention’ while section 6 (3) provides for the displacement of a non-determinative provision expressly or by ‘contrary intention’.

37 The term ‘manifest’, which is used in relation to the displacement of determinative provisions, is intended to signify a contrary intention that is clearly deliberate, that is, the displacement is by unmistakable and unambiguous language. In other words, if there is any reasonable doubt whether the contrary intention exists, the determinative provision should be taken not to have been displaced. Usages of the term ‘manifest’ in other areas of the law have been considered. In particular, the following passage from the joint judgment of Mason CJ, Brennan, Gaudron and McHugh JJ in *Coco v R* (1994) 179 CLR 427 at 437 is of particular relevance:

> The insistence on express authorization of an abrogation or curtailment of a fundamental right, freedom or immunity must be understood as a requirement for some manifestation or indication that the legislature has not only directed its attention to the question of the abrogation or curtailment of such basic rights, freedoms or immunities but has also determined upon abrogation or curtailment of them. The courts should not impute to the legislature an intention to interfere with fundamental rights. Such an intention must be *clearly manifested by unmistakable and unambiguous language*. General words will rarely be sufficient for that purpose if they do not specifically deal with the question because, in the context in which they appear, they will often be ambiguous on the aspect of interference with fundamental rights. (emphasis added)

38 Similarly the concept of displacement by ‘necessary implication’ has also been considered (used, for example, by the High Court in a number of cases considering the privilege against selfincrimination and legal professional privilege). The ‘manifest contrary intention’ required to displace a determinative provision is intended to be stronger than an indication of a ‘necessary implication’.

39 The Bill therefore divides the provisions of the Legislation Act into 2 groups—

- first, those that are to be applied except so far as displaced by express provision or manifest contrary intention (identified in the Legislation Act by being expressly declared to be ‘determinative provisions’); and
- second, those that are to be applied except so far as displaced by express provision or a contrary intention (the remaining Legislation Act provisions).

40 To enable these changes to be implemented throughout the Act, a number of consequential amendments are provided in schedule 1. First, each reference in a provision to the effect that it is displaced by another law that makes express provision to the contrary has been omitted and the provision amended to declare that it is a determinative provision. Second, express references to 'contrary intention' have been omitted from the Act, because they are no longer required.

41 Although it might seem to follow that determinative provisions are somehow more 'fundamental' to the scheme of the Legislation Act than provisions displaced by a contrary intention, this is not necessarily the case. For example, the rationalisation across the ACT statute book that follows from the use of standard definitions in the dictionary, part 1 is an important feature of the operation of the Legislation Act. But the nature of definitions is such that a 'contrary intention' seems to be the most appropriate displacement mechanism. However, even if the determinative provisions may properly be described, on the whole, as 'more fundamental' to the scheme of the Legislation Act than the other provisions, the fact remains that all the provisions of the Legislation Act have the force of law. The distinction between determinative and non-determinative provisions is simply that non-determinative provisions may be more readily displaced than determinative provisions. Proposed section 6 (4) is intended to emphasise that the distinction between the 2 kinds of provisions lies in the degree of 'deliberation' required to displace them.

42 Proposed section 6 (5) expressly provides that the section applies despite any presumption or rule of interpretation (see also the comments about proposed section 6 (7), which deals with the non-application of a particular rule of interpretation).

43 Proposed section 6 (6) is intended to create a presumption in favour of the concurrent operation of a Legislation Act provision to the maximum extent possible, whether the provision is a determinative or non-determinative provision.

44 Section 6 (7) is an extension of this presumption. It is included to exclude the strict application (in this context) of the common law rule of statutory construction '*expressio unius est exclusio alterius*' ('the expression of one is the exclusion of the other'). That rule might otherwise have created a contrary presumption to the effect that the treatment of an aspect of a subject matter in a provision of an Act or statutory instrument impliedly excluded the treatment of another aspect of the same (or similar) subject matter in a provision of the Legislation Act, simply by not mentioning it. As with section 6 (6), section 6 (7) applies to any provision of the Legislation Act, whether determinative or non-determinative.

45 By proposed section 6 (8), section 6 itself is declared to be a 'determinative provision', requiring an express statement or manifest contrary intention in an Act or statutory instrument for its displacement.

46 To assist Legislation Act users further, 4 examples appear at the end of section 6. The examples illustrate the different kinds of displacement and how the provisions about non-displacement work.

Part 1.2 Basic Concepts

(A2001-14)

A2001-14 inserted the part. The explanatory statement provides:

> 19. This Part sets out some of the basic concepts of the Bill and arranges the various kinds of statutory instruments into logical groups. The concepts in this Part are used to simplify the substantive provisions of the Bill. Most of the concepts in this Part are already widely used in the law, eg subordinate law and disallowable instrument. Clause 10, however, introduces a new concept ('notifiable instrument') for instruments (other than subordinate laws), disallowable instruments and commencement notices required to be notified under the Bill and clause 12 provides a new concept ('registrable instrument') to cover all the kinds of instruments required to be notified (or registered) under the Bill. Each of the clauses that explains a concept contains a 'sectional definition' that is applied to the entire Bill by a corresponding 'signpost definition' in the dictionary to the Bill (for a detailed illustration of how this works see example 1 to subsection 11F(2) of the *Interpretation Act 1967*). Each of the clauses (apart from clause 16) also provides for references to a law or instrument so defined to include a provision of the law or instrument. This is merely a way of simplifying the language of the Bill by avoiding the need to say, for example, 'if a disallowable instrument *or a provision of a disallowable instrument*'.

Section 7 Meaning of *Act* generally

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 7 Meaning of *Act*
> 20. The Bill would apply to all ***Acts***, meaning laws (however described or named) made by the Legislative Assembly under the Self-Government Act. This would re-enact paragraph (a) of the existing definition of ***Act*** in the dictionary to the *Interpretation Act 1967*. Under clause 17 (References to Acts include references to former Cwlth enactments), former NSW Acts and former UK Acts, which are part of the law of the Territory, would also fall within the meaning of ***Act***. As to the structure and scope of the definitions provided for in this clause, see the comments under 'Basic concepts'.

(A2005-20)

A2005-20 replaced note 2. The explanatory note provides:

> This amendment replaces a note to section 7 consequential on the remaking of chapter 10 (Referring to laws) by another amendment.

Section 8 Meaning of *subordinate law*

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clauses 8, 9 and 10 Subordinate laws, disallowable instruments and notifiable instruments
> 21. The structure of the current law about subordinate laws and statutory instruments does not make it easy to use. Under the *Subordinate Laws Act 1989*, provisions of the *Interpretation Act 1967* (which are expressed to apply to Acts), are applied indirectly (and globally) to subordinate laws (and also to disallowable instruments and instruments of an administrative nature). The provisions also overlap, eg those that apply to regulations, rules and by-laws on one hand, and those that apply to other statutory instruments on the other.
>
> 22. These clauses arrange the various kinds of statutory instruments into logical groups, to permit a simpler and clearer structure for the substantive provisions later in the Bill.
>
> 23. Clause 8 provides for a definition of ***subordinate law*** adapted from the definition presently used in the dictionary to the *Interpretation Act 1967* and paragraph (a) of the definition of ***subordinate law*** in subsection 6 (19) of the *Subordinate Laws Act 1989*. The general meaning of ‘subordinate law’ is a rule of law made by an authority such as the Executive under power given by Parliament. Under our system of government, Parliament is the primary law-maker. Parliament makes laws known as Acts that lay down the basic features of a scheme of legislation. For example, Parliament has legislated to provide that people must not drive without a licence. But rather than clutter the Act with details about the form of a licence, how to obtain the licence or the fee for a licence, these matters are provided for in regulations or disallowable instruments. Parliament does not necessarily have sufficient time to develop and debate all aspects of the proposed legislative scheme. Therefore, the Act that lays down the general rules about driving will contain a section conferring power on the Executive to make the necessary regulations. Because the Executive is exercising powers given or delegated to it by the Parliament it is sometimes referred to as a ‘subordinate law-making body’ and the rules it makes ‘subordinate laws’.
>
> 24. One of the differences between the Interpretation Act definition and the definition in clause 8 is that under the clause a subordinate law will always be a regulation, rule or by-law. In this regard the definition follows the definition of ***subordinate law*** in subsection 6 (19) of the *Subordinate Laws Act 1989*. This will assist in standardising the term throughout the ACT statute book. Regulations are the most common type of subordinate law in the ACT. If a subordinate law is primarily concerned with matters of procedure, it will usually be designated a rule (the best example being rules of court). A subordinate law that operates in a particular geographical area (eg a nature reserve) or applies to a particular body will often be designated as by-laws. These are rare in the ACT. It should be noted, however, that there is no legal requirement that regulations, rules and by-laws have the subject matter indicated. These are matters of usage relating to the way that subordinate law-making powers are commonly expressed. It is often the case, for example, that regulations will deal with matters of procedure.

25. Although clause 8 stipulates that a subordinate law will always be a regulation, rule or by-law, it does not require that the subordinate law must always be 'legislative' in nature. (The same approach is also taken by other clauses of the Part.) From time to time, the courts have had to grapple with the question whether a particular instrument is legislative or (say) administrative in nature. Essentially, an instrument is legislative if it lays down a general rule of conduct (often expressed as the power or duty to do something) while an administrative instrument may often apply such a rule to a particular person, time and place (for example, by effecting an appointment, delegation or some other exercise of power). While the broad distinction between legislative and administrative is clear enough, it is extremely difficult to fix the precise point at which something that is essentially administrative takes on a legislative character and vice versa. Clause 8 seeks to avoid these uncertain distinctions by providing in effect that if an Act provides for the making of something designated as a regulation, rule or by-law it is treated by the ACT legal system as a subordinate law without the need to embark on a further inquiry about whether it is also legislative in effect. In other words, it is a matter for the Legislative Assembly to decide the designation of delegated legislation (and the consequences flowing from that designation) when it gives power to make the delegated legislation.

26. As previously noted, a subordinate law will usually be made under the power specifically given by an Act for the purpose. Clause 8 allows for the possibility, however, that in making the subordinate law the Act may also draw upon another source of power such as a rule of common law or the prerogative.

27. As to the structure and scope of the definition of ***subordinate law***, see the comments under "Basic concepts".

Section 9 Meaning of disallowable instrument

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

Clauses 8, 9 and 10 Subordinate laws, disallowable instruments and notifiable instruments
21. The structure of the current law about subordinate laws and statutory instruments does not make it easy to use. Under the *Subordinate Laws Act 1989*, provisions of the *Interpretation Act 1967* (which are expressed to apply to Acts), are applied indirectly (and globally) to subordinate laws (and also to disallowable instruments and instruments of an administrative nature). The provisions also overlap, eg those that apply to regulations, rules and by-laws on one hand, and those that apply to other statutory instruments on the other.

22. These clauses arrange the various kinds of statutory instruments into logical groups, to permit a simpler and clearer structure for the substantive provisions later in the Bill.
...
28. Clause 9 provides for a definition of ***disallowable instrument*** adapted from paragraph (b) of the definition of ***subordinate law*** in subsection 6 (19) and section 10 of the *Subordinate Laws Act 1989*. Before exploring in more detail the kinds of instruments that are disallowable instruments,

it will be desirable to say something about the notion of disallowance itself. In the earlier discussion on clause 8 of the Bill relating to subordinate laws it was pointed out that Parliament may not have sufficient time to develop and debate the detailed rules usually provided for in regulations and other kinds of subordinate laws. The Parliament therefore delegates this task to an authority such as the Executive so that it becomes a subordinate law-maker. Unlike the process of law-making in the Legislative Assembly, regulations are not made in public proceedings with the corresponding opportunity for debate and questions. Subordinate laws are formulated within government agencies and need only become public when they are notified in the Gazette.

29. Although the Executive consists of Ministers who are responsible to the Legislative Assembly for the proper discharge of their duties, there is a need for some system by which the subordinate laws may be scrutinised by Members and citizens specially affected. In common with every other jurisdiction in Australia, section 6 of the *Subordinate Laws Act 1989* therefore requires that subordinate laws must 'laid before' the Legislative Assembly within a specified time after they are made. (Clause 52 provides for subordinate laws and disallowable instruments to be 'presented' to the Legislative Assembly.)

30. One of the consequences of presenting a subordinate law is that a period begins to run within which any Member (perhaps responding to representations from an individual or organisation) may move for the 'disallowance' (in effect, the repeal) or amendment of the subordinate law. If the motion for disallowance is passed by the Legislative Assembly (and in certain other circumstances that are not relevant for present purposes), section 6 of the *Subordinate Laws Act 1989* further provides that the subordinate law is taken to be repealed. (The details of the disallowance procedure are set out in Chapter 6 of the Bill.) It should be noted that although section 6 is only expressed to apply to 'subordinate laws', its provisions are extended by section 10 of the *Subordinate Laws Act 1989* to instruments that are declared to be disallowable instruments.

31 Section 10 does not limit the kind of instrument that may be so declared. It simply provides that the declaration may be made by an Act or a subordinate law. Ultimately then, the significance of an instrument a disallowable instrument is that it may be disallowed or amended by the Legislative Assembly.

32. Paragraph 9 (1) (a) has been adapted from the definition of ***disallowable instrument*** in subsection 10 (1) of the *Subordinate Laws Act 1989* but is wider in that it allows an instrument to be declared to be a disallowable instrument by another disallowable instrument. Paragraph 9 (1) (b) has been adapted from paragraph (b) of the definition of ***subordinate law*** in subsection 6 (19) of the *Subordinate Laws Act 1989*. Current legislative drafting practice is to expressly declare statutory instruments mentioned in the paragraph to be disallowable instruments. As to the structure and scope of the definition of ***disallowable instrument***, see the comments under 'Basic concepts'.

33. Finally, clause 115 contains a transitional provision about the status of statutory instruments declared to be disallowable instruments under the *Subordinate Laws Act 1989*.

Section 10 Meaning of notifiable instrument

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clauses 8, 9 and 10 Subordinate laws, disallowable instruments and notifiable instruments
> 21. The structure of the current law about subordinate laws and statutory instruments does not make it easy to use. Under the *Subordinate Laws Act 1989*, provisions of the *Interpretation Act 1967* (which are expressed to apply to Acts), are applied indirectly (and globally) to subordinate laws (and also to disallowable instruments and instruments of an administrative nature). The provisions also overlap, eg those that apply to regulations, rules and by-laws on one hand, and those that apply to other statutory instruments on the other.
>
> 22. These clauses arrange the various kinds of statutory instruments into logical groups, to permit a simpler and clearer structure for the substantive provisions later in the Bill.
> ...
> 34. Clause 10 provides for a definition of ***notifiable instrument***. As previously noted, this is a category of instruments not previously provided for in the ACT legal system (although clause 116 contains a transitional provision that, among other things, would treat certain statutory instruments made under existing provisions as notifiable instruments). The definition is essentially a convenient device to enable the Bill to deal in a consistent way with statutory instruments (other than subordinate laws, disallowable instruments and commencement notices) that are required to be notified under the Bill. Most of these instruments are presently required to be published or notified in the Gazette. Under the Bill, registration of the full text of such an instrument (and any particulars) would replace notification in the Gazette. The definition contemplates that the particular instruments to be registered would be identified by being declared for that purpose in an Act or a registrable instrument. As to the structure and scope of the definition, see the comment under ‘Basic concepts’.

Section 11 Meaning of *commencement notice*

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 11 Commencement notices
> 35. Under the Bill, commencement notices for Acts, subordinate laws, disallowable instruments would be published on the legislation register, rather than in the Gazette. This clause defines ***commencement notice*** comprehensively. As to the structure and scope of the definition of ***commencement notice***, see the comments under ‘Basic concepts’.

Section 12 Meaning of legislative instrument

[The term initially used in this section was registrable instrument.]

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 12 Registrable instruments
> 36. This clause, which lists the statutory instruments to be published (ie registered) on the legislation register, is a machinery provision to facilitate the operation of Part 5.3 (Numbering and notification of registrable instruments). The provisions of that Part would apply in a similar way to all registrable instruments.
>
> 37. The concept of ***registrable instrument*** is used for all statutory instruments required to be notified. As to the structure and scope of the definition of ***registrable instrument***, see the comment under 'Basic concepts'.

(A2006-42)

A2006-42 substituted s 12. The explanatory statement provides:

> The amendments in schedule 2, part 2.1 (amendments of the Legislation Act) include the following:
> - replacement of the term *registrable instrument* with the better known term *legislative instrument*

The explanatory note further explained the change as follows:

> This amendment replaces the defined term *registrable instrument* with the defined term *legislative instrument*. It has become apparent that users of the Legislation Act do not find the term *registrable instrument* helpful. The amendment, therefore, replaces it with the equivalent term used in the *Legislative Instruments Act 2003* (Cwlth).

Section 13 Meaning of *statutory instrument*

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> 38. As the Bill would streamline the 'machinery of government' law about ***statutory instruments*** generally, clause 13 would define them broadly, to mean any ***instrument*** (whether legislative or not) made under an Act, another statutory instrument or a power given by an Act or statutory instrument or otherwise by law. Statutory instruments include, but are not limited to, subordinate laws, disallowable instruments, notifiable instruments and commencement

notices. The definition is based on the existing definition of ***statutory instrument*** in the dictionary to the *Interpretation Act 1967*

Section 14 Meaning of instrument

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

39 To support the meaning of ***statutory instrument***, clause 14 would import the base level meaning of ***instrument*** from the dictionary to the *Interpretation Act 1967*, ie any writing or other document. As to the structure and scope of the definition of ***statutory instrument***, see the comments under 'Basic concepts'.

(A2001-56)

A2001-56 made a minor amendment to a note in s 14 (1). The explanatory note is as follows:

This amendment updates the reference to the definition mentioned in the note. The definition is being relocated to the Legislation Act 2001 by the Bill.

Section 15 Meaning of authorised republication

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

40 Clause 15 defines an authorised republication as a law (as defined in clause 95) authorised by the Parliamentary Counsel under the Bill. Clause 23 authorises the Parliamentary Counsel to authorise printed and electronic versions of republications. As to the structure and scope of the definition, see the comments under 'Basic concepts'.

Section 16 Meaning of *provision*

(A2001-14)

41. Clause 16 re-enacts the definition of ***provision*** in the dictionary to the *Interpretation Act 1967*. The definition makes it clear that a provision of an Act or statutory instrument means any words or anything else forming part of the Act or instrument. As to the structure and scope of the definition, see the comments under 'Basic concepts'.

(2001-56)

A2001-56 made a minor amendment to a note in s 14 (1). The explanatory note is as follows:

This amendment updates the reference to the provisions mentioned in the note. The provisions are being relocated to the Legislation Act 2001 by the Bill.

Part 1.3 Sources of Law in the ACT

(A2001-14)

A2001-14 inserted the part. The explanatory statement provides:

> 42. As part of the consolidation of the 'machinery of government' law, this Part would re-enact section 7A paragraph (b) of the definition of ***Act*** in the dictionary, the definition of ***enactment*** in the dictionary and Schedule 1, to the *Interpretation Act 1967*.

Section 17 References to Acts include references to former Cwlth enactments etc

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> 43. Clause 17 would enlarge the meaning of Act given by clause 7 (Meaning of *Act*) to include former Commonwealth enactments and former NSW and UK laws that form part of the law of the Territory.

Chapter 2 ACT legislation register and website

(A2001-14)

A2001-14 inserted the chapter. The explanatory statement provides:

> 44. This Chapter is the core of the scheme to make ACT legislation accessible sooner and more widely, and move the emphasis in printing legislation from printed to electronic form.

Section 18 ACT legislation register

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> 45. Clause 18 would require the Parliamentary Counsel to establish and maintain the ***ACT legislation register*** in 1 or more computer databases.

(A2001-56)

A2001-56 substituted s 18 (2). The explanatory note is as follows:

> This amendment will allow greater flexibility in the operation of the computer systems needed for the legislation register. The amendment will avoid the need for individual documents in all cases and allow material such as tables to be compiled from information associated with registered documents.

Section 19 Contents of register

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> To simplify access to the law, clause 19 provides for the register to be arranged in parts, with the various kinds of legislation and statutory instruments arranged in logical groups. Part 1 would be a key element, containing authorised, up-to-date republications of legislation and statutory instruments in force from time to time. (Subclauses 19 (5) and (6) would require the Parliamentary Counsel to keep laws and instruments in part 1 of the register up-to-date.)
>
> 46. Subclause 19 (2) would allow the Parliamentary Counsel to establish additional parts of the register, if considered useful to users. This would allow separate parts to be established, for example for appointments under the *Statutory Appointments Act 1994* (which are notifiable and disallowable in their own right under that Act) or executive appointments under the *Public Sector*

Management Act 1994 (which are notifiable in their own right under that Act, but not disallowable).

47. It would also allow bills and explanatory memoranda and amendments of bills presented to the Legislative Assembly to be included on the register, together with superseded (historical) versions of republications and repealed Acts and statutory instruments. At present, there is little or no access to much of this material.

48. The Parliamentary Counsel would also be able to add other informational material in any part of the register. The material could include user guides, indexes, pointers to responsible Government agencies, or assistance for people with access disabilities.

49. To promote better access to Acts and statutory instruments, subclause 19 (8) would allow the publication on the register of any Act or statutory instrument, even if it had been notified in the Gazette before the commencement of the new arrangements. However, transitional clauses 110 (Application of s 28) and 111 (Application of s 50) make it clear there would be no obligation to register the Act or instrument if it has already been notified.

50. Under subclause 19 (9), the Parliamentary Counsel would be able to correct mistakes, errors and omissions in the register, subject to any requirements set out in the regulations.

(A2001-14 – government amendment 2)

Amendment 2
This amendment is a technical amendment to bring the language of clause 19 (8) more closely into line with clause 116 (3). Under the Bill registrable instruments are not, strictly speaking, ‘required to be notified’ (see cl 50 (1)). However, unless a registrable instrument is notified it cannot commence (see cl 61) and is, therefore, unenforceable (see proposed cl 50A).

(A2001-56)

A2001-56 substituted s 19. The explanatory note is as follows:

The remaking of section 19 will remove the existing requirement for the register to contain separate parts for the various types of registered material. This requirement would unnecessarily complicate the keeping of the register. The computing system will separate material for user convenience without the need for separate parts to be established legislatively.

The new section would also require Bills presented to the Legislative Assembly to be available on the register. The section also deals comprehensively with notification of the disallowance and amendment of subordinate laws and disallowable instruments by the Legislative Assembly.

(A2002-11)

A2002-11 inserted a new section (4A). The explanatory statement provides:

> 47 The Legislation Act, section 19 deals with the contents of the ACT legislation register. Section 19 (3) presently authorises the parliamentary counsel to enter additional material in the register if the parliamentary counsel considers that it is likely to be useful to users of the register. The clause inserts a new subsection (4A) into section 19 to make it clear that the parliamentary counsel can enter the additional material in the register in any way the parliamentary counsel considers is likely to be helpful to users of the register. To simplify the operation of the register for users, it has been found necessary to deal with some additional material within existing categories of material on the register rather than adding further categories to deal with it. The examples to proposed section 19 (4A) illustrate the proposed operation of the subsection. The amendment will assist in ensuring that the widest range of material is made available on the ACT legislation register. Wherever necessary, notes will be included in the register to clearly indicate the status of any additional material included in the register and avoid any possible confusion by register users.

(A2002-49)

A2002-49 substituted s 19 (1) (i), adding ss 19 (1) (j) and (k). The explanatory note is as follows:

> This amendment adds explanatory statements for bills (and amendments of bills), subordinate laws and disallowable instruments, and regulatory impact statements to the list of material that must be included on the ACT legislation register. Explanatory statements for bills (previously called explanatory memoranda), and explanatory statements and regulatory impact statements for subordinate laws and disallowable instruments have been included on the register since the beginning of the current Assembly.

(A2003-41)

A2003-41 inserted s 19 (6) and (7) and renumbered. The explanatory note is as follows:

> This amendment makes it clear that regulations can be made to improve consistency in the entry of additional material in the legislation register. This will help users to access the material more easily. Under the Act, section 19 (3) and (5), the parliamentary counsel may enter additional material in the register in any way the parliamentary counsel considers will help users of the register. The additional material includes, for example, statutory instruments that are not registrable instruments, the administrative arrangements for the ACT under the *Australian Capital Territory (Self-Government) Act 1988*, (Cwlth) and the Australian Road Rules applying in all States and Territories including the ACT. As this kind of material is generally similar to registrable instruments, it is helpful to users if regulations ensure that it can be entered and numbered in the register in a similar way to registrable instruments.

(A2004-5)

A2004-5 amended section 19 (4) (f) and inserted 19 (4) (g). The explanatory statement provides:

> **Part 2.3 Legislation Act 2001**
> [2.6] amends section 19 (4) (f) and inserts new subsection 19 (4)(g) to the *Legislation Act 2001* to include materials relevant to interpreting the rights set out in the Human Rights Act including the documents mentioned in that Act, dictionary, definition of international law.

(A2004-42)

A2004-42 inserted a new definition in s 19 (13). The explanatory note is as follows:

> This amendment includes a new definition of ***repealed*** based on the definition of that term in section 82. The amendment makes it clear that lapsed and expired Acts and statutory instruments may be included on the ACT legislation register.

(A2005-20)

A2005-20 omitted an example 3 in s 19 (5). The explanatory note is as follows:

> This amendment omits an example that is no longer appropriate. The Australian Road Rules currently in force were notified as a notifiable instrument on 16 July 2004.

(A2006-42)

A2006-42 updated references from ‘registrable instrument’ to ‘legislative instrument’ in this section. The explanatory note is as follows:

> This amendment is consequential on another amendment in this part.

Section 20 Prompt registration

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> 51. To underline the object of making legislation accessible sooner, this clause would expressly oblige the Parliamentary Counsel to act promptly in complying with requirements concerning the register.

Section 21 Approved website

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> 52. To protect the integrity of ‘master’ legislation files, the legislation register itself would not be directly accessible by users. Instead, copies of the register would be available at 1 or more approved web sites which satisfy strict security requirements.
>
> 53. Clause 21 would allow the Parliamentary Counsel to approve the web sites, and enter into arrangements to ensure that users can authenticate approved sites or the material accessible at approved sites.

Section 22 Access to registered material at approved website

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> 53. ... Under clause 22, the Parliamentary Counsel would be obliged to ensure, as far as practicable, that registered material is accessible at all times at an approved web site. Subclause (2) would ensure that the Territory would not charge users for access.

(A2001-56)

A2001-56 substituted s 22 (1) consequential to the remaking of section 19 in another amendment. The explanatory note for the change is as follows

> This amendment is consequential on the remaking of section 19, and removes any reference to separate parts of the legislation register.

Chapter 3 Authorised versions and evidence of laws and legislative material

(A2001-14)

A2001-14 inserted the chapter. The explanatory statement provides:

> **Chapter 3—Authorised versions and evidence of Acts and statutory instruments**
>
> 54. This Chapter would bring together existing and new provisions dealing with the 'machinery of government' law on these matters.
>
> 55. With regard to legislation in electronic form, the Bill does not provide for any ultimate version. Instead, it would create a range of presumptions in favour of authorised versions, whether accessible at approved web sites or otherwise. This arrangement is similar to that currently applying to printed legislation.
>
> 56. As far as practicable, the Bill deals with both forms of authorised legislation in a similar way. In this respect, it would re-enact in simpler form a number of existing provisions in other Acts, particularly the *Legislation (Republication) Act 1996* and the *Evidence Act 1971*. The Consequential Provisions Bill provides for the repeal of the *Legislation (Republication) Act 1996* and omission of the relevant provisions from the *Evidence Act 1971*.

(A2003-41)

A2003-41 substituted a new chapter heading. The explanatory note is as follows:

> This amendment and the other amendments of chapter 3 permit authorised electronic versions of Acts, statutory instruments and republications (***legislation***) to be downloaded from a web site approved under the Act. They also allow authorised written versions of legislation to be produced directly from authorised electronic versions of the legislation.
>
> At present, electronic versions of legislation are only authorised when viewed at an approved web site. Printed versions of legislation are presently only authorised when printed by authority of the ACT government. Improvements to the legislation register will allow digital signatures to be included in locked pdf files of legislation accessible at an approved web site. This will allow legislation users to verify whether downloaded copies of those files are the same as the digitally signed pdf files authorised by the parliamentary counsel.
>
> The proof of authorised electronic versions of legislation is supported by the presumptions in new section 24. Written copies of legislation produced directly from authorised electronic versions will be authorised versions, and proof is supported by the presumptions in new section 25.

The amendments of chapter 3 also extend the range of legislative material for which authorised electronic and written versions will be available. The legislative material (defined in new section 22A) includes additional material entered in the legislation register under section 19 and material used under chapter 14 to work out the meaning of Acts and statutory instruments.

Section 22A Definitions—ch 3

(A2003-41)

A2003-41 inserted s 22A . The explanatory note for the new section is as follows:

See the explanatory note for the amendment of the heading to chapter 3.

This amendment relocates the definition of ***law*** from sections 24 and 25 so that it applies generally in chapter 3. The definition repeats the definition of ***law*** in section 107 rather than picking it up by reference using a signpost definition. The extension of the definition (paragraphs (a) and (b)) applies only in relation to republications, to more clearly reflect the use of the definition in chapter 3. Paragraph (b) has been widened to include any part of an agreement or instrument mentioned. This brings this part of the definition into line with the position of Acts and statutory instruments (see sections 7 and 13).

In addition, the amendment inserts a new definition of ***legislative material*** wide enough to encompass material entered in the legislation register under section 19 (eg additional material that the parliamentary counsel considers likely to be useful to users of the register) and extrinsic material that may be used under chapter 14 in working out the meaning of an Act or statutory instrument (eg explanatory statements for bills).

The amendment also includes a new definition of ***republication***. This definition ensures that the chapter applies to parts of republications in the same way as it applies to whole republications. This means that users of legislation can print and use as an authorised republication only the parts of the republication they need. The definition brings the position of republications into line with the position of Acts and statutory instruments (see sections 7 and 13). A note has been included in the definition of ***law*** to remind users of this.

(A2005-20)

A2005-20 substituted example 1 in the definition of 'legislative material' The explanatory note is as follows:

This amendment omits part of an example that is no longer appropriate. The Australian Road Rules currently in force were notified as a notifiable instrument on 16 July 2004.

Section 23 Authorised versions by parliamentary counsel

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 23 Authorisation by Parliamentary Counsel
> 57. Clause 23 would allow the Parliamentary Counsel to authorise printed or electronic versions of Acts, statutory instruments and republications. The clause restates the effect of section 8 of the *Legislation (Republication) Act 1996*, applies only to republications.

(A2003-41)

A2003-41 substitutes s 23. The explanatory note is as follows:

> See the explanatory note for the amendment of the heading to chapter 3.
>
> This amendment remakes section 23 to widen its scope to include legislative material as defined in new section 22A. The remade section refers to ***written*** versions (rather than printed) to take advantage of the definition of ***writing*** in the Legislation Act (dictionary, part 1), that is, ***writing*** includes any way of representing or reproducing words in visible form. In the context of the legislation register, printing is the most common form.

Section 24 Authorised electronic versions

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clauses 24 and 25 Authorised versions of legislation
> 58. Clauses 24 and 25 indicate the electronic and printed versions of legislation which would be authorised.
>
> 59. Under subclause 24 (1) a version of an Act, statutory instrument or republication accessible at an approved web site would be authorised. Under subclause 24 (2) another electronic version of an Act, statutory instrument or republication (eg a CD-ROM version) authorised by the Parliamentary Counsel under clause 23 would also be an authorised version.
>
> 60. Subclause 24 (2) would provide a range of supporting presumptions necessary to ensure the legal effectiveness of authorised electronic versions of laws and instruments. The subclause is modelled on section 153 of the *Evidence Act 1995* (Cwlth), which deals with proof of Gazettes and officially printed documents. The presumptions restate the effect of the provisions of sections 20, 22 and 23 of the *Legislation (Republication) Act 1996* and extend them to cover relevant aspects of the legislative publishing system provided by the Bill.

(A2001-56)

A2001-56 substituted s 24 (1) and (2) and made consequential changes to s 24 (3) (b) and (c). The explanatory notes for the amendments are as follows:

> This amendment makes section 24 more accurate by referring to copies of registered material. Section 22 provides that a copy of the registered material must be accessible at an approved web site. New section 24 (2) is also more precise in identifying the characteristics of an authorised version.
>
> This amendment is consequential on amendment 2.25.

(A2002-11)

A2002-11 omitted the words 'by the parliamentary counsel' after 'authorised' in s 24 (3) (b) and (c). The explanatory statement provides:

> 144 This amendment enables the footer on authorised versions of laws and instruments on the ACT Legislation register to be simplified.

(A2003-41)

A2003-41 substituted s 24. The explanatory note is as follows:

> See the explanatory note for the amendment of the heading to chapter 3.
>
> Remade section 24 extends the form and range of authorised electronic versions of laws, republications and legislative material. The section will permit authorised versions to be downloaded from an approved web site. At present electronic versions of laws are only authorised when viewed at an approved web site. Improvements to the legislation register and the ease with which the accuracy of downloaded files can be verified using digital signatures have enabled this step to be made.
>
> New section 24 (2) widens the presumptions in favour of authorised electronic copies of legislation to include electronic copies in authorised format downloaded from an approved web site.
>
> The presumption of accuracy in existing section 24 (2) has been extended to authorised electronic versions of legislative material (defined in new section 22A). New section 24 (2) (f) provides this presumption for legislative material.
>
> Section 24 as remade no longer defines ***law***. The definition has been relocated in new section 22A inserted by another amendment.

Section 25 Authorised written versions

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> 61. Under subclause 25 (1) a version of an Act, statutory instrument or republication printed by authority of the government of the Territory, and authorised by the Parliamentary Counsel, is an authorised version. The subclause restates the effect of sections 6 to 10 of the *Legislation (Republication) Act 1996*, which applies only to republications. Subclause 25 (2) provides a range of supporting presumptions to printed versions corresponding to the presumptions provided by subclause 24 (2) for electronic versions.

(A2003-41)

A2003-41 substituted s 25. The explanatory note is as follows:

> See the explanatory note for the amendment of the heading to chapter 3.
>
> Traditionally, the only authorised written versions of ACT legislation have been those printed by authority of the ACT Government (eg by the government printer). This is reflected in the presumptions in existing section 25.
>
> However, improvements to the legislation register and the use of digital signatures for verifying electronic material remove the need for such a narrow approach. Consequently, remade section 25 (1) provides for a written copy of a law, republication or legislative material to be an authorised version if it is a written copy produced directly from an authorised electronic version. The authorised electronic format used for ACT laws (locked pdf) enables downloaded laws to be printed with complete accuracy, irrespective of the operating system used in the computer into which the laws are downloaded and the system used for printing. In practice, the same locked pdf file has been (and will continue to be) used to publish an authorised electronic version of a law and any written version published by authority of the ACT Government.
>
> New section 25 (2) widens the presumptions in favour of authorised written legislation to include written copies printed from authorised electronic versions.
>
> The presumption of accuracy in existing section 25 (2) has also been extended to authorised written versions of legislative material (defined in new section 22A). New section 25 (2) (d) provides this presumption for legislative material.
>
> Section 25 as remade no longer defines ***law***. The definition has been relocated in new section 22A inserted by another amendment.

Section 26 Judicial notice of certain matters

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 26 Judicial notice
>
> 62. This clause would facilitate the proof of important events in the legislation 'life cycle', for example the passing of a proposed law by the Legislative Assembly or its notification in the legislation register (or the Gazette, in emergencies—see clause 28). The clause is modelled on section 143 of the *Evidence Act 1995* (Cwlth), which deals with judicial notice of matters of law (including matters of ACT law). Subclause 26 (1) restates the effect of sections 8 to 10A and 10C of the *Evidence Act 1971* and extends them to the legislative publishing system provided by the Bill. Those sections would be omitted from that Act by the Consequential Provisions Bill. Subclause (1) supplements the evidentiary provisions of the *Evidence Act 1995* (Cwlth) (see ss 8 (4) (b) and 9 (3) (a) of that Act), which are drafted on the assumption of a paper-based system of publishing legislation (see eg s 143 (1) (d) of that Act).
>
> 63. Subclauses 26 (2) to (5) confirm that a court or tribunal could inform itself about any of the matters mentioned in subclause (1) in any way it considers appropriate, but must consider the reliability of the source of information. For this purpose, an authorised version of legislation would be reliable.

(A2003-41)

A2003-41 substituted example 3 in s 26 (2). The explanatory note is as follows:

> This amendment brings the language of the example into line with sections 24 and 25 as remade by this part.

A2003-41 also substituted 26 (4). The explanatory note is as follows:

> This amendment, consequential on the remaking of sections 24 and 25, widens the scope of the subsection so that authorised versions of legislative material are a reliable source of information.

(A2005-20)

A2005-20 substituted s 26 (1) (h). The explanatory note is as follows:

> This amendment adds a reference to amendments made under chapter 11 to more accurately reflect the wording used in chapter 11.

(A2011-28)

A2011-28 inserted a reference to s 28 (2) (b) in s 26 (1) (a). The explanatory note is as follows:

> This amendment is consequential on changes made to section 28 (2) (b) by another amendment.

A2011-28 also inserted a reference to s 61 (2) (b) in s 26 (1) (b). The explanatory note is as follows:

> This amendment is consequential on changes made to section 61 (2) (b) by another amendment.

Chapter 4 Numbering and notification of Acts

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> 64. This Chapter deals with matters that are currently dealt with in sections 8 to 9 and 10F of the *Interpretation Act 1967*.
>
> 65. The restatement of these sections includes several technical, but important, changes, ie—
>
> a) the Speaker of the Legislative Assembly (rather that the Chief Minister or an authorised Minister) would arrange for the Parliamentary Counsel to notify the making of proposed laws made by the Legislative Assembly;
>
> b) the proposed law must be notified in the register, unless that is impracticable or a copy of a relevant part of the register is not accessible at an approved web site (eg because of a computing system failure);
>
> c) in that (rare) case, the proposed law must be notified in the Gazette and, later, in the register together with an explanation that the proposed law has previously been notified in the Gazette;
>
> d) notification in the register would consist of—
>
> i) entering a statement in part 7 about the passing of the proposed law (this mirrors the existing requirement for Gazette notification); and
>
> ii) entering the text of the law in part 2 (this mirrors the existing requirement for copies of the Act to be available on the Gazette date).

Section 27 Numbering of Acts

(A2001-14)

A2001-14 inserted the section. There is no specific reference to the section in the explanatory statement.

There have been no amendments to this section.

Section 28 Notification of Acts

(A2001-14)

A2001-14 inserted the section. There is no specific reference to the section in the explanatory statement.

(A2001-56)

A2001-56 substituted s 28 (4). The explanatory note is as follows:

> This amendment is consequential on amendment 2.23 (in particular, removal of the need for separate parts within the legislation register).

A2001-56 also substituted s 28 (6) (b). The explanatory note is as follows:

> This amendment is consequential on amendment 2.23 (in particular, removing the need for separate parts within the legislation register). It also clarifies the operation of existing section 28 (6) (b). The existing provision refers to the later notification of the making of the law. If the making is notified first in the Gazette, there would strictly be a later entry in the register about the making but not a second notification.

(A2002-11)

A2002-11 inserted s 28 (9), providing that the section is a determinative provision.

(A2003-41)

A2003-41 substituted s 28 (5) and (6). The explanatory note is as follows:

> The substituted subsections apply to cases where the making of an Act has to be notified in the Gazette. This would only happen in exceptional cases, for example, if some technical problem made notification using the legislation register impracticable at the time for notification.
>
> As such a case is likely to be rare, it may be preferable to publish the Act in full in the Gazette (as can be done at present for registrable instruments—see Legislation Act, section 61 (4) (a)) or to make copies of the Act available for free rather than setting up special arrangements for its sale. The remade subsections, therefore, authorise these things to be done. Under the proposed subsections, if the making of an Act is initially notified in the Gazette, the making of the Act and its text must in any event be entered in the register (and made available at an approved web site). This can be expected to happen very soon after Gazette notification and any special arrangements for making copies of the Act available are likely to be needed only for a short time.
>
> Existing subsection (6) (b) requires ‘later’ entries to be made in the legislation register about an Act notified in the Gazette. As these entries should be made as soon as possible, the express requirement for a later entry serves no purpose and has been omitted from the remade provision.

A minor amendment omitting ‘for purchase’ from s 28 (7) was also made (consequential on the remaking of section 28 (5)).

(A2005-62)

A2005-62 substituted s 28 (2) (b).The explanatory note is as follows:

> This amendment clarifies when the parliamentary counsel is required to notify the making of a proposed law in the gazette. The amendment is consistent with the Legislation Act, section 20 (which requires the parliamentary counsel to ensure that anything the parliamentary counsel is required to do in relation to the register is done promptly) and section 22 (1) (which requires the parliamentary counsel to ensure, as far as practicable, that a copy of the material mentioned in section 19 (1) and (2) is accessible at all times on an approved web site). Uploads from the legislation register to the approved web site are normally made during the night of the day when laws and instruments are notified in the register. Although they are invariably available at the approved web site at the beginning of the next working day, they are not always available before midnight on the day of notification.

A2005-62 also replaced 'within' with 'not later than' in s 28 (9).The explanatory note is as follows:

> The Legislation Act, section 28 (8) requires the parliamentary counsel to give the Minister a statement if the making of a proposed law is notified in the gazette rather than the legislation register and copies of the proposed law are not available in accordance with the gazette notice. This amendment makes it clear that a copy of the statement may be presented to the Legislative Assembly on the gazette date and need not wait until the following day.

(A2011-28)

A 2011-28 substituted section 28 (2) (b) and 3 examples. The explanatory note is as follows:

> Under the Legislation Act, notification of a proposed law passed by the Legislative Assembly is necessary for it to become an Act. 'Notification' in this context means notification in the legislation register, or if that is not practicable, in the gazette (see s 28 (2)).
>
> This amendment proposes to broaden the options available for the notification of the making of a proposed law if the legislation register is temporarily unavailable for technical or other reasons.
>
> Under section 28 (2) (b) as revised by this amendment, a proposed law may be notified in another place the parliamentary counsel considers appropriate. The gazette is one example of a place that may be appropriate.
>
> The legislation register has been in operation since 12 September 2001. To date, it has always been possible to notify material on the register on the date requested. However, it is a prudent and necessary part of risk management planning to have alternatives in place should the need arise. A similarly flexible approach has been taken in the equivalent NSW provision (see *Interpretation Act 1987* (NSW), s 45C).

A 2011-28 also substituted section 28 (5) to (9). The explanatory note is as follows:

> This amendment remakes section 28 (5) to (9) to make consequential amendments necessary to accommodate the changes made to section 28 (2) by the previous amendment.

(A2015-15)

A2015-15 omitted example 2 from s 28 (2) (b). The explanatory note is as follows:

> This amendment omits a reference to the gazette as an example of a place the parliamentary counsel considers appropriate for notifying the making of a proposed law if it is not practicable to do so in the ACT legislation register. The example is redundant because the gazette is now published in the ACT legislation register.

Section 29 References to *enactment* or *passing* of Acts

(A2011-28)

A 2011-28 included reference to section 28 (2) (b) in section 29 and 30. The explanatory note is as follows:

> This amendment is consequential on changes made to section 28 (2) (b) by another amendment.

Section 30 References to *notification* of Acts

(A2001-56)

The amendments are consequential to amendments made to s 28 (2) (b). The explanatory note is as follows:

> This amendment is consequential on amendment 2.29 (in particular, providing for a later entry in the register after the making of a law has first been notified in the Gazette). New section 28 (6) (b) removes the need for existing section 30 (2).

(A2011-28)

A 2011-28 includes reference to section 28 (2) (b) in section 29 and 30. The explanatory note is as follows:

> This amendment is consequential on changes made to section 28 (2) (b) by another amendment.

Chapter 5 Regulatory impact statements for subordinate laws and disallowable instruments

(A2001-14 – government amendment 4)

The Legislation (Access and Operation) Bill 2000 as introduced did not include this chapter. The chapter was proposed for inclusion by government amendment in debate on 1 March 2001. The explanatory statement provides:

> **Amendment 4**
> This amendment re-enacts (with minor, technical changes) the provisions about regulatory impact statements that were inserted into the *Subordinate Laws Act 1989* by the *Subordinate Laws Amendment Act 2000.* That Act was passed by the Legislative Assembly late last year after the presentation of this Bill.
>
> The *Subordinate Laws Act 1989* is proposed to be repealed by the *Legislation (Access and Operation) (Consequential Provisions) Bill 2000*.

(A2000-71)

As noted in relation to amendment 4 the provisions about regulatory impact statements were inserted by the *Subordinate Laws Amendment Act 2000* (A2000-71). No explanatory statement is available for A2000-71. The presentation speech for A2000-71 was made by Mr Hargraves (then a member of the Opposition) in the Legislative Assembly on 6 September 2000 and is as follows (see pp 2889-2290 Hansard):

MR HARGREAVES (10.46*): I move:*

That this bill be agreed to in principle.

> Mr Speaker, this bill provides for the presentation of regulatory impact statements to accompany subordinate legislation in instances where there is a likelihood of the imposition of appreciable costs on the community, or part of the community.
>
> Regulatory impact statements are provided with subordinate legislation in New South Wales, Queensland, Tasmania and Victoria to allow proper scrutiny of the subordinate legislation. The Commonwealth provides its scrutineers with something approaching such statements, but not in the same form, nor is this information as complete as it is in those states which provide regulatory impact statements.
>
> The meeting of chairs and deputy chairs of scrutiny committees in all jurisdictions has considered the issue, and has agreed that regulatory impact statements are the most appropriate way of

providing legislatures with valuable supplementary information about subordinate legislation. I have applied the Queensland model as the basis of this legislation.

Regulatory impact statements are not expected to increase substantially the workload of those who support the government of the day, because the provision of additional information will speed the passage of legislation, and ensure that consultation with stakeholders occurs well before the passage of such legislation. This will probably avoid the extra work involved when, after the passage of subordinate legislation that adversely affects a stakeholder, the issue erupts into the public arena.

It is not envisaged that significant numbers of regulatory impact statements would be developed. The intention is that they be applied only where the subordinate legislation has a significant impact on the community. Examples of interstate regulatory impact statements are regulations for children's services in 1997 in Victoria, 205 pages; a review of the Egg Industry Act in 1998 in Tasmania, 73 pages; and funeral funds regulations in 1994 in New South Wales, 63 pages. Regulatory impact statements are not always huge volumes. The regulatory impact statement concerning the rural lands protection amendment regulation in Queensland was only 11 pages long.

It should be stressed that this bill only addresses subordinate legislation and not primary legislation. Regulatory impact statements are provided to stimulate and provide background for debate on a piece of significant subordinate legislation. Debate is always available for primary legislation, and all primary legislation is brought to the attention of members through the notice paper.

Only too often subordinate legislation passes unnoticed through the scrutiny process, because of the very volume of administrative matters covered by subordinate legislation, such as the raising of fees and charges, the creation or amendment of building regulations, and so on. One feature of this bill is that it stipulates when a regulatory impact statement is required and when it is not. I recall hearing a comment from Queensland indicating that clauses showing where regulatory impact statements were not necessary were more often used than those showing where they were necessary.

The bill allows the minister to issue guidelines in deciding whether a proposed law is, or is not, likely to impose appreciable costs to the community, in which instance those guidelines become a disallowable instrument. The minister may exempt the proposed subordinate law from the need for regulatory impact statements, but this instrument is also a disallowable instrument.

There may be an issue with the definition of appreciable cost to the community. The definition of cost talks about burdens and disadvantages, and direct and indirect economic, environmental and social costs. It would not be appropriate merely to consider a dollar value as the determinant.

It is the intention of the bill that, when subordinate laws are being prepared, the drafters give some consideration to the impact of that legislation and determine whether it has a significant impact on a community. If it does, then a regulatory impact statement should be prepared.

> One could ask if the changes to the regulations attaching to the Dangerous Goods Act in relation to the sale of fireworks will have a major effect on the fireworks sales industry, and also on the general public. If the answer is yes, then a regulatory impact statement would be needed. It need not be long, but would draw attention to many of the issues facing such an industry.
>
> One could also ask whether the determinations on the application of the GST ought to carry a regulatory impact statement because they have an appreciable affect on the gaming industry. Again, the regulatory impact statement need not be long, but would assist in the process of the legislation's passage through the Assembly by removing much uncertainty. Any regulation that might change the allocation of poker machines to the casino would, I hope, attract a regulatory impact statement.
>
> Finally, this bill is intended to enhance the production of good subordinate legislation, and to involve stakeholders who are significantly affected by the legislation. I commend the bill to the Assembly.

The *Subordinate Laws Act 1989* was repealed by the *Legislation (Access and Operation) Consequential Provisions) Act 2000*, s 4 (A2001-15).

Part 5.1 Preliminary

Section 31 Definitions—ch 5

(A2001-14)

A2001-14 inserted the section (see government amendment 4). There is no explanatory statement for this section.

(A2013-19)

A2013-19 substitutes a definition of ***scrutiny committee principles*** in section 31. The explanatory note is as follows:

> This amendment updates the definition as a consequence of a change in the name of the committee.

Section 32 Other publication or consultation requirements not affected

(A2001-14)

A2001-14 inserted the section (see government amendment 4). There is no explanatory statement for this section.

There have been no amendments to this section.

Section 33 Guidelines about costs of proposed subordinate laws and disallowable instruments

(A2001-14)

A2001-14 inserted the section (see government amendment 4). There is no explanatory statement for this section.

(A2005-20)

A2005-20 omitted ‘in writing’ from s 33(1). The explanatory note is as follows:

> This amendment is consequential on the insertion of new section 42 (2) by another amendment.

A2005-20 also omitted ‘issued under this section’ from s 33(2). The explanatory note is as follows:

> This amendment omits words that are unnecessary in the context of the section.

Part 5.2 Requirements for regulatory impact statements

Section 34 Preparation of regulatory impact statements

(A2001-14)

A2001-14 inserted the section (see government amendment 4). There is no explanatory statement for this section.

(A2005-20)

A2005-20 omitted ‘in writing’ from s 34(2). The explanatory note is as follows:

> This amendment is consequential on the insertion of new section 42 (2) by another amendment.

A2005-20 also omitted ‘in whole or in part’ from s 33(4). The explanatory note is as follows:

> This amendment removes unnecessary words.

A2005-20 further omitted ‘after the disallowance of the RIS exemption’ an inserted ‘after the day the RIS exemption is disallowed’ from s 34(5). The explanatory note is as follows:

> This amendment expressly provides that, in working out the period within which a regulatory impact statement must be presented to the Legislative Assembly after a RIS exemption is disallowed, the day on which the RIS exemption is disallowed is not counted. The amendment is in accordance with current drafting practice and reflects the present position under the Legislation Act, section 151 (2) and (3) (b).

(A2005-62)

A2005-62 omitted 'within' an substituted 'not later than' in s 34 (5). The explanatory note is as follows:

> The Legislation Act, section 34 (4) requires the relevant Minister to arrange for a regulatory impact statement to be prepared for a subordinate law if a RIS exemption for the law is disallowed by the Legislative Assembly. This amendment makes it clear that the regulatory impact statement may be presented to the Legislative Assembly on the disallowance day.

Section 35 Content of regulatory impact statements

(A2001-14)

A2001-14 inserted the section (see government amendment 4). There is no explanatory statement for this section.

There have been no amendments to this section.

Section 36 When is preparation of regulatory impact statement unnecessary?

(A2001-14)

A2001-14 inserted the section (see government amendment 4). There is no explanatory statement for this section.

(A2002-30)

A2002-30 substituted section 36 (1) (g). The explanatory note is as follows:

> This amendment makes 2 minor changes to the paragraph that provides that a regulatory impact statement is not required for uniform or complementary legislation. First, this amendment adds New Zealand to the jurisdictions that can be involved. Many uniform or complementary legislative schemes now involve New Zealand as well as the Commonwealth, States and other Territories. Second, this amendment clarifies the nature of uniform legislation to which the paragraph applies. Under the existing paragraph the Territory law must be substantially uniform with legislation of another jurisdiction. This amendment changes this to require that the Territory law be part of a uniform scheme of legislation. This amendment more accurately reflects the nature of uniform legislative schemes and recognises that uniform legislative schemes do not always require a Territory law that is substantially uniform with the law of another jurisdiction. For example, the scheme may provide for a Territory law to give legislative force in the ACT to legislation enacted in another jurisdiction. The uniform credit scheme is an example of such a uniform legislative scheme.

(A2005-20)

A2005-20 substituted section 36 (1) (d) including a note. The explanatory note is as follows:

> This amendment revises the paragraph to omit unnecessary words. Under the definitions of Act and statutory instrument in sections 7 and 13, a reference to an Act or statutory instrument includes a reference to a provision of the Act or instrument. The amendment also inserts a note to this effect.

Section 37 When must regulatory impact statement be presented?

(A2001-14)

A2001-14 inserted the section (see government amendment 4). There is no explanatory statement for this section.

(A2005-20)

A2005-20 omits the words ‘in whole or part’ from s 37 (1). The explanatory note is as follows:

> This amendment removes unnecessary words.

Part 5.3 Failure to comply with requirements for regulatory impact statements

Section 38 Effect of failure to comply with pt 5.2 36

(A2001-14)

A2001-14 inserted the section (see government amendment 4). There is no explanatory statement for this section.

There have been no amendments to this section.

Chapter 6 Making, notification and numbering of statutory instruments

In the Legislation (Access and Operation) Bill 2000 as introduced chapter 6 (Making, notification and numbering of statutory instruments) was chapter 5.

As a government amendment added chapter 5 (Regulatory impact statements for subordinate laws and disallowable instruments) the rest of the chapters were renumbered.

(A2001-14)

A2001-14 inserted the chapter. The explanatory statement provided:

> Chapter 5—Making, notification and numbering of statutory instruments
>
> 66 This Chapter brings together the relevant 'machinery of government' legislation about these matters. At present, they are dealt with in several Acts, particularly the *Evidence Act 1971*, the *Subordinate Laws Act 1989* and the *Interpretation Act 1967*. The Consequential Provisions Bill would repeal the *Subordinate Laws Act 1989* and omit the relevant provisions from the other Acts. It should be noted that many of the existing provisions of the *Interpretation Act 1967* that are expressed to apply to Acts apply also to subordinate laws, disallowable instruments and statutory instruments of an administrative nature (see *Subordinate Laws Act 1989* s 9 (1) and s 10). By contrast, the provisions of the Chapter expressly provide for the application of their provisions to statutory instruments or particular kinds of statutory instruments.

Part 6.1 General

Section 39 Meaning of matter—ch 6

(A2001-14)

A2001-14 inserted the section. The explanatory statement provided:

> Clause 31 Meaning of *matter*
>
> 67 This definition is a shortening device to simplify the language of the substantive provisions. For example, the reference in clause 35 (3) to the application of a provision of a statutory instrument to a ***matter*** would include a reference to any circumstance, person, place and purpose. The definition re-enacts the definition in section 27B of the *Interpretation Act 1967* (which is proposed to be inserted by the *Statute Law Amendment Bill 2000)*.

There have been no amendments to this section.

Section 40 Presumption of validity

(A2001-14)

A2001-14 inserted the section. The explanatory statement provided:

Clause 32 Presumption of validity

68 This clause deals separately and more simply with the intended effect of paragraph 10C (2) (e) of the *Evidence Act 1971*. That provision is proposed to be omitted from that Act by the *Consequential Provisions Bill*.

There have been no amendments to this section.

Section 41 Making of certain statutory instruments by Executive

(A2001-14)

A2001-14 inserted the section. The explanatory statement provided:

Clause 33 Exercise of regulation-making power

69 This clause restates section 3 of the *Subordinate Laws Act 1989* and would confirm that regulations are made when signed by the second Minister.

(A2001-56)

A2001-56 omitted references to 'regulations' inserting references to ' statutory instruments' in s 41 (1) and revised the heading. The explanatory notes are as follows:

This amendment is consequential on the other amendments of section 41 made by this schedule and revises the heading to reflect the scope of the amended section.

The amendments of section 41 have the effect of extending the scope of the section to all statutory instruments.

(A2002-11)

A2002-11 substituted section 41. The explanatory statement provided:

Amendment of s 41
145 The relocation of provisions of the Administration Act to the Legislation Act enables section 41 to be simplified. Existing section 41 (1) is covered by proposed section 253.

Part 6.2 Making of statutory instruments generally

(A2001-14)

A2001-14 inserted the part. The explanatory statement provided:

> 70. This Part would re-enact relevant provisions of the *Interpretation Act 1967* (as it would be amended by the *Statute Law Amendment Bill 2000* and the *Statute Law Amendment Bill 2000 (No 2)*) and the *Subordinate Laws Act 1989*. The re-enactment involves some restructuring and clarification of provisions to bring them together.

Section 42 Power to make statutory instruments

(A2001-14)

A2001-14 inserted the section. The explanatory statement provided:

> Clause 34 Power to make statutory instruments
>
> 71. This clause would re-enact subsection 26 (1) and section 27C of the *Interpretation Act 1967*. (Section 27C is proposed to be inserted by the *Statute Law Amendment Bill* and remakes existing subsection 26A (2)).

(A2002-11)

The amendment inserted s 42 (3), providing that the section is a determinative provision.

(A2005-20)

A2005-20 inserted a new section 42 (2) and renumbers 42 (2) and (3) as 42 (3) and (4). The explanatory note for the substantive amendment is as follows:

> This amendment provides that power to make an instrument that would be a registrable instrument (eg a disallowable instrument) can only be exercised by making an instrument. The amendment removes any possibility that the safeguards attaching to these instruments (notification and, for disallowable instruments, presentation in the Legislative Assembly and possible disallowance or amendment) could be avoided by exercising the power orally rather than in writing. The amendment will remove the need to state in provisions giving power to make a registrable instrument that the power must be exercised in writing. For example, see the amendments of section 33 (1) and section 34 (2).

(A2006-42)

A2006-42 updated references from ‘registrable instrument’ to ‘legislative instrument’ in this section. The explanatory note is as follows:

> This amendment is consequential on another amendment in this part.

Section 43 Statutory instruments to be interpreted not to exceed powers under authorising law

(A2001-14)

A2001-14 inserted the section. The explanatory statement provided:

Clause 35 Statutory instruments to be interpreted not to exceed power

72. This clause would restate subsection 9 (3) of the *Subordinate Laws Act 1989*. The clause makes it clear that a statutory instrument is to be interpreted as operating to the full extent of, but not to exceed, power given by the authorising law. Subclauses (2) and (3) (and their examples) indicate that a statutory instrument is to be read in the way necessary to ensure maximum validity of the instrument.

(A2002-11)

A2002-11 inserted s 43 (5), providing that the section is a determinative provision.

(A2003-56)

A2003-56 inserts a new example 3 and notes. The explanatory notes are as follows:

This amendment inserts another example to further illustrate the operation of the subsection. The amendment also inserts a standard note about examples.

This amendment omits the note about examples, as it is now placed in section 43 (2).

Section 44 Power to make statutory instruments for Act etc

(A2001-14)

A2001-14 inserted the section. The explanatory statement provided:

Clause 36 Power to make statutory instruments generally

73. This clause would restate section 2A of the *Subordinate Laws Act 1989* and widen it to apply to all statutory instruments and not just regulations. Subclause (3) makes it clear that the fact that an authorising law gives power to make a statutory instrument about a particular matter does not, of itself, limit power given by the authorising law to make a statutory instrument about any other matters.

(A2001-14, government amendment 7)

Amendment 7
This amendment is a technical amendment that brings the language of clause 36 (1) more closely into line with the language currently used in provisions that confer power to make statutory instruments eg regulations. For example, the standard regulation making power is as follows:

Regulation-making power

The Executive may make regulations for this Act.

(A2002-11)

A2002-11 made minor amendments to s 44 (3) to omit the words *, except so far as the authorising law otherwise expressly provides*(A2002-11) and insert s 44 (4), providing that the section is a determinative provision. The explanatory statement provided:

141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections).

(A2002-49)

A2002-49 amended s 44 (1). The explanatory note is as follows:

This amendment is consequential on the insertion (by another amendment in this part) of a definition of in relation to in the Legislation Act, dictionary, part 1. Under that definition, **in relation to** includes ‘with respect to’.

(A2005-20)

A2005-20 omitted ‘or for the purposes of’ in ss 44 (1) and (2) (a). The explanatory note is as follows:

This amendment omits words that are no longer necessary. ***For***, in relation to an Act or statutory instrument, is defined in the dictionary, part 1 to include for the purposes of the Act or statutory instrument.

Section 45 Power to make court rules

(A2001-14)

A2001-14 inserted the section. The explanatory statement provided:

Clause 37 Power to make rules of court

74. This clause would re-enact section 27I of the *Interpretation Act 1967*. (Section 27I, which is presently section 31, is proposed to be relocated (and renumbered) by the *Statute Law Amendment Bill 2000*.)

(A2002-11)

A2002-11 substituted section 45. The explanatory statement provided:

> 48 Clause 8 remakes section 45, which deals with the power to make rules of court. In its present form, section 45 has a limited operation. The replacement section enhances the operation of the section in the following respects. First, the replacement section does not require an express power to make rules of court for particular legislation for the section to operate in relation to the legislation. Instead the power to make rules of court comes from the vesting of jurisdiction by the legislation. Under the section the power to make rules of court extends to making rules with respect to any matter necessary or convenient to be prescribed for carrying out or giving effect to the court's jurisdiction under the legislation. Second, the section applies to the making of rules for tribunals as well as courts. Third, proposed subsection (2) clarifies the relationship between the section and the general power under the Legislation Act, section 44 to make statutory instruments (including rules) for an Act or statutory instrument. Fourth, proposed subsection (3) declares the section to be a determinative provision (see proposed section 6 discussed above). Finally, the replacement section extends to making rules of court for jurisdiction given by Commonwealth laws as well as ACT laws. Overall, the replacement section will remove the need to extend rule-making powers to deal expressly with additional jurisdiction given by ACT and Commonwealth laws.

(A2002-49)

A2002-49 amended s 45 (1). The explanatory note is as follows:

> This amendment is consequential on the insertion (by another amendment in this part) of a definition of *in relation to* in the Legislation Act, dictionary, part 1. Under that definition, **in relation to** includes 'with respect to'.

(A2005-20)

A2005-20 substitutes the definition of 'disallowable instrument' and 'law' in s 45 (4). The explanatory notes are as follows:

> This amendment updates the definition [of *disallowable instrument*] to take account of the enactment of the *Legislative Instruments Act 2003* (Cwlth).
>
> This amendment is consequential on the revised definition of *disallowable instrument* substituted by another amendment. The amendment also revises the definition to omit unnecessary words. Under the definitions of *Act, subordinate law* and *disallowable instrument* in sections 7 to 9, a reference to an Act, subordinate law or disallowable instrument includes a reference to a provision of the Act, law or instrument. The amendment also inserts a note to this effect.

Section 46 Power to make instrument includes power to amend or repeal

(A2001-14)

A2001-14 inserted the section. The explanatory statement provided:

Clause 38 Power to make instrument includes power to amend or repeal

75. This clause would re-enact section 27D of the *Interpretation Act 1967*. (Section 27D corresponds to existing subsection 26A (1) and is proposed to be inserted by the *Statute Law Amendment Bill 2000*.)

(A2001-14, government amendments 9 and 10)

The explanatory statement for the government amendments provided:

Amendment 9
This amendment adds examples to clause 38 (2) to clarify the operation of the subclause.

Clause 38 (2) provides that the power to amend or repeal a statutory instrument is exercisable in the same way, and subject to the same conditions, as the power to make the instrument. The examples make it clear that:

- if the instrument is a disallowable instrument, an amendment or repeal of the instrument is also a disallowable instrument.
- if the instrument is a notifiable instrument, an amendment or repeal of the instrument is also a notifiable instrument.
- if notice of the making of the instrument must be published in a newspaper, notice of an amendment or repeal of the instrument must also be published in the newspaper.

Amendment 10
This amendment of clause 38 provides that the clause is subject to any provision of the Act or statutory instrument (the ***authorising law***) that gives the power to make the statutory instrument concerned.

Although it is not common, Acts occasionally provide for a statutory instrument to be amended or repealed in a different way to the way in which the instrument is made. The amendment recognises this practice.

(A2002-11)

A2002-11 substituted section 46 (3).

49 Clause 9 amends section 46 to deal with a possible practical problem arising out of the operation of the ACT legislation register. One of the features of the register is the ready availability of statutory forms that people are required to use in dealings with government or the courts. To enable the register to work effectively in relation to forms, clause 9 amends section 46 to require registrable forms to be remade with any changes rather than simply being amended. If it

were possible to amend forms, users of the register who wanted to find out the current form to be used would need to—

- search for the current form on the register; and
- search for any amendments of the form; and
- revise the form to take account of any amendments.

The amendment made by the clause will ensure that users can continue to go to the current version of the form on the register and use it with confidence.

(A2006-42)

A2006-42 updated references from 'registrable instrument' to 'legislative instrument' in this section. The explanatory note is as follows:

This amendment is consequential on another amendment in this part.

Section 47 Statutory instrument may make provision by applying law or instrument

(A2001-14)

A2001-14 inserted the section. The explanatory statement provided:

Clause 39 Statutory instruments may apply other instruments

76. This clause would re-enact section 8 of the *Subordinate Laws Act 1989*. The clause is wider than section 8 in 2 respects. First, the section applies to instruments made under subordinate laws and disallowable instruments (which are subject to disallowance) and not just Acts. Second, the section applies to all statutory instruments and not just subordinate laws and disallowable instruments. (Section 8 is applied to disallowable instruments by section 10 of the *Subordinate Laws Act 1989*.)

(A2001-14: government amendment 11)

The explanatory statement for the government amendments provided:

Amendment 11

This amendment replaces clause 39 with a new clause 39, in response to concerns raised by the Standing Committee on Justice and Community Safety (the Scrutiny Committee) in Scrutiny Report No 15 of 2000. The Scrutiny Committee was concerned that clause 39 "obstruct(s) ready access to the law" by failing to provide readers of a statutory instrument with access to a law or instrument, or a provision of a law or instrument, that is applied by the statutory instrument.

Subclause (1) has been revised to enable the Scrutiny Committee's concerns to be dealt with in the following subclauses and to clarify the relationship between the clause and clause 90 (Meaning of references to a law or instrument generally). Under the replacement subclause a law or instrument, or a provision of a law or instrument, may be applied by a statutory instrument as in

force from time to time only if certain conditions are met. First, the statutory instrument must expressly provide that the law, instrument or provision is applied from time to time. Second, if an instrument or provision of an instrument is applied, the authorising law must authorise the instrument or provision to be applied from time to time. The replacement subclause includes examples of these conditions.

Subclause (2) provides that, if a law or instrument (or a provision of a law or instrument) as in force at a particular time is applied by a statutory instrument, the text of the law, instrument or provision at that time is taken to be a notifiable instrument made under the statutory instrument.

Subclause (3) provides that, if a law or instrument (or a provision of a law or instrument) as in force from time to time is applied by a statutory instrument, the text of the things mentioned in the subclause are taken to be notifiable instruments made under the statutory instrument.

For example, if a statutory instrument applies an instrument as in force from time to time, the following are notifiable instruments:

- the applied instrument as in force at the time the statutory instrument is made;
- each amendment of the applied instrument;
- if the applied instrument is repealed and remade, the instrument as remade and each subsequent amendment.

Subclauses (2) and (3) adopt an option suggested by the Scrutiny Committee. However, the approach taken in the subclauses is novel. It is envisaged that there will be cases in which it will be inappropriate for the subclauses to apply, but at this stage it is not possible to identify comprehensively the cases that need to be excepted. They will need to be developed and refined over time. Accordingly, subclauses (4) and (5) except ACT laws (which will be notified in the legislation register) and allow laws and instruments to establish other exceptions on a case-by-case basis. The Scrutiny Committee will be able to scrutinise these exceptions as they are established and ensure that they are justified.

Subclause (6) sets out definitions for the clause. The definition of law of another jurisdiction picks up New Zealand and Norfolk Island laws in addition to Commonwealth and State laws (under the definition of State in the Interpretation Act 1967, a State includes the Northern Territory).

(A2002-11)

A2002-11 substituted section 47.

51 Clause 10 remakes section 47. While the initial reason for remaking the section was to accommodate the introduction of the concept of determinative provisions (see proposed sections 5 and 6), the opportunity has also been taken to incorporate a number of minor improvements in the section.

52 Although proposed section 47 extends over nearly 3 pages of text, its essential purposes can be described quite simply. It is intended—

- to regulate the circumstances in which a law or instrument made by one entity may be adopted as the law or instrument of another entity; and
- to provide access to the text of the adopted law or instrument.

53 Why adopt a law or instrument? In some circumstances it is simpler to adopt someone else's law or instrument rather than remake it. For example, in some technical areas such as aircraft maintenance it is easier to require an airline to comply with the manufacturer's voluminous service manuals and related documentation (including periodic updates) than seek to reproduce the detail of the requirements directly in a law or instrument. A second reason to adopt a law or instrument is to achieve a uniform national approach to dealing with a common problem. See, for example, the *Consumer Credit Act 1995* which adopts the Consumer Credit Code from the *Consumer Credit (Queensland) Act 1994 (Qld)*. And even for so-called technical areas, it may be desirable for various reasons (eg safety) to use adoption to ensure that things like aircraft maintenance are done in a uniform way throughout Australia (and perhaps internationally).

54 Although there may be good practical reasons to adopt a law or instrument, there are also a number of policy issues relevant to the adoption of laws and instruments from another source. If the law or instrument is adopted on the basis that future changes will automatically apply, this means that the entity who makes the changes becomes a'lawmaker' not only where the law or instrument originally applied but also where it has been adopted. To this extent the Legislative Assembly is by-passed. The same problem does not arise, however, if the Legislative Assembly chooses to apply one of its own laws to operate in relation to another subject. Consider, for example, the application of provisions of the *Electoral Act 1992* by the *Referendum (Machinery Provisions) Act 1994*. Similarly, if a law or instrument is adopted as in force at a particular time (with perhaps the Legislative Assembly or a person authorised by the Assembly making future changes), the lawmaking role and function of the Assembly is not compromised. Another important policy consideration is that the adopted law or instrument needs to be accessible to those affected by it. These policy considerations are reflected in existing section 47 and its proposed replacement.

55 Proposed section 47 (2) provides, in effect, that an ACT law (see the definition of ***ACT law*** in proposed section 47 (10)) may be applied as in force at a particular time or as in force from time to time. (The way in which a law or instrument might be applied as in force 'from time to time' is illustrated in example 2 to section 47 (9).)

56 On the other hand, proposed section 47 (3) provides that a law from another jurisdiction, or an instrument not subject to Assembly scrutiny, may only be applied as in force at a particular time (see the definitions of ***law of another jurisdiction*** and ***instrument*** in section 47 (10)). Because of section 47 (9), section 47 (3) is a determinative provision. In other words, bearing in mind the policy issues already mentioned, the rule in section 47 (3) will always apply unless an Act, subordinate law or disallowable instrument expressly excludes it in a particular case or indicates a 'manifest' intention that another inconsistent rule is to apply.

57 Proposed subsection (4) provides a default rule for the operation of proposed subsection 47 (3). Unless subsection (3) is displaced, an instrument (the ***applying instrument***) that applies a law of another jurisdiction or an instrument as in force at a particular time is taken to apply the

law or instrument as in force at the time the applying law is made. Proposed subsection (4) includes an example of its operation.

58 Proposed section 47 (5) and (6) lay down a number of requirements to ensure that the policy requirements for accessibility are satisfied whether the law or instrument is applied as in force at a particular time (see section 47 (5)) or as in force from time to time (see section 47 (6)). In each case the law or instrument is taken to be a notifiable instrument. If the law or instrument applies as in force from time to time, each amendment of the law or instrument is also a notifiable instrument. Similarly, if the law or instrument is remade and further amended, or is remade in another law or instrument, the law as remade and amended will also be a notifiable instrument. These requirements about notification apply subject to any displacement or modifications provided by the 'authorising law' (see section 47 (1)) or, if the 'relevant instrument' (see section 47 (1)) is a subordinate law or disallowable instrument, the relevant instrument (see section 47 (7)). This means that the requirements may be displaced or applied in a changed way. However, the displacement or changed application is subject to scrutiny by (and justification to) the Legislative Assembly. Again, section 47 (5) and (6) are determinative provisions because of section 47 (9).

59 Proposed section 47 (8) makes it clear that a power to apply a law or instrument authorises the making of changes or modifications to the law or instrument as it is applied. Accordingly, it is not necessary to expressly provide this power in the 'authorising law' (see section 47 (1)).

(A2002-49)

A2002-49 added the word 'relevant' to s 47 (4). The explanatory note is as follows:

This amendment clarifies a provision.

(A2003-56)

A2003-56 substitutes s 47 (4) and examples. The explanatory note is as follows:

The amendment clarifies the effect of the displacement of section 47 (3) and the relationship between that subsection and this subsection.

More importantly, this amendment makes it clear that a statutory instrument may make provision about a matter by applying a law of another jurisdiction, or an instrument, as in force from time to time only if subsection (3) is displaced by (or under authority given by) an Act or, if the authorising law is a subordinate law or disallowable instrument, the authorising law itself. In other words, only an Act, or authorising law that is a subordinate law or disallowable instrument, can authorise a statutory instrument to apply a law of another jurisdiction, or an instrument, as in force from time to time.

The amendment ensures that displacement of subsection (3) remains subject to the Legislative Assembly's scrutiny and control.

(A2005-20)

A2005-20 substituted the definition of ‘ACT law’ in s 47 (10). The explanatory note is as follows:

> The amendment revises the definition to omit unnecessary words. Under the definitions of Act, ***subordinate law*** and ***disallowable instrument*** in sections 7 to 9, a reference to an Act, subordinate law or disallowable instrument includes a reference to a provision of the Act, law or instrument. The amendment also inserts a note to this effect.

A2005-20 also substituted the definition of ‘disallowable instrument’ in s 47 (10). The explanatory note is as follows:

> This amendment updates the definition to take account of the enactment of the *Legislative Instruments Act 2003* (Cwlth).

A2005-20 further substituted paragraph (a) of the definition of ‘law of another jurisdiction’ in s 47 (10). The explanatory note is as follows:

> This amendment is consequential on the revised definition of ***disallowable instrument*** substituted by another amendment.

Section 48 Power to make instrument includes power to make different provision for different categories etc

(A2001-14)

A2001-14 inserted the section. The explanatory statement provided:

> Clause 40 Power to make instrument includes power to make different provision for different categories
>
> 77. This clause would re-enact section 27E of the *Interpretation Act 1967*. (Section 27E in turn substantially re-enacts existing subsection 27 (2) and is proposed to be inserted by the *Statute Law Amendment Bill 2000*.)

(A2002-11)

A2002-11 inserted s 48 (4), providing that the section is a determinative provision.

(A2002-49)

A2002-49 amended s 48 (1) (a). The explanatory note is as follows:

> This amendment is consequential on the insertion (by another amendment in this part) of a definition of in relation to in the Legislation Act, dictionary, part 1. Under that definition, ***in relation to*** includes ‘with respect to’.

Section 49 Single instrument may exercise several powers or satisfy several requirements

(A2001-14)

A2001-14 inserted the section. The explanatory statement provided:

Clause 41 Single instrument may exercise several powers or satisfy several requirements

78. This clause would re-enact section 27F of the *Interpretation Act 1967*. (Section 27F is proposed to be inserted by the *Statute Law Amendment Bill 2000*.)

(A2002-11)

A2002-11 inserted s 49 (4), providing that the section is a determinative provision.

Section 50 Relationship between authorising law and instrument dealing with same matter

(A2001-14)

A2001-14 inserted the section. The explanatory statement provided:

Clause 42 Relationship between authorising law and instrument dealing with same matter

79. This clause would re-enact section 27G of the *Interpretation Act 1967*. (Section 27G in turn substantially re-enacts existing subsection 27 (2) and is proposed to be inserted by the *Statute Law Amendment Bill 2000*.)

(A2002-11)

A2002-11 inserted s 50 (2), providing that the section is a determinative provision.

(A2002-49)

A2002-49 amended s 50 (1). The explanatory note is as follows:

This amendment is consequential on the insertion (by another amendment in this part) of a definition of in relation to in the Legislation Act, dictionary, part 1. Under that definition, ***in relation to*** includes ‘with respect to’.

Section 51 Instrument may make provision in relation to land by reference to map etc

(A2001-14)

A2001-14 inserted the section. The explanatory statement provided:

Clause 43 Instrument may make provision in relation to land by reference to map etc

80. This clause would re-enact section 27GA of the *Interpretation Act 1967*. (Section 27GA is proposed to be inserted by the *Statute Law Amendment Bill 2000* (No 2).)

(A2005-20)

A2005-20 inserted (on the internet or otherwise) in s 51 (2). The explanatory note is as follows:

This amendment makes it clear that it is sufficient for this section if the map, plan or register is available for inspection on the internet and does not need to be physically available for inspection.

Section 52 Instrument may authorise determination of matter etc

(A2001-14)

A2001-14 inserted the section. The explanatory statement provided:

Clause 44 Instrument may authorise determination of matter

81. This clause would re-enact section 27GB of the *Interpretation Act 1967*. (Section 27GB is proposed to be inserted by the *Statute Law Amendment Bill 2000* (No 2).)

(A2001-14, government amendment 12)

The explanatory statement for the government amendments provided:

Amendment 12
This amendment makes it clear that clause 44 (Instrument may authorise determination of matter etc) applies to a state of mind eg the forming of an opinion or being satisfied. In a statutory instrument it is frequently necessary to make provision about a matter by requiring someone to form an opinion or be satisfied about something. For example, a statutory instrument may provide for courses or qualifications to be approved by an official, if the official is satisfied that they meet a specified standard.

(A2002-11)

A2002-11 inserts s 52 (2A), providing that the section is a determinative provision.

Section 53 Instrument may prohibit

(A2001-14)

A2001-14 inserted the section. The explanatory statement provided:

> Clause 45 Instrument may prohibit
>
> 82. This clause would re-enact section 27GC of the *Interpretation Act 1967*. (Section 27GC is proposed to be inserted by the *Statute Law Amendment Bill 2000* (No 2).)
>
> Clause 46 Instrument may provide for reconsideration etc
>
> 83. This clause would re-enact section 27GD of the *Interpretation Act 1967*. (Section 27GD is proposed to be inserted by the *Statute Law Amendment Bill 2000* (No 2).)

(A2001-14, government amendment 13)

The explanatory statement for the government amendments provided:

> **Amendment 13**
> The opposition to clause 46 is in response to the Scrutiny Committee's concerns that it may not be appropriate to authorise a statutory instrument to provide for reconsideration or review of a decision made under the instrument, or the Act under which the statutory instrument is in force.)

(A2002-11)

A2002-11 inserts s 53 (2), providing that the section is a determinative provision.

Section 54 Instrument may require making of statutory declaration

(A2001-14)

A2001-14 inserted the section. The explanatory statement provided:

> Clause 47 Instrument may require the making of a statutory declaration
>
> 84. This clause would re-enact section 27H of the *Interpretation Act 1967*. (Section 27H in turn re-enacts existing subsection 27 (4) and is proposed to be inserted by the *Statute Law Amendment Bill 2000*.)

(A2002-11)

A2002-11 inserted s 54 (3), providing that the section is a determinative provision.

(A2002-30)

A2002-30 inserted a note in s 54 (1). The explanatory note is as follows:

> This amendment adds a note about the legislation under which statutory declarations for ACT laws are made.

Part 6.3 Making of certain statutory instruments about fees

(A2001-14, government amendment 14)

The explanatory statement for the government amendments provided:

> **Amendment 14**
> This amendment inserts a new part 5.2A that deals with the making of certain statutory instruments about fees.
>
> In the ACT most fees are determined by Ministers by disallowable instrument. New part 5.2A provides a standard set of provisions that will apply to the determination of fees. The part will enable the provisions about fees in individual Acts and statutory instruments to be simplified. In particular, it will be unnecessary to mention determined fees in every provision for which fees are determined.

Section 55 Definitions—pt 6.3

(A2001-14, government amendment 14)

The explanatory statement for the government amendments provided:

> Proposed new clause 47A sets out definitions used in the part.

There have been no amendments to this section.

Section 56 Determination of fees by disallowable instrument

(A2001-14, government amendment 14)

The explanatory statement for the government amendments provided:

> Proposed new clause 47B clarifies the power to determine a fee for an Act or statutory instrument, and makes provision in relation to the determined fee, by disallowable instrument. Subclause (2) sets out how a fee may be determined and provides examples of the different methods of determining a fee. Subclause (3) lists the matters that must and may be provided for in a fee determination. Examples are also given for subclause (3). As a result of the clause, most fee details will be contained in the fee determination itself and not in the Act under which it is made. This will allow greater flexibility and enable the fee determination to deal comprehensively with the fees that are payable and details such as the person who must pay the fee, the person to whom the fee is payable, when the fee is payable and how it is to be paid. At the moment, may of these details are fragmented between the relevant Act and the fee determination.

(A2001-56)

A2001-56 substituted s 56 (1). The explanatory note is as follows:

> Proposed section 56 (1) recasts the subsection to simplify the language of the subsections that follow. Proposed section 56 (1A) clarifies the scope of the power to determine fees in response to comments of the Scrutiny Committee. Proposed section 56 (1B) makes it clear that a fee may be determined for a provision even though the provision does not mention a fee. The operation of section 56 (1B) is illustrated by an example.

(A2002-11)

A2002-11 inserted 'by' in s 56 (4) (c). The explanatory note is as follows:

> 146 This amendment corrects a minor typographical error.

A2002-11 also inserted s 56 (6), providing that the section is a determinative provision.

(A2002-49)

A2002-49 amended s 56 (2). The explanatory note is as follows:

> This amendment is consequential on the insertion (by another amendment in this part) of a definition of in relation to in the Legislation Act, dictionary, part 1. Under that definition, **in relation to** includes 'with respect to'.

(A2005-20)

A2005-20 substituted section 56 (1) The explanatory note is as follows:

> This amendment makes it clear that an Act can authorise fees to be determined for a number of laws (see also Legislation Act, section 49 (Single instrument may exercise several powers or satisfy several requirements) and section 145 (Gender and number)).

A2005-20 also inserted a new example in section 56 (3) The explanatory note is as follows:

> This amendment is consequential on the insertion of a new section 42 (2) by another amendment.

A2005-20 also made a number of minor changes to update the language of the section.

(A2006-42)

A2006-42 substituted a new note 1 in s 56 (3). The explanatory note for this amendment is as follows:

> This amendment brings the note into line with the new note for section 4 (2) which is inserted by another amendment.

Section 57 Fees payable in accordance with determination etc

(A2001-14, government amendment 14)

The explanatory statement for the government amendments provided:

> Proposed new clause 47C provides that fees are payable in accordance with the fee determination, that fees are payable before a service is provided (unless the determination states otherwise), and that there is no obligation to provide a service if a fee has not been paid. This clause removes the need to repeat these provisions in each Act or statutory instrument under which fees are determined.

(A2002-11)

A2002-11 inserted s 57 (5), providing that the section is a determinative provision.

Section 58 Regulations may make provision about fees

(A2001-14, government amendment 14)

The explanatory statement for the government amendments provided:

> Proposed new clause 47D authorises regulations to prescribe provisions about the payment, collection and recovery of determined fees, the waiver, postponement or refund of fees, payment of fees by cheque and credit card and anything else covered by proposed new clause 47B. The clause will allow regulations, rather than individual fee determinations, to deal with certain standard matters about fees if that is more appropriate.

(A2001-56)

A2001-56 inserted references to *the authorising law* in s 58 (4), (5) and (6). The explanatory note is as follows:

> This amendment makes it clear that the regulations mentioned in the subsections are regulations under the authorising law.

(A2002-11)

A2002-11 inserted s 58 (7A), providing that the section is a determinative provision.

(A2005-20)

A2005-20 omitted '(in whole or part)' and substituted '(completely or partly)' in s 58 (2) (b). The explanatory note is as follows:

> This amendment updates language.

Part 6.4 Numbering and notification of legislative instruments

(A2006-42)

A2006-42 updated references from 'registrable instrument' to 'legislative instrument' in the heading of this part. The explanatory note is as follows:

> This amendment is consequential on another amendment in this part.

Section 59 Numbering

(A2001-14)

A2001-14 inserted the section. The explanatory statement provided:

> Clause 48 Numbering
>
> 85. This clause would remake subsection 4 (1) of the *Subordinate Laws Act 1989* and extend its application to subordinate laws, disallowable instruments, commencement notices and other registrable instruments. The Parliamentary Counsel would be able to apply different alpha-numeric series to enable different kinds of instruments to be distinguished readily. Regulations could disapply the section to particular instruments if its application to them was inappropriate, eg perhaps certain notifiable instruments for appointments. Statutory instruments numbered under the clause may be referred to using the year of making and the number given under the clause (see cl 88 (1) (b)).

(A2001-56)

A2001-56 substituted s 59 (1). The explanatory note for this amendment is as follows:

> This amendment will ensure that instruments are generally numbered in the order in which they are notified, whether notification is made in the Gazette or the register.

(A2003-41)

A2003-41 omitted reference to 'statutory' and substituted 'registrable' in s 59 (2). The explanatory note for this amendment is as follows:

> This amendment brings the language of section 59 (2) more closely into line with the language of section 59 (1).

(A2005-20)

A2005-20 omitted reference to 'could' and substituted 'may' in example 2, s 59 (2). The explanatory note is as follows:

> This amendment makes the language of the example consistent with example 1.

(A2006-42)

A2006-42 omitted reference to 'registrable instrument' and substituted 'legislative instrument' in this section. The explanatory note is as follows:

> This amendment is consequential on another amendment in this part.

Section 60 Correction etc of name of instrument

(A2001-14)

A2001-14 inserted the section. The explanatory statement provided:

> Clause 49 Correction of name of registrable instrument
>
> 86. This clause would allow the Parliamentary Counsel to make minor adjustments to the names of registrable instruments, eg to complete or correct details and ensure instruments are registered properly with a unique name. Minor adjustments could also be made to bring the names of instruments into line with current drafting practices. These 'housekeeping' powers are intended to permit the ready identification of instruments to ensure their accessibility. Under paragraph 88 (1) (a), a statutory instrument may be referred to by any name the instrument gives itself.

(A2001-56)

A2001-56 inserted reference to unnamed registrable instruments in s 60 (1). The explanatory note is as follows:

> This amendment is to authorise the parliamentary counsel to add a name to an unnamed instrument that is to be registered. This refinement would help legislation users in finding instruments on the register.

A2001-56 also substituted s 60 (2) and (3). The explanatory note is as follows:

> This amendment is consequential on amendment 2.42.

(A2001-70)

A2001-70 inserted reference to 'current legislative drafting practice' in s 60 (2). No explanatory material for this amendment could be located.

(A2002-49)

A2002-49 includes a new s 60 (1) (e) and example. The explanatory note for this amendment is as follows:

> This amendment inserts an additional paragraph (e) for consistency with existing section 60 (2) (b). The amendment will allow the parliamentary counsel to ensure that registrable instruments

included on the register are correctly named. The correct, consistent naming of instruments will facilitate access to instruments on the register.

This amendment includes an example to illustrate the operation of new section 60 (1) (e).

(A2003-41)

A 2003-41 includes a minor amendment to the heading. The explanatory note for this amendment is as follows:

This amendment changes the heading (by adding 'etc') to better reflect the section's contents.

A 2003-41 also amended 60 (1) (a) to replace ***made*** with ***notified***. The explanatory note for this amendment is as follows:

Section 60 deals with the parliamentary counsel's power to correct the name of a registrable instrument, including in cases where the name of the instrument includes a year that is not the year that the instrument was made (section 60 (1) (a)). Usually a registrable instrument is made and notified in the same year, and it includes in its name the year it was made. However, if a registrable instrument is made at the end of a year, but is not notified until the next year, the name it bears should include the year that it was notified, not made.

This amendment makes that change.

(A2004-42)

A2004-42 simplifies language in s 60 (2) and inserts a new s 60 (4). The explanatory note for the s 60 (4) amendment is as follows:

This amendment makes it clear that, if the parliamentary counsel adds a name to, or amends the name of, a registrable instrument, the parliamentary counsel may also make consequential changes to the instrument's explanatory statement or regulatory impact statement. As noted by the Standing Committee on Legal Affairs (performing the duties of a Scrutiny of Bills and Subordinate Legislation Committee), discrepancies between instruments and their explanatory documentation may cause confusion to people when tracking legislation on the register. The consistent naming of instruments and their explanatory documentation assists access to the law.

(A2006-42)

A2006-42 updated references from 'registrable instrument' to 'legislative instrument' in this section. The explanatory note is as follows:

This amendment is consequential on another amendment in this part.

(A2009-20)

A2009-20 substitutes everything before paragraph (a) of s 60 (1). The explanatory note for this amendment is as follows:

> Section 60 ensures that legislative instruments notified on the legislation register are named correctly, in line with current legislative drafting practice It provides for names to be added to unnamed instruments and sets out the limited circumstances in which the name of an instrument may be corrected to bring it into line with current legislative drafting practice. Consistent naming of instruments makes them easier for users to find, therefore enhancing access to legislation.
>
> The amendment will extend the section to statutory instruments added to the register under section 19 (3) (Contents of register). That section includes provision for certain statutory instruments to be added to the register as 'additional material' if the parliamentary counsel considers it is likely to be helpful to users of the register. For example, appointments of public servants to various statutory bodies are generally not notifiable but can be included on the register for public information, where appropriate. The amendment will ensure that the naming conventions for legislative instruments apply also to this additional material.

A2009-20 also amends other subsections consequential on the extension of the application of section 60 mentioned above.

Section 60A Correction of name of explanatory statement etc

(A2004-42)

A2004-42 inserts a new section 60A. The explanatory note is as follows:

> This amendment makes it clear that the parliamentary counsel may add or correct instrument numbers and names in explanatory statements and regulatory impact statements. As noted by the Standing Committee on Legal Affairs (performing the duties of a Scrutiny of Bills and Subordinate Legislation Committee), discrepancies between instruments and their explanatory documentation may cause confusion to people when tracking legislation on the register. The consistent naming of instruments and their explanatory documentation assists access to the law.

(A2006-42)

A2006-42 updated references from 'registrable instrument' to 'legislative instrument' in this section. The explanatory note is as follows:

> This amendment is consequential on another amendment in this part.

Section 61 Notification of legislative instruments

(A2001-14)

A2001-14 inserted the section. The explanatory statement provided:

Clause 50 Notification of registrable instruments

87. This clause would provide notification requirements common to all registrable instruments and, for subordinate laws and disallowable instruments would replace the requirement in section 6 of the *Subordinate Laws Act 1989* to notify them in the Gazette. The scheme is similar to that applying to Acts (see cl 28, Notification of Acts).

88. To cater for the range of people or entities who make registrable instruments, the clause provides for the maker or authorised person (as defined) to arrange for notification by the Parliamentary Counsel. The clause enables the regulations to prescribe requirements that must be met for registration, eg production of the original, or an appropriately authenticated copy, of the instrument to be registered.

89. As with Acts, notification would consist of entering the full text of the instrument, and related particulars, in the relevant parts of the register. If that is impracticable or the relevant parts of the register are not accessible on an approved web site (eg because of computer failure), the instrument would have to be notified in the Gazette and, later, published in the register with an explanation that the instrument has previously been notified in the Gazette.

90. Unless a registrable instrument is registered (or notified in the Gazette), it would not commence (see ch 7, esp cl 61 (2)).

(A2001-56)

A2001-56 substituted s 61. The explanatory note is as follows:

The remaking of section 19 by amendment 2.23 (particularly the removal of the need for separate parts of the register) requires a number of minor, consequential changes to existing section 61. This amendment remakes the section entirely to avoid a lengthy set of amendments to individual provisions. The remade section also provides for later entry into the register (rather than a later notification) if the making of an instrument has first been notified in the Gazette.

(A2002-11)

A2002-11 inserted new sections 61 (8A), (8B) and (8C). The explanatory statement provided:

60 Clause 11 amends section 61 to deal with another practical problem arising out of the operation of the ACT legislation register. Section 61 is about the notification of registrable instruments. Section 61 (2) requires the parliamentary counsel to notify the making of a registrable instrument if—

- the maker of, or appropriate person for (see section 61 (9)), the instrument asks the parliamentary counsel to notify the making of the instrument; and
- the person complies with the requirements prescribed under the regulations.

61 Many of the requirements prescribed under the regulations are technical requirements relating to the form of the instrument itself (see Legislation Regulations 2001). These requirements are designed to enhance the accessibility of instruments available on the register, but do not go to matters that are fundamental to the register's operation. Accordingly, proposed section 61 (8A) will make it clear that the parliamentary counsel has a discretion to notify an instrument even though a prescribed requirement has not been complied with. Proposed section 61 (8B) complements this by making it clear that failure to comply with a prescribed requirement in relation to a registrable instrument does not affect the validity of the instrument's notification. Proposed section 61 (8C) identifies the section as a 'determinative provision' (see proposed section 6 discussed above)....

Amendment of s 61 (2)

147 This amendment makes it clear that regulations made under section 61 (2) can deal with the form of instruments to be registered.

(A2003-41)

A 2003-41 substituted s 61 (4) (b) (ii) and amended 61 (4), (5) and (6). The explanatory notes for these related amendments are as follows:

This amendment, and the amendments of sections 61 (5), (6) and (7), apply to cases where the making of a registrable instrument has to be notified in the Gazette. This would only happen in exceptional cases, for example, if some technical problem made notification using the legislation register impracticable at the time for notification. As these cases are likely to be rare, it may be preferable to make copies of the instrument available for free rather than setting up special arrangements for its sale. The amendments of section 61, therefore, authorise this to be done. Under the amended section, if the making of a registrable instrument is initially notified in the Gazette, the making of the instrument and its text must in any event be entered in the register (and made available at an approved web site). This can be expected to happen very soon after Gazette notification and any special arrangements for making copies of the instrument available are likely to be needed only for a short time.

Existing subsection (5) requires 'later' entries to be made in the legislation register about a registrable instrument notified in the Gazette. As these entries should be made as soon as possible, the express requirement for a later entry serves no purpose and has been omitted.

This amendment brings the language of section 61 (6) more closely into line with the language of section 61 (5).

See the explanatory note for the amendment of section 61 (4) (b) (ii).

(A2004-60)

A2004-60 amends the definition of appropriate person in s 61 (12). The explanatory statement notes:

> **Part 1.37 – *Legislation Act 2001* –** provides for amendments to the *Legislation Act 2001* by changing the definition of appropriate person consistent with changes under the *Courts Procedures Act 2004.*

(A2005-20)

A2005-20 made a number of amendments to s 61. The explanatory statement provides the following general explanation of the changes:

> The process of continuous review and improvement is, for example, reflected in the following amendments of section 61 (Notification of registrable instruments):
>
>> (a) The group of people who can request the notification of registrable instruments is broadened, in particular, to allow any chief executive to make a notification request for an instrument made by the Executive or a Minister. Experience has shown that the existing provisions are unnecessarily restrictive. For example, existing section 61 provides for an Executive instrument to be notified by a Minister. In practice, Ministers delegate the function to chief executives who subdelegate to other public servants. Further, the notification of a package of legislative instruments that includes an Executive instrument (eg a regulation) requires delegations between administrative units. The amendments will allow the notification process to be simplified without affecting the power to make registrable instruments (nor the people who can make registrable instruments).
>>
>> (b) Another amendment of section 61 ensures the legal effectiveness of the notification of a registrable instrument made on the request of a person who was not authorised to make the request. Once a registrable instrument is notified it will not matter that there may have been, for example, a defect in a delegation relied on to make the notification request. The amendment will remove any need for people seeking to rely on a notified registrable instrument to check the validity of a delegation used in making the notification request. The amendment complements the judicial notice provision about notification made by the Legislation Act, section 26 (1) (b) and section 242 (Delegation not affected by defect etc).

A2005-20 omitted 'the maker of, or the appropriate person for' and substituted 'an authorised person for making a notification request for' in s 61 (1) and (2). The explanatory notes are as follows:

> This amendment simplifies the subsections by substituting a single self-explanatory concept for the people who can request notification of the making of a registrable instrument. The amendment also recognises that, under the replacement of section 61 (12) by another amendment, usually a notification request can be made by 1 of a number of people.

A2005-20 also substituted s 61 (10). The explanatory note is as follows:

> This amendment ensures the legal effectiveness of the notification of a registrable instrument made on the request of a person who was not, or was no longer, a delegate of an authorised person for making a notification request for the instrument. Once a registrable instrument is notified it will not matter that there may have been, for example, a defect in a delegation relied on to make the notification request. The amendment will remove any need for people seeking to rely on a notified registrable instrument to check the validity of a delegation used in making the notification request. The amendment complements the judicial notice provision about notification made by the Legislation Act, section 26 (1) (b) and section 242 (Delegation not affected by defect etc).

In addition A2005-20 substituted s 61 (12). The explanatory note is as follows:

> This amendment simplifies existing section 61 by including the maker of a registrable instrument within the definition of authorised person for making a notification request for the instrument. It also broadens, in a number of respects, the people who (apart from the maker) can request the notification of registrable instruments.
>
> First, the definition of authorised person, paragraph (b) will allow any Minister or chief executive to request the notification of a registrable instrument made by the Executive. Under the existing definition of appropriate person a notification request for an Executive instrument can only be made by a Minister. However, in practice registrable instruments made by the Executive are notified under a delegation made by a Minister (usually the Chief Minister) to a chief executive (usually the Chief Executive, Chief Minister's Department) and a subdelegation made by the chief executive to the public servants who in fact make the notification requests. Paragraph (b) will allow this process to be simplified.
>
> Second, the definition of authorised person, paragraph (c) will allow any chief executive to request the notification of a registrable instrument made by a Minister. Under the Legislation Regulation 2003, section 11 a notification request for a Ministerial instrument can only be made by the chief executive of the administrative unit responsible for the provision under which the instrument is made. In practice this has been unnecessarily restrictive. For example, it can be more convenient for concurrent notification requests to be made for a Ministerial instrument (eg a disallowable instrument or commencement notice) that is made as part of a package with an Executive instrument (eg a regulation). At present this can only be achieved through delegations between administrative units.
>
> Third, the definition of authorised person, paragraph (d) will allow notification requests for registrable instruments made by the rule-making committee under the Court Procedures Act 2004 to be made by the secretary of the committee or the registrar of a court or tribunal in relation to which the instrument applies. This will remove the need for the Chief Justice to appoint people for making notification requests. The amendment inserts a definition of rule-making committee for the paragraph.
>
> Fourth, the definition of authorised person, paragraph (e) will allow notification requests for any other registrable instruments made by a court or tribunal (or a member of the court or tribunal) to be made by the registrar of the court or tribunal.

> Fifth, the definition of authorised person, paragraphs (f) and (g) will allow a notification request for any other registrable instrument to be made by any chief executive or someone prescribed by regulation. Under the Legislation Regulation 2003, section 11 such a notification request can only be made by the chief executive of the administrative unit responsible for the provision under which the instrument is made. In practice this has been unnecessarily restrictive.
>
> Although the amendment broadens the people who can request the notification of registrable instruments, it does not affect the power to make registrable instruments (nor the people who can make registrable instruments).

(A2006-42)

A2006-42 updated references from 'registrable instrument' to 'legislative instrument' in this section. The explanatory note is as follows:

> This amendment is consequential on another amendment in this part.

(A2011-22)

A2011-22 omitted 'chief executive'; and substituted 'director-general' in the definition of 'authorised person' in s 61 (12). The amendment was consequential on a change of terminology across the statute book.

(A2011-28)

A 2011-28 substituted section 61 (2) (b). The explanatory note is as follows:

> Under the Legislation Act, a legislative instrument is not enforceable unless it is notified. 'Notification' in this context means notification in the legislation register, or if that is not practicable, in the gazette (see s 61 (2)).
>
> This amendment proposes to broaden 1 the options available for the notification of the making of a legislative instrument if the legislation register is temporarily unavailable for technical or other reasons. Under section 61 (2) (b) as revised by this amendment, a legislative instrument may be notified in another place the parliamentary counsel considers appropriate. The gazette is one example of a place that may be appropriate.
>
> The legislation register has been in operation since 12 September 2001. To date, it has always been possible to notify material on the register on the date requested. However, it is a prudent and necessary part of risk management planning to have alternatives in place should the need arise. A similarly flexible approach has been taken in the equivalent NSW provision (see *Interpretation Act 1987* (NSW), s 45C).

(A2015-15)

A2015-15 omitted example 2 in s 61 (2) (b). The explanatory note is as follows:

> This amendment omits a reference to the gazette as an example of a place the parliamentary counsel considers appropriate for notifying a legislative instrument if it is not practicable to notify the instrument in the ACT legislation register. The example is redundant because the gazette is now published in the ACT legislation register.

Section 62 Effect of failure to notify legislative instrument

(A2001-14, government amendment 15)

A2001-14 inserted the section (see government amendment 15). The explanatory statement provided:

> **Amendment 15**
> Although the Bill does not directly require a subordinate law, disallowable instrument or notifiable instrument (a ***registrable instrument***) to be notified under the Bill, it is implicit in clause 61 (2) that the registered instrument cannot commence unless it is notified. However, the application of clause 61 (2) to the text of applied laws and instruments is unclear (see proposed new clause 39 (2) and (3)). This amendment, therefore, inserts a new clause 50A that provides that a registrable instrument (which will include the text of applied laws and instruments) is not enforceable by or against the Territory or anyone else unless it is notified. The clause is modelled on a similar provision in the Commonwealth *Legislative Instruments Bill 1996*.

(A2002-11)

A2002-11 inserted s 62 (2), providing that the section is a determinative provision.

(A2006-42)

A2006-42 updated references from ‘registrable instrument’ to ‘legislative instrument’ in this section. The explanatory note is as follows:

> This amendment is consequential on another amendment in this part.

Section 63 References to notification of legislative instruments

(A2001-14)

A2001-14 inserted the section. The explanatory statement provided:

> Clause 51 References to notification of registrable instruments
>
> 92. This is a machinery provision that defines the concept of notification in relation to registrable instruments.

(A2001-56)

A2001-56 omitted s63 (2) consequential to amendments to s 61 (5). The explanatory note for this amendment is as follows:

> This amendment is consequential on amendment 2.44 (in particular, providing for a later entry in the register after the making of a instrument has first been notified in the Gazette). New section 61 (5) removes the need for existing section 63 (2).

(A2006-42)

A2006-42 updated references from 'registrable instrument' to 'legislative instrument' in this section. The explanatory note is as follows:

> This amendment is consequential on another amendment in this part.

(A2011-28)

A2011-28 omitted 'or gazette' and substituted 'the gazette or otherwise under section 61 (2) (b)' in s 63. The explanatory note is as follows:

> This amendment is consequential on changes made to section 61 (2) (b) by another amendment.

Chapter 7 Presentation, amendment and disallowance of subordinate laws and disallowable instruments

(A2001-14)

A2001-14 inserted the chapter. The explanatory statement provides:

> 92. This chapter re-enacts much of section 6 of the *Subordinate Laws Act 1989* and restructures it to deal separately and more clearly with the matters covered by the section.

Section 64 Presentation of subordinate laws and disallowable instruments

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 52 Presentation
>
> 93. This clause would restate paragraph 6 (1) (c) and subsections 6 (6) and (8) of the *Subordinate Laws Act 1989* in simpler form.

(A2002-11)

A2002-11 amended the heading and added ss 64 (3) declaring that the provision is determinative.

> 148 This amendment substitutes a more helpful heading.

(A2005-20)

A2005-20 amended s 64 (2) to include the words ‘in accordance with’. The explanatory note is as follows:

> This amendment tightens language.

(A2005-62)

A2002-62 omitted ‘within’ and substituted ‘not later than’ in s 64 (1). The explanatory note is as follows:

> This amendment makes it clear that a subordinate law or disallowable instrument can be presented to the Legislative Assembly on the day it is notified.

Section 65 Disallowance by resolution of Assembly

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 53 Disallowance
>
> 94. This clause would restate subsections 6 (7) (7A) and (8) of the *Subordinate Laws Act 1989*.

(A2001-56)

A2001-56 substituted a new heading and s 65 (2). The explanatory notes are as follows:

> This amendment makes the heading more informative.
>
> This amendment spells out more clearly when the repeal made by a disallowance takes effect and is consequential on amendment 2.50. It preserves the Legislative Assembly's control over the timing of the effect of a disallowance by allowing it to fix the day of disallowance as the date of effect, even though the disallowance may be notified later.

A2001-56 also inserted new s 65 (4). The explanatory note is as follows:

> This amendment spells out more clearly what the 'resolution' is if a disallowance motion is not actually passed by the Legislative Assembly, but is taken to have been passed. The resolution set out in the disallowance motion is the resolution notified under proposed new section 65A (inserted by amendment 2.50).

(A2002-11)

A2002-11 added ss 65 (5) declaring that the provision is determinative.

(A2003-56)

A2003-56 inserted ss 65 (4A) declaring the effect of a disallowance under the section. The explanatory note is as follows:

> This amendment inserts a provision similar to section 68 (6) into section 65. Section 65 provides that, if the Legislative Assembly passes a resolution to disallow a subordinate law or disallowable instrument, the law or instrument is taken under section 65 to be repealed. This amendment means that a deemed repeal, once effective, will be repealed automatically under the Legislation Act, section 89. Its effect is, however, saved under the Legislation Act, section 84.

(A2004-42)

A2004-42 omitted 'after the notice' and substituted 'after the day the notice' in s 65 (3). The explanatory note is as follows:

> This amendment expressly provides that, in working out the period within which a disallowance notice for a subordinate law or disallowable instrument must be dealt with, the day on which the law or instrument is presented to the Legislative Assembly is not counted. The amendment is in accordance with current drafting practice and reflects the present position under the Legislation Act, section 151 (2) and (3) (b).

(A2005-20)

A2005-20 substituted s 65 (2) (a). The explanatory note is as follows:

> This amendment brings the default repeal commencement provision for disallowances of subordinate laws or disallowable instruments arising from Legislative Assembly resolutions into line with the default commencement provision for Acts and registrable instruments under the Legislation Act, section 73.

(A2005-62)

A2002-62 omitted 'within' and substituted 'not later than' in s 65 (1). The explanatory note is as follows:

> This amendment makes it clear that notice of a motion to disallow a subordinate law or disallowable instrument can be given in the Legislative Assembly on the day the law or instrument is presented to the Assembly.

Section 65A Notification of disallowance by resolution of Assembly

(A2001-56)

A2001-56 inserted s 65A. The explanatory note is as follows:

> This amendment overcomes a gap in the existing law by providing a mechanism for the notification of a disallowance of a subordinate law or disallowable instrument by the Legislative Assembly. The mechanism provided is similar to that already provided in the Legislation Act 2001 for Acts (s 28), registrable instruments (s 61) and amendments of subordinate laws and disallowable instruments made by resolution of the Legislative Assembly (s 68).

(A2002-11)

A2002-11 added ss 65A (7) declaring that the provision is determinative.

(A2003-41)

A2003-41 omitted the word 'later' from ss 65A (6). The explanatory note is as follows:

> These amendments omit an unnecessary word. The amended provisions apply to cases where the disallowance or amendment of a subordinate law or disallowable instrument by the Legislative Assembly has to be notified in the Gazette. This would only happen in exceptional cases, for example, if some technical problem made notification using the legislation register impracticable at the time for notification. In these cases, the existing provisions require that 'later' entries be made in the legislation register about the disallowance or amendment of the instrument. As these entries should be made as soon as possible, the express requirement for a later entry serves no purpose.

(A2005-62)

A2002-62 substituted s 65A (2) (b). The explanatory note is as follows:

> This amendment clarifies when the parliamentary counsel is required to notify the disallowance of a subordinate law or disallowable instrument in the gazette. The amendment is consistent with the Legislation Act, section 20 (which requires the parliamentary counsel to ensure that anything the parliamentary counsel is required to do in relation to the register is done promptly) and section 22 (1) (which requires the parliamentary counsel to ensure, as far as practicable, that a copy of the material mentioned in section 19 (1) and (2) is accessible at all times on an approved web site). Uploads from the legislation register to the approved web site are normally made during the night of the day when laws and instruments are notified in the register. Although they are invariably available at the approved web site at the beginning of the next working day, they are not always available before midnight on the day of notification.

(A2011-28)

A2011-28 substituted s 65A (2) (b) and made consequential amendments to ss 65A (5), (6) and (6) (b). The explanatory note for the main substitution is as follows:

> Under the Legislation Act, if a subordinate law or disallowable instrument is disallowed by resolution of the Legislative Assembly, the Speaker must ask the parliamentary counsel to notify the disallowance. 'Notification' in this context means notification in the legislation register, or if that is not practicable, in the gazette (see s 65A (2)).
>
> This amendment proposes to broaden the options available for the notification of a disallowance if the legislation register is temporarily unavailable for technical or other reasons.
>
> Under section 65A (2) (b) as revised by this amendment, a disallowance may be notified in another place the parliamentary counsel considers appropriate. The gazette is one example of a place that may be appropriate.
>
> The legislation register has been in operation since 12 September 2001. To date, it has always been possible to notify material on the register on the date requested. However, it is a prudent and necessary part of risk management planning to have alternatives in place should the need arise.

(A2015-15)

A2015-15 omitted example 2 from ss 65A (2) (b). The explanatory note is as follows:

> This amendment omits a reference to the gazette as an example of a place the parliamentary counsel considers appropriate for notifying the disallowance of a subordinate law or disallowable instrument if it is not practicable to notify the disallowance in the ACT legislation register. The example is redundant because the gazette is now published in the ACT legislation register.

Section 66 Revival of affected laws

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 54 Revival of affected laws
> 95. This clause would restate subsection 6 (9) of the *Subordinate Laws Act 1989* more fully and simply.

(A2002-11)

A2002-11 added ss 66 (3) declaring that the provision is determinative.

Section 67 Making of instrument same in substance within 6 months after disallowance

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 55 Making of instruments same in substance within 6 months after disallowance
> 96. This clause would restate subsection 6 (10) of the *Subordinate Laws Act 1989* more fully and simply.

(A2002-11)

A2002-11 added ss 67 (4) declaring that the provision is determinative.

(A2005-20)

A2005-20 amended s 67 (2) to include the words 'the day of'. The explanatory note is as follows:

> This amendment expressly provides that, in working out the period within which a law the same in substance as a disallowed law must not be made, the day of the disallowance is not counted. The amendment is in accordance with current drafting practice and reflects the present position under the Legislation Act, section 151 (2) and (3) (b).

(A2005-62)

A2005-62 omitted 'after' and substituted 'beginning on' in s 67 (2). The explanatory note is as follows:

> This amendment makes it clear that section 67 prevents an instrument the same in substance as a disallowed subordinate law or disallowable instrument being made on the day of the disallowance.

Section 68 Amendment by resolution of Assembly

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 56 Amendment by resolution of Assembly
>
> 97. This clause would restate subsections 6 (7A) (11) (13) (15) and (17) of the *Subordinate Laws Act 1989*.

(A2001-56)

A2001-56 substituted s 68 (3). The explanatory note is as follows:

> This amendment spells out more clearly when an amendment of a subordinate law or disallowable instrument made by resolution of the Legislative Assembly takes effect. It ensures the Legislative Assembly's control over the timing of the amendment by allowing it to fix the day the resolution is passed as the date of effect, even though the amendment may be notified later.

A2001-56 also inserted a new s 68 (4A). The explanatory note is as follows:

> This amendment spells out more clearly what the 'resolution' is if an amendment motion for a subordinate law or disallowable instrument is not actually passed by the Legislative Assembly, but is taken to have been passed. The resolution set out in the amendment motion is the resolution notified under section 68.

Consequential to the substitution of s 68 (3) A2001-56 also substituted s 68 (6). The explanatory note is as follows:

> This amendment is consequential on amendment 2.51 (which deals with when an amendment resolution passed (or taken to have been passed) by the Legislative Assembly takes effect).

(A2002-11)

A2002-11 added s 68 (8) declaring that the provision is determinative.

(A2004-42)

A2004-42 amended the time frames in s 68 (2) and (4). The explanatory notes are as follows:

> This amendment expressly provides that, in working out the period within which notice of an amendment motion must be given for a subordinate law or disallowable instrument, the day on which the law or instrument is presented to the Legislative Assembly is not counted. The amendment is in accordance with current drafting practice and reflects the present position under the Legislation Act, section 151 (2) and (3) (b).
>
> This amendment expressly provides that, in working out the period within which an amendment motion for a subordinate law or disallowable instrument must be dealt with, the day on which the law or instrument is presented to the Legislative Assembly is not counted. The amendment is in accordance with current drafting practice and reflects the present position under the Legislation Act, section 151 (2) and (3) (b).

(A2005-20)

A2005-20 substituted s 68 (3) (a). The explanatory note is as follows:

> This amendment brings the default commencement provision for amendments of subordinate laws or disallowable instruments arising from Legislative Assembly resolutions into line with the default commencement provision for Acts and registrable instruments under the Legislation Act, section 73.

(A2005-62)

A2002-62 omitted 'within' and substituted 'not later than' in s 64 (1). The explanatory note is as follows:

> This amendment makes it clear that notice of a motion to amend a subordinate law or disallowable instrument can be given in the Legislative Assembly on the day the law or instrument is presented to the Assembly.

Section 69 Notification of amendments made by resolution of Assembly

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 57 Notification of amendments made by resolution of Assembly
>
> 98. This clause would restate subsection 6 (11) of the *Subordinate Laws Act 1989* but would require the Speaker of the Legislative Assembly to arrange for the notification of the amendment by the Parliamentary Counsel. Notification would be made in a similar fashion to that for Acts and subordinate laws, ie in the register or the gazette (eg because of a computer failure). If notified in the gazette, the Parliamentary Counsel would be required to publish the amendment in the register with a statement about the earlier gazettal.

(A2001-56)

A2001-56 substituted s 69 (2) (b) and ss (4), (5) and (6) . The explanatory notes are as follows:

> This amendment is consequential on amendment 2.23 (in particular, removal of the need for separate parts within the legislation register).
>
> This amendment is consequential on amendment 2.23 (in particular, removal of the need for separate parts within the legislation register) and amendments 2.51 and 2.52 (in particular, the more detailed provisions dealing with resolutions of the Legislative Assembly to amend a subordinate law or instrument).

(A2002-11)

A2002-11 added s 69 (7) declaring that the provision is determinative.

(A2002-49)

A2002-49 omitted 'repealed' from s 69 (4) (d) and substituted 'amended'. The explanatory note is as follows:

> This amendment corrects a minor error.

(A2003-41)

A2003-41 omitted the word 'later' from s 69 (6). The explanatory note is as follows:

> These amendments omit an unnecessary word. The amended provisions apply to cases where the disallowance or amendment of a subordinate law or disallowable instrument by the Legislative Assembly has to be notified in the Gazette. This would only happen in exceptional cases, for example, if some technical problem made notification using the legislation register impracticable at the time for notification. In these cases, the existing provisions require that 'later' entries be made in the legislation register about the disallowance or amendment of the instrument. As these entries should be made as soon as possible, the express requirement for a later entry serves no purpose.

(A2005-62)

A2002-62 substituted s 69 (2) (b). The explanatory note is as follows:

> This amendment clarifies when the parliamentary counsel is required to notify in the gazette the amendment by the Legislative Assembly of a subordinate law or disallowable instrument. The amendment is consistent with the Legislation Act, section 20 (which requires the parliamentary counsel to ensure that anything the parliamentary counsel is required to do in relation to the register is done promptly) and section 22 (1) (which requires the parliamentary counsel to ensure, as far as practicable, that a copy of the material mentioned in section 19 (1) and (2) is accessible at all times on an approved web site). Uploads from the legislation register to the approved web site

> are normally made during the night of the day when laws and instruments are notified in the register. Although they are invariably available at the approved web site at the beginning of the next working day, they are not always available before midnight on the day of notification.

(A2011-28)

A2011-28 substituted s 69 (2) (b) and made consequential amendments to s 69 (5), (6) and (6) (b). The explanatory note for the main substitution is as follows:

> Under the Legislation Act, if a subordinate law or disallowable instrument is disallowed by resolution of the Legislative Assembly, the Speaker must ask the parliamentary counsel to notify the disallowance. ‘Notification’ in this context means notification in the legislation register, or if that is not practicable, in the gazette (see s 69 (2)).
>
> This amendment proposes to broaden the options available for the notification of a disallowance if the legislation register is temporarily unavailable for technical or other reasons.
>
> Under section 69 (2) (b) as revised by this amendment, a disallowance may be notified in another place the parliamentary counsel considers appropriate. The gazette is one example of a place that may be appropriate.
>
> The legislation register has been in operation since 12 September 2001. To date, it has always been possible to notify material on the register on the date requested. However, it is a prudent and necessary part of risk management planning to have alternatives in place should the need arise.

(A2015-15)

A2015-15 omitted example 2 from s 69 (2) (b). The explanatory note is as follows:

> This amendment omits a reference to the gazette as an example of a place the parliamentary counsel considers appropriate for notifying the disallowance of a subordinate law or disallowable instrument if it is not practicable to notify the disallowance in the ACT legislation register. The example is redundant because the gazette is now published in the ACT legislation register.

Section 70 Making of amendment restoring effect of law within 6 months after amendment

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 58 Making of amendment restoring effect of law within 6 months after amendment
>
> 99. This clause would restate subsection 6 (10) of the *Subordinate Laws Act 1989*.

(A2002-11)

A2002-11 added s 70 (4) declaring that the provision is determinative.

(A2005-20)

A2005-20 amended s 70 (2) to include reference to 'the day the amendment is made'. The explanatory note is as follows:

> This amendment expressly provides that, in working out the period within which a law the same in substance as a subordinate law or disallowable instrument amended by resolution of the Legislative Assembly must not be made, the day the amendment is made is not counted. The amendment is in accordance with current drafting practice and reflects the present position under the Legislation Act, section 151 (2) and (3) (b).

(A2005-62)

A2002-62 omitted 'after' and substituted 'beginning on' in s 70 (2). The explanatory note is as follows:

> This amendment makes it clear that section 70 prevents an instrument the same in substance as a subordinate law or disallowable instrument amended by the Legislative Assembly being made on the day the amendment was made.

Section 71 Effect of dissolution or expiry of Assembly on notice of motion

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 59 Effect of dissolution or expiration of Legislative Assembly on notice of motion
>
> 100. This clause would restate subsection 6 (7B) of the *Subordinate Laws Act 1989*.

(A2002-11)

A2002-11 added s 71 (3) declaring that the provision is determinative.

(A2005-20)

A2005-20 amended s 71 (1) (a) and (b) to include references to 'the day'. The explanatory note for the changes is as follows:

> This amendment clarifies how to work out a period required for the application of this section. The amendment is in accordance with current drafting practice and reflects the present position under the Legislation Act, section 151 (2) and (3) (b).

(A2005-62)

A2002-62 omitted ‘within’ and substituted ‘not later than’ in ss 71 (1) (a) and (b). The explanatory note is as follows:

> The amendment of section 71 (a) is consequential on an identical amendment made to section 65 (1) and section 68 (2).
>
> The amendment of section 71 (1) (b) makes it clear that section 71 applies if the Legislative Assembly is dissolved or expires on the day a notice of motion to disallow or amend a subordinate law or disallowable instrument is given in the Assembly.

Chapter 8 Commencement and exercise of powers before commencement

(A2001-14)

A2001-14 inserted the chapter. The explanatory statement provides:

> 101. This Chapter would bring together the relevant provisions from the *Interpretation Act 1967* and the *Subordinate Laws Act 1989* and restate them more simply.
>
> 102. At present, the *Subordinate Laws Act 1989* operates, in relation to the matters dealt with in this Chapter, largely by reference to the provisions of the *Interpretation Act 1967*, which applies to Acts. Those provisions are applied by reference (indirectly) to subordinate laws, disallowable instruments and administrative instruments (see *Subordinate Laws Act 1989*, s 9 (1) and s 10)). This makes the relevant law difficult to find and understand. By contrast, the provisions of the Chapter expressly provide for the application of their provisions to statutory instruments or particular kinds of statutory instruments.

Section 72 Meaning of *law*—ch 8

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 60 Meaning of law in ch 7
>
> 103. This is a machinery provision to avoid the need for separate references to Acts, subordinate laws and disallowable instruments (and their provisions).

(A2004-42)

A2004-42 substituted the definition of 'law'. The explanatory note is as follows:

> This amendment includes all statutory instruments in the definition of law for chapter 8 (Commencement and exercise of powers before commencement). At present a number of provisions of the chapter apply to statutory instruments that are not subordinate laws or disallowable instruments, but the following sections do not apply:
>
> - section 75 (Commencement of naming and commencement provisions on notification day)
> - section 78 (Separate commencement of amendment)
> - section 79 (Automatic commencement of postponed law)
> - section 79A (Commencement of amendment of uncommenced law)
> - section 80 (References to commencement of law)
> - section 81 (Exercise of powers between notification and commencement).

There is no reason in principle why these sections should not apply (with any necessary changes) to statutory instruments such as notifiable instruments. There is considerable advantage to users of ACT legislation in having the provisions of the chapter apply as consistently as possible to all statutory instruments.

(A2005-20)

A2005-20 substituted the definition of 'law'. The explanatory note is as follows:

This amendment revises the definition to omit unnecessary words. Under the definitions of *Act* and *statutory instrument* in sections 7 and 13, a reference to an Act or statutory instrument includes a reference to a provision of the Act or instrument. The amendment also inserts a note to this effect.

Section 73 General rules about commencement

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

Clause 61 General rules about commencement

104. Subclauses 61 (1) and (2) restate sections 10 of the *Interpretation Act 1967* and paragraph 6 (1) (b) of the *Subordinate Laws Act 1989* by reference to *notification day* as defined in the dictionary to the Bill, ie registration on the legislation register instead of notification in the Gazette. Under subclause 61 (2), the same commencement rules would apply to notifiable instruments as presently apply to subordinate laws and disallowable instruments. Paragraphs (2) (c) and (d) recognise that the Legislative Assembly may, by an Act, authorise the making of retrospective subordinate laws, disallowable instruments or notifiable instruments.

105. Subclause 61 (3) deals with cases where a subordinate law, disallowable instrument or notifiable instrument is notified after the date stated in it for its commencement. (For example, a subordinate law that provides for its commencement on 30 June 2001 is not registered until 1 July 2001.) The subclause provides that the instrument is valid but commences on its notification day. (In the example given, the subordinate law would commence on 1 July 2001.) This result is equivalent to the result achieved under subsection 10C (2) of the *Interpretation Act 1967* in the case of a commencement notice that is notified after the commencement date provided in the notice. Subclause 61 (3) does not apply to instruments that have valid retrospective operation (see the exception in the subclause and cl 61 (5) (b)).

106. Subclause 61 (4) states commencement rules for statutory instruments that are not required to be registered under the Bill. Under the subclause a non-registrable instrument may commence when it is made or, if relevant, approved, at a later date or time stated in the instrument, or at an earlier date or time if authorised by an Act.

107. Subclause 61 (5) provides that the general commencement rules provided in the subclauses (1) to (4) are subject to the following exceptions:

a) the commencement of naming and commencement provisions on the notification day under clause 63;
b) the retrospective commencement of non-prejudicial provisions under clause 64;
c) the automatic commencement of a postponed law under clause 67.

(A2002-11)

A2002-11 substituted ss73 (1) (a), (2) (a) and (3) (b). The explanatory statement provides:

Clauses 12 and 13

62 These clauses amend the general rules in section 73 about commencement. For Acts and registrable instruments (that is, instruments required to be notified on the ACT legislation register), the section presently provides a default commencement of the notification day of the Act or instrument. (The default commencement applies in the absence of a provision providing for a later or earlier commencement.) This default commencement is consistent with the position that previously applied under the Interpretation Act and before 1999 under the Self-Government Act.

63 In addition to this default commencement, the Legislation Act, section 74 provides that, if an Act commences on a day, it commences at the beginning of the day. The section is consistent with the position that generally applies under interpretation legislation and reflects the common law rule that the law does not generally recognise parts of a day. According to the common law rule a part of a day is generally counted as the whole day. Under the rule, for example, if something is done on a day, it is taken to have been done for the whole of a day.

64 The interaction of the existing default commencement in section 73 and the time of commencement under section 74 creates a practical issue for users of the ACT legislation register. This issue, which has always existed, has been made more acute by the instant access to the law provided by the register. The issue can best be illustrated by an example. If someone searches the register at some time on a day for the law about bail applying under the *Bail Act 1993*, the person cannot be certain that an Act amending the Bail Act will not be notified later that day (particularly if a bill has been passed by the Legislative Assembly and is awaiting notification). If an amending Act is in fact notified later that day and does not have a postponed (or retrospective) commencement, the amending Act operates back to the first moment of that day. In theory at least, notification of the amending Act may alter the legal effect of something done in reliance on the then existing law earlier in the day. Even if this is not the case, it is not satisfactory that a person cannot rely on a search made of the legislation register on a day to work out with confidence their rights and liabilities on that day. The issue is particularly acute with subordinate laws because they are generally not made after a public process (unlike Acts).

65 To deal with this issue, clauses 12 and 13 propose to amend section 73 to change the default commencement of Acts and registrable instruments to the day after the day they are notified under the Legislation Act. This legislative change will be supported by a change to the standard commencement provisions used in ACT legislation. These will be changed to provide, in relevant

cases, for commencement on the day after the day of notification rather than the day of notification.

A2002-11 also amended 73 (5) (d). The explanatory statement provides:

Amendment of s 73 (5) (d)
149 This amendment clarifies the relationship between Legislation Act, sections 73 and 81. Under section 81 instruments made under a law between its notification and commencement can commence before the commencement of the law in certain circumstances.

(A2003-41)

A2003-41 substituted s 73 (5) (d). The explanatory note is as follows:

This amendment is consequential on the insertion of new section 79A by another amendment.

(A2003-56)

A2003-56 amended s 73 (1) (b). The explanatory note is as follows:

This amendment makes it clear that the commencement of an Act may be provided for in another Act.

A2003-56 also amended s 73 (2) and (3b). The explanatory note is as follows:

This amendment applies the general commencement rules of the Legislation Act, section 73 to commencement notices. The rules presently apply to all other registrable instruments.

The rules for the commencement of laws by commencement notice are dealt with in the Legislation Act, section 77. The amendment does not affect the operation of those rules.

However, the amendment will facilitate the operation of the ACT legislation register. When a registrable instrument is included on the register, the date the instrument becomes effective (or commences) is indicated to assist users of the register. The amendment confirms that the general commencement rules that apply to other registrable instruments apply also to commencement notices **as instruments**, that is, the default commencement for a commencement notice itself is the day after the day the notice is notified. (This default commencement date may or may not be the same date as the date fixed by the commencement notice for the commencement of the law that it commences).

The proposed default commencement for commencement notices is the same default commencement that already applies to the commencement of a law made by a commencement notice (see Legislation Act, s 77). The amendment does not change the law, but rather confirms the way that commencement notices have been shown on the legislation register since its establishment.

A2003-56 further amended s 74 (a). The explanatory note is as follows:

> This amendment brings the default commencement for non-registrable instruments (that is, instruments not required to be notified on the ACT legislation register) into line with the default commencement for registrable instruments. Under the amendment the default commencement for a non-registrable instrument will be the day after the instrument is made (or, if it is required to be approved by an entity after making, the day after the approval day).
>
> The law does not generally recognise parts of days. In theory, it is therefore presently possible for a non-registrable instrument to operate retrospectively by default from the time of making (or approval) back to the first moment of the day it is made (or approved). The amendment will prevent this result.
>
> However, under other amendments made by this schedule, a non-prejudicial provision of a non-registrable instrument may commence on or before the day it is made (or approved) if the instrument clearly indicates that it is to commence retrospectively (see proposed new s 75B and existing s 76 (1)). By contrast, a prejudicial provision of a non-registrable instrument may commence on or before the day it is made (or approved) only if the Legislation Act, section 76 (2) (inserted by another amendment) is displaced by, or under authority given by, an Act.

(A2004-42)

A2004-42 omitted 'on notification day' from s 73 (5) (a). The explanatory note is as follows:

> This amendment is consequential on the change to the heading to section 75 made by the next amendment.

(A2005-20)

A2005-20 substituted example 2 for s 73 (2). par (b). The explanatory note is as follows:

> This amendment amends the example to reflect current drafting practice and brings the example into line with the Legislation Act, section 79A (3).

(A2006-42)

A minor amendment replacing mentions of ***registrable instrument*** with ***legislative instrument*** in s 73. The explanatory note is as follows:

> This amendment is consequential on another amendment in this part.

Section 74 Time of commencement

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 62 Time of commencement
>
> 108. This clause would re-enact section 10A of the *Interpretation Act 1967*.

(A2002-11)

A2002-11 substituted s 74. The explanatory statement provides:

> *Clause 14*
> 66 Clause 14 revises section 74 to recognise that an Act or statutory instrument may commence at a time on a day other than the first moment of a day. For example, an Act may provide that it commences at 8 pm on a day. Although the cases in which an Act or statutory instrument would commence at another time on a day are likely to continue to be rare, they nevertheless arise from time to time.

Section 75 Commencement of naming and commencement provisions

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 63 Commencement of naming and commencement provisions on notification day
>
> 109. This clause would re-enact section 10B of the *Interpretation Act 1967*.

(A2002-11)

A2002-11 substituted s 75(2) and provided that the section is a determinative provision. The explanatory statement provides:

> *Clause 15*
> 67 Very often legislation allows for its provisions to come into operation at different times. It is also not uncommon for Acts to contain provisions (***commencement provisions***) that authorise the Minister to fix a future date or time for most of the provisions of the Act to commence. To ensure that the commencement provision is itself in operation so its powers are available, the Legislation Act, section 75 (1) provides in effect that the commencement provision of a law comes into operation when the making of the law is notified. Section 75 (1) also provides in effect that the provision of a law that gives it its name commences at the same time. (In the case of an Act, this is the section that reads, for example, 'This Act is the *Electoral Amendment Act 2000*.'.) Because these provisions cannot affect rights and liabilities, the Bill does not propose to change the time of their commencement.

68 Sometimes an Act provides that 1 or more of its provisions are to commence retrospectively. For example, an Act passed by the Legislative Assembly on 9 August 2001 and notified in the following week might provide that a provision is taken to have commenced on 1 July 2001. In this situation, it would seem strange for one part of the Act to be in force while the name and commencement provisions of the Act had no legal effect. Proposed section 75 (2) therefore provides that, if any provisions of a law commence retrospectively, the name and commencement provisions commence when the earlier or earliest of the retrospective provisions commence. The operation of this provision is illustrated by an example at the end of section 75 (2).

69 Proposed section 75 (3) provides that section 75 is a determinative provision. This means that the rules laid down by section 75 (1) and proposed section 75 (2) cannot be changed except as indicated in proposed section 6 (2).

(A2002-49)

A2002-49 inserted a new example in s 75 (1) and substituted s 75 (2). The explanatory notes are as follows:

This amendment inserts a new example.

This amendment recasts the subsection [75(2)] to make it more self-explanatory. The operation of the subsection is unchanged. The amendment also updates the example to bring it more closely into line with the amended example to section 77 (1) and omits a note that is unnecessary in section 75 (2) because it is included in section 75 (1).

(A2003-56)

A2003-56 amended s 75 (2) and (2) (b). The explanatory notes are as follows:

This amendment removes unnecessary words.

(A2004-42)

A2004-42 substituted the heading of the section and inserted s 75 (2A). The explanatory notes are as follows:

This amendment is consequential on the changed scope of the section because of the insertion of new section 75 (2A) by the next amendment.

This amendment provides for the modified operation of the section for instruments that do not have a notification day because they are not required to be notified. The subsection is modelled on section 73 (4) (a) and section 75A (2) and is consequential on the revised definition of law inserted into section 72 by another amendment.

(A2006-42)

A minor amendment replacing mentions of ***registrable instrument*** with ***legislative instrument*** in s 75 (3). The explanatory note is as follows:

> This amendment is consequential on another amendment in this part.

Section 75AA Commencement of provisions identifying amended laws

(A2006-42)

A2006-42 inserted new s 74AA. The explanatory note is as follows:

> This amendment includes a new section to ensure that provisions identifying legislation that is amended commence when the amendments (or the earlier or earliest of the amendments) commence.

Section 75A Meaning of commences retrospectively

(A2003-56)

A2003-56 inserted new s 75A. The explanatory note is as follows:

> New section 75A makes it clear what retrospective commencement means. The language of the section follows the language of the provisions of the Legislation Act about the notification of Acts and registrable instruments and the making and commencement of instruments (see esp s 73 (2) and (4)).

(A2006-42)

A minor amendment replacing mentions of ***registrable instrument*** with ***legislative instrument*** in s 75A. The explanatory note is as follows:

> This amendment is consequential on another amendment in this part.

Section 75B Retrospective commencement requires clear indication

(A2003-56)

A2003-56 inserted new s 75B. The explanatory note is as follows:

> New section 75B states that retrospective commencement requires a clear indication, and provides an example of a clear indication. The rule in section 75B is a statutory expression of the common law presumption against retrospectivity (see Pearce, D and Geddes, R S (2001), *Statutory Interpretation in Australia*, 5th ed, Butterworths, Sydney, ch 10). The rule presently appears in section 76 (2) and is limited in its application to section 76 (s 78 (4) presently provides a similar rule for the operation of commencement notices). The rule restated in section 75B will apply to all

the provisions of the Legislation Act (eg s 73 (2) (c) and (d)) and will apply whether or not the relevant law or instrument operates prejudicially.

The amendment will facilitate the operation of the ACT legislation register. To inform users of the register about what the law is at any time, the register provides information about when a law or instrument, or a particular version of a law or instrument, became effective or ceased to be effective. In the absence of a general rule about retrospective commencements like the rule presently in the Legislation Act, section 76 (2), it can be difficult to work out whether a retrospective commencement of a registrable instrument is intended or a registrable instrument is simply notified later than the time that was envisaged. If it is simply notified late, the Legislation Act, section 73 (3) will apply and the instrument will commence on the day after its notification day.

By requiring a clear indication if a retrospective commencement is intended, the amendment will enable questions of that kind to be decided more easily and with greater certainty. It will also assist in ensuring greater transparency in the operation of laws and instruments. Under the amendment a retrospective commencement with non-prejudicial operation will need to be clearly indicated in the same way as a retrospective commencement with prejudicial operation.

(A2004-42)

A2004-42 omitted s 75B (1). The explanatory note is as follows:

This amendment is consequential on the revised definition of *law* inserted into section 72 by another amendment.

Section 76 Non–prejudicial provision may commence retrospectively

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

Clause 64 Non-prejudicial provision may commence retrospectively

110. A law or instrument is said to commence retrospectively if it has effect on a date earlier than the date when it is notified. This clause is intended to make it clear that an instrument of a legislative or administrative nature may commence retrospectively provided ordinary citizens, companies and other businesses are not disadvantaged and the instrument clearly indicates that it is to commence retrospectively.

111. It is not unusual, for example, for an industrial award to give a pay rise ‘backdated’ to an earlier time. It may also be desirable for legislation to commence at the beginning of a month or other period to avoid the inconvenience of reports being prepared for broken periods, provided no-one is disadvantaged. Similarly, there is no reason in principle why appointments and other instruments of an administrative nature should not operate retrospectively, in appropriate cases, if there is no prejudice to anyone.

112. At present section 7 of the *Subordinate Laws Act 1989* prohibits retrospective subordinate laws in certain cases (equivalent to those provided in clause 64) and section 10 applies that section to disallowable instruments. The effect of the combined operation of sections 7 and 10 is that a subordinate law or disallowable instrument may not apply retrospectively if the rights of a person would be prejudiced or the instrument would have the effect of imposing liability for past acts or omissions. However, it is implicit in the sections that subordinate laws and disallowable instruments may apply retrospectively in other cases (ie if a person's rights would *not* be prejudiced or the instrument would *not* have the effect of imposing liability for past acts or omissions). Clause 64 is expressed in these terms and would not therefore change the law. In other words, the clause identifies cases where it is permissible to give an instrument a retrospective operation because no-one (other than the Territory or a Territory authority or instrumentality) is disadvantaged. The qualification relating to the Territory and Territory authorities would be carried over from section 7. In other cases, the general commencement rules in clause 61 would apply. These rules prohibit a retrospective commencement unless authorised by an Act.

113. Subclause 64 (2) requires a clear intention in the instrument that a provision operate retrospectively for the clause to apply. In the absence of a clear intention, subclause 61 (3) would apply to the instrument and the provision would commence on the notification day.

114. As noted, sections 7 and 10 of the *Subordinate Laws Act 1989* apply only to subordinate laws and disallowable instruments. For the reasons indicated above, clause 64 would apply the rule generally to all statutory instruments (which term includes subordinate laws and disallowable instruments).

(A2002-11)

A2002-11 inserted s 76 (2A) providing that the section is a determinative provision. The explanatory statement provides:

141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections).

(A2003-56)

A2003-56 substituted s 76 (2) including an example. The explanatory note is as follows:

This amendment makes it clear that a statutory instrument may not provide for the retrospective commencement of a prejudicial provision (defined by another amendment) of the instrument unless under the authority of an Act. The amendment also adds a new example to further illustrate the operation of the section.

A2003-56 also substituted s 76 (4). The explanatory note is as follows:

> This amendment includes a new definition of ***prejudicial provision***. The new definition is the converse of the existing definition of ***non-prejudicial provision***, which is as follows:
>
> '***non-prejudicial provision*** means a provision that does not operate to the disadvantage of a person (other than the Territory or a Territory authority or instrumentality) by—
>
> (a) adversely affecting the person's rights; or
> (b) imposing liabilities on the person.'.
>
> This amendment also substitutes a new definition of ***non-prejudicial provision.***

(A2005-20)

A2005-20 omitted 'may not' and substituted 'cannot' in s 76 (2). The explanatory note is as follows:

> This amendment tightens language.

Section 77 Commencement by commencement notice

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 65 Commencement by commencement notice
>
> 115. This clause would re-enact section 10C of the *Interpretation Act 1967*.

(A2002-11)

A2002-11 substituted s 77 (2) with ss 77 (2) to (5). The explanatory statement provides:

> *Clause 16*
> 70 Clause 16 amends section 77, which deals with commencement by commencement notice. The clause makes the following amendments of section 77. First, the clause revises the language and coverage of section 77 to bring it more closely into line with the definition of ***commencement notice*** in section 11. Second, the clause amends the section consequentially on the default commencement proposed by clauses 12 and 13.
>
> Third, the clause amends the section to recognise cases in which a commencement notice commences a law or notifiable instrument at a time earlier than the time applying under the default commencement. These cases are likely to be very rare, and can only happen under specific authority given by an Act. Finally, the amendment includes a subsection declaring the section to be a determinative provision (see proposed section 6 discussed above).

A2002-11 also amended s 77(1). The explanatory statement provides:

> Amendment of s 77 (1)
> 150 This amendment brings the language of section 77 (1) more closely into line with the definition of ***commencement notice*** in section 11.

(A2002-49)

A2002-49 included reference to 'written notice' in the example. The explanatory note is as follows:

> This amendment updates an example to bring it more closely into line with the definition of commencement notice in section 11.

(A2004-42)

A2004-42 omitted reference to *notifiable instrument*, *instrument* and *statutory instrument* in ss 77 (1), (2) and (3). The explanatory notes are as follows:

> This amendment is consequential on the revised definition of *law* inserted into section 72 by another amendment.

Section 78 Separate commencement of amendments

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 66 Separate commencement of amendments
>
> 116. This clause would re-enact section 10D of the *Interpretation Act 1967*.

(A2002-11)

A2002-11 amended s 78. The explanatory statement provides:

> Amendment of s 78
> 151 This amendment remakes the section to clarify its operation in minor respects and include examples. The remade section also declares the section to be a determinative provision.

Section 79 Automatic commencement of postponed law

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 67 Automatic commencement of postponed law
>
> 117. This clause would re-enact section 10E of the *Interpretation Act 1967*.

(A2002-11)

A2002-11 inserted s 79 (2) providing that the section is a determinative provision. The explanatory statement provides:

> 141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections).

(A2002-49)

A2002-49 included reference to 'written notice' in the example. The explanatory note is as follows:

> This amendment updates an example to bring it more closely into line with the amended example in section 77 (1).

(A2003-41)

A2003-41 made a minor substitution in s 79 (1). The explanatory note is as follows:

> This amendment tightens language.

(A2003-56)

A2003-56 inserted new s 79 (1A). The explanatory note is as follows:

> This amendment makes it clear that section 79 (which deals with the automatic commencement of postponed laws) can only be displaced under the authority of an Act or, if the postponed law is a subordinate law or disallowable instrument, the postponed law itself. In other words, section 79 cannot be displaced by a commencement notice, which would not be subject to the Legislative Assembly's scrutiny and control.

A2003-56 also amended the s 79 (3) definition of ***postponed law***. The explanatory note is as follows:

> This amendment omits unnecessary words. ***Law*** is defined for chapter 8 (in s 72) to include a provision of a law.

(A2004-42)

A2004-42 inserted a new definition of *law* in 79 (4). The explanatory note is as follows:

> This amendment is consequential on the revised definition of *law* inserted into section 72 by another amendment.
>
> Section 79 provides for the automatic commencement of a 'law' that does not commence on its notification day because a law postpones its commencement until a day or time fixed or determined by a commencement notice. Section 11 defines a *commencement notice* as a statutory

instrument that fixes or otherwise determines the commencement of 'an Act, subordinate law, disallowable instrument or notifiable instrument'. The definition of law inserted by this amendment reflects the definition of *commencement notice* in section 11.

(A2005-20)

A2005-20 substituted the definition of 'law' in s 79 (4). The explanatory note is as follows:

This amendment revises the definition to omit unnecessary words. Under the definitions of *Act*, *subordinate law*, *disallowable instrument* and *notifiable instrument* in sections 7 to 10, a reference to an Act, subordinate law, disallowable instrument or notifiable instrument includes a reference to a provision of the Act, law or instrument. The amendment also inserts a note to this effect.

A2005-20 also amended the wording in the definition of 'postponed law' in s 79 (4). The explanatory note is as follows:

This amendment tightens language.

Section 79A Commencement of amendment of uncommenced law

(A2003-41)

A2003-41 inserted s 79A. The explanatory note is as follows:

This amendment inserts proposed new section 79A to make it clear that an amendment of a law that has not commenced does not of itself commence the law, and that the amendment commences on the commencement of the uncommenced law. Because of the definition of ***law*** in section 72, the proposed section will apply to the amendment of an uncommenced provision in the same way as it applies to an uncommenced law.

Section 80 References to commencement of law

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

Clause 68 References to commencement of law

118. This clause would re-enact section 11 of the *Interpretation Act 1967*.

(A2002-49)

A2002-49 changed the location of a comma in the section. The explanatory note is as follows:

This amendment corrects punctuation.

Section 81 Exercise of powers between notification and commencement

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 69 Exercise of powers between notification and commencement
>
> 119. This clause would re-enact section 5 of the *Subordinate Laws Act 1989* in simpler, more comprehensive form and extend its application to all statutory instruments.

(A2002-11)

A2002-11 substituted s 81 (1) (a) and (b) and s 81 (4) (a). The explanatory statement is as follows:

> 152 These amendments are consequential on the changed default commencement day under the amendments made by clauses 12 and 13.

A2002-11 also inserted s 81 (6) providing that the section is a determinative provision. The explanatory statement provides:

> 141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections).

(A2004-42)

A2004-42 substituted s 81 (4) (b). The explanatory note is as follows:

> This amendment makes 2 changes to the paragraph.
>
> First, the amendment brings the commencement of non-registrable instruments (that is, instruments not required to be notified on the ACT legislation register) under section 81 (4) into line with the commencement of registrable instruments. Under the amendment the commencement for a non-registrable instrument will be the day after the instrument is made (or, if it is required to be approved by an entity after making, the day after it is approved).
>
> The law generally does not recognise parts of days. In theory, it is therefore presently possible for a non-registrable instrument to operate retrospectively by default from the time of making (or approval) back to the first moment of the day it is made (or approved). The amendment will prevent this result.
>
> However, a non-prejudicial provision of a non-registrable instrument may commence on or before the day it is made (or approved) if the instrument clearly indicates that it is to commence retrospectively (see Legislation Act, s 75B and s 76 (1)). By contrast, a prejudicial provision of a non-registrable instrument may commence on or before the day it is made (or approved) only if the Legislation Act, section 76 (2) is displaced by, or under authority given by, an Act.

> A similar amendment of the Legislation Act, section 73 (General rules about commencement) was made by the *Statute Law Amendment Act 2003 (No 2)*.
>
> Second, the amendment deals expressly with instruments that are required to be approved after making. The commencement of such instruments operates from the day after the day of approval rather than the day after the day of making. In this respect the amendment brings the paragraph into line with the Legislation Act, section 73 (4) (a) and section 75A (2) (see also proposed sections 75 (2A) and 89 (8A) inserted by other amendments in this schedule).

A2004-42 also inserted s 81 (5A). The explanatory note is as follows:

> This amendment provides for the modified operation of the section for instruments that are not notified. The amendment is consequential on the revised definition of law inserted into section 72 by another amendment.

(A2005-5)

A2005-5 substituted section 81 (2) and (2A). The explanatory statement provides:

> Section 81 of the Legislation Act is frequently relied on to support transitional administrative arrangements between old and new legislative schemes. However, there is some doubt about the operation of the section in relation to the performance of anticipatory administrative functions to be carried out in relation to entities (such as statutory corporations) that are not yet technically in existence because the establishing legislation has not yet commenced. To remove any doubt, section 81 is amended to expressly extend its operation to cases where powers are to be exercised in relation to entities established under laws that are notified but not yet commenced.

(A2005-20)

A2005-20 inserted new examples in s 81 (1). The explanatory note is as follows:

> This amendment includes examples of powers to which section 81 applies. The examples are largely drawn from section 94 (Continuance of appointments etc made under amended provisions).

(A2006-42)

A minor amendment replacing mentions of ***registrable instrument*** with ***legislative instrument*** in s 81 (6) and (8). The explanatory note is as follows:

> This amendment is consequential on another amendment in this part.

Chapter 9 Repeal and amendment of laws

Part 9.1 General

(A2001-14)

A2001-14 inserted the chapter. The explanatory statement provides:

> Chapter 8—Repeal and amendment of laws
> Part 8.1—General
> 120. It should be noted that many of the existing provisions of the *Interpretation Act 1967* (re-enacted in this Chapter) that are expressed to apply to Acts apply also to subordinate laws, disallowable instruments and administrative instruments (see *Subordinate Laws Act 1989* s 9 (1) and s 10). By contrast, the provisions of the Chapter expressly provide for the application of their provisions to statutory instruments or particular kinds of statutory instruments.

Section 82 Definitions—ch 9

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 70 Definitions for ch 8
>
> 121. This clause would re-enact section 37 of the *Interpretation Act 1967*.

(A2002-49)

A2002-49 substituted the definition of ***repeal***. The explanatory note is as follows:

> This amendment adds 'lapse' to the definition of ***repeal*** in section 82.

(A2004-42)

A2004-42 substituted the definition of ***law***. The explanatory note is as follows:

> This amendment includes all statutory instruments in the definition of ***law*** for chapter 9 (Repeal and amendment of laws). At present a number of provisions of the chapter do not generally apply to statutory instruments that are not subordinate laws or disallowable instruments. With one exception (for which an amendment is provided below), there is no reason why the chapter should not apply generally to statutory instruments such as notifiable instruments. There is considerable advantage to users of ACT legislation in having a consistent set of provisions about repeal and amendment applying to all statutory instruments. In addition, application of provisions such as section 89 (Automatic repeal of certain laws and provisions) will assist in avoiding unnecessary clutter of redundant instruments on the ACT legislation register.

A2004-42 also made a minor amendment to the definition of ***repeal***. The explanatory note is as follows:

> This amendment corrects the syntax of the definition.

(A2005-20)

A2005-20 substituted a new definition of ***law*** in s 82. The explanatory note is as follows:

> This amendment revises the definition to omit unnecessary words. Under the definitions of ***Act*** and ***statutory instrument*** in sections 7 and 13, a reference to an Act or statutory instrument includes a reference to a provision of the Act or instrument. The amendment also inserts a note to this effect.

Section 83 Consequences of amendment of statutory instrument by Act

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 71 Consequences of amendment of statutory instrument by Act
>
> 122. This clause would re-enact section 8A of the *Subordinate Laws Act 1989* and extend its application to all statutory instruments.

(A2002-11)

A2002-11 inserted s 83 (2) providing that the section is a determinative provision. The explanatory statement provides:

> 141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections).

Section 84 Saving of operation of repealed and amended laws

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 72 Saving of operation of repealed and amended laws
>
> 123. This clause would re-enact section 41 of the *Interpretation Act 1967* in a simpler form (see also the definition of ***penalty*** in the dictionary to that Act). Some of the concepts used in the clause are clarified by the definitions in subclause (5).

(A2002-11)

A2002-11 inserted s 84 (4A) providing that the section is a determinative provision. The explanatory statement provides:

> 141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections).

(A2005-20)

A2005-20 made a minor amendment to s 84 (2). The explanatory note is as follows:

> This amendment updates language.

Section 84A Creation of offences and changes in penalties

(A2001-56)

A2001-56 inserted new section 84A in part 9.1. The explanatory note is as follows:

> This amendment transfers the provisions of the *Interpretation Act 1967*, section 33A to the *Legislation Act 2001*. Section 84A (1) makes it clear that an offence cannot be created retrospectively. In other words, for an act or omission to be a criminal offence, it must be done, or not done, after the commencement of the law that makes it an offence. This part of the section is an extension of the principles of section 33A. Section 84A also continues the effect of section 33A in relation to increases and reductions in penalties. If a person commits an offence and, before the person comes to trial, the penalty for the offence is increased, the penalty that applied at the time of the offence is the penalty that the court may impose. On the other hand, if a penalty is reduced between the time the offence is committed and the trial, the court may only impose the lower penalty. Section 84A (4) makes it clear that another law can only displace the operation of this section by express words.

(A2004-42)

A2004-42 inserted a new section 84A (3A). The explanatory note is as follows:

> This amendment is consequential on the revised definition of law inserted into section 82 by another amendment. The amendment inserts a definition of law for the section to avoid any possible implication that a law other than an Act or subordinate law may create an offence.

(A2002-11)

A2002-11 inserted s 84 (4A) providing that the section is a determinative provision. The explanatory statement provides:

> 141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections).

(A2005-20)

A2005-20 substituted a new definition of ***law*** in s 84A (4). The explanatory note is as follows:

> This amendment revises the definition to omit unnecessary words. Under the definitions of ***Act*** and ***statutory instrument*** in sections 7 and 13, a reference to an Act or statutory instrument includes a reference to a provision of the Act or instrument. The amendment also inserts a note to this effect.

Part 9.2 Repeal

Section 85 When repeal takes effect

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 73 When repeal takes effect
>
> 124. This clause would re-enact section 38 of the *Interpretation Act 1967*. ***Repeal*** would include expiry (see cl 70 (Definitions for ch 8)).

(A2002-11)

A2002-11 substituted s 85. The explanatory statement provides:

> Clause 17
> 71 Clause 17 remakes section 85, which deals with when a repeal takes effect. Under the current section a repeal takes effect at the end of the day when the repeal happens. This rule is appropriate for cases in which a law is repealed and not replaced. However, it is not satisfactory in cases in which a law is repealed as part of its remaking. In these cases the rule results in the repealed law and the remade law both operating in the day when the remade law commences. To avoid this result, replacement section 85 provides that in these cases the repeal takes effect when the remade law commences.

Section 86 Repealed and amended laws not revived on repeal of repealing and amending laws

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 74 Repealed and amended laws not revived on repeal of repealing or amending law
>
> 125. This clause would re-enact section 39 of the *Interpretation Act 1967* (as proposed to be amended by the *Statute Law Amendment Bill 2000 (No 2)*).

(A2002-11)

A2002-11 inserted s 86 (3A) providing that the section is a determinative provision. The explanatory statement provides:

> 141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections).

Section 87 Commencement not undone if repealed

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 75 Commencement not undone if repealed
>
> 126. This clause would re-enact section 40 of the *Interpretation Act 1967* (as proposed to be amended by the *Statute Law Amendment Bill 2000 (No 2)*).

(A2002-11)

A2002-11 inserted s 87 (4) providing that the section is a determinative provision. The explanatory statement provides:

> 141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections).

Section 88 Repeal does not end effect of transitional laws etc

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 76 Repeal does not end transitional or validating effect
>
> 127. This clause would re-enact section 42 of the *Interpretation Act 1967*.

(A2002-11)

A2002-11 inserted s 88 (6) providing that the section is a determinative provision. The explanatory statement provides:

> 141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections).

(A2002-49)

A2002-49 substituted the heading for s 88. The explanatory note is as follows:

> This amendment revises the section heading to more accurately reflect the contents of the section.

(A2003-56)

A2003-56 substituted new examples for s 88 (1) (a). The explanatory note is as follows:

> This amendment includes an additional example of a common transitional provision, namely, a provision dealing with the application of amendments.

(A2005-20)

A2005-20 made a minor amendment to s 88 (1) (b). The explanatory note is as follows:

> This amendment omits an unnecessary word.

A2005-20 also inserted s 88 (1A). The explanatory note is as follows:

> This amendment makes it clear that the effect of a modification ends when the modification ends and is not saved by section 88 (1).

(A2006-42)

A2006-42 substituted s 88 (1) and (2). The explanatory note is as follows:

> This amendment and the next clarify and simplify provisions of section 88 (Repeal does not end effect of transitional laws etc). To make existing section 88 (1) more readable, details of the subsection are proposed to be moved to definitions inserted by the next amendment and the language of the subsection brought more closely into line with Legislation Act, section 86 (2). Existing section 88 (2) is only amended consequentially.
>
> The Legislation Act, like other interpretation legislation in Australia, contains provisions dealing with the effect of the repeal and amendment of laws (see chapter 9). Despite these provisions and the general principle against the retrospective operation of legislation, transitional provisions are commonly included in legislation, particularly in legislation moving from one legislative scheme to another. It is readily apparent that not all of these transitional provisions are, on a strict analysis, legally necessary.
>
> Transitional provisions that may not be strictly legally necessary are commonly included for at least 2 reasons. First, to put the intended effect of legislation during a transitional period completely beyond doubt. Second, to have an express statement of the transitional effect of provisions. Such a statement assists members of the Legislative Assembly and users of new or amended legislation to arrive at a clear understanding of the intended effect of the new or amended legislation.
>
> In this regard the statement is educative rather than having an intended long-term legal effect. Hence the practice in the ACT for a number of years has been to include transitional provisions even though they may not be strictly necessary and to sunset the transitional provisions (including those that may be legally necessary) after they have become known to users. Sunsetting transitional provisions assists in avoiding unnecessary clutter in the statute book. However, because the ACT legislation register provides ready access to versions of the law at each point in time since the establishment of the register, these sunsetted transitional provisions can be readily located by looking at a version of the law for the relevant point in time or at the extensive endnotes provided for all ACT legislation. Because of the ACT drafting practice of including transitional provisions for amended legislation by amendment into the legislation being amended, it is unnecessary for users of ACT legislation to check amending legislation for transitional provisions.
>
> The ACT legislative drafting practice is supported by section 88 which enables transitional provisions to be removed from current versions of legislation after a period sufficient to allow users to become familiar with them, whether or not they may have a continuing legal effect. The operation of this legislative drafting practice is reflected in the sunsetting of every transitional provision that was included in the Legislation Act when it was enacted. It is also demonstrated in many other Acts enacted by the Legislative Assembly in recent years. For example, see—
>
> - *Unit Titles Act 2001*, part 16
> - *Food Act 2001*, part 12

- *Civil Law (Wrongs) Act 2002*, chapter 16 (previously ch 12)
- *Security Industry Act 2003*, part 6
- *Rates Act 2004*, part 9
- *Animal Diseases Act 2005*, part 9.

A2006-42 also inserted 88 (8) and (9). The explanatory note is as follows:

> This amendment inserts 2 new subsections into section 88.
>
> Proposed section 88 (8) is included to ensure that the repeal or expiry of a transitional or validating law does not, of itself, displace section 88 or give rise to an implication that section 88 is intended to be displaced. As mentioned in the explanatory note to the previous amendment of section 88, transitional provisions may be included in legislation even though they may not be strictly legally necessary. Their repeal (or expiry) should not, therefore, give rise to an implication that any legal effect that they had was to be ended.
>
> Proposed section 88 (9) defines the terms ***transitional law*** and ***validating law***. The details of the definitions (including examples) are largely taken from existing section 88 (1).

Section 89 Automatic repeal of certain laws and provisions

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 77 Automatic repeal of certain laws and provisions
>
> 128. This clause would re-enact section 43 of the *Interpretation Act 1967* (as proposed to be amended by the *Statute Law Amendment Bill 2000* and the *Statute Law Amendment Bill 2000 (No 2)*).

(A2002-11)

A2002-11 inserted s 89 (7A) providing that the section is a determinative provision. The explanatory statement provides:

> 141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections).

A2002-11 also substituted the definition of appropriation Act in s 89 (8) and the last dot point in example 1. The explanatory statement provides:

> Amendment of s 89 (8), def of appropriation Act
>
> 153 This amendment is consequential on amendments of the Financial Management Act 1996 made last year.
>
> Amendment of s 89 , example 1
>
> 154 This amendment brings an example more closely into line with current legislative drafting practice.

(A2002-30)

A2002-30 amended s 89 (3) and (4) . The explanatory note is as follows:

> The Parliamentary Counsel's Office endeavours to republish all new laws on the legislation register on the day they commence. The office also republishes a new version of republished laws every time the law is affected by an amendment, modification or expiry. Section 89 (3) and (4) presently provides for the automatic repeal of amendment and commencement provisions *on the day after* they have commenced. Under this amendment the repeal will happen *immediately after* the provisions have fully operated. This amendment will allow the Parliamentary Counsel's Office to maintain its existing republication practices without the need to prepare an additional version of every new law on the day after the day of its commencement. This amendment is backdated to the establishment of the legislation register.

(A2002-49)

A2002-49 amended s 89 (4) to include the word 'repealed' after 'automatically'. The explanatory note is as follows:

> This amendment inserts a missing word.

A2002-49 also inserted a new s 89 (5A). The explanatory note is as follows:

> This amendment inserts a provision for the automatic repeal of registrable instruments making, or evidencing, appointments when the appointments end. The amendment will ensure that the instruments can be removed from the current part of the ACT legislation register when the appointments end. This will ensure that the current part of the register is not cluttered up, over time, with instruments about appointments that have ended. Instruments removed from the current part of the register will continue to be accessible in the repealed part of the register.

A2002-49 also added a new definition of ***amend*** in s 89 (9). The explanatory note is as follows:

> This amendment makes it clear that the provisions of the section about the automatic repeal of amending laws and provisions do not apply to modifying laws and provisions. A modifying law or

provision has the effect of modifying the operation of the law (see Legislation Act, s 95). Accordingly, it is not appropriate that they should be automatically repealed in the same way as amending laws and provisions.

In addition, A2002-49 also made a number of changes to the examples for s 89. The explanatory notes are as follows:

This amendment revises the example heading to make it clear that the example is an example of the section.

This amendment revises part of an example to bring it more closely into line with other provisions of the Act, especially section 73 (General rules about commencement). Section 73 was amended by the *Legislation Amendment Act 2002* to change the default commencement date.

This amendment revises the example heading to make it clear that the example is an example of the section.

This amendment inserts a standard note.

(A2003-56)

A2003-56 substituted s 89 (6). The explanatory note is as follows:

This amendment makes it clear that, if an instrument makes 2 or more appointments that end on different days, the instrument is repealed when the last-ending appointment ends.

A2003-56 also inserted new s 89 (7A). The explanatory note is as follows:

This amendment applies to the rare case where all of the provisions of a law or instrument to which this section applies commence retrospectively. Without this amendment, the automatic repeal would happen before notification day, which is potentially confusing. This amendment means that the earliest that an automatic repeal can happen is the day after the relevant notification day.

In addition, A2003-56 substituted the s 89 (10) definition of ***amending provision*** and inserted a new example The explanatory notes are as follows:

This amendment extends the provisions that are automatically repealed to include provisions that identify or group provisions that are amended or repealed. The following amendment provides an example.

This amendment inserts a new example for section 89. It illustrates the operation of the new definition of amending provision. The definition was amended by the previous amendment.

(A2004-42)

A2004-42 amended s 89 (8) and the definition of ***amending law*** and ***amending provision*** in s 89 (11). The explanatory notes are as follows:

> This amendment is consequential on the revised definition of *law* inserted into section 82 by another amendment.

A2004-42 also inserted s 89 (2A). The explanatory note is as follows:

> This amendment provides for the modified operation of section 89 (8) for instruments that do not have a notification day because they are not required to be notified. Proposed section 89 (8A) is modelled on section 73 (4) (a) and section 75A (2) and is consequential on the revised definition of law inserted into section 82 by another amendment.

(A2005-20)

A2005-20 substituted a new paragraph (b) in the definition of ***amending law*** in s 89 (1) and added a note. The explanatory notes are as follows:

> This amendment expands the paragraph to include recitals (which are sometimes used in statutory instruments) in the definition of amending law.
>
> This amendment includes a note drawing attention to the legal status of notes.

A2005-20 also amended examples 1 and 2. The explanatory notes are as follows:

> This amendment adds material to the example to explain when the Act given in the example is automatically repealed.
>
> This amendment adds material to the example to state expressly that the Act given in the example is not automatically repealed under section 89.

(A2006-42)

A2006-42 substituted s 89 (1). The explanatory note is as follows:

> This amendment makes it clear that an amending law is automatically repealed if the last of its uncommenced amendments are repealed before they commence or can no longer commence. Amendments can no longer commence if, for example, they amend a law or provisions that are repealed before the amendments commence. The amendment will help to remove unnecessary clutter from the statute book.

A2006-42 also made minor amendments replacing mentions of ***registrable instrument*** with ***legislative instrument*** in s 89 (6) and (9). The explanatory note is as follows:

> This amendment is consequential on another amendment in this part.

Part 9.3 Amendment

Section 90 Law and amending laws to be read as one

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 78 Law and amending laws to be read as one
>
> 129. This clause would re-enact section 44 of the *Interpretation Act 1967*.

Section 91 Insertion of provisions by amending law

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 79 Insertion of provisions by amending laws
>
> 130. This clause would re-enact section 45 of the *Interpretation Act 1967* (as proposed to be replaced by the *Statute Law Amendment Bill 2000 (No 2)*).

(A2001-56)

A2001-56 made a minor amendment to s 91 (8). The explanatory note is as follows:

> This amendment will bring the language of section 91 (8) into line with the terminology in proposed sections 126 (7), 127 (6), 134 (7), 135 (6) and 156 (5).

(A2002-11)

A2002-11 inserted s 91 (9A) providing that the section is a determinative provision. The explanatory statement provides:

> 141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections).

A2002-11 also amends s 91 (9) (e) and substituted examples in s 91 (9). The explanatory statement provides:

> Amendment of s 91 (9) (e)
> 155 This amendment corrects a reference to a defined term (see dictionary, part 2, definition of ***current legislative drafting practice***).

Amendment of s 91 (9), examples 4 and 5
156 This amendment brings 2 examples more closely into line with current legislative drafting practice in relation to the making of amendments.

(A2004-42)

A2004-42 amended s 91 (8). The explanatory notes are as follows:

This amendment is consequential on the revised definition of law inserted into section 82 by another amendment.

(A2005-20)

A2005-20 substituted a new s 91 (8). The explanatory note is as follows:

This amendment remakes subsection (8) so that it is expressed to apply to a law that is divided otherwise than into sections. Existing subsection (8) is expressed to apply to a statutory instrument or a provision of a schedule to an Act. However, to simplify the naming of provisions of statutory instruments and schedules to Acts current drafting practice is to use ‘section’ instead of ‘regulation’ or ‘clause’ and ‘subsection’ instead of ‘subregulation’ or ‘subclause’. Because of the definition of ***law*** in section 82 (and the definitions of ***Act*** and ***statutory instrument*** in sections 7 and 13), the remade subsection will also apply to provisions of an Act or statutory instrument (eg a schedule that sets out a list of items).

(A2009-20)

A2009-20 substituted s 91 (9) (b). The explanatory note is as follows:

The existing paragraph refers to the ‘heading of the relevant amending provision of the amending Act’. This amendment remakes the paragraph so that it is consistent with the rest of section 91 (9), which refers to ‘the amending law’.

Section 92 Amendment to be made wherever possible

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

Clause 80 Amendment to be made wherever possible

131. This clause would re-enact section 46 of the *Interpretation Act 1967*.

(A2002-11)

A2002-11 inserted s 92 (2) providing that the section is a determinative provision. The explanatory statement provides:

> 141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections).

A2002-11 also inserted a new example. The explanatory statement provides:

> Amendment of s 92 , new example
> 157 This amendment inserts an example to clarify its operation.

(A2005-20)

A2005-20 amended the example in s 92 (1). The explanatory note is as follows:

> This amendment amends an example to expressly cover notes and examples.

Section 93 Provisions included in another provision for amendment purposes

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 81 Provisions included in another provision for amendment purposes
> 132. This clause would re-enact section 46A of the *Interpretation Act 1967* (as proposed to be inserted by the *Statute Law Amendment Bill 2000 (No 2)*).

(A2001-56)

A2001-56 substituted a note in s 93 (5). The explanatory note is as follows:

> This amendment updates the reference to the provision mentioned in the note. The provision is being relocated to the Legislation Act 2001 by the Bill.

(A2002-11)

A2002-11 inserted s 93 (11) providing that the section is a determinative provision. The explanatory statement provides:

> 141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections).

(A2004-42)

A2004-42 amended s93 (10). The explanatory notes are as follows:

> This amendment is consequential on the revised definition of law inserted into section 82 by another amendment.

(A2005-20)

A2005-20 substituted a new s 93 (10). The explanatory note is as follows:

> This amendment remakes subsection (10) so that it is expressed to apply to a law that is divided otherwise than into sections. Existing subsection (10) is expressed to apply to a statutory instrument or a provision of a schedule to an Act. However, to simplify the naming of provisions of statutory instruments and schedules to Acts current drafting practice is to use 'section' instead of 'regulation' or 'clause' and 'subsection' instead of 'subregulation' or 'subclause'. Because of the definition of law in section 82 (and the definitions of Act and statutory instrument in sections 7 and 13), the remade subsection will also apply to provisions of an Act or statutory instrument (eg a schedule that sets out a list of items).

Section 94 Continuance of appointments etc made under amended provisions

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 82 Continuance of appointments etc made under amended provisions
>
> 133. This clause would re-enact section 47 of the *Interpretation Act 1967*.

(A2002-11)

A2002-11 inserted s 94 (2A) providing that the section is a determinative provision. The explanatory statement provides:

> 141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections).

(A2002-49)

A2002-49 substituted s 94 (1) and (2). The explanatory notes are as follows:

> This amendment remakes section 94 (1) and (2) to expressly include licences and permits as things that continue to have effect if the law under which they are issued is amended. The amendment also includes examples and makes it clear that 'doing' and 'done' are intended to cover actions that are described using other verbs in the relevant law (eg give).

Section 95 Status of modifications

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

Clause 83 Status of modifications

134. This clause would re-enact section 48 of the *Interpretation Act 1967.*

(A2002-11)

A2002-11 inserted s 95 (2) providing that the section is a determinative provision. The explanatory statement provides:

141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections).

Section 96 Relocated provisions

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

Clause 84 Relocated provisions

135. This clause would re-enact section 49 of the *Interpretation Act 1967*.

(A2002-11)

A2002-11 inserted s 96 (5) providing that the section is a determinative provision. The explanatory statement provides:

141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections).

(A2005-20)

A2005-20 amended s 96 (4). The explanatory note is as follows:

This amendment recognises that the operation of a relocated provision may be affected by changes made to other provisions of the law to which the provision is relocated and by existing provisions of that law.

Chapter 10 Referring to laws

(A2001-14)

When initially introduced this chapter was chapter 9. The explanatory statement for A2001-14 noted:

> 136. Some of the existing provisions of the *Interpretation Act 1967* (re-enacted in this Chapter) that are expressed to apply to Acts apply also to subordinate laws, disallowable instruments and administrative instruments (see *Subordinate Laws Act 1989* s 9 (1) and s 10). By contrast, the provisions of the Chapter expressly provide, where appropriate, for the application of their provisions to statutory instruments or particular kinds of statutory instruments.

(A2005-20)

A2005-20 remade chapter 10.

The explanatory statement for the chapter provides as follows:

> Other amendments of the Legislation Act 2001 include the following:
>
> (a) Remaking chapter 10 (Referring to laws) to simplify its provisions and reorganise them into a more logical arrangement. Also, its scope is extended in two main areas. First, the chapter will apply to all statutory instruments rather than distinguishing between subordinate laws and disallowable instruments and other statutory instruments. There is no reason in principle why this distinction needs to be maintained as a general rule. There is in fact considerable advantage to users of ACT legislation in having the provisions of the chapter apply as consistently as possible to all statutory instruments. Second, in addition to setting out how ACT laws may refer to other ACT laws and Commonwealth and State laws, the chapter will provide for how United Kingdom and New Zealand laws may be referred to by ACT laws.

The explanatory note for the chapter is as follows:

> This amendment remakes chapter 10 (Referring to laws) to simplify its provisions and reorganise them into a more logical arrangement. The simplification is achieved largely by the insertion of new definitions of ***ACT law***, ***law*** and ***law of another jurisdiction*** for the chapter in new section 97.
>
> [See s97 for the explanatory notes relevant to the new definitions].
>
> The new definitions are inserted at the beginning of the chapter as new section 97. The subsequent sections of new chapter 10 are organised as follows:
>
> - new sections 98 to 100 deal with references to ACT laws only
> - new section 101 deals with references to laws of other jurisdictions only

- new sections 102 to 104 deal with references to laws generally (ie ACT laws and laws of other jurisdictions)
- new sections 105 to 106A also apply to references to laws generally but focus on references to provisions of those laws.

The following table lists the provisions of existing chapter 10 and the corresponding provision of the new chapter.

Provision of existing ch 10	Corresponding provision of new ch 10
section 97 (References to law or instrument include law or instrument containing reference)	section 98 (References to ACT law include law containing reference)
section 98 (Referring to laws in general terms)	[covered by general provisions]
section 99 (Referring to particular Acts)	s 100 (1) (Referring to particular ACT laws) s 101 (Referring to particular laws of other jurisdictions etc)
section 100 (Referring to statutory instruments)	section 100 (2) (Referring to particular ACT laws) section 101 (Referring to particular laws of other jurisdictions etc)
section 101 (Referring to provisions of laws or instruments)	section 105 (Referring to provisions of laws)
section 101A (Reference to provisions of law or instrument is inclusive)	section 106 (References to provisions of laws are inclusive)
section 101B (References to paragraphs etc)	section 106A (References to paragraphs etc of laws)
section 102 (Meaning of references to a law or instrument generally)	section 102 (References to laws include references to laws as in force from time to time)
section 103 (References to laws and instruments with amended names)	section 102 (3)
section 104 (References to laws include references to instruments under laws)	section 104 (References to laws include references to instruments under laws)
section 105 (References in statutory instruments to *the Act*)	section 99 (References in ACT statutory instruments to *the Act*)
section 106 (References to repealed laws)	section 103 (References to repealed laws)

Most provisions of existing chapter 10 have been consequentially amended and substantially simplified (eg by removing section definitions and redundant words) because of the new definitions.

In addition, the headings of a number of sections have been changed to more accurately indicate their scope and content. For example, the heading to existing sections 97, 99 and 105 have been changed to make it clear to the reader that the sections are only about ACT laws.

Additional changes made to particular sections are noted below.

This document has included the text about particular sections under the entries in the particular sections.

Section 97 Definitions—ch 10

(A2001-56)

A2001-56 amended the heading and substituted s 97 (2). The explanatory notes are as follows:

This amendment broadens the scope of the heading to the section consequentially on the next amendment.

This amendment extends the application of section 97 to statutory instruments that are not subordinate laws or disallowable instruments. Because of the amendment, a general reference in a kind of instrument (eg a code of practice) to an instrument of the same kind will include the instrument itself (ie the code of practice). It is not, therefore, be necessary to include words such as '(including this code)' to make it clear that the reference included the instrument itself.

(A2005-20)

A2005-20 remade chapter 10. The explanatory note for the chapter as a whole is reproduced under chapter 10 above. The explanatory note for this section is as follows:

The definition of ***ACT law*** includes all statutory instruments. At present a number of provisions of the chapter distinguish between subordinate laws and disallowable instruments and other statutory instruments (see eg existing section 97). There is no reason in principle why this distinction needs to be maintained as a general rule. There is in fact considerable advantage to users of ACT legislation in having the provisions of the chapter apply as consistently as possible to all statutory instruments.

The definitions of ***law*** and ***law of another jurisdiction*** are inserted to enable the provisions of the chapter to be simplified. The definition of ***law of another jurisdiction*** provides a definition for certain other jurisdictions equivalent to the definition of ***ACT law***. The definition of ***statutory instrument*** in new section 97 (2) mirrors the existing definition of ***statutory instrument*** in the Legislation Act, section 13. ***Another jurisdiction*** is defined (in a definition being inserted in the dictionary, part 2 by another amendment) to include the Commonwealth, a State, another Territory, the United Kingdom and New Zealand. The application of the definition has the effect of extending the operation of the chapter to references to United Kingdom and New Zealand laws.

Most, but not all, of the provisions of the chapter already operate in relation to references to laws of the Commonwealth, a State or a Territory. Presently only existing section 99 (Referring to particular Acts) and existing section 100 (Referring to statutory instruments) apply to United Kingdom laws. None of the provisions of the chapter presently apply to New Zealand laws even though New Zealand laws are occasionally referred to in ACT laws.

The new definitions are inserted at the beginning of the chapter as new section 97.

A2005-20 also amended the heading of this section. The relevant part of the explanatory note is as follows:

In addition, the headings of a number of sections have been changed to more accurately indicate their scope and content. For example, the heading to existing sections 97, 99 and 105 have been changed to make it clear to the reader that the sections are only about ACT laws.

Section 98 References to ACT law include law containing reference

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

Clause 85 References to a law include law containing reference

137. This clause would re-enact subsection 50 (2) of the *Interpretation Act 1967*.

(A2002-11)

A2002-11 substituted a new example for section 98 (1). The explanatory statement provides as follows:

Amendment of s 98 (1), example

158 This amendment revises an example to more accurately reflect the status of former NSW Acts.

(A2005-20)

A2005-20 remade chapter 10. The explanatory note for the chapter as a whole is reproduced under chapter 10 above. The explanatory note for this section is as follows:

The subsequent sections of new chapter 10 are organised as follows:

- new sections 98 to 100 deal with references to ACT laws only

The explanatory note also provides:

Existing section 98 is not reproduced in new chapter 10. This is because the existing section does not add anything that is not already covered in the Act as amended so separate provision for it is not necessary. For example, existing section 98 (1) states that an Act may be referred to by the

word 'Act' alone. However, the combined effect of the definition of the term Act in section 7 and the provisions of new sections 98 and 100 (1) now cover this point. Similarly, the combined effect of the definition of statutory instrument in section 13 and the provisions of new sections 98 and 100 (2) cover what existing section 98 (2) provides. In addition, under the Legislation Act, section 122 (1) (b) a reference to anything by name or description is a reference to the thing of that name or description in or for the Territory (unless the provision is displaced). A reference to an 'Act' or 'statutory instrument' without more is, therefore, a reference to an 'ACT Act' or 'ACT statutory instrument'.

Section 99 References in ACT statutory instruments to the Act

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 93 References in statutory instruments to the Act
>
> 145. This clause would re-enact section 55B of the Interpretation Act 1967 (as proposed to be inserted by the Statute Law Amendment Bill 2000 (No 2)).

(A2001-11)

A2001-11 included an explanatory note for section 55B of the *Interpretation Act 1967,* as follows:

> Proposed section 55B will remove the need to include a standard definition of the Act in all regulations and disallowable instruments.

(A2005-20)

A2005-20 remade chapter 10. Before A2005-20 this section was previously numbered s 105.

The remade section did not included subsection (2) that previously stated that the section applies 'except so far as the contrary intention appears'.

A2005-20 also amended the heading of this section. The relevant part of the explanatory note is as follows:

> In addition, the headings of a number of sections have been changed to more accurately indicate their scope and content. For example, the heading to existing sections 97, 99 and 105 have been changed to make it clear to the reader that the sections are only about ACT laws.

Section 100 Referring to particular ACT laws

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 87 Referring to particular Acts
>
> 139. This clause would re-enact section 51 of the Interpretation Act 1967.
>
> Clause 88 Referring to statutory instruments
>
> 140. This clause would re-enact section 52 of the Interpretation Act 1967 and subsection 4(2) of the Subordinate Laws Act 1989. In relation to ACT statutory instruments, the clause restates its application in the context of the legislation register.

(A2003-56)

A2003-56 amended section 99 (1) (b) (Referring to particular Acts) to substitute the paragraph and example of reference to indicate Act. The explanatory note is as follows:

> This amendment clarifies the way in which an Act may be referred to. The example follows the practice used on the ACT legislation register to refer to Acts.

A2003-56 also amended s 100 (1) to insert new examples of kinds of instrument for par (b). The explanatory note is as follows:

> This amendment adds examples to section 100 (1) to illustrate how statutory instruments may be referred to. The examples follow the practice used on the ACT legislation register to refer to registrable instruments.

(A2005-20)

A2005-20 remade chapter 10. The explanatory note for the chapter as a whole is reproduced under chapter 10 above. The explanatory note for this section is as follows:

> New section 100 has been revised to bring the section more closely into line with the provisions of the Legislation Act about the numbering of Acts and registrable instruments (see section 27 and section 59). In particular, new section 100 (2) now deals separately with instruments that have been notified and numbered under a territory law and instruments that have not been notified but have been numbered under a territory law. For an instrument that is notified, the year of notification rather than the year of making is used in referring to the instrument (see Legislation Act, section 59 (1) and section 60 (1) (a)). The existing provision has been simplified by omitting subsection (1) (c) (iii). That provision is no longer necessary as all instruments notified in the register are numbered and so are covered by new section 100 (2) (b).

(A2011-28)

A2011-28 amended 100 (2) (b) to include a cross reference to s 61 (2) (b). The explanatory note is as follows:

> This amendment is consequential on changes made to section 61 (2) (b) by another amendment.

Section 101 Referring to particular laws of other jurisdictions etc

(A2005-20)

A2005-20 remade chapter 10. The explanatory note for the chapter as a whole is reproduced under chapter 10 above. The explanatory note for this section is as follows:

> New section 101 is about referring to laws, and provisions of laws, of other jurisdictions. The section replaces in a simplified form the existing provisions of section 99 (2) to (4) and section 100 (2) to (4). Subsection (1) recognises that current ACT legislative drafting practice is used in referring to all laws (including laws of other jurisdictions). For example, ACT legislative styles in the use of italics in legislation names are used rather than any different style of another jurisdiction. Subsection (2) recognises that current ACT legislative drafting practice is used in referring to the provisions of all laws (including laws of other jurisdictions). For example, Commonwealth provisions are referred to using ACT legislative reference styles rather than Commonwealth styles eg ‘section 20 (1)’ rather than ‘subsection 20 (1)’.
>
> Existing section 99 (2) to (4) covers references to Acts and ordinances of the Commonwealth, a State, another Territory and the United Kingdom. Existing section 100 (2) to (4) covers references to instruments of the Commonwealth, a State, another Territory and the United Kingdom. The amendment broadens the existing provisions to include references to laws of New Zealand.
>
> New subsection (3) makes it clear that other provisions of the chapter apply to references to provisions of laws of other jurisdictions eg new section 102 (References to laws include references to laws as in force from time to time), new section 105 (Referring to provisions of laws), new section 106 (References to provisions of laws are inclusive) and new section 106A (References to paragraphs etc of laws).

Section 102 References to laws include references to laws as in force from time to time

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 90 Meaning or references to a law or instrument generally
>
> 142. This clause would re-enact section 54 of the Interpretation Act 1967.

(A2002-11)

A2002-11 omitted subsection (2) and renumbered the section.

(A2003-56)

A2003-56 inserted new s 102 (2A). The explanatory note is as follows:

> This amendment makes it clear that section 102 is subject to section 47.

(A2005-20)

A2005-20 remade chapter 10. The explanatory note for the chapter as a whole is reproduced under chapter 10 above. The explanatory note for this section is as follows:

> **New section 102 (1) and (2)** has been revised to clarify its operation to laws and provisions that have been remade more than once. In this case, a reference to the law or provision includes a reference to the law or provision as last remade, and as amended from time to time since then.
>
> **New section 102 (3)—**under existing section 103, if the name of a law is amended, a reference to the name includes a reference to the name as amended. It is likely that this is already covered under the terms of existing (and proposed replacement) section 102 (1) (a). However, to remove any doubt the provision is included expressly as new section 102 (3).

Section 103 References to repealed laws

(A2001-11)

A2001-11 included an explanatory note for section 55C of the *Interpretation Act 1967,* as follows:

> Proposed section 55C provides a way of referring to repealed laws.

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 94 References to repealed laws
>
> 146. This clause would re-enact section 55C of the *Interpretation Act 1967* (as proposed to be inserted by the *Statute Law Amendment Bill 2000 (No 2)*).

(A2005-20)

A2005-20 remade this section with no substantive change. There is no explanatory note for this section.

Section 104 References to laws include references to instruments under laws

(A2001-11)

A2001-11 included an explanatory note for section 55A of the *Interpretation Act 1967,* as follows:

> Proposed section 55A (1) provides that a reference to an Act or statutory instrument, or to a provision of an Act or statutory instrument, includes a reference to the statutory instruments made or in force under the Act, instrument or provision. Proposed subsection 55A (2) makes similar provision for references to the laws of other jurisdictions. Often different parts of a legislative scheme are found in an Act and the statutory instrument (including regulations and disallowable instruments) made or in force under the Act. The proposed section will facilitate treating the different parts of a legislative scheme as a whole and simplify references to provisions.

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 92 References to laws include references to instruments under laws
>
> 144. This clause would re-enact section 55A of the *Interpretation Act 1967* (as proposed to be inserted by the *Statute Law Amendment Bill 2000 (No 2)*).

(A2001-56)

A2001-56 made a minor amendment to correct a cross-reference.

(A2005-20)

A2005-20 remade chapter 10. The explanatory note for the chapter as a whole is reproduced under chapter 10 above. The explanatory note for this section is as follows:

> **New section 104 (3)** has been included to apply the provisions of the chapter to instruments applied, adopted or incorporated under laws. The subsection will, for example, ensure that new section 106 (References to provisions of laws are inclusive) applies to a reference to a part of an applied instrument. This result is achieved in existing chapter 10 by the definitions of ***instrument*** contained in most of the sections of the chapter (see eg section 101A (2)).

(A2015-50)

A2015-05 omitted s 104 (4). The explanatory note is as follows:

> This amendment omits the definition of '**statutory instrument**, of another jurisdiction' because the term is no longer used in this section.

Section 105 Referring to provisions of laws

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 89 Referring to provisions of laws or instruments
>
> 141. This clause would re-enact section 53 of the Interpretation Act 1967.

(A2005-20)

A2005-20 remade chapter 10. The explanatory note for the chapter as a whole is reproduced under chapter 10 above. The re-enacted section did not include subsection (2) that previously included sectional definitions of ***instrument*** and ***law***.

A2005-20 also amended the heading of this section. The relevant part of the explanatory note is as follows:

> In addition, the headings of a number of sections have been changed to more accurately indicate their scope and content. For example, the heading to existing sections 97, 99 and 105 have been changed to make it clear to the reader that the sections are only about ACT laws.

Section 106 References to provisions of laws are inclusive

(A2001-11)

A2001-11 inserted new 101A into the Legislation Act and included an explanatory note as follows:

> Section 101A reproduces the effect of *Interpretation Act 1967*, section 14. Like related provisions of chapter 10, section 101A would also apply to references to instruments.

(A2001-11)

A2001-11 substituted a new example in s 106 (1). The explanatory note is as follows:

> This amendment brings the example into line with current drafting practice relating to references to repealed laws.

(A2005-20)

A2005-20 remade this section with no substantive change. There is no explanatory note for this section.

Section 106A References to paragraphs etc of laws

(A2001-11)

A2001-11 inserted new 101A into the Legislation Act and included an explanatory note as follows:

> Section 101B reproduces the effect of *Interpretation Act 1967*, section 12A. Like related provisions of chapter 10, section 101B would also apply to references to instruments. The language of proposed section 101B has been simplified and an example added to illustrate its intended operation.

(A2005-20)

A2005-20 remade chapter 10. The explanatory note for the chapter as a whole is reproduced under chapter 10 above. The explanatory note for this section is as follows:

> **New section 106A** extends the operation of existing section 101B to references to a paragraph of a law of another jurisdiction. The amendment brings the section into line with other provisions of the chapter that already apply to references to provisions of laws of other jurisdictions eg existing section 101 (Referring to provisions of laws or instruments) and existing section 101A (Reference to provisions of law or instrument is inclusive).

Chapter 11 Republication of Acts and statutory instruments

Part 11.1 General

Section 107 Definitions—ch 11

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 95 Meaning of law in ch 10
>
> 147. This clause would restate provisions of the Legislation (Republication) Act 1996 (s 5, def of law and s 8 (2)).

(A2003-41)

A2003-41 substituted paragraph (b) of the definition of *law.* The explanatory note is as follows:

> This amendment makes it clear that all or any part of an agreement or instrument mentioned in the paragraph can be republished. In some cases, republication of the whole agreement or instrument may not assist users of the republication and may cause needless cost.

(A2004-42)

A2004-42 changed the heading and inserted a definition of *republication* for the chapter. The explanatory notes are as follows:

> This amendment is consequential on the insertion of a new definition into the section by the next amendment.
>
> This amendment inserts a definition of republication that was inadvertently omitted by earlier amendments.

(A2005-20)

A2005-20 inserted a note. The explanatory note is as follows:

> This amendment inserts a new note for consistency with other amendments.

Section 108 Republication in register

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 96 Republication in register
>
> 148. This clause would allow the Parliamentary Counsel to republish laws by entering the text in part 1 of the register, but not limit the ways in which a law may be republished.

(A2001-56)

A2001-56 substituted s 108 (1). The explanatory note is as follows:

> This amendment is consequential on amendment 2.23 (in particular, removal of the need for separate parts within the legislation register).

Section 109 Republications may be published with other information

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 97 Republications may be republished with other information
>
> 149. This clause would allow the Parliamentary Counsel to enhance the usefulness of authorised publications by including material that is likely to be useful to users. For example, this would permit the inclusion of notes and other helpful material.

(A2003-41)

A2003-41 omitted *printed* and substituted *written* in the section**.** The explanatory note is as follows:

> This amendment brings the language of the section into line with sections 24 and 25 as remade by this part.

Section 110 Collections of laws

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 98 Collections
>
> 150. This clause would re-enact section 19A of the *Legislation (Republication) Act 1996*.

Part 11.2 Substantive amendments made by laws

Section 111 Incorporation of amendments

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 99 Incorporation of amendments
>
> 151. Clause 99 would restate section 10 of the *Legislation (Republication) Act 1996* and extend its operation to include in republications the renumbering or relocation of provisions and any consequential amendments. The clause would also allow the preparation of 'future law' republications that show the effect of uncommenced amendments, but only if the republication indicates that the amendments have not commenced. Republication date is defined in the dictionary.

(A2005-20)

A2005-20 omitted 111 (3) and renumbered. The explanatory note is as follows:

> This amendment is consequential on the amendments of section 116.

Section 112 Reference to amending laws

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 100 Reference to amending laws
>
> 152. This clause would restate subsection 11 (1) of the *Legislation (Republication) Act 1996.*

Section 113 Provisions not republished or relocated

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 101 Provisions not republished or relocated
>
> 153. This clause would restate section 12 of the *Legislation (Republication) Act 1996*.

Part 11.3 Editorial changes

Section 114 Authorisation for parliamentary counsel

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 102 Authorisation for Parliamentary Counsel
>
> 154. This clause would restate sections 13 and 19 of the *Legislation (Republication) Act 1996*.

(A2001-70)

A2001-70 added the word *legislative* in paragraph (b). No explanatory material has been located for this change.

Section 115 Amendments not to change effect

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 103 Amendments not to effect change
>
> 155. This clause would restate section 14 of the *Legislation (Republication) Act 1996*.

Section 116 Ambit of editorial amendments

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 104 Ambit of editorial amendments
>
> 156. This clause would restate section 15 of the *Legislation (Republication) Act 1996* (as proposed to be amended by the *Statute Law Amendment Bill 2000 (No 2)*).

(A2003-56)

A2003-56 substituted s 116 (1) (l) . The explanatory note is as follows:

> This amendment brings the paragraph into line with current drafting practice by using 'term' instead of 'expression'.

(A2005-20)

A2005-20 inserted s 116 (1) (o), renumbered and inserted new examples. The explanatory notes are as follows:

> The effect of this amendment is to relocate the power to make editorial amendments consequential on substantive amendments made by laws from part 11.2 (Substantive amendments made by laws) to part 11.3 (Editorial changes). This power is more appropriately located in part 11.3. In part 11.3 the following provisions will apply to consequential amendments made under the relocated power:
>
> - section 115 (Amendments not to change effect)
> - section 117 (Legal effect of editorial changes)
> - section 118 (Reference to editorial amendments).
>
> Examples of the kinds of amendments that could be made under the power are inserted by another amendment of section 116.
>
> This amendment is consequential on the insertion of new section 116 (1) (o) by another amendment.
>
> This amendment includes examples of some of the more common consequential editorial amendments that are authorised by new section 116 (1) (o), which is inserted by another amendment.

A2005-20 also substituted s 116 (2). The explanatory note is as follows:

> This amendment remakes the existing definition of law using the term ‘another jurisdiction’. A definition of that term is inserted in the dictionary, part 2 by another amendment. The amendment also inserts a definition of law of another jurisdiction to clarify the meaning of that term.

Section 117 Legal effect of editorial changes

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 105 Legal effect of editorial amendments
>
> 157. This clause would restate section 16 of the *Legislation (Republication) Act 1996*.

Section 118 Reference to editorial amendments

(A2001-14)

A2001-14 inserted the section. The explanatory statement provides:

> Clause 106 Reference to editorial amendments
>
> 158. This clause would restate section 17 of the *Legislation (Republication) Act 1996*.

Chapter 12 Scope of Acts and statutory instruments

(A2001-56)

A2001-56 inserted chapters 12 - 18. The general explanatory note is as follows:

General explanatory note for ch 12 to ch 18

The amendments of the *Legislation Act 2001* relocate to that Act the bulk of the provisions in the *Interpretation Act 1967*. Most of these provisions will be located in new chapters 12 to 18. As with earlier revisions of these kinds of provisions, the opportunity has been taken, wherever practicable, to restate, restructure and rearrange provisions to improve their clarity and accessibility.

Most of the provisions of the *Interpretation Act 1967* are expressed to apply to 'an Act' but they apply also to subordinate laws, disallowable instruments and instruments of an administrative nature because of the *Subordinate Laws Act 1989*, sections 9 and 10 (which will be repealed when the *Legislation Act 2001* commences). The provisions of the *Legislation Act 2001*, on the other hand, indicate on their face their application to laws and instruments. Most of the provisions in Parts 12 to 18 are expressed to apply to a 'law'. This term is used in parts 16 to 18 and is defined in each of those parts to mean an Act, a subordinate law (defined in the *Legislation Act 2001*, s 8), a disallowable instrument (defined in the *Legislation Act 2001*, s 9) or a provision of Act, a subordinate law or a disallowable instrument. The term 'law' is also used with the same meaning in proposed sections 133 to 135 (see the def of ***law*** in s 125). The effect is that the provisions of the *Legislation Act 2001* that are expressed to apply to a 'law' will apply to a slightly narrower range of instruments than the corresponding provision of the *Interpretation Act 1967*. A smaller number of provisions of the *Legislation Act 2001* (see s 126 to 132 and ch 15) are expressed to apply to Acts and 'statutory instruments' (a term defined in the *Legislation Act 2001*, s 13). The effect of the definition of statutory instrument is that these provisions of the *Legislation Act 2001* will have substantially the same application as the corresponding provision of the *Interpretation Act 1967*.

Section 120 Act to be interpreted not to exceed legislative powers of Assembly

(A2001-56)

A2001-56 inserted section 120. The explanatory note is as follows:

For s 120 Act to be interpreted not to exceed legislative powers of Assembly

Proposed section 120 reproduces the effect of the *Interpretation Act 1967*, section 11AA in more up-to-date language. The section is a response to questions that arise from time to time about the

> validity or constitutionality of Acts. The Legislative Assembly does not have unfettered law-making powers, so what should a court or tribunal do if an Act appears to exceed the Assembly's law-making powers? The section is intended to guide courts and others to read the laws as intended to operate within the scope of the Assembly's law-making powers. Because of section 120, an Act may be interpreted and applied more narrowly than the language of the Act suggests at first view.

(A2002-11)

A2002-11 inserted s 120 (5) providing that the section is a determinative provision. The explanatory statement provides:

> 141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections).

Section 121 Binding effect of Acts

(A2002-11)

A2002-11 inserted s 121. The explanatory statement provides:

> ***Clause 18***
> 72 Clause 18 remakes Interpretation Act, section 7. Section 7 deals with the binding effect of Acts.
>
> 73 It is assumed that Acts of the Legislative Assembly are binding on all residents and others who find themselves in the ACT. Not so many years ago, however, it was understood that an Act would not bind the government itself (or the 'Crown' as it was often described) unless the Act expressly provided or necessarily implied that this was its intention. However, because of a decision in the High Court in 1990 (*Bropho v Western Australia* 171 CLR 1), the States and Territories reconsidered the matter and the ACT enacted rules that more or less reversed the previous understanding of the law. Proposed section 121 would have substantially the same effect as existing section 7 except that the proposed section refers primarily to 'government' (a more generally understood concept) rather than the 'Crown'. While the Crown was once said to be 'indivisible', the reality of the Australian federal system is that the administration of the ACT must take account of the activities (including business activities) of the Commonwealth, States and other Territories. The opportunity has been taken in remaking section 7 to clarify what acts and omissions of government employees and contractors etc (***government entities***) are covered by any immunity of the government (see definitions of ***authorised*** and ***government entity*** in proposed section 121 (6)). Proposed section 121 (5) provides that section 121 is a determinative provision (see proposed section 6 discussed above).

(A2006-38)

A2006-38 substituted s 121 (1) . The explanatory statement indicates that the amendment is consequential.

Section 122 Application to Territory

(A2001-56)

A2001-56 inserted section 122. The explanatory note is as follows:

> **For s 122 Application to Territory**
> Bearing in mind that laws of the Territory are usually dealing with people and situations connected with the Territory, it would be tedious to be always inserting descriptive words indicating this fact. Proposed section 122 recognises this and lays down a general rule that references to persons and situations are to be understood as referring to people and situations in or of the Territory. At the same time, the words 'except so far as the contrary intention appears' allow for provisions in laws or instruments that may need to refer to something not belonging to the Territory (for example, the NSW Fire Brigade or the Commonwealth Ombudsman) to use the necessary descriptive words (such as 'NSW' or 'of the Commonwealth'). Section 122 reproduces the effect of *Interpretation Act 1967*, section 23A and is expressed to apply to an Act or a statutory instrument (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch 12 to ch 18.

(A2002-11)

A2002-11 omitted the words ', except so far as the contrary intention appears' from s 122 (1). The explanatory statement provides:

> 141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections).

Chapter 13 Structure of Acts and statutory instruments

(A2001-56)

A2001-56 inserted chapters 12 - 18. The general explanatory note is as follows:

General explanatory note for ch 12 to ch 18

The amendments of the *Legislation Act 2001* relocate to that Act the bulk of the provisions in the *Interpretation Act 1967*. Most of these provisions will be located in new chapters 12 to 18. As with earlier revisions of these kinds of provisions, the opportunity has been taken, wherever practicable, to restate, restructure and rearrange provisions to improve their clarity and accessibility.

Most of the provisions of the *Interpretation Act 1967* are expressed to apply to 'an Act' but they apply also to subordinate laws, disallowable instruments and instruments of an administrative nature because of the *Subordinate Laws Act 1989*, sections 9 and 10 (which will be repealed when the *Legislation Act 2001* commences). The provisions of the *Legislation Act 2001*, on the other hand, indicate on their face their application to laws and instruments. Most of the provisions in Parts 12 to 18 are expressed to apply to a 'law'. This term is used in parts 16 to 18 and is defined in each of those parts to mean an Act, a subordinate law (defined in the *Legislation Act 2001*, s 8), a disallowable instrument (defined in the *Legislation Act 2001*, s 9) or a provision of Act, a subordinate law or a disallowable instrument. The term 'law' is also used with the same meaning in proposed sections 133 to 135 (see the def of ***law*** in s 125). The effect is that the provisions of the *Legislation Act 2001* that are expressed to apply to a 'law' will apply to a slightly narrower range of instruments than the corresponding provision of the *Interpretation Act 1967*. A smaller number of provisions of the *Legislation Act 2001* (see s 126 to 132 and ch 15) are expressed to apply to Acts and 'statutory instruments' (a term defined in the *Legislation Act 2001*, s 13). The effect of the definition of statutory instrument is that these provisions of the *Legislation Act 2001* will have substantially the same application as the corresponding provision of the *Interpretation Act 1967*.

Part 13.1 General

Section 125 Meaning of law—ch 13

(A2001-56)

A2001-56 inserted section 125. The explanatory note is as follows:

For s 125 Meaning of law in ch 13

This section defines law for chapter 13.

(A2005-20)

A2005-20 substituted the definition of *law* in section 125. The explanatory note is as follows:

> This amendment revises the definition to omit unnecessary words. Under the definitions of ***Act***, ***subordinate law*** and ***disallowable instrument*** in sections 7 to 9, a reference to an Act, subordinate law or disallowable instrument includes a reference to a provision of the Act, law or instrument. The amendment also inserts a note to this effect.

Section 126 Material that is part of Act or statutory instrument

(A2001-56)

A2001-56 inserted section 126. The explanatory note is as follows:

> **For s 126 Material that is part of an Act or statutory instrument**
>
> This section indentifies the provisions that are to be regarded from the point of view of the law as forming part of an Act or statutory instrument. Traditionally, the law considered that certain parts of the text of a law (for example, punctuation) were not to be regarded as forming part of the law. This of course had implications when a court came to interpret the law. Broadly speaking, section 126 may be regarded as bringing the technical or legal view of what forms part of a law largely into line with what could be described as a common sense view of what the law consists of. Section 126 reproduces the effect of *Interpretation Act 1967*, section 11H and is expressed to apply to an Act or a statutory instrument (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch 12 to ch 18. Section 126 (7) makes it clear that in the application of this section to a statutory instrument or a schedule to an Act, the term 'section' includes provisions such as 'regulation' or 'clause'.

(A2002-11)

A2002-11 inserted s 126 (8) providing that the section is a determinative provision. The explanatory statement provides:

> 141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections).

(A2002-30)

A2002-30 omitted *another Act* and substituted *the Act* in section 126 (2) (b). The explanatory note is as follows:

> This amendment clarifies the operation of the section.

(A2003-56)

A2003-56 inserted a new s 126 (2A) and renumbers. The explanatory note is as follows:

> This amendment provides that a preamble or other recital is part of an Act or statutory instrument. This is the current position in Australia (see Pearce, D and Geddes, R S (2001), *Statutory Interpretation in Australia*, 5th ed, Butterworths, Sydney, par 1.27 and par 4.39).

(A2005-20)

A2005-20 substituted section 126 (8). The explanatory note is as follows:

> This amendment remakes subsection (8) so that it is expressed to apply to an Act or statutory instrument that is divided otherwise than into sections. Existing subsection (8) is expressed to apply to a statutory instrument or a provision of a schedule to an Act. However, to simplify the naming of provisions of statutory instruments and schedules to Acts current drafting practice is to use 'section' instead of 'regulation' or 'clause' and 'subsection' instead of 'subregulation' or 'subclause'. Because of the definition of ***Act*** and ***statutory instrument*** in sections 7 and 13, the remade subsection will also apply to provisions of an Act or statutory instrument (eg a schedule that sets out a list of items).

Section 127 Material that is not part of Act or statutory instrument

(A2001-56)

A2001-56 inserted section 127. The explanatory note is as follows:

> **For s 127 Material that is not part of an Act or statutory instrument**
>
> Section 127 complements section 126 by identifying provisions that from a legal point of view do *not* form part of the law. Essentially, the provisions mentioned in section 127 are explanatory in nature and the section is intended to avoid any doubt about the cut-off between the two kinds of provisions. The section reproduces the effect of *Interpretation Act 1967*, section 12 and is expressed to apply to an Act or a statutory instrument (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch 12 to ch 18. Section 127 (6) makes it clear that in the application of this section to a statutory instrument or a schedule to an Act, the term 'section' includes provisions such as 'regulation' or 'clause'.

(A2002-11)

A2002-11 inserted s 127 (7) providing that the section is a determinative provision. The explanatory statement provides:

> 141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections).

(A2005-20)

A2005-20 substituted section 127 (6). The explanatory note is as follows:

> This amendment remakes subsection (6) so that it is expressed to apply to an Act or statutory instrument that is divided otherwise than into sections. Existing subsection (6) is expressed to apply to a statutory instrument or a provision of a schedule to an Act. However, to simplify the naming of provisions of statutory instruments and schedules to Acts current drafting practice is to use ‘section’ instead of ‘regulation’ or ‘clause’ and ‘subsection’ instead of ‘subregulation’ or ‘subclause’. Because of the definition of ***Act*** and ***statutory instrument*** in sections 7 and 13, the remade subsection will also apply to provisions of an Act or statutory instrument (eg a schedule that sets out a list of items).

Part 13.2 Particular kinds of provisions

(A2001-56)

A2001-56 inserted part 13.2. The explanatory note is as follows:

> **Part 13.2 Particular kinds of provisions**
> **General explanatory note for pt 13.2**
> Part 13.2 deals with various kinds of provisions that affect the structure and operation of legislation.

Section 130 What is a definition?

(A2001-56)

A2001-56 inserted section 130. The explanatory note is as follows:

> **For s 130 What is a definition?**
>
> Definitions are useful tools to improve the precision of terms in legislation and instruments. Section 130 seeks to explain the nature of definitions. The examples and notes to the section provide illustrations of various kinds of definitions. Section 130 is adapted from the *Interpretation Act 1967*, dictionary, def of ***definition*** and is expressed to apply to an Act or a statutory instrument (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch 12 to ch 18.

(A2003-56)

A2003-56 substituted s 130 (a) and (b). The explanatory note is as follows:

> This amendment brings the section into line with current drafting practice by using ‘term’ instead of ‘word or expression’.

A2003-56 also inserted a new example 8. The explanatory note is as follows:

> This amendment brings the example into line with current drafting practice by adding ‘the day’ after ‘after’.

A2003-56 further substituted example 9 with examples 9 and 10 and note 1. The explanatory note is as follows:

> This amendment brings the example and note into line with current drafting practice, including using ‘term’ instead of ‘word’ and ‘expression’. The amendment also inserts new example 10, a variation of example 9.

Section 131 Signpost definitions

(A2001-56)

A2001-56 inserted section 131. The explanatory note is as follows:

> **For s 131 Signpost definitions**
>
> Section 131 defines a particular kind of definition and should be read in conjunction with section 130. Signpost definitions are a convenient form of definition. Section 131 is adapted from the *Interpretation Act 1967*, dictionary, def of ***see*** and is expressed to apply to an Act or a statutory instrument (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch 12 to ch 18.

(A2002-49)

A2002-49 made a substitution in s 131 (1) and inserted new example 3. The explanatory notes are as follows:

> This amendment extends the provision about the meaning of signpost definitions to signpost definitions that define the meaning of a word or expression by reference to the definition of another word or expression (see example inserted by next amendment).
>
> This amendment inserts an example to explain the operation of the previous amendment of section 131 (1).

(A2003-56)

A2003-56 substituted section 131 (1) inserted a new s 131 (1A) and renumbered. The explanatory notes are as follows:

> This amendment brings the subsection into line with current drafting practice by using ‘term’ instead of ‘word or expression’.
>
> This amendment makes it clear that section 131 is subject to section 47.

(A2009-20)

A2009-20 substituted section 131 (1) and examples. The explanatory note is as follows:

> The term 'signpost definition' is not currently defined in the Act, dictionary, part 1. However, it is used in the heading to section 131 and in notes, and in provisions and notes in other Acts. This amendment remakes the subsection to include the words in brackets to make clear that the definition described is a signpost definition.

(A2009-28)

A2009-28 a minor amendment to update a reference to OH & S to Work Safety in s 131 (1), example 3.

Section 132 Examples

(A2001-56)

A2001-56 inserted section 132. The explanatory note is as follows:

> **For s 132 Examples**
>
> Examples are a useful tool to improve the clarity of legislation and instruments. Laws and instruments are generally addressed to a wide range of situations. One result of this is that their language tends to be quite abstract (particularly to anyone who is unfamiliar with the subject matter of the law or instrument). Examples provide a concrete way of showing how a law or instrument is intended to operate. Section 132 reproduces the effect of *Interpretation Act 1967*, section 11D and is expressed to apply to an Act or a statutory instrument (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch 12 to ch 18.

(A2002-11)

A2002-11 inserted s 132 (4) providing that the section is a determinative provision. The explanatory statement provides:

> 141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections).

Section 133 Penalty units

(A2001-56)

A2001-56 inserted section 133. The explanatory note is as follows:

> **For s 133 Penalty units**
>
> Penalty units provide a convenient way of specifying a penalty for an offence. Rather than specifying an amount of dollars, laws may indicate a number of penalty units as the penalty. Section 133 (1) defines the value for each penalty unit. One advantage of this approach is that changes to the level of penalties to reflect the impact of inflation need only be made to section 133 (1). The increased value for a penalty unit will therefore apply to each existing offence without the need to amend hundreds of statutory provisions. As the note to section 133 (1) indicates, the operation of paragraph (b) is qualified by section 273 (see the explanatory note for that section). Section 133 (2) indicates that another law may exclude the operation of section 133. The section reproduces the effect of *Interpretation Act 1967*, section 33AA and is expressed to apply to a 'law' (a term defined in the *Legislation Act 2001*, s 125)—see the General explanatory note for ch 12 to ch 18.

(A2002-11)

A2002-11 inserted s 133 (2) providing that the section is a determinative provision. The explanatory statement provides:

> 141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections).

(A2009-35)

A2009-35 substituted section 133 (1) with 133 (1) and (1A). The explanatory statement provides:

> The Legislation (Penalty Units) Amendment Act 2009 (the Bill) amends the *Legislation Act 2001* to increase the value of penalty units that provide the basis for determining statutory fines.
>
> The rates for penalty units have not been reviewed since 2001. The decision to increase the rates includes consideration of inflation and the associated rise in the cost of administering court imposed sanctions. It also brings the rate for penalty units applied to individuals into line with the Commonwealth and New South Wales.
>
> ...
>
> This clause increases the amounts defined for penalty units from $100 to $110 for individuals and from $500 to $550 for corporations.

(A2013-30)

A2013-30 substituted section 133 (2). The explanatory statement provides:

> The Legislation (Penalty Units) Amendment Bill 2013 (the Bill) amends the Legislation Act 2001 to increase the value of penalty units that provide the basis for determining statutory fines.
>
> The rates for penalty units have not been reviewed since 2009.
>
> The Bill also introduces a clause requiring the Attorney-General to consider the appropriateness of penalty unit values at least every four years.
> ...
> This clause increases the amounts defined for penalty units from $110 to $140 for individuals and from $550 to $700 for corporations.
>
> This clause also inserts a requirement for the Attorney-General to consider the appropriateness of penalty unit values at least every four years. This provision does not preclude consideration and changes to penalty unit values more than once during a four year period.

(A2014-37)

A2014-37 substituted section 133 (2). The explanatory statement provides:

> The Legislation (Penalty Units) Amendment Bill 2014 (the Bill) amends the Legislation Act 2001 to increase the value of penalty units that provide the basis for determining statutory fines.
>
> In accordance with section 133 (2) of the Legislation Act, the Attorney-General has considered the appropriateness of current penalty unit values and decided to increase the value of penalty units by approximately 7% so that a penalty unit:
>
> - for an individual has been increased from $140 to $150; and
> - for a corporation has been increased from $700 to $750.

The explanatory statement provides:

> **Human Rights Considerations**
> The Bill does engage any rights under the *Human Rights Act 2004*. While the Bill seeks to increase penalty units, and therefore increase the maximum penalty for offences that carry a financial penalty, there is nothing in the amendment that affects a court’s ability to have regard to an offender’s circumstances at sentencing.
>
> The Standing Committee on Justice and Community Safety (performing the duties of a Scrutiny of Bills & Subordinate Legislation Committee) considered an increase in the monetary value of penalty units on two separate occasions (Scrutiny Report, 14 September 2009, page 1 and Scrutiny Report 9, 29 July 2013) and made no comment in relation to the increase or the engagement of human rights.

Climate Change Impact Assessment
There are no climate change impacts flowing from the amendments in this Bill.
...

This clause increases the amounts defined for penalty units from $140 to $150 for individuals and from $700 to $750 for corporations.

This clause provides an example of how a fine is calculated using penalty units.

Section 134 Penalties at end of sections and subsections

(A2001-56)

A2001-56 inserted s 134. The explanatory note is as follows:

For s 134 Penalties at the end of sections and subsections

Section 134 is concerned with creating offences in the simplest possible way. In doing so the section takes account of the fact that provisions such as sections may be divided into subsections and paragraphs. Fundamentally, the section relies on the use of a penalty (eg, 'Maximum penalty: 20 penalty units'—see s 133 which deals with penalty units) and the position the penalty occupies in a provision. (See section 134 (1) which distinguishes between—

- whether a penalty appears at the end of a section or subsection; and
- whether the penalty applies only to a *provision* of the section or subsection or to the *whole* of the section or subsection.)

As the first example to section 134 (2) illustrates, it is possible to create an offence against a provision simply by stating a duty ('A person must not contravene a notice.') and attaching a penalty to the provision (eg, 'Maximum penalty: 20 penalty units'). On the other hand, the context or subject matter of the legislation may require a different approach, as illustrated by the first example to section 134 (3). In this case the provision indicates that an offence is involved ('A person who contravenes a notice commits an offence.') and, once again, a penalty is attached. In each case, it should be noted, the imposition of the penalty will not happen unless the person is convicted. In other words, the traditional role of the courts is preserved by these provisions. Section 134 (4) introduces a further options, if required: the penalty stated may simply be a maximum penalty or it may state a minimum and a maximum penalty. If only a maximum penalty is stated, the penalty that the court may impose may not be more than the penalty indicated. If a minimum and a maximum penalty are stated, the penalty that the court may impose must be not less than the minimum nor more than the maximum. Section 134 (5) is a new provision which enables a penalty to be set out at the end of the last subsection in a section without the need to expressly label the penalty as applying only to that subsection. In the absence of section 134 (5) or a specially limited penalty, a penalty set out at the end of the section would apply to an offence against earlier subsections because such an offence would be an offence against the section (see section 134 (2) and (3)). Section 134 (5) is a particular example of a contrary intention limiting the otherwise general application of a penalty at the end of a section divided into subsections.

Section 134 (7) makes it clear that in the application of this section to a subordinate law (see the *Legislation Act 2001*, s 8) or disallowable instrument (see the *Legislation Act 2001*, s 9) or to a schedule to an Act, the term 'section' includes provisions such as 'regulation' or 'clause'. The section reproduces the effect of *Interpretation Act 1967*, section 32A and applies to a 'law' (a term defined in the *Legislation Act 2001*, s 125)—see the General explanatory note for ch 12 to ch 18.

(A2002-11)

A2002-11 inserted s 134 (8) providing that the section is a determinative provision. The explanatory statement provides:

141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections).

(A2002-49)

A2002-49 omitted *retains possession of* and substituted *keeps* in the second example in s 134 (3). The explanatory note is as follows:

This amendment updates language.

(A2005-20)

A2005-20 omitted s 134 (7) and renumbered. The explanatory notes are as follows:

This amendment omits an unnecessary provision as the provisions to which this section would apply are now all called sections or subsections.

This amendment is consequential on the omission of section 134 (7) by another amendment.

Section 135 Penalties not at end of sections and subsections

(A2001-56)

A2001-56 inserted s 135. The explanatory note is as follows:

For s 135 Penalties not at the end of sections and subsections

This section deals with cases where the penalties are stated within the body of a section or subsection rather than at the end (see s 134). Section 134 (2) provides for a case where the section or subsection mentions that an offence is created and section 134 (3) deals with a case where no offence is mentioned. In each case, however, the mention of a penalty indicates that an offence has been created punishable on conviction. As in section 134 (4), the penalty may be a maximum penalty or a penalty fixed between the limits of a minimum and a maximum (see s 135 (4)).

Section 135 (6) makes it clear that in the application of this section to a subordinate law (see the *Legislation Act 2001*, s 8) or disallowable instrument (see the *Legislation Act 2001*, s 9) or to a schedule to an Act, the term 'section' includes provisions such as 'regulation' or 'clause'. Section 135 reproduces the effect of *Interpretation Act 1967*, section 33 and is expressed to apply to a 'law' (a term defined in the *Legislation Act 2001*, s 125)—see the General explanatory note for ch 12 to ch 18.

(A2002-11)

A2002-11 inserted s 135 (7) providing that the section is a determinative provision. The explanatory statement provides:

> 141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections).

(A2002-49)

A2002-49 omitted *not exceeding* and substituted *of not more than* in the examples in s 135 (2) and (3). The explanatory notes is as follows:

> This amendment updates language.

(A2005-20)

A2005-20 omitted s 135 (6) and renumbered. The explanatory notes are as follows:

> This amendment omits an unnecessary provision as the provisions to which this section would apply are now all called sections or subsections.
>
> This amendment is consequential on the omission of section 135 (6) by another amendment.

Chapter 14 Interpretation of Acts and statutory instruments

(A2001-56)

A2001-56 inserted chapters 12 – 18. The explanatory note provides as follows for chapter 14:

> **Chapter 14**
> There is no chapter 14 at this stage.
>
> **For s 137 to 143**
> There are no sections 137 to 143 at this stage.

(A2002-11)

A2002-11 inserted chapter 14. The explanatory statement provides the following:

> **Background to new chapter 14**
>
> 74 As part of the process of relocating provisions from the Interpretation Act to the Legislation Act, the enacted law relating to statutory interpretation has been restated to make it clearer and more coherent. The new provisions also take account of recent court decisions about statutory interpretation.
>
> 75 To place these provisions in context it may be helpful to say something about the respective roles of the courts and the Legislative Assembly in the area of statutory interpretation. Under our system of government and law it is not only the role but also the constitutional duty of the courts to decide the meaning of legislation; in Marshall CJ's memorable phrase, 'to say what the law is' (*Marbury v Madison* (1803) 1 Cranch 137 at p 177 [5 US 87 at p 111], mentioned with approval in *Attorney-General (NSW) v Quin* (1990) 170 CLR 1 at p 35 per Brennan J). However, it has long been accepted that a Parliament can make rules about the interpretation of its statute book. Interpretation Acts have had a long history in Anglo-Australian law and in some cases their rules have negated common law rules (see Pearce and Geddes, *Statutory Interpretation in Australia* 5th ed (2001), par 6.14). But from time to time it has been asked whether Parliament might do more to ensure that the words of its legislation are understood in the way it intended. In the 1980s most Australian jurisdictions, including the ACT (see Interpretation Act, section 11B), liberalised rules about the use of extrinsic materials (materials beyond the Act concerned). Also in that period, most Australian jurisdictions, including the ACT (see Interpretation Act, section 11A) also laid down rules clarifying the status of a purposive construction: requiring it to prevail over a construction that did not promote the statutory purpose or object. Even where legislation seeks to confirm an existing common law rule, enactment of a rule in interpretation legislation can play a useful educative role: it can send a strong message to statute users that legislation is drafted with this assumption particularly in mind.

(A2003-18)

A2003-18 substituted a new chapter 14. The explanatory statement provides a general outline, background and introduction to the substituted chapter as follows:

General Outline
Purpose

1 The Legislation (Statutory Interpretation) Amendment Bill 2003 completes the process of updating and clarifying provisions brought over to the *Legislation Act 2001* from the *Interpretation Act 1967* (repealed). It restates the provisions in chapter 14 (which relate to statutory interpretation) to make the law clearer and more coherent.

2 Proposed chapter 14 is designed to reflect significant developments in the common law of statutory interpretation since the existing provisions in chapter 14 were included in the Interpretation Act some 20 years ago—

- in 1982 (s 11A (Regard to be had to purpose or object of Act)); and
- in 1985 (s 11B (Use of extrinsic material in interpreting an Act)).

3 In fact, this is the only legislative statement, or restatement, in Australia since the mid-1980s of some of the fundamental rules of statutory interpretation. However, the proposed new provisions do not represent a dramatic change in the rules of statutory interpretation.

4 The direction in which the common law has been moving, as reflected by the proposed restatement in the Bill, is as follows:

- towards the consolidation of a purposive approach to the interpretation of legislation (proposed s 139 (Interpretation best achieving Act's purpose))
- towards an increasing stress on the importance of provisions of an Act being read in the total context of the statute (proposed s 140 (Legislative context))
- towards more liberal access to non-legislative material (also known as 'extrinsic material') for the purpose of statutory interpretation than under the existing statutory arrangements (proposed s 141 (Non-legislative context generally), s 142 (Non-legislative context—material that may be considered) and s 143 (Law stating material for consideration in working out meaning)).

Background

5 When the Legislation Act was enacted, its provisions superseded the following:

- much of the *Interpretation Act 1967*
- the *Subordinate Laws Act 1989* and the *Legislation (Republication) Act 1996*.
- the provisions of the *Evidence Act 1971* about legislation

6 The *Statute Law Amendment Act 2001* subsequently transferred most of the remaining provisions of the Interpretation Act to the Legislation Act. The Subordinate Laws Act and Legislation (Republication) Act were repealed by the *Legislation (Consequential Provisions) Act 2001*.

7 The Legislation Amendment Bill 2002 was proposed as the final stage of transferring provisions from the Interpretation Act to the Legislation Act, and therefore provided for the repeal of the Interpretation Act. As part of this proposal, a new chapter 14 (Interpretation of Acts and statutory instruments) was to be inserted into the Legislation Act to restate in an updated form Interpretation Act, sections 11A and 11B.

8 However, the Standing Committee on Legal Affairs when performing the duties of a scrutiny of bills and subordinate legislation committee (the ***Scrutiny Committee***) raised concerns about some of the new provisions to be included in chapter 14 (see *Scrutiny Reports* No 4 (5 March) and No 9 (7 May) of 2002). These concerns were echoed, and a number of others raised, by the ACT Bar Association (the ***Bar Association***) in a submission to members of the Legislative Assembly dated 13 May 2002 (see ***Concerns addressed*** below).

9 As a result of these concerns, the Attorney-General proposed amendments to the Bill with the effect of preserving in Legislation Act, chapter 14 the current form of Interpretation Act, sections 11A and 11B. Those amendments to the Bill were passed, and the *Legislation Amendment Act 2002* was notified on 21 May 2002 with the content of those Interpretation Act provisions relocated to chapter 14.

10 In presenting the amendments, the Attorney-General foreshadowed that further consultation would take place with the Bar Association with a view to revising chapter 14 along lines similar to those originally proposed, but addressing the concerns raised by the Scrutiny Committee and the Bar Association in relation to the previously proposed chapter 14. The views of the Scrutiny Committee have been carefully considered in redrafting chapter 14, and the Bar Association has now agreed on the provisions of a proposed new chapter 14 (Interpretation of Acts and statutory instruments), to be inserted into the Legislation Act by the current Bill.

Concerns addressed

11 The main concerns expressed by the Scrutiny Committee and the Bar Association in relation to chapter 14, as originally proposed, may be summarised as follows:

- Access to law—would the revised non-legislative material provisions tend to make the law less accessible and more costly?
- Separation of powers—would the mandate given by the revised provisions to consult a wide range of non-legislative material give the courts too much leeway to ‘mould’ the law in a way that trespasses on the doctrine of separation of powers?
- Presumptions of common law—would the ‘best purpose’ rule, as drafted in proposed section 139, extinguish common law presumptions regarding the interpretation of legislation?

Access to law and cost of litigation

12 The Scrutiny Committee and the Bar Association expressed the view that by including a reference to a broader class of non-legislative material in the examples to then-proposed section 142 (2), and without a provision like the current section 139 (3) (Interpretation Act, s 11B (3)) (see below), courts and advocates would be obliged to consult too large a range of materials in

considering the interpretation of legislation. This would have the undesirable effects of making legislation difficult to understand on its face, particularly for a non-lawyer, and of unduly increasing the costs of litigation (see *Scrutiny Report* No 4, pp 6-8 and *Bar Association Submission* pp 9-11).

13 In particular, the Bar Association expressed concern that courts or tribunals would be permitted to consider material not normally available to the public, such as a constituent letter to a member of the Legislative Assembly or drafting instructions for new legislation (see *Bar Association Submission*, p 9).

14 Legislation Act, section 139 (3), currently provides:

> (3) In determining whether consideration should be given to any material in accordance with subsection (1), or in considering the weight to be given to the material, regard shall be had, in addition to any other relevant matters, to—
>
>> (a) the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision taking into account its context in the Act and the purpose or object underlying the Act; and
>> (b) the need to avoid prolonging legal or other proceedings without compensating advantage.

15 To address the concerns of the Scrutiny Committee and the Bar Association, this provision has been continued in proposed section 141 (2) (a) and (b). Indeed, it has been strengthened by the addition (in proposed s 141 (2) (c)) of a requirement for the court to take into account 'the accessibility of the material to the public'. Reflecting the new, central role of the legislation register in the provision of access to legislative materials in the Territory, proposed section 141 (4) declares that material on the register is taken to be accessible to the public.

16 The approach adopted in proposed sections 141 to 143 is intended as a safeguard against the use of inappropriate material to work out the meaning of an Act. In the Federal Court case of *Commissioner of Taxation vs Murray* ((1990) 21 FCR 436) a private letter to a Minister, an internal departmental minute and correspondence between Ministers (among other documents) were tendered in evidence on a point of statutory interpretation. Justice Hill rejected the material. He held (and Sheppard J agreed) that the test applying under the Commonwealth version of existing Legislation Act, section 139 was whether non-legislative material is 'capable of assisting in the ascertainment of the meaning of [the relevant] provision' (at 449), and that in the case before him they were 'of no assistance' (at 448).

17 The test that will apply under proposed section 141 will be essentially the same: whether the material is capable of assisting in 'working out the meaning of the Act'. It can be expected that a court or tribunal considering the same question would come to the same conclusion as the Federal Court in that case, particularly in the light of the additional protection provided by the proposed new factor of public accessibility to be weighed up in deciding questions of admissibility of non-legislative material.

18 As in existing section 139 (2), proposed section 142 lists a range of documents that may be used to work out the meaning of an Act or statutory instrument. While the list is not exhaustive, it gives a clear indication of the type of material that it is envisaged should properly be relevant to the interpretation of legislation and statutory instruments.

19 As revised in consultation with the Bar Association, the proposed provisions relating to non-legislative material strike an appropriate balance. On the one hand, the potential for the use of the material is clarified and updated to reflect developments in the common law. On the other hand, existing criteria are retained by reference to which limits may be placed on recourse to non-legislative material, together with a new requirement to take into account its accessibility.

Separation of powers

20 The Scrutiny Committee expressed a concern in relation to chapter 14, as previously proposed, that too much power was being offered to the courts to 'mould' the law and become 'part of the legislative process' in offering less restricted access to nonlegislative material than before (see *Scrutiny Report* No 4, p 7).

21 The committee's concerns are addressed by the express provision in proposed section 141 (2) (a)—continuing the effect of existing section 139 (3) (a)—that when considering the relevance of non-legislative material to the interpretation of an Act or statutory instrument, a court must take into account the desirability of being able to rely on the ordinary meaning of the words of the law-maker as used in the relevant law, in the overall context of the law. This provision confirms a limit on the degree to which non-legislative material may be used to find a meaning in an Act that is not evident from the language of the Act.

Presumptions of common law

22 Proposed section 139 (1) provides for interpretations that 'would best achieve the purpose of the Act' to be 'preferred to any other interpretation'. The equivalent provision in the Legislation Amendment Bill 2002, as originally proposed, was section 140. Section 140 (2) provided as follows:

(2) This section applies—

(a) whether or not the Act's purpose is expressly stated in the Act; and

(b) despite any presumption or rule of interpretation.

23 The Bar Association objected to section 140 (2) (b) on the basis that this paragraph appeared to extinguish well-established common law presumptions of statutory interpretation, for example the presumption that the common law is not over-ridden, the presumption against interference with the liberty of a citizen, the presumption against conferring a right to invade private property, the presumption against the retrospective operation of legislation and the presumption of conformity with international law (see Bar Association Submission, p 6).

24 This effect was not intended. As explained in more detail in the clause notes below, proposed section 139 (the equivalent section in the current Bill) has the more modest aim of establishing a rule of priority in any particular case.

25 To remove any suggestion that previously proposed section 140 (2) (b) might have had the absolute effect argued for, the paragraph is not included in section 139 as proposed in the Bill (the effect of previously proposed section 140 (2) (a) is continued in proposed section 139 (2), however). This change to the section as originally proposed is designed to address any concern about inadvertent (or inappropriate) displacement of the common law in this context.

26 Common law presumptions of statutory interpretation will continue to apply where appropriate (see the clause notes below for more detail). This is expressly sanctioned by proposed section 137 (2), which declares that the chapter 'is not intended to be a comprehensive statement of the law of interpretation applying to Acts'.

27 Moreover, proposed section 137 (3) provides that 'in particular, this chapter assumes that the rules and presumptions of common law operate in conjunction with this chapter.'. In the form originally proposed, this subsection also provided for the operation of common law rules or presumptions to be subject to any inconsistency with the chapter, or the Act. This additional provision has been omitted, for the same reason as the change reflected in section 139 in its current form.

Part 14.1 Purpose and scope

(A2003-18)

A2003-18 substituted this heading. The explanatory statement provides the following:

Proposed chapter 14
Introduction

32 As part of the process of relocating provisions from the Interpretation Act to the Legislation Act, the enacted law relating to statutory interpretation has been restated to make it clearer and more coherent. The new provisions also take account of recent court decisions about statutory interpretation.

33 To place these provisions in context it may be helpful to say something about the respective roles of the courts and the Legislative Assembly in the area of statutory interpretation.

34 Under our system of government and law it is not only the role but also the constitutional duty of the courts to decide the meaning of legislation; in the words of Chief Justice Marshall of the United States Supreme Court, 'to say what the law is' (*Marbury v Madison* (1803) 1 Cranch 136 at p 177 [5 US 87 at p 111], mentioned with approval in *Attorney-General (NSW) v Quin* (1990) 170 CLR 1 at p 35 per Brennan J).

35 However, it has long been accepted that a Parliament can make rules about the interpretation of its statute book. Interpretation Acts have had a long history in Anglo-Australian law and in some cases their rules have negated common law rules (see Pearce and Geddes, *Statutory Interpretation in Australia* 5th ed (2001), par 6.14).

36 From time to time it has been asked whether Parliament might do more to ensure that the words of its legislation are understood in the way it intended. In the 1980s, most Australian jurisdictions, including the ACT (in Interpretation Act, section 11A) laid down rules clarifying the status of a purposive construction, requiring it to prevail over a construction that did not promote the statutory purpose or object. A few years later, most Australian jurisdictions, again including the ACT (in Interpretation Act, section 11B), introduced more liberal rules about the use of non-legislative material.

37 Even where legislation seeks to confirm an existing common law rule, enactment of a rule in interpretation legislation can play a useful educative role. It can send a strong message to statute users that legislation is drafted with this assumption particularly in mind.

Section 136 Meaning of Act—ch 14

(A2001-56)

A2001-56 inserted s 136 (Indictable and summary offences). The explanatory statement provides the following:

For s 136 Indictable and summary offences

The legal system of the ACT recognises two kinds of offences: indictable offences (generally, serious offences that are heard before a judge and jury) and summary offences (generally, less serious offences that are heard before a magistrate). Subsection (1) defines an indictable offence as either an offence punishable by imprisonment for longer than 1 year (compare *Interpretation Act 1967*, s 33D) or declared by law to be indictable. The provision for an offence to be declared to be indictable is taken from the *Interpretation Act 1967*, section 33E. It reflects the fact that some serious offences may provide for fines of such magnitude that it is appropriate that they be dealt with before a judge and jury. In the absence of this provision, such an offence would be a summary offence. Subsection (2) defines a summary offence as any other offence. In other words, an offence punishable by imprisonment for not longer than 1 year or not declared by law to be indictable. The terms ***indictable offence*** and ***summary offence*** are provided for as signpost definitions in the dictionary, part 1. The *Subordinate Laws Act 1989*, section 9 (which will be repealed when the *Legislation Act 2001* commences), applies sections 33D and 33E to subordinate laws and instruments of an administrative nature.

The section on indictable and summary offences is now in s 190 of the Legislation Act.

(A2002-11)

A2002-11 inserted this section. The explanatory statement provides the following:

Proposed section 137 Meaning of ***Act*** in ch 14

76 Chapter 14, as its heading indicates, applies to the interpretation of both Acts and statutory instruments. But to simplify the language of the chapter as far as possible, proposed section 137 defines ‘Act’ to include a statutory instrument.

(A2003-18)

A2003-18 substituted this section. The explanatory statement provides the following:

Proposed section 136 Meaning of *Act* in ch 14

38 Chapter 14, as its heading indicates, applies to the interpretation of both Acts and statutory instruments. To simplify the language of the chapter as far as possible, proposed section 136 defines 'Act' to include a statutory instrument.

Section 137 Purpose and scope—ch 14

(A2002-11)

A2002-11 inserted this section. The explanatory statement provides the following:

Proposed section 138 Purpose and scope of ch 14

77 Proposed section 138 (1) states that the purpose of chapter 14 is to provide guidance about the interpretation of Acts (and statutory instruments). Proposed section 138 (2) and (3) is intended to make clear that chapter 14 complements the common law to the extent that the common law is not inconsistent. There are, for example, many common law presumptions (or legal assumptions) relevant to statutory interpretation. Those identified by Pearce and Geddes include:

- the presumption that when general matters are referred to in conjunction with a number of specific matters of a particular kind, the general matters are limited to things of the like kind to the specific matters ('ejusdem generis')
- the presumption that an express reference to 1 matter indicates that other matters are excluded ('expressio unius est exclusio alterius')
- the presumption that legislation is not to invade common law rights.

78 Proposed section 138 (4) emphasises that the statutory provisions are to operate alongside the common law as it continues to evolve.

(A2003-18)

A2003-18 substituted this section. The explanatory statement provides the following:

Proposed section 137 Purpose and scope of ch 14

39 Proposed section 137 (1) states that the purpose of chapter 14 is to provide guidance about the interpretation of Acts (and statutory instruments). Proposed section 137 (2) and (3) makes it clear that chapter 14 complements the common law.
There are, for example, many common law presumptions (or legal assumptions) relevant to statutory interpretation. These include:

- the presumption that when general matters are referred to in conjunction with a number of specific matters of a particular kind, the general matters are limited to things similar to the specific matters (*ejusdem generis*—see Pearce and Geddes, paragraphs 4.19 – 4.25)
- the presumption that an express reference to a particular matter indicates that other matters are excluded (*expressio unius est exclusio alterius*—see Pearce and Geddes, paragraphs 4.26 – 4.27)
- the presumption that legislation does not alter common law rights (see Pearce and Geddes, paragraphs 5.21 – 5.27)
- other presumptions mentioned above (***Concerns addressed***—Presumptions of common law)

40 Proposed section 137 (4) emphasises that statutory provisions are to operate alongside the common law as it continues to evolve. Proposed section 137 does not change the common law. It is merely a procedural or clarifying provision.

Part 14.2 Key principles of interpretation

(A2002-11)

A2002-11 inserted this part. The explanatory statement provides the following:

Proposed part 14.2 Key principles of interpretation

79 The heading to proposed part 14.2 emphasises the significance of its provisions by describing them as 'key' principles of interpretation. Apart from the interpretive provision in proposed section 139, the part contains 3 substantive sections:

- proposed section 140, which deals with the *purposive approach* to the interpretation of legislation;
- proposed section 141, which deals with legislation being read in the context of all of its provisions;
- proposed section 142, which deals with the use of *extrinsic materials* (that is, materials not forming part of the legislation) in the interpretation of legislation.

Together these 3 proposed sections deal with some of the most significant aspects of the interpretation of legislation.

(A2003-18)

A2003-18 substituted this section. The explanatory statement provides the following:

Proposed part 14.2 Key principles of interpretation
Introduction
41 The heading to proposed part 14.2 emphasises the significance of its provisions by describing them as 'key' principles of interpretation. These are dealt with as follows:

- proposed section 139, which deals with the *purposive approach* to the interpretation of legislation;
- proposed section 140, which deals with legislation being read in the context of all of its provisions;
- proposed sections 141 to 143, which deal with the use of non-legislative material in the interpretation of legislation.

Section 138 Meaning of working out the meaning of an Act—pt 14.2

(A2002-11)

A2002-11 inserted this section. The explanatory statement provides the following:

> Proposed section 139 Meaning of *working out the meaning of an Act*
>
> 80 The 3 proposed substantive sections of part 14.2 operate ‘ [I]n working out the meaning of an Act’. Proposed section 139 defines what this phrase means.
>
> 81 The purpose of proposed section 139 is to indicate that the 3 proposed substantive sections are intended to have the broadest operation. They are, for example, not intended to be applied only in cases of ambiguity or uncertainty. As will be seen from the discussion below in relation to the proposed sections, in most respects this broad operation reflects the position at common law.
>
> 82 However, as explained in the general outline in one respect the application of proposed section 139 to proposed section 142 may go further than the existing common law. The cases mentioned below in relation to section 142 only allow recourse to material for the purpose of finding out the ‘mischief’ that the statute being interpreted was intended to cure. This restriction is not present in the existing Interpretation Act provision (section 11B) that section 142 replaces. For the reasons explained in the general outline proposed section 139 adopts the same broad approach to the scope of the substantive sections of the part.

(A2003-18)

A2003-18 substituted this section. The explanatory statement provides the following:

> Proposed section 138 Meaning of working out the meaning of an Act
>
> 42 The substantive provisions of part 14.2 are each expressed to operate ‘[i]n working out the meaning of an Act’. Proposed section 138 defines what this phrase means. It provides a statement, in plain terms, of what is to be understood by the notion of ‘interpretation’ of legislation.
>
> 43 The purpose of proposed section 138 is to indicate that the principles of statutory interpretation are to have the broadest operation. For example, they may be applied to confirm or displace an apparent meaning whether or not there is any ambiguity or uncertainty on the face of the provision being interpreted. As may be seen from the discussion about the relevant interpretative principles below, in most respects this broad operation reflects the position at common law.

44 In one respect the application of proposed section 138 to proposed sections 141 to 143 may go further than the existing common law. The cases mentioned below in relation to these sections only allow recourse to non-legislative material for the purpose of finding out the 'mischief' that the statute being interpreted was intended to cure. This restriction is not present in current Legislation Act, section 139, and will not apply to proposed sections 141 to 143, which are to replace the current provision.

45 The result is that recourse to non-legislative materials may be permitted, not only to find out the mischief of a statute, but also for other reasons. For example, non-legislative materials may be relevant to working out the parliamentary history behind the passage of the law in question, or an amendment to the law. This may not always be able to be characterised as finding out the mischief, but is an acknowledged aspect of statutory interpretation—'working out the meaning of an Act'—at common law. So this approach does not represent a particularly significant extension of the law. It has the advantage that it avoids overly technical distinctions by rationalising and simplifying the operation of the chapter as a whole.

Section 139 Interpretation best achieving Act's purpose

(A2002-11)

A2002-11 inserted this section. The explanatory statement provides the following:

Proposed section 140 Interpretation best achieving Act's purpose

83 Proposed section 140 re-enacts Interpretation Act, section 11A and makes changes to take account of subsequent judicial interpretation. Section 11A was inserted into the Interpretation Act in June 1982. The section, as presently in force, provides:

> 11A Regard to be had to purpose or object of Act
>
> In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

84 In 1990 3 High Court judges found that the Victorian equivalent of section 11A did not require an interpretation that would *best* achieve the object of the Act (*Chugg v Pacific Dunlop Ltd* (1990) 170 CLR 249 at 262 per Dawson, Toohey and Gaudron JJ). Proposed section 140 would remedy this deficiency. The proposed section indicates that the interpretation that would best achieve the purpose of an Act is to be preferred to any other. A provision similar to proposed section 140 has been in existence in the *Acts Interpretation Act 1954* (Qld), section 14A for a number of years.

85 Section 140 does not distinguish between different kinds of statutes and is consistent with the approach adopted by the courts in recent times in dealing with revenue and penal statutes. For example, Gibbs J (as he then was) in *Beckwith v R* (1976) 135 CLR 569 explained the modern approach to the interpretation of penal statutes as follows:

> The rule formerly accepted, that statutes creating offences are to be strictly construed, has lost much of its importance in modern times. In determining the meaning of a penal statute *the ordinary rules of construction must be applied*, but if the language of the statute remains ambiguous or doubtful the ambiguity or doubt may be resolved in favour of the subject by refusing to extend the category of criminal offences...The rule is perhaps one of last resort. (emphasis added)

Proposed section 140 provides one of 'the ordinary rules of construction' that must be applied in the interpretation of revenue and penal statutes.

86 Proposed section 140 (2) makes it clear that the section applies whether or not the Act's purpose is expressly stated in the Act and despite any presumption or rule of interpretation. The subsection includes an example of the latter point.

(A2002-49)

A2002-49 made a minor amendment to s 139 (2) (e) to replace 'memorandum' with 'statement (however described)'. The explanatory note is as follows:

This amendment updates a reference to the explanatory material presented with a bill.

(A2003-18)

A2003-18 substituted this section. The explanatory statement provides the following:

Proposed section 139 Interpretation best achieving Act's purpose

46 Proposed section 139 restates existing Legislation Act, section 138 (previously, Interpretation Act, s 11A) and in the process makes changes to take account of subsequent judicial interpretation. Existing section 138 provides:

> **138 Regard to be had to purpose or object of Act**
> In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

47 In 1990 a majority of the High Court found that the Victorian equivalent of this provision did not require an interpretation that would *best* achieve the object of the Act; '[r]ather it is a limited choice between 'a construction that would promote the purpose or object [of the Act]' and one 'that would not promote that purpose or object' ' (quoting the Victorian provision, which is in precisely the same terms as existing Legislation Act, s 138—*Chugg v Pacific Dunlop Ltd* (1990) 170 CLR 249 at 262 per Dawson, Toohey and Gaudron JJ). To remedy this deficiency, the proposed section indicates that the interpretation that would *best* achieve the purpose of an Act is to be preferred to *any other interpretation*. A provision similar to proposed section 139 has been in existence in the *Acts Interpretation Act 1954* (Qld), section 14A for a number of years.

48 In applying proposed section 139, a number of considerations are relevant:

- *First*, regard must be had to the purpose of the Act in deciding whether there are any alternative interpretations of the provision in question (see *Mills v Meeking* (1990) 91 ALR 16 at 30-31, per Dawson J, discussing the Cwlth equivalent of existing Legislation Act, s 138).
- *Second*, if a number of alternative interpretations are available, the interpretation to be given priority is that which *best* achieves the purpose of the Act. This is an implication from the common law purpose rule, as noted in *Nimmo v Alexander Cowan & Sons Pty Ltd* [1968] AC 107, at 122, per Guest LJ (cited in the judgment of the majority of the High Court in *Chugg* at 261).
- *Third*, to qualify in the competition for 'best achieving' the purpose of a law, an interpretation must be 'otherwise open' (*Trevison v FCT* (1991) 101 ALR 26 at 31, per Burchett J, noted in Pearce and Geddes, par 2.9). By this is meant 'open' through a reasonable construction of the words of the Act in context (see proposed s 140) by reference to any relevant non-legislative material (see proposed ss 141-143).

49 Proposed section 139 will not always apply, however. It will not apply if there is no interpretation that will 'best achieve' the purpose of the relevant law, whether because no such interpretation is 'reasonably open', or, conceivably, a number of interpretations are found to *equally* achieve the purpose. In these circumstances, any relevant common law presumptions about interpretation may readily be applied, by virtue of the operation of proposed section 137 (3) ('this chapter [14] assumes that common law presumptions operate in conjunction with this chapter'). See comments above (***Concerns addressed***, Presumptions of common law) about the concerns the Bar Association raised in relation to the previously proposed version of section 139.

50 A further aspect of proposed section 139 is that it does not distinguish between different kinds of statutes, and is consistent with the approach adopted by the courts in recent times in dealing with revenue and penal statutes. For example, Gibbs J (as he then was) in *Beckwith v R* (1976) 135 CLR 569 explained the modern approach to the interpretation of penal statutes as follows:

> The rule formerly accepted, that statutes creating offences are to be strictly construed, has lost much of its importance in modern times. In determining the meaning of a penal statute *the ordinary rules of construction must be applied*, but if the language of the statute remains ambiguous or doubtful the ambiguity or doubt may be resolved in favour of the subject by refusing to extend the category of criminal offences...The rule is perhaps one of last resort.
> (emphasis added)

51 Proposed section 139 provides one of 'the ordinary rules of construction' that must be applied in the interpretation of revenue and penal statutes. However, the common law presumptions may still be applied if there is no application for such 'ordinary' rules.

(A2004-5)

A2004-5 inserted a note in s 139 (2) referring to the *Human Rights Act 2003*, s 30. The explanatory statement provides the following:

> [2.7] inserts a new note at the end of section 139(2) of the Legislation
> Act 2001 to clarify that clause 30 (1) is also relevant to interpreting Territory laws.

Section 140 Legislative context

(A2002-11)

A2002-11 inserted this section. The explanatory statement provides the following:

> Proposed section 141 Legislative context
>
> 87 Section 141 addresses the vice of reading statutory words and provisions in isolation. Statutory words and provisions need to be read in context (see Pearce and Geddes, par 4.2). The courts have frequently recognised that statutory words (like all words) derive their 'colour and content' from their context (eg *Attorney-General v Prince Ernest Augustus of Hanover* [1957] AC 436 at 461 per Viscount Simonds). It is now axiomatic that, under the common law, Acts must be read as a whole (see *CIC Insurance* case discussed in the next paragraph). However, the common law has, at least in the past, maintained obstacles in the way of interpreters taking account of certain provisions of Acts. Provisions of Acts that, on the traditional view, were not to be taken account of in the absence of ambiguity in the provision concerned, included the long title to the Act (see Pearce and Geddes, par 4.37), any preamble to the Act (see Pearce and Geddes, par 4.39), headings (see Pearce and Geddes, par 4.41-4.42) and punctuation (see Pearce and Geddes, par 4.44). To this might be added objects clauses (see *Leask v Commonwealth of Australia* (1996) 187 CLR 579 at 591 per Brennan CJ).
>
> 88 In 1997 the High Court made it clear that such limitations in relation to particular provisions of an Act, to the extent that they still existed, no longer applied. In *CIC Insurance Ltd v Bankstown Football Club Ltd*, 4 members of the court held as follows:
>
>> It is well settled that at common law, apart from any reliance upon s 15AB of the *Acts Interpretation Act 1901* (Cwlth), the court may have regard to reports of law reform bodies to ascertain the mischief which a statute is intended to cure. Moreover, the modern approach to statutory interpretation (a) insists that the context be considered in the first instance, not merely at some later stage when ambiguity might be thought to arise, and (b) uses 'context' in its widest sense to include such things as the existing state of the law and the mischief which, by legitimate means such as those just mentioned, one may discern the statute was intended to remedy: (*Attorney-General v Prince Ernest Augustus of Hanover* [1957] AC 436 at 461, cited in *K & S Lake City Freighters Pty Ltd v Gordon & Gotch Ltd* (1985) 157 CLR 309 at 312, 315).

Instances of general words in a statute being so constrained by their context are numerous. In particular, as McHugh JA pointed out in Isherwood v Butler Pollnow Pty Ltd ((1986) 6 NSWLR 363 at 388), if the apparently plain words of a provision are read in the light of the mischief which the statute was designed to overcome and of the objects of the legislation, they may wear a very different appearance. Further, inconvenience or improbability of result may assist the court in preferring to the literal meaning an alternative construction which, by the steps identified above, is reasonably open and more closely conforms to the legislative intent: *Cooper Brookes (Wollongong) Pty Ltd v FCT* ((1981) 147 CLR 297 at 320-1.) ((1997) 187 CLR 384 at 408 per Brennan CJ, Dawson, Toohey and Gummow JJ, with whom Gaudron J generally agreed. Emphasis added.)

89 In this case and others the High Court has made it clear that even *extrinsic* material may be considered and may have an effect on interpretation without there being an ambiguity in the provision concerned.

90 Proposed section 141 is not then intended to alter the common law. It is consistent with the ruling that ‘context be considered in the first instance’. Nevertheless, by its inclusion amongst other ‘key principles’ in the Legislation Act the Legislative Assembly is highlighting the particular importance of reading statutory provisions in the context of the whole Act in which they are contained.

91 Another feature of the proposed section is the way in which it clarifies *what is* the legal context that must be considered. Because the obligation in section 141 is limited to consideration of ‘the Act’, the provision gives clear guidance to statute users. (But see proposed section 142 which *permits* recourse to ‘extrinsic’ material.) It needs to be noted that ‘the Act’ for section 141 includes only the material forming part of the Act. By sections 126 and 127, an Act is taken to include certain material but not other. For instance, a heading to a section is part of an Act if the Act is enacted after 1 January 2000 or the heading is amended or inserted after that date. Examples and punctuation are also part of an Act, but a note is not.

92 The fact that material forming part of an Act must be considered by a statute user does not mean, of course, that all material forming part of the Act has equal weight. Courts are accustomed to weighing the indications of meaning provided by different parts of an Act. Thus, for instance, a heading can generally be expected to be given less weight than a substantive provision (see Pearce and Geddes, par 4.41-4.42).

(A2003-18)

A2003-18 substituted this section. The explanatory statement provides the following:

Proposed section 140 Legislative context

52 Proposed section 140 addresses the vice of reading statutory words and provisions in isolation. Statutory words and provisions need to be read in context (see Pearce and
Geddes, par 4.2). The courts have frequently recognised that statutory words (like all

words) derive their ‘colour and content’ from their context (eg *Attorney-General v Prince Ernest Augustus of Hanover* [1957] AC 436 at 461 per Viscount Simonds). It is now axiomatic that, under the common law, Acts must be read as a whole (see *CIC Insurance Ltd v Bankstown Football Club Ltd* (1997) 187 CLR 384).

53 However, the common law has, at least in the past, maintained obstacles in the way of interpreters taking account of certain provisions of Acts. Provisions of Acts that, on the traditional view, were not to be taken account of in the absence of ambiguity in the provision concerned included the long title to the Act (see Pearce and Geddes, par 4.37), any preamble to the Act (see Pearce and Geddes, par 4.39), headings (see Pearce and Geddes, par 4.41-4.42) and punctuation (see Pearce and Geddes, par 4.44). To this might be added objects clauses (see *Leask v Commonwealth of Australia* (1996) 187 CLR 579 at 591 per Brennan CJ).

54 In 1997 the High Court made it clear that such limitations in relation to particular provisions of an Act, to the extent that they still existed, no longer applied. In *CIC Insurance Ltd*, 4 members of the court held as follows:

> It is well settled that at common law, apart from any reliance upon s 15AB of the *Acts Interpretation Act 1901* (Cwlth), the court may have regard to reports of law reform bodies to ascertain the mischief that a statute is intended to cure. Moreover, *the modern approach to statutory interpretation (a) insists that the context be considered in the first instance, not merely at some later stage when ambiguity might be thought to arise*, and (b) uses ‘context’ in its widest sense to include such things as the existing state of the law and the mischief which, by legitimate means such as those just mentioned, one may discern the statute was intended to remedy: (*Attorney-General v Prince Ernest Augustus of Hanover* [1957] AC 436 at 461, cited in *K & S Lake City Freighters Pty Ltd v Gordon & Gotch Ltd* (1985) 157 CLR 309 at 312, 315). Instances of general words in a statute being so constrained by their context are numerous. In particular, as McHugh JA pointed out in *Isherwood v Butler Pollnow Pty Ltd* ((1986) 6 NSWLR 363 at 388), if the apparently plain words of a provision are read in the light of the mischief that the statute was designed to overcome and of the objects of the legislation, they may wear a very different appearance. Further, inconvenience or improbability of result may assist the court in preferring to the literal meaning an alternative construction which, by the steps identified above, is reasonably open and more closely conforms to the legislative intent: *Cooper Brookes (Wollongong) Pty Ltd v FCT* ((1981) 147 CLR 297 at 320-1.)

(at 408, per Brennan CJ, Dawson, Toohey and Gummow JJ, with whom Gaudron J generally agreed. Emphasis added.)

55 In this case and others the High Court has made it clear that even *non-legislative* material may be considered and may have an effect on interpretation without there being an ambiguity in the provision concerned.

56 Proposed section 140 will not, then, alter the common law. It is consistent with the ruling that ‘context be considered in the first instance’. Nevertheless, by its inclusion amongst other ‘key principles’ in the Legislation Act, the Legislative Assembly is

highlighting the particular importance of reading statutory provisions in the context of the whole Act in which they are contained.

57 Another feature of the proposed section is the way in which it clarifies *what is* the legislative context that must be considered. Because the obligation in section 140 is limited to consideration of 'the Act', the provision gives clear guidance to statute users. Legislation Act, section 126 declares certain material to be part of an Act (including headings, examples, schedules etc.) and section 127 declares other material not to form part of an Act (notes, tables of contents etc.).

58 The fact that material forming part of an Act must be considered does not mean, of course, that all material forming part of the Act has equal weight. Courts are accustomed to weighing the indications of meaning provided by different parts of an Act. Thus, for instance, a heading can generally be expected to be given less weight than a substantive provision (see Pearce and Geddes, par 4.41-4.42).

(A2006-23)

A2006-23 made a minor amendment consequentially updating the reference to a non-conviction order in example 3. The explanatory statement provides:

Clause 1.211
This clause updates terminology.

Section 141 Non-legislative context generally

(A2002-11)

A2002-11 inserted this section. The explanatory statement provides the following:

Proposed section 142 Non-legislative context

93 Proposed section 142 re-enacts Interpretation Act, section 11B with some changes. Section 11B deals with the use of extrinsic materials in the interpretation of legislation (that is, materials not forming part of the legislation being interpreted). The changes made in re-enacting section 11B consist largely in bringing proposed section 142 up-to-date with developments in the common law.

94 To explain the changes, some historical background is needed. Section 11B (1) currently provides in part:

(1) …if any material not forming part of the Act is capable of assisting in the ascertainment of the meaning of the provision, consideration may be given to the material—

(a) to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision taking into account its context in the Act and the purpose or object underlying the Act; or

> (b) to determine the meaning of the provision when—
>
> (i) the provision is ambiguous or obscure; or
>
> (ii) the ordinary meaning conveyed by the text of the provision taking into account its context in the Act and the purpose or object underlying the Act leads to a result that is manifestly absurd or is unreasonable.

95 This provision, like similar legislation in most jurisdictions of Australia, clearly allows the use of extrinsic material. However, the provision's application is subject to significant restrictions. As the High Court stated in relation to the Commonwealth equivalent to section 11B (*Acts Interpretation Act 1901* (Cwlth), s 15AB):

> Reliance is also placed on a sentence in the second-reading speech of the Minister when introducing the Consequential Provisions Act, but that reliance is misplaced. Section 15AB of the Acts Interpretation Act 1901 (Cwlth), as amended, does not permit recourse to that speech for the purpose of departing from the ordinary meaning of the text unless either the meaning of the provision to be construed is ambiguous or obscure or in its ordinary meaning leads to a result that is manifestly absurd or is unreasonable.

(*Re Australian Federation of Construction Contractors; ex parte Billing* (1986) 68 ALR 416 at 420, per Gibbs CJ, Mason, Wilson, Brennan, Deane and Dawson JJ)

96 Section 11B is now largely redundant because of changes to the common law made by the High Court in several recent cases. Beginning with *CIC Insurance Ltd v Bankstown Football Club Ltd* ((1997) 187 CLR 384), which was quoted above in relation to proposed section 141, the High Court made it clear that no ambiguity or obscurity was necessary for a court to take account of a law reform report. Further, and importantly, consideration of this material helped the court in interpreting the provision in a way that departed from its ordinary (or apparent) meaning. Then, in *Newcastle City Council v GIO General Ltd* ((1997) 191 CLR 85), the High Court had regard to an explanatory memorandum as well as a law reform report in similar circumstances. In this case the court made clear that, even though the conditions in s 15AB were not satisfied, the common law independently authorised recourse to the material concerned. Toohey, Gaudron and Gummow JJ held that:

> In the interpretation of s 40, the Court may consider the Explanatory Memorandum relating to the Insurance Contracts Bill 1984 which was laid before the House of Representatives by the responsible Minister. The common law, independently of s 15AB of the Acts Interpretation Act 1901 (Cwth), permits the Court to do so in order to ascertain the mischief which the statute was intended to cure.

((1997) 191 CLR 85 at 99 (Emphasis added) McHugh J similarly held in a separate judgment ((1997) 191 CLR 85 at 112).

97 In *Attorney-General v Oates* ((1999) 198 CLR 162 at 175), the High Court held that at common law, irrespective of the statutory conditions laid down in the relevant extrinsic materials provisions, the 'legislative history' could be considered to find out 'the mischief'. In this case the

court considered various materials including a presentation speech made by a Minister (at 176-177).

98 In each of these cases, the High Court has said that, independently of statutory provisions such as section 11B, the common law authorises recourse to material that is evidence of 'the mischief'. The court has explained that 'the mischief' refers to 'the problems for the resolution of which a statute is enacted' (*North Ganalanja Aboriginal Corporation v Qld* (1996) 185 CLR 595 at 614n, followed in *Attorney-General v Oates* (1999) 198 CLR 162 at 175n).

99 Interpretation Act, section 11B (3) contains matters to which a court is required to have regard in deciding whether extrinsic material should be considered and, if so, the weight to be given to it. The Victorian provision about the use of extrinsic materials (*Interpretation of Legislation Act 1984,* section 35) does not contain an equivalent provision. As the use of extrinsic materials is discretionary under proposed section 142, there seems to be no justification in providing directions to the court about when extrinsic materials should be used in interpreting legislation. Such directions are, in any event, unlikely to have significant practical effect.

100 The purpose of proposed section 142 (2) is to make it clear that an express provision of an Act providing that particular extrinsic material may be considered does not raise an inference that other extrinsic material (whether of the same or similar kind) may not be used in interpreting the Act or another Act. The operation of the subsection is illustrated by example 8 in the examples to the section.

101 In summary, proposed section 142 complements proposed section 141. Under section 141 the provisions of an Act *must* be read in the context of the Act as a whole in working out the meaning of the Act. There are no restrictions on the kinds of provisions that may be considered or the purposes for which they may be considered. Similarly, under section 141 in working out the meaning of an Act any material not forming part of the Act *may* be considered if the material is relevant. Apart from the test of relevance, there are no restrictions on the kinds of extrinsic material that may be considered or the purposes for which they may be considered. The intended broad operation of proposed section 142 is illustrated by the examples to the section.

(A2003-18)

A2003-18 substituted this section. The explanatory statement provides the following:

Proposed sections 141, 142 and 143 Non-legislative context

General

59 The proposed sections re-enact existing Legislation Act, section 139 (formerly Interpretation Act, s 11B) with some changes. This section deals with the use of non-legislative material in the interpretation of legislation. Non-legislative material (also known as 'extrinsic material') is material not forming part of the legislation being interpreted, for example, a Minister's presentation speech, or the report of an Assembly Committee, or of a royal commission cited in debates in the Legislative Assembly.

Redundancy of existing section 139 (1)
Proposed s 141 (1)
60 Legislation Act, section 139 (1) currently provides, as does similar legislation in most Australian jurisdictions

> (1) … in the interpretation of a provision of an Act, if any material not forming part of the Act is capable of assisting in the ascertainment of the meaning of the provision, consideration may be given to the material—
> (a) to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision taking into account its context in the Act and the purpose or object underlying the Act; or
> (b) to determine the meaning of the provision when—
> (i) the provision is ambiguous or obscure; or
> (ii) the ordinary meaning conveyed by the text of the provision taking into account its context in the Act and the purpose or object underlying the Act leads to a result that is manifestly absurd or is unreasonable.

61 The application of this provision has been held to be subject to significant restrictions. A majority of the High Court has stated in relation to the Commonwealth equivalent to existing section 139 (1) (*Acts Interpretation Act 1901* (Cwlth), s 15AB):

> Reliance is also placed [by counsel arguing the case] on a sentence in the second-reading speech of the Minister when introducing the Consequential Provisions Act, but that reliance is misplaced. Section 15AB of the *Acts Interpretation Act 1901* (Cwlth), as amended, does not permit recourse to that speech for the purpose of departing from the ordinary meaning of the text unless either the meaning of the provision to be construed is ambiguous or obscure or in its ordinary meaning leads to a result that is manifestly absurd or is unreasonable.

(*Re Australian Federation of Construction Contractors; ex parte Billing* (1986) 68 ALR 416 at 420, per Gibbs CJ, Mason, Wilson, Brennan, Deane and Dawson JJ)

62 Existing section 139 is, however, now largely redundant because of changes to the common law made by the High Court in several recent cases. Beginning with *CIC Insurance Ltd*, the High Court made it clear that no ambiguity or obscurity was necessary for a court to take account of non-legislative material such as a law reform report. Further, and importantly, consideration of this material helped the court in interpreting the provision in a way that departed from its ordinary (or apparent) meaning.

63 Then, in *Newcastle City Council v GIO General Ltd* ((1997) 191 CLR 85), the High Court had regard to an explanatory statement as well as a law reform report in similar circumstances. In this case the court made it clear that, even though the conditions in *Acts Interpretation Act,* s 15AB (Cwlth) were *not* satisfied, the common law independently authorised recourse to the material concerned. Toohey, Gaudron and Gummow JJ held that:

> In the interpretation of s 40, the Court may consider the Explanatory Memorandum relating to the Insurance Contracts Bill 1984 which was laid before the House of

> Representatives by the responsible Minister. The common law, *independently of s 15AB* of the *Acts Interpretation Act 1901* (Cwth), permits the Court to do so in order to ascertain the mischief that the statute was intended to cure.

((1997) 191 CLR 85 at 99 (Emphasis added) (McHugh J similarly held in a separate judgment ((1997) 191 CLR 85 at 112).)

64 In *Attorney-General v Oates* ((1999) 198 CLR 162 at 175), the High Court held that at common law, irrespective of the statutory conditions laid down in the relevant non-legislative material provisions, the 'legislative history' could be considered to find out 'the mischief'. In this case the court considered various materials including a presentation speech made by a Minister (at 176-177).

65 In each of these cases, the High Court has said that, independently of statutory provisions such as existing section 139, the common law authorises recourse to material that is evidence of 'the mischief'. The court has explained that 'the mischief' refers to 'the problems for the resolution of which a statute is enacted' (*North Ganalanja Aboriginal Corporation v Qld* (1996) 185 CLR 595 at 614n, followed in *Oates*).

Relevant matters to be considered
Proposed s 141 (2) & (3)
66 As discussed above (see ***Concerns addressed***, Access to law and cost of litigation), in response to issues raised by the Scrutiny Committee and the Bar Association, proposed section 141 (1) will permit non-legislative material to be considered for 'working out the meaning of an Act', but proposed section 141 (2) will expressly require courts to consider three criteria in deciding whether to consider non-legislative material and the weight to be given to it:

- the desirability of people being able to rely on the ordinary meaning of the Act (s 141 (2) (a))
- the need not to prolong litigation (s 141 (2) (b)).
- the public accessibility of the material (s 141 (2) (c)).

67 The first 2 of these essentially reflect existing section 139 (3). The criterion of accessibility has been added to include a clear statement of the government's commitment to the policy of access to law. Section 141 (3) provides that the list of criteria is not exhaustive: other matters may be found by a court to be relevant for the purposes of assessing whether, and how, to use non-legislative material in interpreting an Act or statutory instrument.

Non-legislative material on the legislation register
Proposed s 141 (4)-(7)
68 Proposed section 141 (2) (c) provides that the accessibility of material to the public is a matter to be weighed in deciding whether, and how, to consider non-legislative material in interpreting legislation. Proposed section 141 (4) declares that material on the legislation register (www.legislation.act.gov.au) 'is taken to be accessible to the public'. Thus inclusion on the register is a certain method for ensuring that non-legislative material relevant to statutory interpretation is made publicly accessible.

69 Section 141 (5) and (6) are proposed to avoid the need for technical proof of non-legislative material—for example, an explanatory statement such as this one—that is included on the legislation register. Proof is not required if the material is authorised by the parliamentary counsel (proposed s 141 (5)). Proposed section 141 (6) provides that authorisation is presumed, unless the contrary is proved, if the material purports to be authorised (for example, if there is a statement to that effect on the website).

70 Proposed section 141 (7) is included to make it clear that other laws may provide a method different from that set out in section 141 (6) for deciding how courts or tribunals are to inform themselves about non-legislative material for proposed section 141.

(A2003-41)

A2003-41 consequentially omitted ss 141 (5) to (7). The explanatory note is as follows:

This amendment omits provisions that will be covered by the provisions of chapter 3 as amended by this part.

Section 142 Non-legislative context—material that may be considered

(A2003-18)

A2003-18 inserted this section. The explanatory statement provides the following:

Indicative list of non-legislative material
Proposed s 142
71 Like existing Legislation Act, section 139 (2), proposed section 142 is intended to give assistance in deciding the range of non-legislative material that may be relevant to working out the meaning of an Act. It reflects the types of material that have, in Australia in recent years, been considered in the process of statutory interpretation.
Proposed section 142 (3), as does existing section 139 (2), also provides that the material that may be considered is not limited to that listed in the table.

72 The Scrutiny Committee expressed concern about previously proposed section 141, example 7, which set out circumstances in which an international agreement to which Australia is a party (in the example, the *Universal Declaration of Human Rights*) might be the Act does not mention the agreement. Proposed section 142 would likewise permit consideration of such agreements (see table 1, item 7). However, as discussed in more detail above (***Concerns addressed***, Access to law; Separation of powers), reasonable constraints on whether and how to consider any non-legislative material are effectively continued by the inclusion, in proposed section 141 (2), of the criteria in existing section 139 (3). considered by a court or tribunal in working out the meaning of an Act, even though the Act does not mention the agreement. Proposed section 142 would likewise permit consideration of such agreements (see table 1, item 7). However, as discussed in more detail above (Concerns addressed, Access to law; Separation of powers), reasonable constraints on whether and how to consider any non-legislative material are effectively continued by the inclusion, in proposed section 141 (2), of the criteria in existing section 139 (3).

(A2003-41)

A2003-41 consequentially amended cross-references in the table in s 142 . The explanatory note is as follows:

> This amendment updates a reference to the heading of chapter 3 as amended by this part.

(A2005-20)

A2005-20 omitted references to ‘body’ substituting ‘entity’ in the table in s 142 . The explanatory note is as follows:

> This amendment updates language. ***Entity*** is defined in the Legislation Act, dictionary, part 1.

Section 143 Law stating material for consideration in working out meaning

(A2003-18)

A2003-18 inserted this section. The explanatory statement provides the following:

> *Express provision authorising consideration of non-legislative material*
> *Proposed s 143*
> 73 Section 143 will apply if there is an express provision of an Act providing that particular non-legislative material may be considered (of the type mentioned in existing Legislation Act, s 139 (2) (i)) in interpreting that Act or another Act. Section 143 provides that this does not in itself prevent other non-legislative material (whether of the same or similar kind) from being used in interpreting the Act or another Act.
>
> ***Summary***
> *Proposed ss 141-143*
> 74 In summary, proposed sections 141 to 143 complement proposed section 140. Under section 140 the provisions of an Act *must* be read in the context of the Act as a whole in working out the meaning of the Act. There are no restrictions on the kinds of provisions that may be considered or the purposes for which they may be considered. Under section 141 any material not forming part of the Act *may* be considered in working out the meaning of an Act.
>
> 75 Proposed section 142 provides an indicative list of the types of non-legislative material that may be relevant, but the list is not exhaustive. There are no categorical restrictions on the kinds of non-legislative material that may be considered or the purposes for which they may be considered. Similarly, proposed section 143 provides that the existence of express provisions in an Act permitting access to particular non-legislative material does not prevent access to other materials for working out the meaning of the Act. However, proposed section 141 will require a court or tribunal to consider relevant criteria, including those relating to ordinary meaning, cost and accessibility, in deciding whether to permit non-legislative material to be used at all, or in assessing the weight to be given to it.

Chapter 15 Aids to interpretation

(A2001-56)

A2001-56 inserted chapters 12 - 18. The general explanatory note is as follows:

General explanatory note for ch 12 to ch 18

The amendments of the *Legislation Act 2001* relocate to that Act the bulk of the provisions in the *Interpretation Act 1967*. Most of these provisions will be located in new chapters 12 to 18. As with earlier revisions of these kinds of provisions, the opportunity has been taken, wherever practicable, to restate, restructure and rearrange provisions to improve their clarity and accessibility.

Most of the provisions of the *Interpretation Act 1967* are expressed to apply to 'an Act' but they apply also to subordinate laws, disallowable instruments and instruments of an administrative nature because of the *Subordinate Laws Act 1989*, sections 9 and 10 (which will be repealed when the *Legislation Act 2001* commences). The provisions of the *Legislation Act 2001*, on the other hand, indicate on their face their application to laws and instruments. Most of the provisions in Parts 12 to 18 are expressed to apply to a 'law'. This term is used in parts 16 to 18 and is defined in each of those parts to mean an Act, a subordinate law (defined in the *Legislation Act 2001*, s 8), a disallowable instrument (defined in the *Legislation Act 2001*, s 9) or a provision of Act, a subordinate law or a disallowable instrument. The term 'law' is also used with the same meaning in proposed sections 133 to 135 (see the def of ***law*** in s 125). The effect is that the provisions of the *Legislation Act 2001* that are expressed to apply to a 'law' will apply to a slightly narrower range of instruments than the corresponding provision of the *Interpretation Act 1967*. A smaller number of provisions of the *Legislation Act 2001* (see s 126 to 132 and ch 15) are expressed to apply to Acts and 'statutory instruments' (a term defined in the *Legislation Act 2001*, s 13). The effect of the definition of statutory instrument is that these provisions of the *Legislation Act 2001* will have substantially the same application as the corresponding provision of the *Interpretation Act 1967*.

(A2002-11)

A2002-11 omitted the note to the chapter heading. The text of the omitted note is as follows:

Note for ch 15 See also *Interpretation Act 1967*, s 7, s 11A and s 11B.

The explanatory statement for A2002-11 provides:

Amendment of ch 15, note to chapter heading
160 This amendment is consequential on the relocation of remaining provisions of the Interpretation Act to the Legislation Act.

Part 15.1 General

(A2001-56)

A2001-56 inserted chapters 12 - 18. The general explanatory note chapter 15 is as follows:

General explanatory note for pt 15

Part 15 draws together a number of basic provisions that assist in the process of statutory interpretation. Note that for the time being the *Interpretation Act 1967*, sections 7, 11A and 11B continue to be relevant.

Section 144 Meaning of commonly-used terms

(A2001-56)

A2001-56 inserted the section. The explanatory note is as follows:

For s 144 Meaning of commonly-used words and expressions

Legislation and instruments tend to make frequent use of certain terms and expressions, for example, 'Minister', 'AAT', 'chief executive', 'contravene'. Rather than define these in each Act or instrument (which would be burdensome and lead to inconsistencies), they are gathered together in a 'dictionary' which applies to the whole statute book. Once a term is defined in the dictionary it does not need to be defined again in Territory legislation. Section 144 reproduces the effect of *Interpretation Act 1967*, section 11F (1) and is expressed to apply to all Acts and statutory instruments (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch12 to ch 18.

(A2003-56)

A2003-56 substituted 'terms' for 'words and expressions in the section heading. The explanatory note is as follows:

This amendment brings the heading into line with current drafting practice by using 'terms' instead of 'words and expressions'.

Section 145 Gender and number

(A2001-56)

A2001-56 inserted the section. The explanatory note is as follows:

For s 145 Gender and number

Paragraph (a) of this section makes it clear that a reference to gender (eg 'he') includes other genders (ie 'she' and 'it'). The need for this provision is not as obvious as in the past because

legislation and instruments now make greater use of gender-neutral language ('the person'). At the same time, however, this provision enables neuter gender entities (such as corporations) to be conveniently included because legislation and instruments, if they refer at all to genders, usually only refer to male and female genders. Paragraph (b) simplifies the text of legislation and instruments by allowing them to deal with single situations (for example 'A person must not') and avoid the unnecessarily complex and lengthy provisions that result from dealing with single and multiple situations ('A person *or persons* must not'). Section 145 reproduces the effect of *Interpretation Act 1967*, section 19 and is expressed to apply to an Act or a statutory instrument (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch 12 to ch 18.

(A2002-11)

A2002-11 omitted ', except so far as the contrary intention appears' from section 145. The explanatory statement provides:

> 141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections).

Section 146 Meaning of *may* and *must*

(A2001-56)

A2001-56 inserted the section. The explanatory note is as follows:

> **For s 146 Meaning of *may* and *must***
>
> This section is intended to give more certainty to the use of the terms 'may' and 'must'. These have sometimes been interpreted by courts in ways that depart from their ordinary meaning. The section, however, allows for another law to exclude its operation as provided in the section. Section 146 reproduces the effect of *Interpretation Act 1967*, section 16 and is expressed to apply to an Act or a statutory instrument (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch 12 to ch 18.

(A2002-11)

A2002-11 substituted s 146 (3) providing that the section is a determinative provision. The explanatory statement provides:

> 141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections).

(A2002-30)

A2002-30 inserted a new definition of 'inserted' in s 146 (4). The explanatory note is as follows:

> This amendment makes it clear that the rules in section 146 about the meaning of *may* and *must* apply to provisions inserted in substitution for other provisions.

(A2003-56)

A2003-56 substituted 'term' for 'word or expression' in ss 146 (1) and (2). The explanatory note is as follows:

> This amendment brings the subsections into line with current drafting practice by using 'term' instead of 'word or expression'.

(A2005-20)

A2005-20 substituted the definitions of 'applicable provision' and 'application date' in s 146 (4). The explanatory note is as follows:

> This amendment has the effect of extending the operation of section 146 (3), from 1 January 2006, to statutory instruments that are not subordinate laws or disallowable instruments. Section 146 (3) has applied to Acts, subordinate laws and disallowable instruments since 1 January 2000.
>
> As a result of section 146 (3), section 146 (which deals with the meaning of ***may*** and ***must***) is a determinative provision in relation to laws and provisions to which section 146 (3) applies (but not other laws or provisions). Determinative provisions may only be displaced expressly or by a manifest contrary intention (see Legislation Act, section 6).

Section 147 Changes of drafting practice not to affect meaning

(A2001-56)

A2001-56 inserted the section. The explanatory note is as follows:

> **For s 147 Changes in drafting practice not to affect meaning**
>
> Ideally, the language of the statute book should be consistent so that whenever an idea is expressed it is always be expressed in a consistent way. At the same time, however, changes in drafting practice, as it evolves over the years, can result in a number of different forms of expression—all meaning the same thing—appearing in legislation depending on the time it was passed. The problem is more acute if the same law is successively amended (perhaps in minor ways) over a period of years. In theory, the law could be remade each time but there are not usually enough resources to permit this. It will often be the case, therefore, that a law will contain provisions in different parts that seem to be saying the same thing though expressed in different words. Section 147 seeks to prevent any inference being drawn from differences in expression in different provisions. The same problem can arise where the law on a topic is found in a number of

related Acts (for example, taxation and gambling). The problem can also arise where a provision is rewritten using new legislative drafting practice. Section 147 reproduces the effect of *Interpretation Act 1967*, section 11C and is expressed to apply to an Act or a statutory instrument (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch 12 to ch 18.

A2002-11 inserted s 147 (8) providing that the section is a determinative provision. The explanatory statement provides:

141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections).

Section 148 Terms used in instruments have same meanings as in authorising laws

(A2001-56)

A2001-56 inserted the section. The explanatory note is as follows:

For s 148 Terms used in instruments have the same meaning as in authorising laws

If a statutory instrument (a term defined in the *Legislation Act 2001*, s 13) such as regulations is made under the authority given by an Act, words and expressions in the regulations will have the same meaning as in the Act or statutory instrument. The section therefore simplifies the drafting of regulations and other instruments and ensures that terms in the instrument and the authorising Act or statutory instrument are used consistently. The operation of the section will be displaced, however, if the instrument indicates (usually by way of definitions) that a particular term is not intended to have the same meaning as in the empowering Act or statutory instrument. The section reproduces the effect of *Interpretation Act 1967*, section 11BA and is expressed to apply to an Act or a statutory instrument (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch 12 to ch 18.

(A2002-11)

A2002-11 omitted the words ‘, except so far as the contrary intention appears’ from s 148. The explanatory statement provides:

141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections).

(A2003-56)

A2003-56 substituted 'Terms' for 'Words and expressions in s 148. The explanatory note is as follows:

> This amendment brings the section into line with current drafting practice by using 'terms' instead of 'words and expressions'.

Section 149 Age in years

(A2001-56)

A2001-56 inserted the section. The explanatory note is as follows:

> **For s 149 Age in years**
>
> At one time the law about when a person attained a particular age was technical and artificial. This section ensures that the ordinary understanding about when a person attains an age also applies as a matter of law. The section reproduces the effect of the *Interpretation Act 1967*, section 13D and is expressed to apply to an Act or a statutory instrument (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch 12 to ch 18. The operation of the section will be displaced, however, if the Act or statutory instrument that contains the reference to age indicates that a different rule is to apply.

(A2002-11)

A2002-11 omitted the words ', except so far as the contrary intention appears' from s 149. The explanatory statement provides:

> 141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections).

Section 150 Measurement of distance

(A2001-56)

A2001-56 inserted the section. The explanatory note is as follows:

> **For s 150 Measurement of distance**
>
> There are various ways in which distance can be calculated for the purposes of the law (for example, by way of the nearest road). Section 150 reproduces the effect of the longstanding rule in the *Interpretation Act 1967*, section 35 and is expressed to apply to an Act or a statutory instrument (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch 12 to ch 18. The operation of the section will be displaced, however, if the Act or statutory instrument that contains the reference to distance indicates that a different rule is to apply.

(A2002-11)

A2002-11 omitted the words ', except so far as the contrary intention appears' from s 150. The explanatory statement provides:

> 141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections).

Section 151 Working out periods of time generally

(A2002-11)

2002-11 inserted s 151 (Reckoning of time). The explanatory statement provides:

> 102 Proposed section 151 restates the effect of Interpretation Act, section 36. The proposed section is intended to provide a way of working out whether something has been done within a period provided or allowed by law. The section identifies the point when the period starts and allows it to be extended to the first available working day if the last day is not a working day. The proposed section includes some examples to illustrate its operation.

(A2002-49)

A2002-49 substituted 'not later than' for 'not later' in s 151 (3), example 2. The explanatory note is as follows:

> This amendment corrects a minor error.

(A2003-56)

A2003-56 substituted ss 151 (1). The explanatory note is as follows:

> This amendment makes it clear that section 151 only applies to periods of 1 day or longer, not to periods of, for example, a few hours.

(A2005-62)

A2005-62 remade section 151. The explanatory note is as follows:

> General
>
> This amendment remakes section 151 to provide comprehensively for working out the time for doing something required or allowed to be done under an Act or statutory instrument.
>
> The sections substituted by this amendment do not significantly change the law presently applying under section 151, but rather deal with a range of cases not dealt with by the existing section.

Because the days on which periods begin and end are usually expressly dealt with under current ACT drafting practice and the substituted sections largely reflect the position at common law (see Pearce and Geddes, *Statutory Interpretation in Australia* (5th ed), pars 6.45-6.50), this amendment will not have a significant impact on the interpretation of the existing ACT statute book. The impact has, in any event, been minimised by application provisions in the substituted sections. Nevertheless, the substituted sections should produce greater clarity in the operation of the statute book and lead to a better understanding of how time is worked out for statutory provisions. Over time existing provisions of the ACT statute book will be reviewed for consistency with the substituted sections and revised as necessary.

<u>Section 151</u>

New section 151 deals with working out periods of time generally. Like existing section 151 the new section applies in working out periods of 1 day or longer for an Act or statutory instrument (see section 151 (1)). The new section applies in working out periods in the past (backwards) as well as in the future (forwards).

New section 151 is modelled on the *Interpretation Act 1999* (NZ), section 35. The new section is also consistent with the *Interpretation Act 1984* (WA), section 61 (1) (a) to (h) with 1 exception discussed below in relation to new section 151 (6).

New section 151 (2) and (3) provide how the beginning of a period of time is worked out. New section 151 (4) and (5) provide how the end of a period of time is worked out. Under the subsections the relevant day at the beginning or end of the period is excluded or included depending on how the period is described.

Although new section 151 (2) is fully consistent with the equivalent New Zealand and Western Australian provisions mentioned above, the application of the subsection to a period described as beginning 'on' a day, act or event is different to the outcome achieved under equivalent Victorian and Queensland provisions (see *Interpretation of Legislation Act 1984* (Vic), s 44 (1) and *Acts Interpretation Act 1954* (Qld), s 38 (1)). However, new section 151 (2) is consistent with existing provisions of the Legislation Act (see eg s 74 (Time of commencement)).

By contrast, new section 151 (3) is consistent with the equivalent provision of most other Australian jurisdictions in relation to a period described as beginning 'from' a day, act or event (see existing s 151 (3) (a) and *Acts Interpretation Act 1901* (Cwlth), s 36 (1); *Interpretation Act 1987* (NSW), s 36 (1); *Interpretation of Legislation Act 1984* (Vic), s 44 (1); *Interpretation Act 1984* (WA), s 61 (1) (b); *Acts Interpretation Act 1931* (Tas), s 29 (1); *Interpretation Act* (NT), s 28 (1)).

New section 151 (6) provides that a reference to a number of days between events does not include the days when the events happen. The subsection follows the *Interpretation Act 1999* (NZ), section 35 (5). By contrast, the equivalent Western Australian provisions (*Interpretation Act 1984*, s 61 (1) (f) and (g)) provide for the same outcome but only if the reference includes the expression 'clear' days, 'at least' or 'not less than'. If the reference does not include one of these

expressions, the day when the first event happens is included, but the day when the second event happens is excluded. Queensland (see *Acts Interpretation Act 1954*, s 38 (1)) and Tasmania (see *Acts Interpretation Act 1931*, s 29 (2)) have interpretation provisions similar to the Western Australian provisions. The New Zealand approach has been followed because of its simplicity. The Western Australian, Queensland and Tasmanian provisions require the use of a particular expression to achieve the outcome that would usually be wanted in provisions for working out periods of time, namely, allowing a specified period in full. In the unusual case where this is not the outcome wanted, this can be achieved in the drafting of the relevant provisions (eg by reducing the allowed period by 1 day).

New section 151 (7) provides that new section 151 is a determinative provision so far as it applies to an applicable law or applicable provision. The terms *applicable law* and *applicable provision* are defined in new section 151 (8). New section 151 (7) affects the application of new section 151 and, in particular, its displacement. Laws and provisions enacted after 1 January 2006 will have been drafted in the light of the new section and the section will, therefore, need to be displaced expressly or by manifest 'contrary intention' (see Legislation Act, s 6 (2)). Laws and provisions enacted on or before 1 January 2006 will not have been drafted in the light of the new section and the section will, therefore, be able to be displaced fairly readily by a 'contrary intention' (see Legislation Act, s 6 (3)).

New section 151 (9) ensures that new section 151 does not have retrospective effect. The subsection is a transitional provision and is expired by subsection (11). However, to remove any doubt about its continuing effect after the expiry, subsection (9) is declared by subsection (10) to be a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional law etc) applies.

(A2006-42)

A2006-42 replaced 'until' with 'to or until' in s 151(4). The explanatory note is as follows:

Section 151 deals with working out periods of time generally. Section 151 (4) provides for the inclusion of the last day of a stated period in that period. The amendment makes it clear that section 151 (4) covers cases where the period is described as 'to' a stated day. For example, the period described as '1 January 1974 to 31 December 1980' means that 31 December 1980 is included in the period.

A2006-42 also inserted s 151(6A). The explanatory note is as follows:

This amendment makes it clear that, if something must or may be done, within a particular period of time after a stated day, then, despite section 151 (3) (which would otherwise exclude the day), the thing may be done on that day.

(A2014-44)

A2014-44 omitted a term from s 151 (1), note 1. The explanatory note is as follows:

> Note 1 lists a number of terms defined in the dictionary, part 1 that are relevant to periods of time. This amendment omits a reference to ***named month*** as a consequence of the omission of the definition of that term from the dictionary, part 1, by another amendment.

A2014-44 also substituted s 151 (2) to (7). The explanatory note is as follows:

> Section 151 deals with working out periods of time generally in an Act or statutory instrument. This amendment replaces section 151 (2) to (6) with a table to make working out periods of time easier for users of legislation. The table is based on a similar table in the *Acts Interpretation Act 1901* (Cwlth), section 36.
>
> Proposed table 151 replaces current section 151 (2) to (6) as follows:
> - item 1 replaces current section 151 (2)
> - item 2 replaces current section 151 (3)
> - item 3 replaces current section 151 (4)
> - item 4 replaces current section 151 (5)
> - item 5 replaces current section 151 (6).
>
> Proposed section 151 (3) replaces current section 151 (7) as a consequence of the replacement of current section 151 (4) by proposed item 3 of the table.
>
> The proposed amendment does not substantively change the existing policy on working out periods of time.

Section 151A Periods of time ending on non-working days

(A2005-62)

A2005-62 inserted section 151A. The explanatory note is as follows:

> <u>Section 151A</u>
>
> New section 151A deals with extending the time for something to be done if the day or the last day of the period for the thing to be done is not a working day (see new s 151A (1)). New section 151A (2) provides for the thing to be done on the next day that is a working day. Although new section 151A (2) is fully consistent with existing section 151 (4), the definition of ***working day*** (see new s 151A (4), def ***working day***) has been changed for this section to specifically deal with the time for doing something at an office of a public entity where the thing must or may be done (see also new s 151A (4), def ***public entity***). Under the new definition, a working day for doing something at the office of a public entity is a day when the entity's office is open. In any other

case, a ‘working day’ is a day that is not a Saturday, Sunday or a public holiday at the place where the thing must or may be done.

Queensland (see *Acts Interpretation Act 1954*, s 38 (2) and (5)) and Tasmania (see *Acts Interpretation Act 1931*, s 29 (4)) achieve the same outcome in relation to the filing or registration of documents (and, for Tasmania, instruments). In those jurisdictions, if the time or period of time for the filing or registration of a document ends on a day when the office where the filing or registration is to happen is closed, the time is extended to the next day when the office is open. In all other cases, if the time or last day of the period falls on a Saturday, Sunday or public holiday in the place where the thing is to be done the time is extended to the next day that is not a Saturday, Sunday or public holiday.

By contrast, other jurisdictions (see *Acts Interpretation Act 1901* (Cwlth), s 36 (2); *Interpretation Act 1987* (NSW), s 36 (2); *Interpretation of Legislation Act 1984* (Vic), s 44 (3); *Interpretation Act 1984* (WA), s 61 (1) (h) and (2); *Acts Interpretation Act 1915* (SA), s 27 (2); *Interpretation Act* (NT), s 28 (2); *Interpretation Act 1999* (NZ), s 35 (6)) provide for time to be extended only if the last day of a prescribed period falls on a weekend or public holiday at the place where the thing is to be done (or bank holiday in the Commonwealth or New South Wales and bank holiday or public service holiday in Western Australia).

New section 151A (3) and (5) operate in a corresponding way to new section 151 (7) and (9). The operation of new section 151 (7) and (9) is explained above. Section 151A (5) is a transitional provision and is expired by subsection (7). However, to remove any doubt about its continuing effect after the expiry, subsection (5) is declared by subsection (6) to be a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional law etc) applies.

(A2006-42)

A2006-42 substituted paragraph (b) (ii) of the definition of ‘working day’ in s 151A (4). The explanatory note is as follows:

This amendment amends the definition of ***working day*** in section 151A (Periods of time ending on non-working days) to take into account the effect of bank holidays.

Section 151B Doing things for which no time is fixed

(A2005-62)

A2005-62 inserted section 151B. The explanatory note is as follows:

Section 151B

If something must or may be done under an Act or statutory instrument, and no time is provided for doing the thing, new section 151B provides that the thing must be done as soon as possible and as often as needed (see new s 151B (2)). New section 151B follows the approach taken in Queensland which requires the thing to be done ‘as soon as possible, and as often as the relevant

occasion happens' (see *Acts Interpretation Act 1954*, s 38 (4)). South Australia and Western Australia have similar provisions, requiring the thing to be done 'with all convenient speed and as often as the prescribed occasion arises' (see *Acts Interpretation Act 1915* (SA), s 27 (3)) or 'with all convenient speed and as often as occasion arises' (see *Interpretation Act 1984* (WA), s 63).

Section 151C Power to extend time

(A2005-62)

A2005-62 inserted section 151C. The explanatory note is as follows:

Section 151C

New section 151C provides that, if something must or may be done under an Act or statutory instrument on a particular day, or within a particular period of time, and a court or other entity has power to extend the time within which the thing must or may be done, an application may be made for an extension of time, and the court or other entity may extend the time for doing the thing, even though the time for doing the thing has ended before the extension of time is given. This provision follows the approach taken in New South Wales (see *Interpretation Act 1987*, s 36 (3)) and Western Australia (see *Interpretation Act 1984*, s 64). The new section will remove the need for provisions of this kind to be included in legislation.

New section 151C (4) provides that new section 151C is a determinative provision. New section 151C (4) affects the application of section 151C and, in particular, its displacement. Because new section 151C may (in some cases at least) represent a change in the law, the section will apply only to laws and provisions enacted after 1 January 2006 (see section 151C (5) and (6)). Laws and provisions enacted after 1 January 2006 will have been drafted in the light of the new section and the section will, therefore, need to be displaced expressly or by manifest 'contrary intention' (see Legislation Act, s 6 (2)).

Section 152 Continuing effect of obligations

(A2002-11)

2002-11 inserted s 152. The explanatory statement provides:

103 Proposed section 152 deals with a situation where an obligation is imposed by law to do something within a period or before a particular time. What effect does the expiry of the period have on the obligation? Proposed section 152 makes it clear that the obligation continues until the thing is done. The proposed section is adapted from the Interpretation Act, section 33B where it forms part of a section about continuing offences. However, the language of Interpretation Act, section 33B (1) indicates that the rule it lays down need not be limited to the criminal law. For this reason proposed section 152 is intended to be located in a part of the Legislation Act that does not limit its subject matter to a particular branch or area of law. The

remaining part of Interpretation Act, section 33B is dealt with in proposed section 193 (which is discussed below).

(A2002-49)

A2002-49 substituted s 152. The explanatory note is as follows:

This amendment remakes the section to clarify that an obligation to do an act continues until the act is done even if someone has been convicted of an offence for failing to do the act (see also s 193 (Continuing offences)).

Part 15.2 Definitions

Section 155 Definitions apply subject to contrary intention

(A2001-56)

A2001-56 inserted the section. The explanatory note is as follows:

For s 155 Definitions apply subject to contrary intention

The effect of this section is that the meaning given to a word or expression in an Act or statutory instrument (a term defined in the *Legislation Act 2001*, s 13) will apply unless there is an indication in a particular context that the given meaning does not apply in that context. One example would be if the term or expression was given a meaning in a part (ie for a group of sections) that differed from the meaning it was given by another definition elsewhere in the Act or statutory instrument. But a contrary intention might be indicated in other ways. Mining legislation, for example, might define ***bank*** to refer to the surface around a shaft but in a group of financial provisions use the word 'bank' to refer to a financial institution. In that case, the context provided by the financial provisions would be sufficient to indicate that 'bank' was being used in a different sense without the need for a further definition for that context. Section 155 reproduces the effect of the *Interpretation Act 1967*, section 11G and is expressed to apply to an Act or a statutory instrument—see the General explanatory note for ch 12 to ch 18.

A2002-11 inserted s 155 (2) providing that the section is a determinative provision. The explanatory statement provides:

141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections).

Section 156 Application of definitions in dictionaries and sections

(A2001-56)

A2001-56 inserted the section. The explanatory note is as follows:

For s 156 Application of definitions in dictionaries and sections

In recent years the practice has developed of locating definitions of general application to an Act or statutory instrument (a term defined in the *Legislation Act 2001*, s 13) in a dictionary at the end of the Act or instrument. Section 156 (1) supports this practice by providing that a definition in a dictionary will apply to the entire Act or instrument unless a more limited application is provided in the Act or instrument. The examples that follow illustrate this in detail. Section 156 (2) and (3) complement this rule by laying down a similar rule about definitions in sections; a definition in a section only applies in the section unless the relevant Act or a statutory instrument provides for the definition to have a wider operation. Once again, examples illustrate in detail how this rule operates. As previously noted, the section is expressed to apply to an Act or a statutory instrument (see the General explanatory note for ch 12 to ch 18). Section 156 (4) makes it clear that in the application of this section to a statutory instrument or a schedule to an Act, the term ‘section’ includes provisions such as ‘regulation’ or ‘clause’. Section 156 (2) and (3) reproduce the effect of *Interpretation Act 1967*, section 11F (2) and (3). Section 156 is expressed to apply to an Act or a statutory instrument—see the General explanatory note for ch 12 to ch 18.

(A2003-56)

A2003-56 substituted two notes in ss 156 (1). The explanatory note is as follows:

This amendment of the note (now note 1) is consequential on the amendment of the heading to section 144 by an earlier amendment.

New note 2 refers readers to section 148.

(A2005-20)

A2005-20 inserted a new example in s 156 (1). The explanatory note is as follows:

This amendment inserts a new example to clarify the application of definitions in dictionaries. The example is consistent with current drafting practice.

A2005-20 also substituted example 2 in s 156 (2). The explanatory note is as follows:

This amendment revises an example to clarify the application of definitions that are not in dictionaries. The revised example complements section 156 (1), new example 3 and is consistent with current drafting practice.

A2005-20 also substituted ss 156 (4). The explanatory note is as follows:

> This amendment remakes subsection (4) so that it is expressed to apply to an Act or statutory instrument that is divided otherwise than into sections. Existing subsection (4) is expressed to apply to a statutory instrument or a provision of a schedule to an Act. However, to simplify the naming of provisions of statutory instruments and schedules to Acts current drafting practice is to use ‘section’ instead of ‘regulation’ or ‘clause’ and ‘subsection’ instead of ‘subregulation’ or ‘subclause’. Because of the definition of ***Act*** and ***statutory instrument*** in sections 7 and 13, the remade subsection will also apply to provisions of an Act or statutory instrument (eg a schedule that sets out a list of items).

Section 157 Defined terms—other parts of speech and grammatical forms

(A2001-56)

A2001-56 inserted the section. The explanatory note is as follows:

> **For s 157 Defined terms—other parts of speech and grammatical forms**
>
> Although a particular word or expression (for example, ‘publish’) may be given a defined meaning, the legislation in which it appears may use a number of forms of the same word or expression (for example, ‘publisher’, ‘publishes’, ‘published’, ‘publishing’, ‘publication’). It would be inconvenient and cumbersome to have to define each of these related terms. Section 157 provides that if other forms of the same word or expression are to be used, they will have a meaning that corresponds to the defined meaning. The section also provides that the operation of the section may be displaced if a contrary intention appears in the relevant Act or statutory instrument (a term defined in the *Legislation Act 2001*, s 13). For example, the word ‘publisher’ may be included in a definition of another term (‘government publisher’) and therefore not apply to members of the public. This section reproduces the effect of *Interpretation Act 1967*, section 11E and is expressed to apply to an Act or a statutory instrument—see the General explanatory note for ch 12 to ch 18.

(A2002-11)

A2002-11 substituted s 157. The explanatory statement provides:

> Amendment of s 157
> 161 This amendment remakes the section to omit an unnecessary reference to contrary intention and include an example to illustrate the operation of the section.

(A2003-56)

A2003-56 substituted ‘term’ for ‘word or expression’ in s 157. The explanatory note is as follows:

> This amendment brings the section into line with current drafting practice by using ‘term’ instead of ‘word or expression’.

Part 15.3 References to various entities and things

Section 160 References to people generally

(A2001-56)

A2001-56 inserted the section. The explanatory note is as follows:

> **For s 160 References to people generally**
>
> The law recognises not only human beings, but also ‘artificial people’ such as companies, as having the capacity to enter into legal relations (for example, being a party to a contract, bringing or defending legal proceedings and owning property). Artificial persons are generally referred to in Territory laws as ‘corporations’ (see *Legislation Act 2001*, dict, pt 1, def of ***corporation***). Laws are usually made with the intention that they will apply equally to corporations and to individuals (also defined in the *Legislation Act 2001*, dict, pt 1, def of ***individual***). Section 160 provides a legal basis for this common supposition. Section 160 (1) does recognise that in some cases a law may only apply to individuals (for example, registration as a doctor) or to corporations (the requirement to have a common seal). In these cases the relevant law would indicate a contrary intention so that it only applied to one kind of person. Section 160 (2) also makes it clear that simply by referring to a particular kind of person (say a corporation), does not in itself indicate that the law only applies to corporations. Section 160 reproduces the effect of *Interpretation Act 1967*, section 15 and is expressed to apply to an Act or a statutory instrument (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch 12 to ch 18.

(A2002-11)

A2002-11 omitted the words ‘, except so far as the contrary intention appears’ from s 160 (1) and inserted s 160 (3). The explanatory statement provides:

> 141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections)...
>
> Amendment of s 160, new s 160 (3)
>
> 162 This amendment clarifies the relationship between section 160 (2) and proposed section 6.

(A2009-20)

A2009-20 substituted s 160 (1). The explanatory note is as follows:

> This amendment revises section 160 (1) to make clear that the provision is giving meaning to the term ‘person’ and to enable a signpost definition for the term to be inserted in the dictionary.

Section 161 Corporations liable to offences

(A2001-56)

A2001-56 inserted the section. The explanatory note is as follows:

For s 161 Corporations liable to offences

Section 161 is essentially a particular instance of the general principle expressed in section 160: offences that apply to individuals also apply to corporations. Section 161 (1) indicates that this general rule may be displaced by a contrary intention (for example, a corporation could not commit bigamy). Section 161 (2) also makes it clear that an offence that is expressed to be punishable by imprisonment only can apply to corporations even though a corporation cannot be imprisoned. Section 161 (3) enables this to work in practice by setting out a table that equates various terms of imprisonment with corresponding fines. Section 161 reproduces the effect of the *Interpretation Act 1967*, section 32 and is expressed to apply to a 'law' (a term defined in s (4)). See also the General explanatory note for ch 12 to ch 18.

(A2002-11)

A2002-11 omitted the words ', except so far as the contrary intention appears' from s 161 (1). The explanatory statement provides:

141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections).

Amendments of s 161
163 These amendments are consequential on the relocation of the provisions of the Administration Act and the Statutory Appointments Act to the Legislation Act.

(A2002-51)

A2002-51 substituted s 161 (3) (e) and (f). The explanatory memorandum for the Bill introducing the Criminal Code 2002 provides:

The Schedule contains minor consequential amendments to relevant legislation arising from the enactment of the provisions of the Code.

(A2002-49)

A2002-49 amended the reference to penalty units in the example in s 161 (2). The explanatory note is as follows:

This amendment makes the example consistent with section 161 (3).

Section 162 References to a Minister or the Minister

(A2001-56)

A2001-56 inserted the section. The explanatory note is as follows:

For s 162 References to *a Minister* or *the Minister*

The term ‘Minister’ is commonly used in Territory law. Section 162 defines the term in 2 senses. First, in general terms, as a position occupied by a person because of election as Chief Minister under the *Australian Capital Territory* (*Self-Government) Act 1988* (Cwlth), section 40 or an appointment as a Minister made under the Self-Government Act, section 41 (see s (1). Second, as referring to the person occupying a particular portfolio (s (2)). Section 162 assumes that legislation will not often refer to a Minister by reference to his or her title or portfolio. The practical reason for this is that titles and portfolios usually change with each change of government or may happen at other times following a ministerial reshuffle. If the titles and portfolios were mentioned in every law or instrument, an enormous amount of work would be required to continually amend the relevant laws and instruments. For this reason, laws and instruments usually refer to the administering Minister as ‘the Minister’. (In some limited cases, laws and instruments use the terms ‘Attorney-General’ or ‘Treasurer’, but in most cases legislation administered by these Ministers simply uses the term ‘the Minister.) Section 162 (2) to (4) therefore lays down a number of rules to enable the relevant title or portfolio to be identified. Section 162 (2) (a) lays down the general rule: ‘the Minister’ means the Minister administering the law or statutory instrument (a term defined in the *Legislation Act 2001*, s 13) in which the reference occurs. And the identity of the person who is administering a law or statutory instrument at any particular time will be indicated in an ‘Administrative Arrangements’ instrument that is published in the Special Gazette issue of the ACT Gazette from time to time (this may be accessed at www.act.gov.au/gazettes). Section 162 reproduces the effect of *Interpretation Act 1967*, section 24 and, as previously indicated, is expressed to apply to an Act or a statutory instrument—see the General explanatory note for ch 12 to ch 18.

Section 163 References to a director-general or the director-general

(A2001-56)

A2001-56 inserted the section. The explanatory note is as follows:

For s 163 References to *a chief executive* or *the chief executive*

Section 163, which applies to ‘chief executives’, the heads of Territory government departments, is analogous to section 162. The factors that have given rise to section 162 also explain the need for section 163. The section reproduces the effect of *Interpretation Act 1967*, section 24A and is also expressed to apply to an Act or a statutory instrument (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch 12 to ch 18.

(A2005-44)

A2005-44 consequentially amended s 163 (1) to reflect changed section names in the *Public Sector Management Act 1994.*

(A2011-22)

A2011-22 substituted s 163 to reflect changes arising from *Public Sector Management (One ACT Public Service) Amendment Act 2011* (the One ACTPS Act). The explanatory statement for A2011-22 provides:

> The Administrative (One ACT Public Service Miscellaneous Amendments) Bill 2011 (the Bill) amends legislation because of the enactment of the One ACTPS Act. The Bill makes consequential and transitional amendments to various pieces of legislation.
>
> Schedule 1 of the Bill outlines all of the consequential, technical and transitional amendments arising from the One ACTPS Act...
>
> Schedule 1 contains minor or technical amendments of legislation arising as a consequence of the One ACTPS Act.
>
> Amendments of this nature include:
>
> ...
>
> - substituting definitions of chief executive with a new definition of director-general
>
> ...

Section 164 References to Australian Standards etc

(A2001-56)

A2001-56 inserted the section. The explanatory note is as follows:

> **For s 164 References to Australian Standards**
>
> The standards prepared by Standards Australia (formerly the Standards Association of Australia) on technical matters of all kinds (eg ways of measuring the flamability of garments) may provide a convenient basis for, or an element of, legislation. Each standard is issued under a distinctive number. Section 164 provides a convenient way of describing standards for the purpose of Acts or statutory instruments (a term defined in the *Legislation Act 2001*, s 13). The section reproduces the effect of *Interpretation Act 1967*, section 25AB and, as indicated, is expressed to apply to an Act or a statutory instrument (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch 12 to ch 18.

(A2003-56)

A2003-56 substituted s 164. The explanatory note is as follows:

> This amendment updates this section to deal with the abbreviation ‘AS’ and joint Australian/New Zealand Standards (or ‘AS/NZS’).

Section 165 References to Assembly committees that no longer exist

(A2001-56)

A2001-56 inserted the section. The explanatory note is as follows:

> **For s 165 References to Assembly Committees that no longer exist**
>
> Legislation sometimes refers to committees of the Legislative Assembly. If one committee is replaced by another, section 165 provides a convenient way of linking references in the legislation from the old to the new committee (in the short term, it may not be practicable to amend the legislation). This section reproduces the effect of *Interpretation Act 1967*, section 25AA and is also expressed to apply to an Act or a statutory instrument (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch 12 to ch 18.

Section 168 References to person with interest in land include personal representative etc

(A2001-56)

A2001-56 inserted the section. The explanatory note is as follows:

> **For s 168 References to person with interest in land include personal representatives etc**
> This is a new provision modelled on provisions frequently found in agreements. The section lays down a general rule in the context of land and other property to make it clear that rights and obligations affecting a person also extend to the personal representatives, successors or assigns of the person. Examples of personal representatives include executors or administrators of a dead person or the guardian of a person under a legal disability. The rule may be displaced by a contrary intention in another law. This section is expressed to apply to an Act or a statutory instrument (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch 12 to ch 18.

(A2002-11)

A2002-11 omitted the words ', except so far as the contrary intention appears' from s 168. The explanatory statement provides:

> 141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections).

Section 169 References to domestic partner and domestic partnership

(A2003-14)

A2003-14 inserted s 169. The explanatory statement provides:

> **<u>Outline</u>**
>
> ...
>
> The amendments address discrimination on the basis of sexual orientation or gender identity.
>
> The amendments in relation to discrimination on the basis of sexual orientation replace current definitions such as *spouse* and *de facto spouse* with the more encompassing term of "domestic partner". There are currently provisions in some ACT legislation that provide for the recognition of relationships between persons of the same sex. This legislation is also amended to achieve a greater consistency of terminology across legislation and a greater consistency of the degree of recognition of these types of relationships. Legislation not subject to amendments will continue to have its ordinary meaning, or meaning as defined by the specific piece of legislation.
>
> ...
>
> **<u>Notes on Clauses</u>**
>
> ...
>
> This clause inserts new sections into the Legislation Act. The Legislation Act does not currently contain provisions relating to the reference to "domestic partner" and "domestic partnership" or reference to "transgender people" in legislation. The purpose of this clause is to create consistent terms for use in all other legislation and statutory instruments.
>
> A "domestic partner" is defined in new section 169 (1), as meaning a person who lives with another person in a domestic partnership, and includes a spouse.
>
> A "domestic partnership" is defined in new section 169 (2) as two people, whether of the same or opposite sex, living together as a couple on a genuine domestic basis.

Debate of the Legislation (Gay, Lesbian and Transgender) Amendment Bill 2002 occurred in March 2003. A number of amendments to the Bill were moved and debated. This led to an amendment to s 169 to include the example listing indicators to decide whether 2 people are in a domestic partnership in s 169 (2) [for the text of the amendment see Hansard 11 March 2003 p 896 to 897].

No explanatory statements are available for the amendments. A relevant extract from debate in the Legislative Assembly is as follows:

> **MR STANHOPE** (Chief Minister, Attorney-General, Minister for Community Affairs and Minister for the Environment) (4.37): At the time of the separation for the luncheon adjournment, I had just concluded responding to Mrs Burke's amendment and had spoken at the same time about my proposed amendment. Of course, the two amendments are connected.

My amendment No 4, just to reiterate as a consequence of the break, seeks to include the list of indicators which we have been discussing. I did not go through that list of indicators that are there to determine whether two people are in a domestic partnership. The list of indicators that I propose is about whether a domestic partnership exists. This is about whether people who are not married, people who do not have a spouse, satisfy some or all of these indicators, as an aid to determining whether a domestic partnership exists.

Ten are listed. The issues are: the length of the relationship; whether they are living together; if they are living together, how long and under what circumstances they have lived together; whether there is a sexual relationship between them; their degree of financial dependence or interdependence and any arrangements for financial support; the ownership, use and acquisition of their property, including any property that they own individually; their degree of mutual commitment to a shared life; whether they mutually care for and support children; the performance of household duties; and the reputation and public aspects of the relationship between them. The following note appears at the end of that list of indicators in the proposed amendment:

> An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears.

The point has been made—I made it prior to the luncheon adjournment and Ms Dundas has just made it—that this is a list of indicators to show whether two people who are not married are in a bone fide domestic relationship, whether they are in a domestic partnership. The reason for that is that a person who is married is, in any event, in a domestic relationship; they are partners. The definition says, as I mentioned earlier, that a married person, a spouse, is included by specific reference in the definition of domestic partner. The definition says:

> In an Act or statutory instrument, a reference to a person's **domestic partner** is a reference to someone who lives with the person in a domestic partnership, and includes a reference to a spouse of the person.

So, just by that process of elimination, we have a definition of domestic partner. It is someone who lives with a person in a domestic partnership and includes a spouse. We know that, if you are married, you are in a domestic relationship, so we then exclude people who are married when we come to the legislation. The first question the court would ask is, "Are you married?". You would drop your wedding certificate on the table and say, "Yes, we are married. Here's the certificate. And no, we haven't been divorced. Therefore, we are in a domestic partnership. This person is my domestic partner."

When the next group of people came into the court, the judge would ask, "Are you living with this person in a domestic partnership?" The first question he would ask is, "Are you married?" If they say, "No, we are not married, but we do have a domestic partnership," he would then say, "Well, tell me about yourselves. How long has your relationship been? Are you living together? Under what circumstances do you live together? Do you have sex? Are you financially dependent or

interdependent?" He would go through the list and a decision would be made on whether they were domestic partners.

To intrude into that list of indicators a doubling up, as Mrs Burke proposes, by adding whether they are legally married is simply surplusage, as is said in the Office of Parliamentary Counsel. I remember it from when I was an instructing officer in the 1970s and the Office of Parliamentary Counsel would say, "That is surplusage." What a beautiful word!...[Hansard 13 March 2003 pp 1058-1059]

(A2006-22)

A2006-22 proposed amendments to insert references to 'civil unions' in s 169 (1) and (3). A2006-22 was repealed before commencement by disallowance (see Cwlth Gaz 2006 N0 S93).

(A2008-14)

A2008-14 inserted references to 'civil partner' and 'civil partnerships' in s 169 and the dictionary and inserted s 169 (3). The explanatory statement of 12 December 2006 provides:

Part 1.2 *Legislation Act 2001*

Amendment 1.5 inserts a reference to *civil partner* in the definition of domestic partner in section 169 of the *Legislation Act 2001* so that a reference to a domestic partner includes a civil partner.

Amendment 1.6 inserts a new section 169(3) which makes it clear that in an Act or statutory instrument, a reference to a *domestic partnership* includes a reference to a marriage and a civil partnership.

Amendment 1.7 inserts new definitions of *civil partner* and *civil partnership* in the dictionary of commonly used terms that apply to all Acts and statutory instruments.

The explanatory statement of 8 May 2008, as presented with government amendments, provides:

Part 1.17 Legislation Act 2001

[1.43] New section 169(3) – inserts a new section 169(3), stating that, in an Act or instrument, a reference to a "domestic partnership" includes a reference to a marriage and a civil partnership.

[1.44] Dictionary, part 1, new definitions – inserts new definitions of "civil partner" and "civil partnership".

(A20012-40)

A2012-40 inserted references to 'civil union' and 'civil union partner' in s 169 and the dictionary. The explanatory statement provides:

> Schedule 3 makes consequential amendments to include civil unions as a recognised relationship in the following Acts and Regulations:
>
> ...
>
> -	Legislation Act 2001
>
> ...

(A2013-39)

A2013-39 proposed omitting the note in s 169 (1) and including marriage under the Marriage Equality (Same Sex) Act 2013 as marriage in the dictionary. A2013-39 was declared to be never effective (see Commonwealth v Australian Capital Territory [2013] HCA 55).

## Section 169A	References to transgender people

(A2003-14)

A2003-14 inserted s 169A. The explanatory statement that was presented to the Legislative Assembly on 12 December 2002 provides:

> **<u>Outline</u>**
>
> ...
>
> The amendments address discrimination on the basis of sexual orientation or gender identity...
>
> Amendments that address discrimination on the basis of gender recognise that there is a need for those persons to whom gender identity is an issue to self-identify their sex. For example, some ACT legislation provides that a body search of a person must be conducted by a person of the same sex. Such a provision would have an ambiguous application to transgender persons. There is a need in such a circumstance for a person to be searched by a member of the same sex with which the transgender person identifies. This need has been addressed by creating an interpretative definition of transgender person.
>
> ...
>
> **<u>Notes on Clauses</u>**
>
> ...
>
> While some legislation currently recognises same sex relationships, the level of recognition and the terminology used to describe such a relationship is not consistent across ACT legislation.

The effect of this definition is to create a single consistent term to be used in all ACT legislation. A “transgender person” is defined in new section 169A, in relation to a person, as meaning a person who identifies themself as a member of the opposite sex by living or seeking to live, as a member of that opposite sex; or a person who has identified themself as a member of the opposite sex by living as a member of that opposite sex; or a person who is of indeterminate sex, that is a person whose gender was ambiguous at birth, and identifies as a member of a particular sex by living as a member of that sex whether or not the person is a recognised transgender person.

A “recognised transgender person” is defined in section 169A (3), in relation to a person, as meaning a person whose record of sex is altered under *the Births, Deaths and Marriages Registration Act 1997*, part 4. The definition also recognises a person whose record of sex is altered in accordance with a corresponding provision of a law of a State or another Territory.

The definition in section 169A (1) (c) includes a person who is an intersex person. An intersex person is someone whose gender was ambiguous at birth – i.e. the person was born with sex chromosomes, external genitalia, or an internal reproductive system that are not considered ‘standard’ for either male or female.

Debate of the Legislation (Gay, Lesbian and Transgender) Amendment Bill 2002 occurred in March 2003. A number of amendments to the Bill were moved and debated.

This led to a changed approach to the definition of transgender people and a separate definition of intersex people in the new s 169B [for the text of the amendments see Hansard 13 March 2003 pp 1083, 1091 and 1092]. No explanatory statements are available for the amendments. Relevant extracts from debate in the Legislative Assembly are as follows:

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (5.17): Mr Speaker, all of the amendments remaining to be moved are identical. I have no desire to engage in a jack-in-the-box contest with Ms Dundas. I am happy to move amendment No 5 circulated in my name and leave all other amendments to Ms Dundas to move.

For the information of members, in every other amendment—there are half a dozen or more—Ms Dundas and I are responding to the same representations by the same constituents and, magically, have come up with exactly the same wording for amendments, essentially relating to intersex people and search powers. I will move my amendment in relation to the definition of transgender persons.
I move amendment No 5 circulated *[see schedule 3 at page 1091]*.

Ms Dundas has exactly the same amendment, but this amendment substitute a new definition of transgender person. As I indicated on Tuesday, the government received representations about the definition of transgender person and this new definition will address some of the concerns that have been raised.

The new definition differs from the original definition in two respects. Firstly, the definition uses the phrase “a different sex” rather than “the opposite sex” so that it does not reinforce the binary notion of gender by presuming that there are only two sexes. This is also consistent with the definition of domestic partnership. Secondly, the new definition does not include intersex people within the definition of transgender person. I commend the amendment to the Assembly. I won’t rise to speak to the subsequent amendments, unless I feel moved by a moment. I will leave all my other amendments which are mirrored by Ms Dundas’s amendments for Ms Dundas to move... [Hansard 13 March 2003 p 1068]

MS DUNDAS (5.20): I am happy to support this amendment. As the Attorney-General has indicated, it is identical to an amendment that I would have moved. I am glad that we have been able to work to bring about better definitions for this piece of legislation so that we do recognise what needed to be fixed in the original bill.

This amendment and the next few amendments deal with the issue of inserting separate definitions of transgender and intersex people into the Legislation Act. All the references to transgender and intersex people that this bill deals with are in relation to body searches conducted by the authorities; in particular, the need for transgender and intersex people to be able to elect the sex of the person conducting a body search.

There are further amendments that clarify that, but this amendment goes to the issue of how we define transgender and intersex people. Transgender and intersex people met the government’s original proposal with some concern as the definition lumped them together as a single group. In addition, the original definition went back to the old idea of binary gender and refused to recognise that many transgender people do not readily identify as either male or female.

The new definition that we are debating now goes some way to fixing the problem by removing the narrow phrases of talking about the same or opposite sex. I believe that it is the best definition that we have at the moment. I would like to note that if, as a result of the ongoing consultation process, a better definition is found, then I would be happy to look at that as well.

I do commend this amendment to the Assembly. It is incredibly important to a number of people in our community who recognised that we did need to have separate definitions for transgender and intersex people. They are quite distinct groups in our community. I do hope that the Assembly will support this amendment. [Hansard 13 March 2003 pp 1068-1069]

MR STEFANIAK (5.22): The opposition is happy with that course of action. I am pleased that Mr Stanhope and Ms Dundas have sorted out the intersex definition. I know how much work Ms Dundas has done on that and we now have a similar definition there. So, in terms of this course of action, the opposition is happy with that..

...

Amendment agreed to.

[Hansard 13 March 2003 p 1069]

Section 169B References to intersex people

(A2003-14)

A2003-14 as introduced did not include s 169B. Debate of the Legislation (Gay, Lesbian and Transgender) Amendment Bill 2002 occurred in March 2003. A number of amendments to the Bill were moved and debated. This led to a changed approach to the definition of transgender people and a separate definition of intersex people in the new s 169B [for the text of the amendment see Hansard 13 March 2003 p 1083].

No explanatory statements are available for the amendments. Relevant extracts from debate in the Legislative Assembly are as follows:

> **MS DUNDAS**: I move the remainder of my amendments—Nos 5 to 30—together *[see schedule 2 at page 1083]*.
>
> The first amendment is the most important, so I will speak briefly to that. It inserts the new definition of intersex person into this legislation. That came about as a result of concerns from the community that the government's original proposal had an incorrect definition of intersex and was included with the transgender definition.
>
> The inclusion of a separate definition for intersex people is necessary because intersex people should also have access to provisions which allow the transgender community to elect the gender of the person conducting a body search. The new definition was developed in consultation with the intersex community and I am confident that it better reflects the reality of intersex conditions...[Hansard 13 March 2003 p 1069]
>
> **MR STANHOPE** (Chief Minister, Attorney-General, Minister for Community Affairs and Minister for the Environment) (5.29): I will, for the record, speak to these amendments, Mr Speaker. I think it is important. The government will support each of these amendments. As Ms Dundas has indicated, these are a significant and important raft of amendments to the legislation as initially introduced. They respond to representations received by members of the Assembly.
>
> The range of amendments Ms Dundas has moved, and to which I am speaking, goes to the definition of transgender person. It is complementary to the definition of transgender person. It inserts a new definition of intersex person. As Ms Dundas indicated, I think all members and all offices received significant support, advice and assistance from the Androgen Insensitivity Syndrome Support Group of Australia in relation to this range of issues.
>
> As I said, the amendments go to the definition of intersex person. The amendments omit the interpretive provisions relating to opposite sex and same sex for a transgender person. They include a new provision in each of the relevant acts and regulations, to the effect that a transgender or intersex person may nominate the gender of the person by whom they wish to be searched... .[Hansard 13 March 2003 p 1071]

(A2014-8)

A2014-8 substituted section 169B. The explanatory note is as follows:

Part 1.2 Legislation Act 2001

Clause 1.6 Section 169B

This clause amends the definition of 'intersex' to mean a person who has physical, hormonal or genetic features that are: neither wholly female nor wholly male, a combination of female and male, or neither female nor male. Amending the clause to reflect the accepted definition of an intersex person will ensure that intersex people are accurately represented and defined. The definition will now be consistent with the definition of intersex adopted in section 4 of the *Sex Discrimination Act 1984* (Cth).

Part 15.4 Preservation of certain common law privileges

Section 170 Privileges against self-incrimination and exposure to civil penalty

(A2002-11)

A2002-11 inserted s 170. The explanatory statement provides:

Clause 21

Outline of proposed part 15.4

104 Proposed part 15.4 (sections 170 and 171) would provide an interpretative presumption preserving the established common law privileges against selfincrimination or exposure to a penalty and in relation to communications between lawyers and their clients.

Common law privileges against selfincrimination and exposure to a civil penalty

105 The privilege against selfincrimination gives a person the right to refuse to make a statement or produce a document on the ground that to do so would expose the person to a risk of being convicted of a criminal offence. The privilege may arise in the course of judicial, quasi-judicial and non-judicial proceedings, including, for example, court hearings, royal commissions, police searches and investigations by officials.

106 Justice Murphy stated the predominant rationale offered for the privilege as follows: 'The privilege against self-incrimination is part of the common law of human rights. It is based on the desire to protect personal freedom and human dignity. These social values justify the impediment the privilege presents to judicial or other investigation. It protects the innocent as well as the guilty from the indignity and invasion of privacy which occurs in compulsory self-incrimination.' (*Pyneboard Pty Ltd v Trade Practices Commission* (1983) 152 CLR 328 at 346). It is sometimes now said that an even stronger justification for the privilege is 'the principle, fundamental in our criminal law, that the onus of proving a criminal offence lies upon the prosecution and that in

discharging that onus it cannot compel the accused to assist it in any way' (*Environment Protection Authority v Caltex Refining Co. Pty Ltd*. (1993) 178 CLR 477 at 527, per Deane, Dawson and Gaudron JJ; see also at 544, per McHugh J).

107 The privilege against exposure to a civil penalty gives a person the right to refuse to make a statement or produce a document on the grounds that to do so would expose the person to liability for a civil penalty. It may also arise in the context of judicial, quasi-judicial or non-judicial proceedings, and shares essentially the same rationale as the privilege against selfincrimination (see Pearce and Geddes, par 5.24).

108 The privileges against selfincrimination and exposure to a penalty cover statements or documents that would expose the person required to give or produce them (though not anyone else—an important qualification) to a 'real and appreciable danger' of incrimination or liability for a civil penalty (see McNicol S. B., *Law of Privilege* (1992) at 174-192). The exposure to incrimination or a penalty may be direct or indirect. An example of indirect exposure would be the potential for the conviction of the person at a later trial because of the police following up a line of inquiry disclosed by a document produced in the course of a search. In this case, privilege might be claimed against the production of a document even if the document itself would be inadmissible or worthless as evidence in the later trial. The privileges do not, however, extend protection in relation to 'real' (non-verbal) evidence. On indirect exposure and 'real' evidence, see *Sorby v Commonwealth* (1983) 152 CLR 281 at 292, per Gibbs CJ.

109 It has recently been held that these privileges do not, however, extend to corporations (*Environment Protection Authority v Caltex Refining Co. Pty Ltd*. (1993) 178 CLR 477 and *Trade Practices Commission v Abbco Ice Works Pty Ltd & Ors* (1994) 52 FCR 96). Confirming these decisions, the privilege has subsequently been abolished by the *Evidence Act 1995* (Cwlth), section 187 for corporations in relation to requirements under Commonwealth and ACT laws, and in proceedings in federal and ACT courts.

110 As previously noted, the privileges against self-exposure to forfeiture and ecclesiastical censure do not to require express preservation by the Legislation Act.

[see also paragraphs 116 to 120 in the extract below for section 171 for the explanatory material on *Statutory abrogation and qualification of privileges* and *Removal of provisions preserving privileges—consequential amendments*]

(A2011-48)

A2002-11 substituted s 170 (2) and the note. The explanatory statement provides:

Part 1.22 Legislation Act 2001

Clause 1.34 Section 170(2) and note – updates a reference in section 170(2) of the *Legislation Act 2001* and its note consequential on the establishment of the *Evidence Act 2011*.
The amendment replaces the reference to the Commonwealth *Evidence Act 1995* with a reference to the ACT *Evidence Act 2011*. On the day the *Evidence Act 2011*commences, the Commonwealth

Evidence Act 1995 will cease to apply in the ACT. The updated reference will not affect the section as official records are treated similarly under the Commonwealth and ACT Evidence Acts.

Section 171 Client legal privilege

(A2002-11)

A2002-11 inserted s 171. The explanatory statement provides:

Clause 21

Outline of proposed part 15.4

104 Proposed part 15.4 (sections 170 and 171) would provide an interpretative presumption preserving the established common law privileges against selfincrimination or exposure to a penalty and in relation to communications between lawyers and their clients.

...

Client legal privilege (legal professional privilege)

111 Justice McHugh summarised the accepted view of the nature of this privilege by saying that ‘[l]egal professional privilege is the shorthand description for the doctrine that prevents the disclosure of confidential communications between a lawyer and client, and confidential communications between a lawyer and third parties when they are made for the benefit of a client unless the client has consented to the disclosure. To be protected by the privilege, a communication must be made solely for the purpose of contemplated or pending litigation or for obtaining or giving legal advice.’ (*Commissioner of Australian Federal Police v Propend Finance Pty Ltd* (1997) 188 CLR 501 at 550).

112 It is important to emphasise that since the 18th century, the privilege has been held to be that of the lawyer’s *client*. As such, it may be waived by the client, but not by the lawyer (*Baker v Campbell* (1983) 153 CLR52 at 85, per Murphy J). In that case, Justice Murphy used the more accurate term ‘client legal privilege’. This term was subsequently adopted in the *Evidence Act 1995* (Cwlth), part 3.10, division 1, which heads the provisions dealing with the privilege ‘Client legal privilege’. The Commonwealth Evidence Act approach is followed in proposed section 171.

113 The High Court has expressed the justification for the privilege, as traditionally accepted, ‘that it promotes the public interest because it assists and enhances the administration of justice by facilitating the representation of clients by legal advisers, the law being a complex and complicated discipline…The existence of the privilege reflects, to the extent that it is accorded, the paramountcy of this public interest over a more general public interest, that which requires that in the interests of a fair trial litigation should be conducted on the footing that all relevant documentary evidence is available.’ (*Grant v Downs* (1976) 135 CLR 674 at 685, per Stephen, Mason and Murphy JJ).

114 However, there are ‘powerful considerations which suggest that the privilege should be confined within strict limits’, in part because ‘the privilege is an impediment, not an inducement, to frank testimony, and it detracts from the fairness of the trial by denying a party access to

relevant documents or at least subjecting him to surprise' (*Grant* at 685, 686, per Stephen, Mason and Murphy JJ). Indeed, in the opinion of a leading writer, no single rationale for the privilege has been settled on by the courts, and indeed no consistent underlying rationale for the doctrine has been offered (Desiatnik R. J. *Legal Professional Privilege in Australia* (1999) at 39-50).

115 Nevertheless, legal professional privilege is an established part of the common law; it is regarded as so entrenched that 'it is not to be exorcised by judicial decision' (*Grant* at 685, per Stephen, Mason and Murphy JJ). Moreover, the scope of this privilege, which had its origin in judicial proceedings alone, has now expanded (like that of the privileges against selfincrimination and exposure to a penalty) to allow the privilege to be claimed against disclosure of evidence in a non-judicial context such as a police search under a search warrant (*Baker v Campbell* (1983) 153 CLR 52).

Statutory abrogation and qualification of privileges

116 Despite the continued recognition and even expansion (in some respects) of the privileges at common law, the privileges are of course subject to legislation. They may be expressly preserved, displaced completely or partly, or preserved in a changed form. In the context of proceedings in ACT courts the privileges have been preserved in a changed form by the Commonwealth Evidence Act. The *Evidence Act 1995* (Cwlth), part 3.10, division 1 restates the law of legal professional privilege (in modified form) as 'client legal privilege'. The Evidence Act (Cwlth), section 128, also qualifies the law relating to the privileges against selfincrimination and exposure to a penalty by giving the court the express options of allowing the claim outright or requiring the relevant evidence to be given despite its incriminating character (or capacity to expose the witness to a penalty). If the evidence is required to be given, the court must give a certificate preventing the evidence from being used in later proceedings against the witness.

117 Proposed sections 170 (2) and 171 (2) make it clear that the proposed sections are not intended to affect the operation of the provisions of the Commonwealth Evidence Act that deal with the privileges.

118 In other respects it is proposed that proposed sections 170 and 171 operate as determinative provisions. Under the sections the privileges against selfincrimination or exposure to a civil penalty and in relation to client legal privilege will require an express statutory statement or 'manifest contrary intention' for their displacement. This is similar to the position at common law that requires an express statutory statement or a 'necessary' (or 'clear') implication for the displacement of the privileges. It is intended that the requirement of a 'manifest contrary intention' should be, if anything, more demanding than an implication that is 'necessary' or 'clear' (see comments above about proposed section 6).

119 By providing the test that applies to other 'determinative provisions' for the overriding of the privileges, it is intended to standardise the approach taken by the courts to the application of the privileges in a statutory context. The following are examples of provisions of other Acts in relation to which the view is taken that either or both of the privileges are displaced (at least in part) by express statement or a manifest contrary intention:

Administrative Appeals Tribunal Act 1989, section 37 (7) (Lodging material documents)

> (7) This section has effect notwithstanding any rule of law relating to privilege or the public interest in relation to the production of documents.

Building and Construction Industry Training Levy Act 1999, section 34 (2) (Powers of inspectors)

> (2) A person is not excused from providing information or from producing a document or other record when requested to do so under subsection (1) on the ground that providing the information or producing the document or record may tend to incriminate the person or expose the person to a civil penalty, but the information or the production of the document is not admissible in evidence against the person in any proceedings, other than proceedings for an offence against section 36 [False or misleading information].

Business Names Act 1963, section 13 (3) (Duty to furnish information)

> (3) A person shall not be excused from furnishing information where required to do so under subsection (1) on the ground that the information might tend to incriminate him or her or make the person liable to a penalty but the information furnished by him or her shall not be admissible in evidence against the person in any proceedings civil or criminal.

Legal Practitioners Act 1970, section 116 (1) (Obligation to comply with inspector's requirements)

> (3) A person is not entitled to refuse to comply with a requirement made of him or her under subsection (1) on the ground of legal professional privilege. [Subsection (1) requires certain information and documents to be given to an investigator.]

Royal Commissions Act 1991, section 37 (3) (Refusal to be sworn or give evidence)

> (3) It is not a reasonable excuse for the purposes of paragraph (1) (b) for a person to refuse or fail to answer a question on the ground that the answer to the question might tend to incriminate the person. [Subsection (1) provides that a witness before a commission 'shall not, without reasonable excuse, refuse or fail—…(b) to answer a question that the [witness] is required…to answer'.]

Removal of provisions preserving privileges—consequential amendments

120 Proposed sections 170 and 171 will help in simplifying and shortening ACT laws by making it clear that it is unnecessary to expressly restate in individual Acts that the privileges have been preserved. The consequential amendments in schedule 2 relating to the privileges are designed to achieve this aim by omitting provisions that do no more than expressly preserve the privileges. The place of the omitted provisions will be taken by the directions in proposed sections 170 and 171 that an Act or statutory instrument must be interpreted to preserve the privileges.

(A2011-48)

A2002-11 substituted s 171 (2) and the note. The explanatory statement provides:

> **Clause 1.35 Section 171(2) and note –** updates a reference in section 171(2) of the *Legislation Act 2001* and its note consequential on the establishment of the *Evidence Act 2011*.
>
> The amendment replaces the reference to the Commonwealth *Evidence Act 1995* with a reference to the ACT *Evidence Act 2011*. On the day the *Evidence Act 2011* commences, the Commonwealth *Evidence Act 1995* will cease to apply in the ACT. The updated reference will not affect the section as client legal privilege is treated similarly under the Commonwealth and ACT Evidence Acts.

Chapter 16 Courts, tribunals and other decision-makers

(A2001-56)

A2001-56 inserted chapters 12-18. The general explanatory note is as follows:

General explanatory note for ch 12 to ch 18

The amendments of the *Legislation Act 2001* relocate to that Act the bulk of the provisions in the *Interpretation Act 1967*. Most of these provisions will be located in new chapters 12 to 18. As with earlier revisions of these kinds of provisions, the opportunity has been taken, wherever practicable, to restate, restructure and rearrange provisions to improve their clarity and accessibility.

Most of the provisions of the *Interpretation Act 1967* are expressed to apply to 'an Act' but they apply also to subordinate laws, disallowable instruments and instruments of an administrative nature because of the *Subordinate Laws Act 1989*, sections 9 and 10 (which will be repealed when the *Legislation Act 2001* commences). The provisions of the *Legislation Act 2001*, on the other hand, indicate on their face their application to laws and instruments. Most of the provisions in Parts 12 to 18 are expressed to apply to a 'law'. This term is used in parts 16 to 18 and is defined in each of those parts to mean an Act, a subordinate law (defined in the *Legislation Act 2001*, s 8), a disallowable instrument (defined in the *Legislation Act 2001*, s 9) or a provision of Act, a subordinate law or a disallowable instrument. The term 'law' is also used with the same meaning in proposed sections 133 to 135 (see the def of ***law*** in s 125). The effect is that the provisions of the *Legislation Act 2001* that are expressed to apply to a 'law' will apply to a slightly narrower range of instruments than the corresponding provision of the *Interpretation Act 1967*. A smaller number of provisions of the *Legislation Act 2001* (see s 126 to 132 and ch 15) are expressed to apply to Acts and 'statutory instruments' (a term defined in the *Legislation Act 2001*, s 13). The effect of the definition of statutory instrument is that these provisions of the *Legislation Act 2001* will have substantially the same application as the corresponding provision of the *Interpretation Act 1967*.

A2001-56 provides a general explanatory note for pt 16 as follows:

General explanatory note for pt 16

Sections 176 to 179 are provisions of particular relevance to courts and other authorities required by law to make a decision. The sections make provision for various matters to supplement legislation setting up courts and similar entities.

Section 175 Meaning of law—ch 16

(A2001-56)

A2001-56 inserted section 175. The explanatory note is as follows:

For s 175 Meaning of *law* in ch 16

This section defines law for chapter 16.

(A2005-20)

A2005-20 substituted the definition of *law*. The explanatory note is as follows:

This amendment revises the definition to omit unnecessary words. Under the definitions of ***Act***, ***subordinate law*** and ***disallowable instrument*** in sections 7 to 9, a reference to an Act, subordinate law or disallowable instrument includes a reference to a provision of the Act, law or instrument. The amendment also inserts a note to this effect.

Section 176 Jurisdiction of courts and tribunals

(A2001-56)

A2001-56 inserted section 176. The explanatory note is as follows:

For s 176 Jurisdiction of courts and tribunals

To avoid arguments about jurisdiction, legislation giving powers to courts formerly gave an additional express vesting of jurisdiction to the court to deal with the new powers. To overcome the need for a separate vesting provision whenever powers were given to a court, the *Interpretation Act 1967*, section 31A provides that if power is given to a court, the court automatically has jurisdiction to deal with the matter. Section 176 reproduces the effect of the *Interpretation Act 1967*, section 31A and extends it to include proceedings before a tribunal. The section is expressed to apply to a 'law' (a term defined in the *Legislation Act 2001*, s 175)—see the General explanatory note for ch 12 to ch 18.

(A2002-11)

A2002-11 substituted section 176 (3) and added a new note. The explanatory statement provides:

164 This amendment remakes the subsection to remove a reference to a contrary intention and includes a new note drawing attention to proposed section 45.

Section 177 Recovery of amounts owing under laws

(A2001-56)

A2001-56 inserted section 177. The explanatory note is as follows:

For s 177 Recovery of amounts owing under laws

Section 177 is another provision that enables legislation to be simplified. It applies if a law creates an obligation for a person to pay an amount. In that case, the section enables proceedings to be brought to recover the amount as a debt without the need for special provision in the law that created the obligation. If, however, the law makes provision for recovery of the amount, the operation of section 177 will be displaced. The section reproduces the effect of *Interpretation Act 1967*, section 34 and, as indicated, is expressed to apply to a 'law' (a term defined in the *Legislation Act 2001*, s 175)—see the General explanatory note for ch 12 to ch 18.

(A2002-11)

A2002-11 substituted section 177. The explanatory statement provides:

165 This amendment remakes the section to correct an error in the description of the parties to whom it applies and removes a reference to a contrary intention.

(A2008-37)

A2008-37 substituted section 177. The general explanatory statement provides:

This part makes consequential amendments to the Act (recognising that certain moneys owing are recoverable under the small civil claims jurisdiction exercised by the ACAT).

Section 178 Power to decide includes power to take evidence etc

(A2001-56)

A2001-56 inserted section 178. The explanatory note is as follows:

For s 178 Power to decide includes authority to administer oath etc

The effect of section 178 is that the power to hear and decide a matter automatically carries with it the power to receive evidence and examine witnesses. However, if a law providing for a hearing makes special provision for receiving evidence and examining witnesses, the operation of section 178 will be displaced. The section reproduces the effect of *Interpretation Act 1967*, section 13E and, as indicated, is expressed to apply to a 'law' (a term defined in the *Legislation Act 2001*, s 175)—see the General explanatory note for ch 12 to ch 18.

(A2002-11)

A2002-11 amended s 178 (1) and (2). Section 178 (2) was omitted because it referred to a contrary intention and s 178 (1) was consequentially renumbered.

(A2003-41)

A2003-41 amended the heading and section 178 generally by omitting 'authority' and substituting 'power'. The explanatory notes are as follows:

> This amendment brings the section more closely into line with current drafting practice. ***Power*** is defined in the Legislation Act, dictionary, part 1 to include authority, and is the drafting term used rather than authority.

(A2005-53)

A2005-53 substituted s 178 to provide that a court, tribunal or other entity authorised by law to hear and decide a matter (however expressed) has power to take evidence, including evidence on oath, examine witnesses, administer oaths and authorise a person to administer an oath. Any other power of the court, tribunal or other entity is not limited by s 178. The general explanatory statement provides:

> **Schedule 1 Consequential amendments**
>
> This schedule will amend a total of 30 Acts and Regulations, primarily to remove offences (including the offences in the Crimes Act) that will become redundant because of the new codified offences in chapter 7. The schedule will also make a number of minor consequential amendments that are necessary because of the offences that have been repealed from the various Acts referred to in the schedule. In addition, the schedule will insert a declaration in a number of Acts to clarify the operation of chapter 7 with respect to those Acts (see, for example, items 1.23 and 1.62 of the schedule and the commentary to clause 701). Also, in accordance with current criminal law policy, the schedule will insert a standard form immunity in Acts where the privilege against self-incrimination is abrogated but no immunity has been provided (see items 1.73, 1.78. 1.104, 1.115 and 1.143).

Section 179 Content of statements of reasons for decisions

(A2001-56)

A2001-56 inserted section 179. The explanatory note is as follows:

> **For s 179 Content of statements of reasons for decisions**
>
> If a tribunal or other entity (see the *Legislation Act 2001*, dict, pt 1, def of ***entity***) is required to give reasons for its decision, section 179 requires that the findings of fact and evidence that underpin its decision must also be set out with the reasons. Section 179 (3) provides that the section will apply unless another law expressly excludes it. The section reproduces the effect of

> *Interpretation Act 1967*, section 13C and is expressed to apply to a 'law' (a term defined in the *Legislation Act 2001*, s 175)—see the General explanatory note for ch 12 to ch 18.

(A2002-11)

A2002-11 substituted s 179 (3) declaring that the provision is determinative.

(A2003-56)

A2003-56 amended s 179 (1) by omitting 'expression' and substituting 'term'. The explanatory note is as follows:

> This amendment brings the subsection into line with current drafting practice by using 'term' instead of 'expression'.

Section 180 Power to make decision includes power to reverse or change

(A2001-56)

A2001-56 inserted section 180. The explanatory note is as follows:

> **For s 180 Power to make decision includes power to reverse or change**
>
> The effect of section 180 is that the power to make a decision carries with it the power to reverse or change the decision. There are, however, 2 qualifications on the power to reverse or change. First, any procedural requirements or substantive grounds that needed to be satisfied in making the decision also need to be complied with before the decision may be reversed or changed. Second, the law which gives the power to make the decision may indicate that the decision cannot be changed or reversed. This indication may follow from the nature of the decision itself. The section reproduces the effect of *Interpretation Act 1967*, section 27 and is expressed to apply to a 'law' (a term defined in the *Legislation Act 2001*, s 195)—see the General explanatory note for ch 12 to ch 18.

(A2002-11)

A2002-11 omitted s 180 (3) because it referred to a contrary intention.

Chapter 17 Entities and positions

(A2001-56)

A2001-56 inserted chapters 12-18. The general explanatory note is as follows:

General explanatory note for ch 12 to ch 18

The amendments of the *Legislation Act 2001* relocate to that Act the bulk of the provisions in the *Interpretation Act 1967*. Most of these provisions will be located in new chapters 12 to 18. As with earlier revisions of these kinds of provisions, the opportunity has been taken, wherever practicable, to restate, restructure and rearrange provisions to improve their clarity and accessibility.

Most of the provisions of the *Interpretation Act 1967* are expressed to apply to 'an Act' but they apply also to subordinate laws, disallowable instruments and instruments of an administrative nature because of the *Subordinate Laws Act 1989*, sections 9 and 10 (which will be repealed when the *Legislation Act 2001* commences). The provisions of the *Legislation Act 2001*, on the other hand, indicate on their face their application to laws and instruments. Most of the provisions in Parts 12 to 18 are expressed to apply to a 'law'. This term is used in parts 16 to 18 and is defined in each of those parts to mean an Act, a subordinate law (defined in the *Legislation Act 2001*, s 8), a disallowable instrument (defined in the *Legislation Act 2001*, s 9) or a provision of Act, a subordinate law or a disallowable instrument. The term 'law' is also used with the same meaning in proposed sections 133 to 135 (see the def of ***law*** in s 125). The effect is that the provisions of the *Legislation Act 2001* that are expressed to apply to a 'law' will apply to a slightly narrower range of instruments than the corresponding provision of the *Interpretation Act 1967*. A smaller number of provisions of the *Legislation Act 2001* (see s 126 to 132 and ch 15) are expressed to apply to Acts and 'statutory instruments' (a term defined in the *Legislation Act 2001*, s 13). The effect of the definition of statutory instrument is that these provisions of the *Legislation Act 2001* will have substantially the same application as the corresponding provision of the *Interpretation Act 1967*.

Section 182 Meaning of law—ch 17

(A2001-56)

A2001-56 inserted s 182 (prev s 185). The explanatory note is as follows:

For s 185 Meaning of *law* in ch 17

This section defines law for chapter 17.

(A2002-11)

A2002-11 renumbered as s 182.

(A2003-56)

A2003-56 substituted s 182. The explanatory note is as follows:

> This amendment includes all statutory instruments in the definition of ***law*** for chapter 17 (Entities and positions). This means that the provisions of the chapter will apply to entities and positions established by statutory instruments that are not subordinate laws or disallowable instruments. For example, the chapter will apply to entities and positions established by notifiable instruments, eg notifiable instruments under the *Public Sector Management Act 1994*, section 13 (Constitution of administrative units).

(A2005-20)

A2005-20 amended s 182. The explanatory note is as follows:

> This amendment revises the definition to omit unnecessary words. Under the definitions of ***Act*** and ***statutory instrument*** in sections 7 and 13, a reference to an Act or statutory instrument includes a reference to a provision of the Act or instrument. The amendment also inserts a note to this effect.

Section 183 Change of name of entity

(A2001-56)

A2001-56 inserted s 183 (prev s 187). The explanatory note is as follows:

> **For s 187 Change of name of entity**
>
> This section applies to an 'entity'. This term has a wide meaning (see the *Legislation Act 2001*, dict, pt 1, def of ***entity***) but in this context would be mainly relevant to a corporation or committee established under a law. Section 187 applies if an entity has its name changed by a law. Section 187 (2) makes it clear that the change of name does not affect the identity of the entity; in other words, despite the change of name, the law regards it as the same entity. Section 187 (3) avoids any inconvenience that might arise if older laws refer to the entity under its previous name; until the laws are brought up-to-date, these references are to be read as if they mentioned the new name of the entity. This section should be compared with section 190 which applies to positions. The section reproduces the effect of the *Interpretation Act 1967*, section 13B so far as it relates to entities. The section is expressed to apply to a 'law' (a term defined in the *Legislation Act 2001*, section 185)—see the General explanatory note for ch 12 to ch 18.

(A2002-11)

A2002-11 renumbered as s 183.

(A2003-56)

A2003-56 amended s 183 (3). The explanatory note is as follows:

> This amendment is consequential on the revised definition of ***law*** in section 182.

(A2005-20)

A2005-20 substituted s 183. The explanatory note is as follows:

> Existing section 183 deals with the effect of a change of the name on the status of an entity established under an ACT law. The section also deals with the operation of references in ACT laws to the entity by its previous name. The amendment remakes the section to deal with the operation of references in ACT laws to an entity that is not established under ACT law. The remade section will, for example, deal with references in ACT laws to an entity established under a Commonwealth law by a previous name.

Section 184 Change in constitution of entity

(A2001-56)

A2001-56 inserted s 184 (prev s 188). The explanatory note is as follows:

> **For s 188 Change in constitution of entity**
>
> This section applies to an 'entity'. This term has a wide meaning (see the *Legislation Act 2001*, dict, pt 1, def of ***entity***) but in this context would be mainly relevant to a corporation or committee established under a law. Section 188 applies where an entity has its constitution changed by a law. In this context, 'constitution' comprehends the widest possible range of changes to the way an entity is established. A change might involve, for example, changing the entity so that it ceases to be a corporation constituted by 1 person and becomes a corporation constituted another way (or vice versa), or perhaps becomes a statutory body that is not a corporation (or vice versa). Other possible changes could be increasing or reducing the number of members of a statutory body or changing some or all of the members to full-time members or part-time members. Whatever the nature of the change, section 188 (2) provides that the change does not affect the identity of the entity; in other words, despite the change to its constitution, the law regards it as the same entity. Section 188 (3) illustrates some aspects or activities of the entity that are not affected by the change. This section reproduces the effect of the *Interpretation Act 1967*, section 13BA. The section is expressed to apply to a 'law' (a term defined in the *Legislation Act 2001*, section 185)—see the General explanatory note for ch 12 to ch 18.

(A2002-11)

A2002-11 renumbered as s 184.

Section 184A References to entity

(A2005-20)

A2005-20 inserted s 184A. The explanatory note is as follows:

> This amendment inserts a new section to make it clear that a reference in an ACT law to an entity established otherwise than under ACT law includes a reference to a person exercising a function of the entity, whether under a delegation, subdelegation or otherwise. The Legislation Act, section 239 (2) already deals with delegates and subdelegates of entities established under ACT law. The amendment complements the amendments of section 185.

Section 185 References to occupant of position

(A2001-56)

A2001-56 inserted s 185 (prev s 189). The explanatory note is as follows:

> **For s 189 References to occupant of position**
>
> The idea behind section 189 is that if an Act refers to a particular position as, for example, 'the registrar', the reference is not limited to the person who occupied the position (ie the person who was registrar) when the Act came into operation but includes whichever person is occupying the position whenever the question arises. This section reproduces the effect of the *Interpretation Act 1967*, section 25 and is expressed to apply to an Act or a statutory instrument (a term defined in the *Legislation Act 2001*, s 13)—see the General explanatory note for ch 12 to ch 18.

(A2002-11)

A2002-11 renumbered as s 185.

(A2003-56)

A2003-56 amended s 185. The explanatory note is as follows:

> This amendment is consequential on the revised definition of ***law*** in section 182.

(A2005-20)

A2005-20 inserted s 185 (2) and consequentially renumbered the section. The explanatory notes are as follows:

> This amendment is consequential on the insertion of new section 185 (2) by another amendment.
>
> This amendment makes it clear that section 185 (which is about the meaning of references to the occupant of a position) applies to all positions and not just positions established under ACT law. Although section 185 is presently expressed in sufficiently general terms to cover all positions, it

is arguable that, because of the Legislation Act, section 122 (1) (b), the section only applies to positions in or for the Territory. On this basis, the section may not, for example, presently apply to references in ACT law to positions established under Commonwealth law eg the commissioner of police or chief police officer. The amendment will remove any doubt that the section applies to all references in ACT law to the occupants of positions, whether or not the positions are established under ACT law.

Section 186 Change of name of position

(A2001-56)

A2001-56 inserted s 186 (prev s 190). The explanatory note is as follows:

For s 190 Change of name of position

This section applies if a position has its name changed by a law. A position might be created directly by a law or as a result of action taken under a law (see the *Legislation Act 2001*, dict, pt 1, defs of ***statutory office holder*** and ***under***). Section 190 (2) makes it clear that the change of name does not affect the identity of the position; in other words, despite the change of name, the law regards it as the same position. Section 187 (3) avoids any inconvenience that might arise if older laws refer to the position under its previous name; until the laws are brought up-to-date, these references are to be read as if they mentioned the new name of the position. This section should be compared with section 187 which applies to entities. This section reproduces the effect of the *Interpretation Act 1967*, section 13B so far as it relates to positions. The section is expressed to apply to a 'law' (a term defined in the *Legislation Act 2001*, section 185)—see the General explanatory note for ch 12 to ch 18.

(A2002-11)

A2002-11 renumbered as s 186.

(A2003-56)

A2003-56 amended s 186 (3). The explanatory note is as follows:

This amendment is consequential on the revised definition of ***law*** in section 182.

(A2005-20)

A2005-20 substituted s 186. The explanatory note is as follows:

Existing section 186 deals with the effect of a change of the name on the status of a position established under an ACT law. The section also deals with the operation of references in ACT laws to the position by its previous name. The amendment remakes the section to deal with the operation of references in ACT laws to a position that is not established under ACT law. The remade section will, for example, deal with references in ACT laws to a position established under a Commonwealth law by a previous name.

Section 187 Chair and deputy chair etc

(A2001-56)

A2001-56 inserted s 187 (prev s 191). The explanatory note is as follows:

> **For s 191 Chairperson and deputy chairperson**
>
> Section 191 (1) gives wide flexibility to the way the person presiding at meetings of entities may be addressed (as to the meaning of 'entity', see the *Legislation Act 2001*, dict, pt 1, def of ***entity***). Section 191 (1) provides that the person presiding may be addressed as 'chairman', 'chairwoman' or 'chair'. Section 191 (2) makes similar provision for the deputy of the person presiding. The section reproduces the effect of the *Interpretation Act 1967*, section 25A and is expressed to apply to a 'law' (a term defined in the *Legislation Act 2001*, s 185)—see the General explanatory note for ch 12 to ch 18.

(A2002-11)

A2002-11 renumbered as s 187.

(A2005-20)

A2005-20 substituted s 187. The explanatory note is as follows:

> This amendment updates the provision to allow for laws that establish a position of 'chair' or 'deputy chair'.

Chapter 18 Offences

(A2002-11)

A2002-11 inserted chapter 18. The general explanatory note is as follows:

> Outline of proposed chapter 18
>
> 121 Clause 22 provides for a new chapter 18 that would include a number of sections relocated from the Interpretation Act.

Section 188 Meaning of ACT law—ch 18

(A2002-11)

A2002-11 inserted s 188. The explanatory statement provides:

> Proposed section 188 Meaning of ***Territory law*** in ch 18
>
> 122 Proposed section 188 defines law for the chapter to restrict it to an Act or a subordinate law, or a provision of an Act or subordinate law.

(A2005-20)

A2005-20 substituted s 188. The explanatory note is as follows:

> This amendment changes the defined term from ***territory law*** to ***ACT law*** for consistency with the equivalent defined term proposed for chapter 10 by another amendment. The replacement definition has been simplified by omitting unnecessary words.

Section 189 Reference to offence includes reference to related ancillary offences

(A2002-11)

A2002-11 inserted s 189. The explanatory statement provides:

> Proposed section 189 Reference to offence includes reference to related ancillary offences
>
> 123 Most offences are expressed to prohibit what might be called a 'core' offence, for example, stealing, making a false statement or discharging a prohibited substance into the environment. Around these core offences there is a wider range of conduct that the law also seeks to prohibit, for example *attempting* to steal, *inciting* a person to make a false statement or *aiding and abetting* (that is, assisting) in the discharge of a prohibited substance into the environment. These wider activities are often referred to as 'ancillary' offences. It would, for example, be possible to create an offence in the terms "A person who steals, attempts to steal or aids and abets another person to

steal is guilty of an offence'. Indeed, at one time offences were sometimes cast in terms similar to these. It is obvious, however, that the repetition of the ancillary offences for each core offence not only adds many words to the legislation but also tends to conceal the focus of the provision, namely, the core offence itself.

124 For these reasons the *Crimes Act 1900*, part 9 creates a number of ancillary offences dealing with such things as attempts (section 182), incitement (section 183) and aiding and abetting (section 180). But in creating these offences part 9 adopts 2 different approaches. In some cases, for example attempts, the ancillary offence is equated with the core offence. In other words, a person who is convicted of an attempt is dealt with as if the core offence had been committed. One consequence of this is that a person who attempts to commit an offence against an Act commits an offence against the Act itself. In other cases, however, the offence is not against the Act creating the core offence but against the Crimes Act. Incitement is an example of this.

125 In most cases, the fact that some offences under the Crimes Act, part 9 are offences against the Crimes Act itself does not cause any problems. There are some situations, however, where legislation can be simplified if the ancillary offences against the Crimes Act are dealt with as if they were offences against the Act creating the relevant core offence. For example, the *Building Act 1972*, section 63B (Conduct of directors, servants and agents) contains a number of rules to link the criminal conduct of individuals (such as directors and employees of a corporation) acting in the course of their duties with the corporation they are associated with. For this purpose the rules in section 63B refer to 'an offence against this Act'. As we have already noted, however, some significant criminal acts committed in relation to the Building Act would not be an offence against that Act but against the Crimes Act, part 9. The fact that a director or employee of a corporation in the course of their duties with the corporation may have been an accessory after the fact, or engaged in incitement or conspiracy, is obviously relevant to the conduct of the corporation.

126 Proposed section 189 therefore provides that references such as those in the Building Act, section 63B are taken to include ancillary offences against the Crimes Act, part 9.

(A2002-51)

A2002-51 amended s 189 by replacing references to ancillary offences with references to other ancillary offences and substituted the example and note. The general explanatory note for schedule 1 and the explanatory note for part 1.12 is as follows:

The Schedule contains minor consequential amendments to relevant legislation arising from the enactment of the provisions of the Code.

Part 1.12 amends provisions of the Legislation Act 2001 by replacing references to the ancillary offences in Part 9 of the Crimes Act (that is attempt and conspiracy etc) with references to the ancillary offences in Part 2.4 of the Code and section 181 (accessory after the fact) of the Crimes Act (which is not being repealed). An example is also provided, and a definition of the Criminal Code is inserted in the dictionary of the Legislation Act.

(A2005-20)

A2005-20 amended s 189 by replacing references to 'territory law' with 'ACT law'. The explanatory note is as follows:

> This amendment is consequential on the use of the defined term ACT law rather than the defined term territory law.

(A2005-53)

A2005-53 amended s 189 by replacing a reference to the *Crimes Act 1900*, s 181 (Accessory after the fact) with the equivalent codified offence, section 717 (Accessory after the fact). The general explanatory statement for schedule 1 is as follows:

> **Schedule 1 Consequential amendments**
>
> This schedule will amend a total of 30 Acts and Regulations, primarily to remove offences (including the offences in the Crimes Act) that will become redundant because of the new codified offences in chapter 7. The schedule will also make a number of minor consequential amendments that are necessary because of the offences that have been repealed from the various Acts referred to in the schedule. In addition, the schedule will insert a declaration in a number of Acts to clarify the operation of chapter 7 with respect to those Acts (see, for example, items 1.23 and 1.62 of the schedule and the commentary to clause 701). Also, in accordance with current criminal law policy, the schedule will insert a standard form immunity in Acts where the privilege against self-incrimination is abrogated but no immunity has been provided (see items 1.73, 1.78. 1.104, 1.115 and 1.143).

Section 190 Indictable and summary offences

(A2002-11)

A2002-11 inserted s 190. The explanatory statement provides:

> Proposed section 190 Indictable and summary offences
>
> 127 Proposed section 190 replaces Interpretation Act, section 136. The legal system of the ACT recognises 2 kinds of offences: indictable offences (generally, serious offences that are heard before a judge and jury) and summary offences (generally, less serious offences that are heard before a magistrate). Proposed section 190 (1) defines an indictable offence as either an offence punishable by imprisonment for longer than 1 year or declared by law to be indictable. The provision for an offence to be declared to be indictable reflects the fact that some serious offences that are not punishable by imprisonment may provide for fines of such magnitude that it is appropriate that they be dealt with before a judge and jury. Proposed section 190 (2) defines a summary offence as any other offence. In other words, an offence punishable by imprisonment for not longer than 1 year or not declared by law to be indictable. The terms ***indictable offence*** and ***summary offence*** are provided for as signpost definitions in the dictionary, part 1. This means that the definitions in proposed section 190 will apply across the statute book (see Legislation Act, section 144).

(A2003-56)

A2003-56 inserted s 190 (1A) to expressly clarify the meaning of ***indictable offence*** and consequentially renumbered the subsections. The explanatory note is as follows:

> This amendment clarifies the scope of the meaning of ***indictable offence*** by expressly providing that an indictable offence includes an indictable offence that is or may be dealt with summarily.

(A2005-20)

A2005-20 amended s 190 (1) (b) by replacing references to 'law' with 'ACT law'. The explanatory note is as follows:

> This amendment ensures that the definition of ***ACT law*** proposed for section 188 applies to the paragraph.

(A2008-44)

A2008-44 substituted s 190 (1) to amend the definition of indictable offence. The explanatory statement is as follows:

> **Clause 1.62- Section 190 (1)**
>
> This clause amends the definition of indictable offence so that it now refers to an offence carrying more than 2 years' imprisonment. The purpose of this amendment is to increase the jurisdiction of the Magistrates Court by increasing the number of matters that are summary offences. It is intended that this reflect the ability of Magistrates to deal professionally with such matters, and that it reduce the number of minor matters that are committed to the Supreme Court to be dealt with.

Section 191 Offences against 2 or more laws

(A2002-11)

A2002-11 inserted s 191. The explanatory statement provides:

> Proposed section 191 Offences against 2 or more laws
>
> 128 Proposed section 191 replaces Interpretation Act, section 33F. It deals with the situation where an act or omission is an offence against 2 or more laws. The proposed section provides that a person cannot be punished twice for a single act or omission. Proposed section 191 (1) deals with cases where each of the laws in question is a Territory law. Proposed section 191 (2) provides for cases where the act or omission is an offence against both a Territory law and a law of another jurisdiction (the Commonwealth, a State, another Territory or New Zealand).

(A2005-20)

A2005-20 amended s 191 (1), (2) (a) and (2) by replacing references to 'territory law' with 'ACT law'. It also omitted s 191 (3).The explanatory notes are as follows:

> This amendment is consequential on the use of the defined term ***ACT law*** rather than the defined term ***territory law***.
>
> This amendment omits a subsection that contains a definition made redundant by the definition of ***another jurisdiction*** inserted into the dictionary, part 2 by another amendment.

Section 192 When must prosecutions begin?

(A2002-11)

A2002-11 inserted s 192. The explanatory statement provides:

> ### Proposed section 192 When must prosecutions begin
>
> 129 Proposed section 192 replaces *Interpretation Act 1967*, section 33H. The proposed section provides time limits for bringing prosecutions for offences. The offences mentioned in proposed section 192 (1) may be prosecuted at any time. Any other offence may be prosecuted within 1 year after the day of commission of the offence (see proposed section 192 (2) (a)). But if a Territory law makes special provision about when a prosecution may be brought (whether longer or shorter than 1 year), the period specially provided applies (see proposed section 192 (2) (b)). The time limits that apply under proposed section 192 (2) will be affected, however, if there has been an inquest or inquiry into a matter that relates to an offence. In that case, the period of 1 year to bring the prosecution begins to run when the coroner's report is made or the report of an inquiry or royal commission is given to the Chief Minister. The time limits in proposed section 192 are identical to the time limits presently applying under Interpretation Act, section 33H.

(A2002-11, government amendment 2)

Government amendment 2 amended proposed new s 192 (3) by omitting 'relates to' and substituting 'discloses or is otherwise found to relate to'. The supplementary explanatory statement provides:

> **Amendment 2**
>
> This amendment is proposed in response to comments of the Standing Committee on Legal Affairs about proposed section 192 (3). The Government is moving the amendment to put the meaning of the provision beyond doubt.

(A2002-51)

A2002-51 substituted s 192 (4) (a). A2002-51 also amended the dictionary, part 1 by inserting a definition of ***Criminal Code***. The general explanatory notes are as follows:

> The Schedule contains minor consequential amendments to relevant legislation arising from the enactment of the provisions of the Code.
>
> Part 1.12 amends provisions of the Legislation Act 2001 by replacing references to the ancillary offences in Part 9 of the Crimes Act (that is attempt and conspiracy etc) with references to the ancillary offences in Part 2.4 of the Code and section 181 (accessory after the fact) of the Crimes Act (which is not being repealed). An example is also provided, and a definition of the Criminal Code is inserted in the dictionary of the Legislation Act.

(A2004-32)

A2004-32 substituted s 192 (1). The explanatory statement provides an overview of the amendment and a specific explanation as follows:

> *Legislation Act 2001*
> The amendment to section 192 varies when a prosecution may be commenced against a corporation or a person who aids and abets a corporation. Presently offences with a maximum penalty below 150 penalty units must be commenced within 12 months of the offence. This can have an anomalous effect because many offences, including offences in the Criminal Code 2002, provide for a maximum penalty of 100 penalty units or imprisonment for one year. This means for an individual a prosecution can be commenced at any time but for a corporation (and individuals who aid and abet a corporation) the prosecution must begin within 12 months. This amendment places the parties on a more equal footing.
>
> **Clause 32 – When must prosecutions begin? Section 192 (1)** – provides a new section 192 (1) that states that a prosecution for an offence against a Territory law may be begun at any time if the offence attracts a maximum penalty for more than six months imprisonment (for individuals), or a fine of more than 100 penalty units (for corporations or individuals that aid and abet a corporation), or an offence against the Criminal Code, section 321 (Minor theft).

(A2005-5)

A2005-5 substituted s 192 (1) (b), (c) and (d). The explanatory statement provides an overview of the amendment and a specific explanation as follows:

Legislation Act 2001

> Section 192 of the *Legislation Act 2001* deals with the question of when a prosecution may begin and provides at paragraph (1)(d) that a prosecution for an offence against section 90 (minor theft) of the *Crimes Act 1900* may begin at any time. The provision is no longer required, given the provisions of section 321 of the Criminal

Code 2002 and the decision of the full Federal Court in *Lawson v Gault* [2002] FCAFC 191.

Paragraph 192(1)(d) was inserted into the Legislation Act before the Federal Court decision in *Lawson v Gault*. At that time, there was no offence which a person could be charged with who had stolen less than $1,000 but whose theft was not discovered for a year or more. Both *Lawson v Gault* and subsection 321(3) of the Criminal Code resolve this difficulty and accordingly, paragraph 192(1)(d) is now redundant. The provision being repealed will continue to apply to offences committed prior to the commencement of the Criminal Code provisions.

As a consequence of the amendment to the word “indictment” in the *Confiscation of Criminal Assets Act 2003*, amendments to the *Legislation Act 2001* have also been prepared to clarify that an indictment presenting a charge of an indictable criminal offence against an accused to the Supreme Court also contemplates an information about any offence against an accused presented to the Magistrates Court.

An amendment was recently made to section 192 of the *Legislation Act 2001*, which intended to place the three categories covered by the section on an equal footing, however it is still the case after the amendment that a prosecution at any time of an offence with a penalty of 100 penalty units is statute-barred against a corporation and an individual who aids and abets a corporation but not against an individual. To ensure that each category under the section is treated equally, section 192 is amended by substituting “more than 100 penalty units” with “100 penalty units or more” at paragraphs (1)(b) and (1)(c).

Section 81 of the Legislation Act is frequently relied on to support transitional administrative arrangements between old and new legislative schemes. However, there is some doubt about the operation of the section in relation to the performance of anticipatory administrative functions to be carried out in relation to entities (such as statutory corporations) that are not yet technically in existence because the establishing legislation has not yet commenced. To remove any doubt, section 81 is amended to expressly extend its operation to cases where powers are to be exercised in relation to entities established under laws that are notified but not yet commenced.

Clause 27 When must prosecutions begin? - Section 192 (1) (c) and (d)

Clause 27 repeals paragraph at 192 (1) (d) as it is now redundant and inserts a full stop at the end of paragraph 192 (1) (c). The clause also amends section 192 by substituting the words “more than 100 penalty units” with “100 penalty units or more” at paragraphs (1)(b) and (1)(c).

(A2005-20)

A2005-20 amended s 192 by replacing references to ‘territory law’ with ‘ACT law’. The explanatory note is as follows:

This amendment is consequential on the use of the defined term ***ACT law*** rather than the defined term ***territory law***.

(A2005-53)

A2005-53 amended s 192 (4) by substituting the definition of ***aiding and abetting offence***. The general explanatory statement for schedule 1 is as follows:

> **Schedule 1 Consequential amendments**
>
> This schedule will amend a total of 30 Acts and Regulations, primarily to remove offences (including the offences in the Crimes Act) that will become redundant because of the new codified offences in chapter 7. The schedule will also make a number of minor consequential amendments that are necessary because of the offences that have been repealed from the various Acts referred to in the schedule. In addition, the schedule will insert a declaration in a number of Acts to clarify the operation of chapter 7 with respect to those Acts (see, for example, items 1.23 and 1.62 of the schedule and the commentary to clause 701). Also, in accordance with current criminal law policy, the schedule will insert a standard form immunity in Acts where the privilege against self-incrimination is abrogated but no immunity has been provided (see items 1.73, 1.78. 1.104, 1.115 and 1.143).

(A2005-62)

A2005-62 amended s 192 (2) and (3). The explanatory notes are as follows:

> This amendment makes it clear that a prosecution for an offence to which section 192 (2) applies may be begun on the day the offence is committed. The amendment also brings the language of the subsection into line with current drafting practice (see Legislation Act, s 146).
>
> This amendment makes it clear that a prosecution for an offence to which section 192 (2) applies may be begun on the day the relevant report is made or given.

(A2007-16)

A2007-16 substituted s 192 (1) (b)and (c) and inserted a new definition of ***prescribed fine***. The explanatory notes are as follows:

> This amendment is related to the amendment below. It changes the reference to 'a fine of 100 penalty units or more' in each paragraph to 'a prescribed fine'.
>
> This amendment follows on from the amendment above. The value of a penalty unit for an offence is $100 if the person charged is an individual and $500 if the person charged is a corporation (see Legislation Act, s 133). The amendment applies section 192 (1) (b) and (c) to an offence in relation to a corporation if the penalty for the offence is expressed, in dollars, as being $50 000 or more (which is equivalent in value to the 100 penalty units mentioned in the existing paragraphs). The amendment is made to deal with 2 main possibilities. First, that a penalty in a law of another jurisdiction that is applied by an ACT law has a fine expressed as an amount of money. Second, that legislation expresses a fine as an amount of money as part of implementing a uniform law.

Section 193 Continuing offences

(A2002-11)

A2002-11 inserted s 193. The explanatory statement provides:

Proposed section 193 Continuing offences

130 Proposed section 193 reenacts Interpretation Act, section 33B (2) in clearer language. It provides for a continuing offence for a failure to do something if—

- the thing is required to be done under a law within a particular period or before a particular time; and
- failure to comply with the requirement is an offence against the law.

Although the deadline for compliance has passed, the person who failed to meet the deadline continues to be required to do the thing. In the meantime, the person commits a fresh offence for each day that the thing remains undone.

(A2005-20)

A2005-20 amended s 193 (1) (a) by replacing references to 'a law' with 'an ACT law'. The explanatory note is as follows:

This amendment ensures that the definition of ***ACT law*** proposed for section 188 applies to the paragraph.

Chapter 19 Administrative and machinery provisions

(A2001-56)

A2001-56 inserted chapters 12-18. The general explanatory note is as follows:

General explanatory note for ch 12 to ch 18

The amendments of the *Legislation Act 2001* relocate to that Act the bulk of the provisions in the *Interpretation Act 1967*. Most of these provisions will be located in new chapters 12 to 18. As with earlier revisions of these kinds of provisions, the opportunity has been taken, wherever practicable, to restate, restructure and rearrange provisions to improve their clarity and accessibility.

Most of the provisions of the *Interpretation Act 1967* are expressed to apply to 'an Act' but they apply also to subordinate laws, disallowable instruments and instruments of an administrative nature because of the *Subordinate Laws Act 1989*, sections 9 and 10 (which will be repealed when the *Legislation Act 2001* commences). The provisions of the *Legislation Act 2001*, on the other hand, indicate on their face their application to laws and instruments. Most of the provisions in Parts 12 to 18 are expressed to apply to a 'law'. This term is used in parts 16 to 18 and is defined in each of those parts to mean an Act, a subordinate law (defined in the *Legislation Act 2001*, s 8), a disallowable instrument (defined in the *Legislation Act 2001*, s 9) or a provision of Act, a subordinate law or a disallowable instrument. The term 'law' is also used with the same meaning in proposed sections 133 to 135 (see the def of ***law*** in s 125). The effect is that the provisions of the *Legislation Act 2001* that are expressed to apply to a 'law' will apply to a slightly narrower range of instruments than the corresponding provision of the *Interpretation Act 1967*. A smaller number of provisions of the *Legislation Act 2001* (see s 126 to 132 and ch 15) are expressed to apply to Acts and 'statutory instruments' (a term defined in the *Legislation Act 2001*, s 13). The effect of the definition of statutory instrument is that these provisions of the *Legislation Act 2001* will have substantially the same application as the corresponding provision of the *Interpretation Act 1967*.

While A2001-56 inserted this chapter as chapter 18 the chapter was renumbered as chapter 19 by A2002-11, s 24.

Part 19.1 Introductory

Section 195 Meaning of law—ch 19

(A2001-56)

A2001-56 inserted s 195. The explanatory note is as follows:

For s 195 Meaning of *law* in ch 18

This section defines law for chapter 18.

(A2005-20)

A2005-20 substituted the definition of *law* in s 195. The explanatory note is as follows:

> This amendment revises the definition to omit unnecessary words. Under the definitions of ***Act***, ***subordinate law*** and ***disallowable instrument*** in sections 7 to 9, a reference to an Act, subordinate law or disallowable instrument includes a reference to a provision of the Act, law or instrument. The amendment also inserts a note to this effect.

Part 19.2 Functions

Section 196 Provision giving function gives power to exercise function

(A2001-56)

A2001-56 inserted s 196. The explanatory note is as follows:

> **For s 196 Provision giving function gives power to exercise function**
>
> This section applies to an 'entity'. This term has a wide meaning (see the *Legislation Act2001*, dict, pt 1, def of ***entity***) but in this context would be mainly relevant to a corporation or committee established under a law, or the occupant of a position. Section 196 applies if an entity is given a function by law (the note at the beginning of the part indicates that a 'function' includes an authority, duty or power). Section 196 (1) provides that the giving of a function also gives the powers necessary and convenient to exercise the function. The subsection removes the need to include in the law creating the entity an additional power to do all things 'necessary and convenient' to exercise the function. Section 196 (2) makes it clear that the powers given to the entity under subsection 25B (1) are additional to other powers that it or the person has under law. The section reproduces the effect of the *Interpretation Act 1967*, section 25B and, as indicated, is expressed to apply to a 'law' (a term defined in the *Legislation Act 2001*, s 195)—see the General explanatory note for ch 12 to ch 18.

Section 197 Statutory functions may be exercised from time to time

(A2001-56)

A2001-56 inserted s 197. The explanatory note is as follows:

> **For s 197 Statutory functions may be exercised from time to time**
>
> This section applies to an 'entity'. This term has a wide meaning (see the *Legislation Act 2001*, dict, pt 1, def of ***entity***) but in this context would be mainly relevant to a corporation or committee established under a law, or the occupant of a position. Section 197 applies if an entity is given a function by law (the note at the beginning of the part indicates that a 'function' includes an authority, duty or power). Section 197 (1) makes it clear, that as a general rule, a function may be exercised again and again. In the absence of this section, it might be arguable that a single

exercise of a power exhausts the power. Section 197 (2) indicates that the operation of the section may be displaced by a 'contrary intention'; certain kinds of powers, for example, to commence the operation of an Act, may only be exercised once. The section reproduces the effect of *Interpretation Act 1967*, section 26(1) and, as indicated, is expressed to apply to a 'law' (a term defined in the *Legislation Act 2001*, s 195)—see the General Explanatory Note to chs 12 to 18 (above).

(A2002-11)

A2002-11 renumbered the provisions and omitted s 197 (2). The explanatory statement provides:

141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections). Other kinds of amendments are outlined in the following paragraphs.

(A2005-20)

A2005-20 renumbered a cross reference in the note. The explanatory note is as follows:

This amendment is consequential on the renumbering of section 42 (2) and (3) by another amendment.

Section 199 Functions of bodies

(A2001-56)

A2001-56 inserted s 199. The explanatory note is as follows:

For s 199 Functions of bodies

This section applies to a 'body' (for example, a corporation or committee established under a law—see the *Legislation Act 2001*, dict, pt 1, def of ***body***). The section lays down a number of rules about how the functions of bodies may be exercised (the note at the beginning of the part indicates that a 'function' includes an authority, duty or power). Section 199 (1) makes it clear that a body may exercise its functions by resolution. Section 199 (2) provides for a signature of the body. Section 199 (3) provides, in effect, that changes in the constitution of a body do not affect the exercise of its functions. Section 199 (4) is related to section 199 (3) in that it allows the functions of the body to be exercised even though there may be vacancies in its membership. The subsection is, of course, subject to any special quorum requirements for the exercise of the functions. Section 199 (5) provides that changes in the membership of a body do not affect an earlier exercise of functions when the body was differently constituted. Similarly, section 199 (6) enables a body to end or change something done at an earlier time when the body was differently constituted. The section reproduces the effect of the *Interpretation Act 1967*, section 13BB and is

expressed to apply to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see the General explanatory note for ch 12 to ch 18.

(A2002-11)

A2002-11 renumbered the provisions and inserted a new example and subsection (s 199 (4A)). The explanatory statement provides:

Amendment of s 199 (3)
167 This amendment inserts a new example to illustrate the operation of the subsection.

Amendment of s 199, new s 199 (4A)
168 This amendment includes a subsection to make it clear that section 199 (3) and (4) do not affect any quorum requirement applying to a body. The new subsection also includes an example of its operation.

(A2003-41)

A2003-41 inserted s 199 (1A) and provided for renumbering. The explanatory note is as follows:

This amendment makes it clear that, if a function must or may be exercised in writing, the function may be exercised by the body by resolution.

A2003-41 also inserted ‘the effect of’ in s 199 (7). The explanatory note is as follows:

This amendment clarifies the provisions.

Section 200 Functions of occupants of positions

(A2001-56)

A2001-56 inserted s 200. The explanatory note is as follows:

For s 200 Functions of occupants of positions

Section 200 (1) makes it clear that if an Act gives a function to the holder of a particular position, any person who occupies the position may exercise the function. Section 200 (1) complements section 189 and reproduces the effect of the *Interpretation Act 1967*, section 26 (2). Section 200 (2) provides that, if the person holding a position changes, the change does not affect an earlier exercise of functions by the person. Similarly, section 200 (3) enables the holder of a position to end or change something done at an earlier time when the position was occupied by a different person. Section 200 (2) and (3) is an adaptation of the *Interpretation Act 1967*, section 30AA that applied to delegations. Section 200 is expressed to apply to a ‘law’ (a term defined in the *Legislation Act 2001*, s 195)—see the General explanatory note for ch 12 to ch 18.

Part 19.3 Appointments

Division 19.3.1 Appointments—general

Section 205 Application—div 19.3.1

(A2001-56)

A2001-56 inserted s 205. The explanatory note is as follows:

For s 205 Application of div 18.3.1

This section provides for the division (sections 205 to 211) to apply if an entity has power to appoint a person to a position (an 'entity' includes a person such as an individual or a corporation and a body such as an unincorporated statutory committee, see *Legislation Act 2001*, dict, pt 1, def of ***entity***). The part applies to a 'law' (a term defined in the *Legislation Act 2001*, s 195)—see the General explanatory note for ch 12 to ch 18.

(A2002-11)

A2002-11 omitted s 205 (2). The explanatory statement provides:

141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections). Other kinds of amendments are outlined in the following paragraphs.

Section 206 Appointments must be in writing etc

(A2001-56)

A2001-56 inserted s 206. The explanatory note is as follows:

For s 206 Appointment must be in writing etc

Section 206 requires that an appointment must be made, or evidenced, by writing. No particular form of writing is required. Apart from a formal document of appointment, an Executive notification or a letter to the person who is to be appointed, advising that the person is appointed, would be sufficient. The section reproduces the effect of the *Interpretation Act 1967*, section 28 (7) and applies to a 'law' (a term defined in the *Legislation Act 2001*, s 195)—see the General explanatory note for ch 12 to ch 18.

(A2002-11)

A2002-11 remade s 206. The explanatory statement provides:

> ***Clause 24***
> 132 This clause remakes Legislation Act, section 206 to provide that, if a law provides for a maximum or minimum period of appointment, the instrument of appointment must state the period for which the appointment is made. The remade section will remove the need to include a provision to this effect in every law that provides for a maximum or minimum period of appointment

Section 207 Appointment may be by name or position

(A2001-56)

A2001-56 inserted s 207. The explanatory note is as follows:

> **For s 207 Appointment may be by name or position**
>
> This section is concerned with the description that is required of the person who is to be appointed (the ***appointee***). Section 207 indicates that the appointee may be described by mentioning the name of the appointee or mentioning a position held by the appointee. It is not uncommon for administrative arrangements to require that the person who occupies a particular public service position should occupy a particular position established by an Act (the ***statutory position***). To give effect to these arrangements, it would be possible to name the occupant of the public service position in the appointment to the statutory position. However, if the appointee ceased for any reason to occupy the public service position, a further appointment would be necessary. To avoid unnecessary paperwork, it is simpler to name the public service position in the appointment rather than a named person. The section reproduces the effect of the *Interpretation Act 1967*, section 28 (2) and applies to a 'law' (a term defined in the *Legislation Act 2001*, s 195)—see section 205 and the General explanatory note for ch 12 to ch 18.

Section 208 Power of appointment includes power to suspend etc

(A2001-56)

A2001-56 inserted s 208. The explanatory note is as follows:

> **For s 208 Power of appointment includes power to suspend etc**
>
> The effect of section 208 is that the power to make an appointment carries with it a number of related powers. These are, at the end of the appointment, reappoint the person (the ***appointee***); during the term of the appointment, suspend the appointee (and later lift the suspension) or end the appointment and reappoint the appointee or someone else. There is, however, a qualification on the power to suspend the appointee or end of the appointment: any procedural requirements or substantive grounds that needed to be satisfied in making the appointment also need to be

complied with before suspending the appointee or ending of the appointment. For another power included in a power of appointment, see also section 209. The section reproduces the effect of the *Interpretation Act 1967*, section 28 (3) to (5) and applies to a 'law' (a term defined in the *Legislation Act 2001*, s 195)—see section 205 and the General explanatory note for ch 12 to ch 18.

(A2005-20)

A2005-29 substituted s 208 (2). The explanatory note is as follows:

Section 208 provides that the power to appoint a person includes the power to suspend the person, end the person's appointment or reappoint the person. It also provides that the power to suspend or end the appointment is exercisable in the same way and subject to the same conditions as the power to make the appointment. This amendment will extend the section so that the power to reappoint a person will also be exercisable in the same way and subject to the same conditions as the power to make the appointment. The example is consequentially updated.

Section 209 Power of appointment includes power to make acting appointment

(A2001-56)

A2001-56 inserted s 209. The explanatory note is as follows:

For s 209 Power of appointment includes power to make acting appointment

The effect of section 209 (1) is that the power to make an appointment to a position carries with it the power to appoint someone to act in the position. Section 209 (2) qualifies the power to make an acting appointment: any procedural requirements or substantive grounds that needed to be satisfied in making the appointment also need to be complied with before making the acting appointment. Section 209 (3) also provides that if a qualification or other special requirement must be complied with in making a substantive appointment to the position, the requirement must also be satisfied in making an acting appointment. For another power included in a power of appointment, see also section 208. Section 209 reproduces the effect of the *Interpretation Act 1967*, section 28 (4) to (6) and applies to a 'law' (a term defined in the *Legislation Act 2001*, s 195)—see section 205 and the General explanatory note for ch 12 to ch 18.

Section 210 Resignation of appointment

(A2001-56)

A2001-56 inserted s 210. The explanatory note is as follows:

For s 210 Resignation of appointment

Section 210 provides for a person to resign an appointment by giving a written notice of resignation to the person who made the appointment. In the case of appointments by the

Executive, the notice of resignation may be given to a Minister. The section reproduces the effect of the *Interpretation Act 1967*, section 28 (8) and (9) and applies to a 'law' (a term defined in the *Legislation Act 2001*, s 195)—see section 205 and the General explanatory note for ch 12 to ch 18.

Section 211 Appointment not affected by appointer changes

(A2001-56)

A2001-56 inserted s 211. The explanatory note is as follows:

For s 211 Appointment not affected by appointer changes

This section is an adaptation for appointments of the *Interpretation Act 1967*, section 30AA (1) and (2) which applied to delegations. Section 211 (1) makes it clear that an appointment made by a body is not affected by the fact that the membership of the body later changes. Section 211 (2) provides that an appointment made by a person in a particular position, is not affected by the fact that the person later ceases to hold that position. The section applies to a 'law' (a term defined in the *Legislation Act 2001*, s 195)—see section 205 and the General explanatory note for ch 12 to ch 18.

Section 212 Appointment not affected by defect etc

(A2001-56)

A2001-56 inserted s 212. The explanatory note is as follows:

For s 212 Appointment not affected by defect etc

This section is intended to protect the validity of an appointment and also things done by a person under an appointment if it later appears that the appointment was ineffective. The section reproduces the effect of the *Interpretation Act 1967*, section 28 (10) and applies to a 'law' (a term defined in the *Legislation Act 2001*, s 195)—see section 205 and the General explanatory note for ch 12 to ch 18.

Division 19.3.2 Acting appointments

Section 215 Application—div 19.3.2

(A2001-56)

A2001-56 inserted s 215. The explanatory note is as follows:

For s 215 Application

This section provides for the division (sections 215 to 225) to apply if an entity has power to appoint a person to act in a position (an 'entity' includes a person such as an individual or a

corporation and a body such as an unincorporated statutory committee, see *Legislation Act 2001*, dict, pt 1, def of ***entity***). The part applies to a 'law' (a term defined in the *Legislation Act 2001*, s 195)—see the General explanatory note for ch 12 to ch 18.

(A2002-11)

A2002-11 omitted s 215 (2). The explanatory statement provides:

141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections). Other kinds of amendments are outlined in the following paragraphs.

Section 216 Acting appointments must be in writing etc

(A2001-56)

A2001-56 inserted s 200. The explanatory note is as follows:16

For s 216 Acting appointment must be in writing etc

Section 216 requires that an acting appointment must be made, or evidenced, by writing. No particular form of writing is required. Apart from a formal document of appointment, an Executive notification or a letter to the person who is to be appointed to act, advising that the person is appointed, would be sufficient. The section reproduces the effect of the *Interpretation Act 1967*, section 28 (7) and (11) and applies to a 'law' (a term defined in the *Legislation Act 2001*, s 195)—see section 215 and the General explanatory note for ch 12 to ch 18.

(A2002-11)

A2002-11 remade s 216. The explanatory statement provides:

Clause 25
133 This clause remakes Legislation Act, section 216 to require acting appointments to state the period for which the appointment is made if a law provides for a maximum or minimum period of appointment.

Section 217 Acting appointment may be made by name or position

(A2001-56)

A2001-56 inserted s 217. The explanatory note is as follows:

For s 217 Acting appointment may be by name or position

This section is concerned with the description that is required of the person who is to be appointed to act in a position (the ***appointee***). Section 217 indicates that the appointee may be described by mentioning the name of the appointee or mentioning a position held by the appointee. It is not uncommon for administrative arrangements to require that a subordinate should perform the duties of a senior person in the absence of the senior person (see also section 218). To give effect to these arrangements, it would be possible to name the subordinate in the acting appointment. However, if the subordinate ceased for any reason to be the subordinate, a further acting appointment would be necessary. To avoid unnecessary paperwork, it is simpler for the acting appointment to name the position occupied by the subordinate rather than the subordinate's name. The section mirrors the effect of the *Interpretation Act 1967*, section 28 (2) and section 29A. It applies to a 'law' (a term defined in the *Legislation Act 2001*, section 195)—see section 215 and the General explanatory note for ch 12 to ch 18.

Section 218 Instrument may provide when acting appointment has effect etc

(A2001-56)

A2001-56 inserted s 218. The explanatory note is as follows:

For s 218 Instrument may provide when acting appointment has effect etc

As indicated in the explanatory note for section 217, it is not uncommon for acting appointments to be expressed to operate in specified circumstances (see also the examples set out in section). An acting appointment that has been made to operate in a specified circumstance will lie dormant (hence the term 'dormant appointment') until the circumstance it specifies happens. At that time the acting appointment takes effect. Section 218 provides authority for these arrangements. The section reproduces the effect of the *Interpretation Act 1967*, section 28A (2) and applies to a 'law' (a term defined in the *Legislation Act 2001*, s 195)—see section 215 and the General explanatory note for ch 12 to ch 18.

Section 219 Appointer may decide terms of acting appointment etc

(A2001-56)

A2001-56 inserted s 219. The explanatory note is as follows:

For s 219 Appointer may decide terms etc of acting appointment

Section 219 (1) makes it clear that the person making the appointment can decide the terms on which a person acts in a position. These terms may include the payment of remuneration (salary, wages or commission) and allowances. Section 219 (1) also makes it clear that an acting appointment may be brought to an end at any time (see also s 221). There is, however, a qualification on the power to end of an acting appointment: any procedural requirements or substantive grounds that needed to be satisfied in making the acting appointment also need to be complied with before ending of the appointment. The section reproduces the effect of the *Interpretation Act 1967*, section 28A (3) and applies to a 'law' (a term defined in the *Legislation Act 2001*, s 195)—see section 215 and the General explanatory note for ch 12 to ch 18.

(A2002-11)

A2002-11 inserted a new example in s 219 (1). The explanatory statement provides:

Amendments of s 219 (1) and s 221 (2)
169 These amendments insert examples to illustrate the operation of the subsections.

Section 220 Appointee may exercise functions under acting appointment etc

(A2001-56)

A2001-56 inserted s 220. The explanatory note is as follows:

For s 220 Appointee may exercise functions under acting appointment etc

Section 220 is intended to assimilate an acting appointee as closely as possible to the person who occupies the position substantively. First, section 220 (a) gives a person acting in a position all the functions of the substantive occupant. (The note to the section indicates that a 'function' includes an authority, duty or power). Second, section 220 (b) applies all Territory laws to the person acting (including the common law) as if the person acting occupied the position substantively. Section 220 reproduces the effect of the *Interpretation Act 1967*, section 28A (8) and applies to a 'law' (a term defined in the *Legislation Act 2001*, s 195)—see section 215 and the General explanatory note for ch 12 to ch 18.

Section 221 How long does an acting appointment operate?

(A2001-56)

A2001-56 inserted s 221. The explanatory note is as follows:

For s 221 How long does an acting appointment operate?

Section 221 (1) and (2) limits the period during which a person may act in a position that is vacant. If the position was vacant before the person began to act in it, the acting appointment ends 1 year after the position became vacant. If the vacancy happens while a person is acting in it, the acting appointment will end on the happening of the first of the following: the ending of the appointment under section 219, the filling of the vacancy or the end of the period of 1 year since the vacancy began. Section 221 (3) makes it clear that if the substantive occupant of the position cannot exercise his functions, a person acting in the position ceases to act on that occasion only. (The note to section 221 (3) indicates that a 'function' includes an authority, duty or power). The section reproduces the effect of the *Interpretation Act 1967*, section 28A (4) to (7) and applies to a 'law' (a term defined in the *Legislation Act 2001*, s 195)—see section 215 and the General explanatory note for ch 12 to ch 18.

(A2002-11)

A2002-11 inserted a new example in s 221 (2). The explanatory statement provides:

Amendments of s 219 (1) and s 221 (2)
169 These amendments insert examples to illustrate the operation of the subsections.

Section 222 Resignation of acting appointment

(A2001-56)

A2001-56 inserted s 222. The explanatory note is as follows:

For s 222 Resignation of acting appointment

Section 222 provides for a person to resign an acting appointment by giving a written notice of resignation to the person who made the appointment. In the case of acting appointments by the Executive, the notice of resignation may be given to a Minister. The section reproduces the effect of the *Interpretation Act 1967*, section 28 (8) to (11) and applies to a 'law' (a term defined in the *Legislation Act 2001*, s 195)—see section 215 and the General explanatory note for ch 12 to ch 18.

Section 223 Effect of acting appointment on substantive appointment etc

(A2001-56)

A2001-56 inserted s 223. The explanatory note is as follows:

For s 223 Effect of acting appointment on substantive appointment

Section 223 is intended to avoid any inference that a substantive position a person occupies is vacated if the person acts in another position. The section reproduces the effect of the *Interpretation Act 1967*, section 28A (7) and applies to a 'law' (a term defined in the *Legislation Act 2001*, s 195)—see section 215 and the General explanatory note for ch 12 to ch 18.

Section 224 Acting appointment not affected by appointer changes

(A2001-56)

A2001-56 inserted s 224. The explanatory note is as follows:

For s 224 Acting appointment not affected by appointer changes

This section is an adaptation for acting appointments of the *Interpretation Act 1967*, section 30AA (1) and (2) that applied to delegations. Section 211 (1) makes it clear that an acting appointment made by a body is not affected by the fact that the membership of the body later changes. Section 211 (2) provides that an acting appointment made by a person in a particular position is not affected by the fact that the person later ceases to hold that position. The section applies to a 'law' (a term defined in the *Legislation Act 2001*, s 195)—see section 215 and the General explanatory note for ch 12 to ch 18.

Section 225 Acting appointment not affected by defect etc

(A2001-56)

A2001-56 inserted s 225. The explanatory note is as follows:

For s 225 Acting appointment not affected by defect etc

This section is intended to protect the validity of an acting appointment and also things done by a person under an acting appointment if it later appears that the appointment was ineffective. The section reproduces the effect of the *Interpretation Act 1967*, section 28 (10) and (11) and section 28A (9) and applies to a 'law' (a term defined in the *Legislation Act 2001*, s 195)—see section 215 and the General explanatory note for ch 12 to ch 18.

Division 19.3.2A Standing acting arrangements

(A2003-41)

A2003-41 inserted division 19.3.2A. The explanatory statement provides:

> Other amendments of the Legislation Act include the following:....
>
> (ii) The insertion of new division 19.3.2A to deal with standing acting arrangements, that is, where a law itself provides that a person automatically acts in a position in stated circumstances (eg when the position holder is ill).

Section 225A Application—div 19.3.2A

(A2003-41)

A2003-41 inserted s 225A. The explanatory note is as follows:

> **Explanatory note**
>
> This amendment inserts a new division that contains provisions applying to standing acting arrangements, that is, where a law itself provides that in stated circumstances a person automatically acts in a position. The *Planning and Land Act 2002*, section 26 (3) is an example of such a law. The provisions of the new division are based on provisions of the Act applying to acting appointments (see section 220).

Section 225B Person acting under standing acting arrangement may exercise functions etc

(A2003-41)

A2003-41 inserted s 225B. The explanatory note is as follows:

> **Explanatory note**
>
> This amendment inserts a new division that contains provisions applying to standing acting arrangements, that is, where a law itself provides that in stated circumstances a person automatically acts in a position. The *Planning and Land Act 2002*, section 26 (3) is an example of such a law. The provisions of the new division are based on provisions of the Act applying to acting appointments (see section 220).

(A2005-20)

A2005-20 substituted the heading to of s 225B. The explanatory note is as follows:

> This amendment revises the section heading to more clearly reflect the scope of the section.

Division 19.3.3 Appointments—Assembly consultation

(A2002-11)

A2002-11 inserted division 19.3.3. The explanatory statement provides:

> 134 This clause re-enacts provisions of the *Statutory Appointments Act 1994* without substantive change. That Act is repealed by clause 30. The transfer of the Statutory Appointments Act provisions to the Legislation Act will bring together in the same Act all the general provisions about statutory appointments. As existing appointment provisions in ACT laws are revised to bring them fully into line with the provisions about appointment in the Legislation Act, notes will be included drawing attention to the relocated provisions. This practice should assist in raising awareness of (and compliance with) the provisions.
>
> 135 The provisions of the Statutory Appointments Act (***SAA)*** to which the proposed sections of new division 19.3.3 correspond are indicated in the headings of the sections. For example, proposed section 229 corresponds to Statutory Appointments Act, section 5 ('SAA s 5'). Statutory Appointments Act, section 4 (2), which is about the application of that Act to appointments under the *Auditor-General Act 1996*, is proposed to be transferred to the Auditor-General Act by an amendment in schedule 2 to the Bill. Statutory Appointments Act, section 3A is a transitional provision that is no longer needed.

Section 226 Meaning of statutory position—div 19.3.3

(A2002-11)

A2002-11 inserted s 226. The explanatory statement for the division is reproduced above.

Section 227 Application—div 19.3.3

(A2002-11)

A2002-11 inserted s 227. The explanatory statement for the division is reproduced above.

(A2002-49)

A2002-49 inserted s 227 (3). The explanatory note is as follows:

> This amendment clarifies that a fire commissioner, deputy fire commissioner or other member of the fire brigade is a public servant for division 19.3.3. An appointment to which that division applies must be the subject of Assembly consultation before it is made, and is disallowable. These requirements, previously found in the *Statutory Appointments Act 1994*, were transferred to the Legislation Act by the *Legislation Amendment Bill 2002*. The requirements are expressed not to apply to appointments of public servants. Members of the fire brigade were regarded as public servants for the Statutory Appointments Act and there was no intention to change this when the

provisions were moved into the Legislation Act. However, the terms 'public servant' and 'public service' have been expressly defined in the Legislation Act and 'public servant' now means someone employed in the Australian Capital Territory Public Service. As the fire brigade is constituted under the *Fire Brigade (Administration) Act 1974* and is not part of the ACT public service constituted under the *Public Sector Management Act 1994*, section 227 is being amended to ensure that appointments of people who are already employed under the Fire Brigade (Administration) Act are not caught by division 19.3.3.

(A2004-28)

A2004-28 substituted s 227 (3) and added s 227 (4) which provided for the expiry of s 229 (3) and (4) on the expiry date under the *Emergencies Act 2004*, s 209. The explanatory statement indicates that the amendments were consequential to the introduction of the *Emergencies Act 2004*.

(A2007-3)

A2007-3 substituted s 227 (2) (b). The explanatory note is as follows:

> Section 227 deals with the application of division 19.3.3. The division is about consultation with Legislative Assembly committees on appointments made by Ministers to statutory positions. It also provides that the instrument making, or evidencing, an appointment to which the division applies is a disallowable instrument.
>
> Section 227 (2) provides 3 exceptions to the application of the division. First, the appointment of a public servant to a statutory position. Second, short-term acting appointments. Third, an appointment the only function of which is to advise the Minister. This amendment is concerned with the 2nd exception.
>
> Existing section 227 (2) (b) excludes the appointment of a person to act in a statutory position for not longer than 6 months, unless the appointment is of the person to act in the position for a 2nd or subsequent consecutive period. The provision does not presently deal with substantive appointments. The amendment extends the exception to short-term, one-off substantive appointments. The effect of the amendment is to remove the anomalous different treatment of substantive appointments. This is in keeping with the approach taken elsewhere in part 19.3 of treating substantive and acting appointments in the same way as far as possible.

Section 228 Consultation with appropriate Assembly committee

(A2002-11)

A2002-11 inserted s 228. The explanatory statement for the division is reproduced above.

Section 229 Appointment is disallowable instrument

(A2002-11)

A2002-11 inserted s 229. The explanatory statement for the division is reproduced above.

(A2002-49)

A2002-49 substituted the heading for s 229. The explanatory note is as follows:

> This amendment remakes the heading to make it more informative.

Part 19.4 Delegations

(A2001-56)

A2001-56 inserted this part (initially numbered part 18). The general explanatory note for the part is as follows:

> Delegations are an essential element of the administration of legislation in the Territory. Many Acts of the Legislative Assembly, and subordinate laws, give functions to various persons such as Ministers or officials. (The note to s 230 (1) draws attention to the fact that 'function' is defined in the dictionary to include authority, duty and power.) The number and scope of these functions is such that the relevant Minister or official cannot possibly exercise them personally. The practice, therefore, is for subordinate officers to exercise the relevant functions under an instrument of delegation. In the past, laws giving powers of delegation repeated on each occasion a number of the provisions contained in this part. The provisions in this part therefore save unnecessary repetition in the statute book by spelling out the rules relating to delegations in one place and applying them to delegations under all laws.

(A2002-11)

A2002-11 renumbered the chapter as chapter 19.

Section 230 Application—pt 19.4 generally

(A2001-56)

A2001-56 inserted s 230. The explanatory note is as follows:

> **For s 230 Application of pt 18.4 generally**
>
> This section provides for the part (s 230 to 242) to apply if an entity has power to delegate or subdelegate a function (an 'entity' includes a person such as an individual or a corporation and a body such as an unincorporated statutory committee, see *Legislation Act 2001*, dict, pt 1, def of ***entity***). The note to section 230 (1) draws attention to the fact that 'function' is defined in the

dictionary to include authority, duty and power. Section 230 (2) is a new provision intended to avoid arguments that a particular provision is not capable of delegation because the relevant law provides a means other than delegation for the power to be exercised. Section 230 (3) provides that the law containing the provision may displace the operation any of the provisions of the part. The part applies to a 'law' (a term defined in the *Legislation Act 2001*, s 195)—see section 230 and the General explanatory note for ch 12 to ch 18.

(A2002-11)

A2002-11 omitted s 230 (2). The explanatory statement provides:

> 141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make other minor consequential amendments (eg provide for the consequential renumbering of subsections). Other kinds of amendments are outlined in the following paragraphs.

(A2005-20)

A2005-20 omitted s 230 (2).The explanatory note is as follows:

> This amendment omits a subsection that is no longer necessary because of the express way in which delegations (and subdelegations) are created in ACT law. The omission of the subsection will remove any argument that the subsection itself creates a delegation power.

Section 231 Application—pt 19.4 to subdelegations

(A2001-56)

A2001-56 inserted s 231. The explanatory note is as follows:

> **For s 231 Application of pt 18.4 to subdelegations**
>
> In some cases legislation authorises a delegate to further delegate the powers the delegate may exercise under a delegation. Such an additional passing on of powers is known as a subdelegation. Section 231 has the effect of extending to subdelegations the rules laid down in this part about delegations. Section 231 (2) makes it clear, however, that a power of subdelegation will only exist if a law makes provision for subdelegation. The section reproduces the effect of the *Interpretation Act 1967*, section 30AB and applies to a 'law' (a term defined in the *Legislation Act 2001*, s 195)—see section 230 and the General explanatory note for ch 12 to ch 18.

(A2002-11)

A2002-11 substituted s 231 (2). The explanatory statement provides:

> Amendment of s 231 (2) and s 236 (2)
> 170 These amendments are consequential on the introduction of the concept of the determinative provisions.

(A2003-56)

A2003-56 substituted s 231 (2) and note and s 231 (3)The explanatory notes are as follows:

> This amendment recasts subsection (2) to make it clearer, and removes the note which is turned into examples by the next amendment.
>
> This amendment inserts examples to illustrate the operation of the section.

Section 232 Delegation must be in writing etc

(A2001-56)

A2001-56 inserted s 232. The explanatory note is as follows:

> **For s 232 Delegation must be in writing etc**
>
> Section 232 is a new provision that extends to delegations a rule similar to the requirement for appointments and acting appointments provided in the *Interpretation Act 1967*, section 28 (7) and (11). Section 232 applies to a 'law' (a term defined in the *Legislation Act 2001*, s 195)—see section 230 and the General explanatory note for ch 12 to ch 18.

Section 233 Delegation may be made by name or position

(A2001-56)

A2001-56 inserted s 233. The explanatory note is as follows:

> **For s 233 Delegation may be by name or position**
>
> This section removes doubt that used to exist about whether it was possible to delegate to (say) 'the Director' or whether it was necessary to name the person who held the position of Director; either form of delegation is permissible. It will often be convenient to delegate to the person who holds a position so that if another person is appointed to the position it will not be necessary to remake the instrument of delegation. The section refers to the delegation of a 'function' and the note to section 230 (1) draws attention to the fact that 'function' is defined in the dictionary to include authority, duty and power. The section reproduces the effect of the *Interpretation Act 1967*, s 29A, but has been recast to simplify its language. Section 233 applies to a 'law' (a term defined in the *Legislation Act 2001*, s 195)—see section 230 and the General explanatory note for ch 12 to ch 18.

Section 234 Instrument may provide when delegation has effect etc

(A2001-56)

A2001-56 inserted s 234. The explanatory note is as follows:

For s 234 Instrument may provide when acting delegation has effect etc

This section enables a delegation to be expressed in general terms or for a particular case. The provision to state directions is a new provision. The examples for section 234 illustrate in detail some possible conditions, limitations or directions. The section broadly reproduces the effect of the *Interpretation Act 1967*, section 29B (a) and applies to a 'law' (a term defined in the *Legislation Act 2001*, s 195)—see section 230 and the General explanatory note for ch 12 to ch 18.

(A2003-41)

A2003-41 omitted 'the function' substituting 'A function in s 234 (b). The explanatory note is as follows:

This amendment corrects a minor drafting error.

Section 235 Delegation may be made to 2 or more delegates

(A2001-56)

A2001-56 inserted s 235. The explanatory note is as follows:

For s 235 Delegation may be made to 2 or more delegates

Section 235 is a new provision intended to make it clear that a delegation may be made to 2 or more people at the one time. The section applies to a 'law' (a term defined in the *Legislation Act 2001*, s 195)—see section 230 and the General explanatory note for ch 12 to ch 18.

Section 236 Power to delegate may not be delegated

(A2001-56)

A2001-56 inserted s 236. The explanatory note is as follows:

For s 236 Power to delegate may not be delegated

This section prevents the person delegating a function to delegate the power of delegation. In effect, the person with a power of delegation must exercise it personally. The section reproduces the effect of the *Interpretation Act 1967*, section 29B (b) and applies to a 'law' (a term defined in the *Legislation Act 2001*, s 195)—see section 230 and the General explanatory note for ch 12 to ch 18.

(A2002-11)

A2002-11 substituted s 236 (2).The explanatory statement provides:

> Amendment of s 231 (2) and s 236 (2)
> 170 These amendments are consequential on the introduction of the concept of the determinative provisions.

(A2003-56)

A2003-56 substituted s 236. The explanatory note is as follows:

> This amendment removes existing subsection (2), which overlapped with existing subsection (1), and turns the note into examples to better illustrate the operation of the section.

Section 237 Delegation may be amended or revoked

(A2001-56)

A2001-56 inserted s 237. The explanatory note is as follows:

> **For s 237 Delegation may be amended or revoked**
>
> This is a new provision that, for convenience, expressly applies to delegations the general rule about amending and revoking instruments (see the *Legislation Act 2001*, s 46). The section, therefore, does not change the law. The section applies to a 'law' (a term defined in the *Legislation Act 2001*, s 195)—see section 230 and the General explanatory note for ch 12 to ch 18.

(A2005-20)

A2005-20 omitted 'in whole or part', substituting 'completely or partly' in s 237 (1).The explanatory note is as follows:

> This amendment updates language.

Section 238 Appointer responsible for delegated function

(A2001-56)

A2001-56 inserted s 238. The explanatory note is as follows:

> **For s 238 Appointer responsible for delegated function**
>
> This section is a new provision intended to make it clear that the ability to delegate a function in the sense of a duty or responsibility does not relieve the person giving the delegation of his or her obligation to ensure that the function is properly exercised. The section applies to a 'law' (a term defined in the *Legislation Act 2001*, s 195)—see section 230 and the General explanatory note for ch 12 to ch 18.

Section 239 Exercise of delegation by delegate

(A2001-56)

A2001-56 inserted s 239. The explanatory note is as follows:

For s 239 Exercise of delegation by delegate

Section 239 (1) complements section 234 (a). Section 239 (2) is intended to impose on the delegate in exercising the delegated power the same powers, obligations and procedures (including those arising at common law) as if it had been exercised by the person who gave the delegation. Section 239 (3) takes account of the fact that laws frequently provide that an official may do something if the official forms a view about the thing. The law may provide, for example, that a power cannot be exercised unless the official 'is of the opinion' or 'is satisfied' or 'believes on reasonable grounds' that something has happened or is likely to happen. Section 239 (3) therefore makes it clear that, if the power is delegated, the task of forming the opinion (etc) may be undertaken by the delegate. Section 239 (4) is intended to give any exercise of the delegated function the same character in law as if it had been done by the person who gave the delegation. Under section 239 (4), anything done under a delegation is taken to have been done by the appointer. The section reproduces the effect of the *Interpretation Act 1967*, section 29B (c) and (e) and s 30 and applies to a 'law' (a term defined in the *Legislation Act 2001*, section 195)—see section 230 and the General Explanatory Note to chs 12 to 18 (above).

(A2002-49)

A2002-49 omitted 'opinion, belief or' from s 239 (3) and inserted s 239 (5)The explanatory notes are as follows:

This amendment is consequential on the insertion into section 239 of a new definition of ***state of mind***.

This amendment inserts a new definition of ***state of mind*** to clarify the meaning of the term in section 239. The term is intended to have a wide meaning and is defined in an inclusive way.

(A2003-56)

A2003-56 added 'or in relation to' to s 239 (4). The explanatory note is as follows:

This amendment adds 'or in relation to' to make it clear that things done in relation to the delegate (eg the service of notice on the delegate) are taken to have been done in relation to the appointer (ie the notice is taken to have been served on the appointer).

Section 240 Appointer may exercise delegated function

(A2001-56)

A2001-56 inserted s 240. The explanatory note is as follows:

For s 240 Appointer may exercise delegated function

The section makes it clear that, although a power given to a person by statute is delegated, the person does not lose the power because of the delegation. This section reproduces the effect of the *Interpretation Act 1967*, section 29B (d) and applies to a 'law' (a term defined in the *Legislation Act 2001*, s 195)—see section 230 and the General explanatory note for ch 12 to ch 18.

Section 241 Delegation not affected by appointer changes

(A2001-56)

A2001-56 inserted s 241. The explanatory note is as follows:

For s 241 Delegation not affected by appointer changes

Section 241 (1) makes it clear that a delegation made by a body is not affected by the fact that the membership of the body later changes. Section 241 (2) provides that a delegation made by a person in a particular position, is not affected by the fact that the person later ceases to hold that position. The section applies to a 'law' (a term defined in the *Legislation Act 2001*, s 195)—see section 230 and the General explanatory note for ch 12 to ch 18.

Section 242 Delegation not affected by defect etc

(A2001-56)

A2001-56 inserted s 242. The explanatory note is as follows:

For s 242 Delegation not affected by defect etc

This section is intended to protect the validity of things done under a delegation if it later appears that the delegation was ineffective. The section applies to a 'law' (a term defined in the *Legislation Act 2001*, s 195)—see section 230 and the General explanatory note for ch 12 to ch 18.

Part 19.5 Service of documents

(A2001-56)

A2001-56 inserted this part (initially numbered part 18.5). The general explanatory note for the part is as follows:

Part 18.5 Service of documents
General explanatory note for pt 18.5

This part elaborates the provisions of the *Interpretation Act 1967*, sections 17A and 18. These sections provided for service in person and by post. The new provisions also provide for these methods of service and take account of developments in technology such as transmission of documents by fax and email. The part contains a comprehensive set of provisions providing for service of documents on individuals, corporations and government agencies. It is intended that these provisions, like other provisions of the *Legislation Act 2001*, will enable legislative provisions to be shortened and standardised. The part applies to a 'law' (a term defined in the *Legislation Act 2001*, s 195)—see section 245 and the General explanatory note for ch 12 to ch 18.

While A2001-56 inserted this part as part 18.5 the part was renumbered as part 19.5 by A2002-11, s 24.

Section 245 Application—pt 19.5

(A2001-56)

A2001-56 inserted s 245. The explanatory note is as follows:

For s 245 Application

This section applies the new provisions for service to other laws irrespective of the language used in the other law. In part this section reproduces the effect of the *Interpretation Act 1967*, section 17A (1).

Section 246 Definitions—pt 19.5

(A2001-56)

A2001-56 inserted s 246. The explanatory note is as follows:

For s 246 Definitions for pt 18.5

This section defines a number of terms that appear in part 18.5. The term 'agency' includes government departments, statutory office holders such as the Public Trustee, statutory corporations such as the Agents Board and unincorporated statutory bodies such as the Vocational Eduction and Training Authority. The term 'corporation' is defined so as not to include a government agency that is a corporation. The definitions of business address and email address take account of addresses recorded in registers by entities administering or responsible for a law.

(A2011-22)

A2011-22 amended the definition of ***executive officer,*** paragraph (b), by replacing the reference to 'chief executive' with 'director-general'. The explanatory statement provides:

> **Background**
>
> The 'Governing the City State: One ACT Government, One ACT Public Service' report (the Report) by Dr Allan Hawke AC identifies a need for increased focus on whole-of-Government priorities and improved co-ordination across the work of individual agencies to better serve the interests of the ACT community. The Report recommends a structure for the ACT Public Service (ACTPS) where 'all existing Administrative Units in ACTPS be abolished and replaced by a single, unified ACTPS organisation ... reporting to a single Chief Executive who is Head of the ACTPS' (p4). Further, the Report states that '(u)nder the recommended structure, there would be a single agency responsible for supporting the government of the day across a number of service delivery lines' (p74). The *Public Sector Management (One ACT Public Service) Amendment Act 2011* (the One ACTPS Act) amends the *Public Sector Management Act 1994* to give effect to these recommendations. The Administrative (One ACT Public Service Miscellaneous Amendments) Bill 2011 (the Bill) amends legislation because of the enactment of the One ACTPS Act. The Bill makes consequential and transitional amendments to various pieces of legislation. Schedule 1 of the Bill outlines all of the consequential, technical and transitional amendments arising from the One ACTPS Act. ....
>
> ....
>
> **Schedule 1 Legislation amended**
>
> Schedule 1 contains minor or technical amendments of legislation arising as a consequence of the One ACTPS Act.
>
> Amendments of this nature include:
>
> ...
>
> - substituting references, in various singular or plural forms, to chief executive with director-general;.....

(A2002-30)

A2002-30 amended the definition of ***home address***, by omitting the words 'under the law' and substituting 'under a law'. The explanatory note is as follows:

> This amendment corrects a minor typographical error.

Section 247 Service of documents on individuals

(A2001-56)

A2001-56 inserted s 247. The explanatory note is as follows:

For s 247 Service of documents on individuals

Apart from service in person, by prepaid post or by leaving a document at the home or business address of the individual which are provided for under the *Interpretation Act 1967*, provision is also made for service by fax and email. In part this section reproduces the effect of the *Interpretation Act 1967*, section 17A (1) (a).

(A2002-49)

A2002-49 inserted s 247 (2) and made a minor consequential amendment to s 247 (1). The explanatory notes are as follows:

This amendment is consequential on the insertion of new section 247 (2).

This amendment inserts a new subsection to make it clear that the section applies to service of documents outside the ACT (eg sending a licence renewal by prepaid post to the business address of an individual in NSW). The effect of the section is subject to section 251. Section 251 preserves the operation of other laws that require service of documents (eg court processes) otherwise than as provided in the section.

Section 248 Service of documents on corporations

(A2001-56)

A2001-56 inserted s 248. The explanatory note is as follows:

For s 248 Service of documents on corporations

A document may be served on a corporation by giving the document to an executive officer of the corporation (see s 246, def ***executive officer***). Service may also be effected, as provided under the *Interpretation Act 1967*, section 17A (1) (b), by prepaid post or by leaving a document at a registered office or business address of the corporation. The section also provides for service on the corporation by fax and email.

(A2002-49)

A2002-49 inserted s 248 (2) and made a minor consequential amendment to s 248 (1). The explanatory notes are as follows:

> This amendment is consequential on the insertion of new section 248 (2).
>
> This amendment inserts a new subsection to make it clear that the section applies to service of documents outside the ACT (eg sending a licence renewal by prepaid post to the registered office of a corporation in NSW). The effect of the section is subject to section 251. Section 251 preserves the operation of other laws that require service of documents (eg court processes) otherwise than as provided under part 19.5.

Section 249 Service of documents on agencies

(A2001-56)

A2001-56 inserted s 249. The explanatory note is as follows:

> **For s 249 Service of documents on agencies**
>
> A document may be served on an agency in ways that correspond to service on a corporation (see s 248).

Section 250 When document taken to be served

(A2001-56)

A2001-56 inserted s 250. The explanatory note is as follows:

> **For s 250 When service taken to be effected**
>
> For legal and administrative purposes it is necessary to know that a document required to be given to a person has in fact been given or served, and the time of service. A person who gives a document to another is able to verify the date and time of service. If a document is served by post, however, the date and time of delivery cannot be known with the same precision. Because of this, the rule that has applied for many years is that the document is taken to have been served when the document would have been delivered 'in the ordinary course of post' (meaning the time that would ordinarily be taken to deliver an article through the post to the particular address). This rule is reflected in section 250 (1) which reproduces the effect of the *Interpretation Act 1967*, section 18. However, section 160 of the *Evidence Act 1995* (Cwlth) affects the calculation of the date of service and its effect is noted to section 250 (2). Sections 250 (3) and (4) lay down analogous rules for determining when a fax or email is to be regarded as served. Section 250 (3) creates a rebuttable presumption that a fax or email is received when it is sent. Section 250 (4) is intended to allow for the fact that at the time of sending a fax or email, the fax machine or computer may signal that transmission failed. In the case of an email, a message may also be received on the sending computer soon after the time of sending indicating that the email was not sent. (This

message may not be received until the next day, depending when the email was sent or when the computer was turned off for the day.) The effect of section 250 (3) and (4) is that unless the person sending the message receives such a signal or message, the fax or email is taken to have been sent at the time of sending at the fax machine or computer. To provide greater certainty where the fax or email is sent by someone in an organisation, section 250 (4) is intended to exclude the sender having constructive notice through someone else in the organisation knowing or believing that the fax or email system was not, or may not have been operational, or fully operational, at the time of sending. However, the injustice that might arise from the operation of section 250 (4) is balanced, as previously indicated, by the fact that the presumption under section 250 (3) is rebuttable. Section 250 (5) also creates a presumption that a document left for an individual, corporation or agency at an address was received on the day it was left.

(A2002-11)

A2002-11 amended s 250 (3) to simplify language by omitting 'adduced' and substituting 'given'. The explanatory statement provides:

Amendment of s 250 (3)
171 This amendment makes a minor simplification of language.

(A2005-20)

A2005-20 substituted a new heading. The explanatory note is as follows:

This amendment updates language.

(A2011-48)

A2011-48 substituted s 250 (2) and the note. The explanatory statement provides:

Clause 1.36 Section 250(2) and note – updates a reference in section 250(2) of the *Legislation Act 2001* and its note consequential on the establishment of the *Evidence Act 2011*. The amendment replaces the reference to the Commonwealth *Evidence Act 1995* with a reference to the ACT *Evidence Act 2011*. On the day the *Evidence Act 2011* commences, the Commonwealth *Evidence Act 1995* will cease to apply in the ACT. The updated reference will not affect the section as postal articles are treated similarly under the Commonwealth and ACT Evidence Acts.

Section 251 Other laws not affected etc

(A2001-56)

A2001-56 inserted s 251. The explanatory note is as follows:

For s 251 Other laws not affected etc

Section 251 (1) indicates that the provisions of this part do not exclude the operation of other laws providing for service of documents. Section 251 (2) makes it clear that other laws may make

special provision about service of particular documents. This section reproduces the effect of the *Interpretation Act 1967*, section 17A (2) (a) and applies to a 'law' (a term defined in the *Legislation Act 2001*, s 195)—see the General explanatory note for ch 12 to ch 18.

(A2002-11)

A2002-11 amended s 251 (2) (b) by omitting 'provide'. The explanatory statement provides:

Amendment of s 251 (2) (b)
172 This amendment omits a redundant word.

Section 252 Powers of courts and tribunals not affected

(A2001-56)

A2001-56 inserted s 252. The explanatory note is as follows:

For s 252 Powers of courts or tribunals not affected

Section 252 does not limit the power of a court or tribunal to order that a particular document be served in a particular way. This section reproduces the effect of the *Interpretation Act 1967*, section 17A (2) (b).

Part 19.6 Functions of Executive and Ministers

(A2002-11)

A2002-11 inserted new part 19.6 including a new heading. The explanatory statement provides:

Clause 28
137 This clause re-enacts the provisions of the *Administration Act 1989* without substantive change. That Act is repealed by clause 30. The transfer of the Administration Act provisions to the Legislation Act will bring together in the same Act general provisions about the exercise of functions by the Executive (including the making of statutory instruments) and provisions about delegation. It will also allow the present overlapping provisions in the Administration Act and the Legislation Act to be simplified (see, for example, the remaking of Legislation Act, section 41 in schedule 1).

138 The provisions of the Administration Act (***AA***) to which the proposed sections of new part 19.6 correspond are indicated in the headings of the sections. For example, proposed section 254A corresponds to Administration Act, section 5 ('AA s 5'). The section has, however, been significantly simplified relying on other provisions of the Legislation Act (eg the provisions about delegations in existing part 18.4). The application of the section to functions under disallowable instruments and other statutory instruments has also been clarified.

Section 253 Exercise of functions of Executive

(A2002-11)

A2002-11 inserted s 253. The explanatory statement is as for part 19.6 above.

(A2003-41)

A2003-41 substituted s 253 (3). The explanatory note is as follows:

> This amendment makes it clear when a statutory instrument, other than a subordinate law or disallowable instrument, made by the Executive is made. Section 41 deals with the making of subordinate laws and disallowable instruments by the Executive.

(A2005-62)

A2005-62 inserted s 253 (6). The explanatory note is as follows:

> This amendment extends the operation of section 253 to functions given to the Executive by or under Commonwealth laws. The Self-Government Act, section 38A provides that an enactment (that is, a law made by the Legislative Assembly) may provide for the exercise by a member or members of the Executive of powers vested in the Executive by or under a Commonwealth Act.

Section 254 Administration of matters not allocated

(A2002-11)

A2002-11 inserted s 254. The explanatory statement is as for part 19.6 above.

Section 254A Delegation by Minister

(A2002-11)

A2002-11 inserted s 254A. The explanatory statement is as for part 19.6 above.

Part 19.7 Other matters

(A2001-56)

A2001-56 inserted this part (initially numbered part 18.6 (Other provisions)).

(A2002-11)

A2002-11 renumbered part 18.6 as part 19.7. The explanatory statement provides as follows:

> ***Clause 27***
> 136 This clause provides for the renumbering of a part (part 18.6) to allow a new part 18.6 to be inserted by the next clause.

Section 255 Forms

(A2001-56)

A2001-56 inserted s 255. The explanatory note is as follows:

> **For s 255 Forms**
>
> Section 255 (1) provides that substantial compliance with a form is sufficient. In other words, a document that is prepared for the purposes of a law does not need to be set out in exactly the same format, typeface etc as are used in the law. Section 255 (2) provides for compliance with requirements in forms. For example, if a requirement for a form is that it must be signed, the form is not properly completed unless it is signed. Section 255 (3) overrides the obligation to comply with a requirement about information if the information is not reasonably necessary. Section 255 (4) makes it clear that forms made for particular laws may be combined. Section 255 (5) provides for arrangements to be made so that a form required by law to be given to one person may be given to another. Section 255 (6) indicates that section 255 applies to all forms approved or prescribed under a law unless the law displaces the operation of the section, or part of the section, by a provision indicating that another rule applies. This section reproduces the effect of the *Interpretation Act 1967*, section 13 and applies to a 'law' (a term defined in the *Legislation Act 2001*, s 195)—see the General explanatory note for ch 12 to ch 18.

(A2002-11)

A2002-11 inserted a new note under s 255 (1). The explanatory statement provides:

> Amendment of s 255 (1)
> 173 This amendment inserts a note drawing attention to proposed section 46 (3).

A2002-11 also substituted s 255 (9) to provide that s 255 is a determinative provision. The general explanatory statement provides:

> 8 First, the Bill deals more fully with the status of Legislation Act provisions, particularly their application and displacement. Some of the provisions of the Act will be declared to be 'determinative' provisions. The idea, essentially, is that these provisions will deal with subjects of such importance to our system of government and law that they should not be readily set aside under other legislation (for example, the requirement that newly-made laws should be publicly notified). Traditionally rules of this kind have been set down in interpretation legislation subject to displacement if a 'contrary intention' is found in another Act. The problem is that in some cases it may be easy to 'find' a contrary intention where none was intended by the legislature.
>
> **General**
> 141 Most of the amendments contained in the schedule declare various provisions of the Legislation Act to be determinative provisions, omit references to a contrary intention or make

other minor consequential amendments (eg provide for the consequential renumbering of subsections). Other kinds of amendments are outlined in the following paragraphs.

(A2002-49)

A2002-49 substituted s 255 (2). The explanatory note is as follows:

> This amendment brings language into line with language used elsewhere in the Act (see especially new definition of ***in relation to*** inserted by another amendment in this part).

(A2003-41)

A2003-41 substituted a note under s 255 (1). The explanatory note is as follows:

> This amendment makes it clear that the forms dealt with in section 46 (3) are forms that are registrable instruments.

(A2005-20)

A2005-20 substituted s 255 (1). The explanatory note is as follows:

> This amendment extends the operation of the section to cases where a subordinate law or disallowable instrument authorises or requires a form to be approved or prescribed.

A2005-20 also substituted an example under s 255 (3). The explanatory note is as follows:

> This amendment is consequential on the insertion of a new section 42 (2) by another amendment.

(A2006-42)

A2006-42 amended the note under s 255 (1) by substituting 'registrable instruments' with 'legislative instruments'.. The explanatory note is as follows:

> This amendment is consequential on another amendment in this part.

The more helpful explanatory note for the related amendment (to s 12 - amendment 2.3) is as follows:

> This amendment replaces the defined term ***registrable instrument*** with the defined term ***legislative instrument***. It has become apparent that users of the Legislation Act do not find the term ***registrable instrument*** helpful. The amendment, therefore, replaces it with the equivalent term used in the *Legislative Instruments Act 2003* (Cwlth).

A2006-42 also substituted the example under s 255 (3). The explanatory note is as follows:

> This amendment clarifies the example by including references to the approval being a notifiable instrument.

Section 256 Production of records kept in computers etc

(A2001-56)

A2001-56 inserted s 256. The explanatory note is as follows:

For s 256 Production of records kept in computers etc

Legislation frequently requires information or documents to be provided for various purposes. When all information was recorded on paper, the requirement would have been complied with by producing a book or document. Section 256 is concerned with applying such an obligation when the information or document is recorded in a computer or similar device. In other words, gaining access to information or documents that do not exist on paper. In that situation the obligation is complied with by the provision of a document (which would usually be printed out from the computer or device) that accurately reproduces or contains the information in a form that can be understood by the person who requires it. The section reproduces the effect of the *Interpretation Act 1967*, section 13A and applies to a 'law' (a term defined in the *Legislation Act 2001*, s 195)—see the General explanatory note for ch 12 to ch 18.

(A2005-20)

A2005-20 amended s 256 (1) (b) by omitting the words 'a law requires the person' and substituting 'the person is required under the law'. The explanatory note is as follows:

This amendment widens the language of the provision so that it applies to a requirement made under a law as well as a requirement made by the law (see Legislation Act, dictionary, part 1, definition of ***under***).

Section 257 Out-of-session presentation of documents to Legislative Assembly

(A2015-50)

A2015-50 inserted s 257. The explanatory note is as follows:

A number of ACT laws require a document to be presented in the Legislative Assembly within a stated time. However, there are occasions when it is not practicable to present the document within the stated time and many of those laws do not provide for the presenting of the document out-of-session. This amendment inserts a new section in the Legislation Act allowing reports, and responses to reports, that are required to be presented in the Legislative Assembly to be presented out-of-session. The new section is consistent with similar provisions in, for example, the *Annual Reports (Government Agencies) Act 2004*, the *Climate Change and Greenhouse Gas Reduction Act 2010*, the *Coroners Act 1997* and the *Government Agencies (Campaign Advertising) Act 2009*.

Chapter 20 Miscellaneous

Chapter 20 has been renumbered previously. A2001-56 renumbered the chapter (previously chapter 12) as chapter 19. Then, A2002-11 renumbered it as chapter 20.

Section 300 Delegation by parliamentary counsel

(A2002-11)

A2002-11 inserted s 300 (previously s 260). The explanatory statement provides:

> 174 This amendment remakes section 260 (renumbered as section 300) to bring it more closely into line with part 18.4. It also allows the regulations to permit delegations of functions under part 11.3 to be made to a public servant prescribed under the regulations. This will permit increased flexibility in the management of the republication of ACT laws subject to Assembly scrutiny. The parliamentary counsel will, of course, continue to be responsible for the exercise of editorial powers under the Legislation Act (see section 238).

(A2004-60)

A2004-60 substituted s 300 (1). The explanatory statement provides:

> **Part 1.37 – *Legislation Act 2001* –** provides for amendments to the *Legislation Act 2001* by changing the definition of appropriate person consistent with changes under the *Courts Procedures Act 2004.* The part also omits references to legislation deleted under this Bill and clarifies the jurisdiction of the small claims court. Further it broadens the scope of the power to delegate the Parliamentary Counsel's functions.

Section 301 References to Administration Act 1989 etc

(A2002-11)

A2002-11 inserted s 301. The explanatory statement provides:

> 175 The amendment also remakes section 261 (renumbered as section 301) to include references to the Administration Act and the Statutory Appointments Act.

Section 302 Regulation-making power

Section 302 has been renumbered twice.

(A2001-56)

A2001-56 renumbered the section (previously s121) as s 262. The explanatory note is as follows:

> This amendment is consequential on the insertion of new chapters 12 to 18 in the *Legislation Act 2001*.

(A2002-11)

A2002-11 renumbered the section as s 302.. The explanatory statement provides:

> Renumbering of s 262 to s 274
> 176 The schedule renumbers sections 262 to 274. The intention is to leave a gap in section numbers before the chapters dealing with miscellaneous and transitional matters. The purpose of the gap is to leave room for additional provisions to be added to the Act in the future.

(A2003-41)

A2003-41 substituted s 302. The explanatory note is as follows:

> This amendment remakes the regulation-making power to include provision for cases where the making of an Act or registrable instrument, or the disallowance or amendment of a subordinate law or disallowable instrument, has to be notified in the Gazette. This would only happen in exceptional cases, for example, if some technical problem made notification using the legislation register impracticable at the time for notification. This could happen after normal business hours at the ACT Government Shopfront. In these cases, it may be necessary to publish a special edition of the Gazette promptly and make it available elsewhere. The regulations would set out the requirements to be satisfied in these cases.

(A2006-42)

A2006-42 amended s 302 (2) (b) by substituting 'registrable instruments' with 'legislative instruments'. The explanatory note is as follows:

> This amendment is consequential on another amendment in this part.

The more helpful explanatory note for the related amendment (to s 12 - amendment 2.3) is as follows:

> This amendment replaces the defined term ***registrable instrument*** with the defined term ***legislative instrument***. It has become apparent that users of the Legislation Act do not find the term ***registrable instrument*** helpful. The amendment, therefore, replaces it with the equivalent term used in the *Legislative Instruments Act 2003* (Cwlth).

(A2011-28)

A2011-28 omitted s 302 (2) and (3). The explanatory note is as follows:

This amendment is consequential on changes made to sections 28, 61, 65A and 69 by other amendments