



**ACT**  
Government

# ACT LEGISLATION

## READING LEGISLATION

ACT PARLIAMENTARY COUNSEL'S  
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**CONTENTS**

- ABOUT THIS GUIDE ..... 1**
  - WHO THIS GUIDE IS FOR .....1
  - WHAT THIS GUIDE COVERS .....1
  - ABBREVIATIONS USED IN THIS GUIDE .....1
  - OTHER PCO GUIDES .....3
  - WHO TO CONTACT ABOUT THIS GUIDE.....3
  
- STRUCTURE OF LAW ..... 4**
  - FORM AND CONTENTS.....4
  - STRUCTURE .....4
  - REFERRING TO PARTS, DIVISIONS ETC .....6
  
- WHAT IS (AND ISN'T) PART OF A LAW? ..... 7**
  - WHY THIS IS IMPORTANT .....7
  - PART OF LAW—PREAMBLE .....7
  - PART OF LAW—HEADINGS.....7
  - PART OF LAW—EXAMPLES AND DIAGRAMS.....8
  - PART OF LAW—DICTIONARY .....8
  - PART OF LAW—SCHEDULES.....8
  - PART OF LAW—OTHER THINGS .....9
  - NOT PART OF LAW—NOTES.....9
  - NOT PART OF LAW—TABLE OF CONTENTS .....9
  - NOT PART OF LAW—CERTAIN SECTION HEADINGS.....9
  - MORE INFORMATION .....9
  
- NAME OF LAW ..... 10**
  - LONG TITLE .....10
  - NAMING SECTION .....10
  
- COMMENCEMENT ..... 11**

KINDS OF COMMENCEMENT .....	11
FINDING COMMENCEMENT INFORMATION .....	12
<b>OFFENCE PROVISIONS.....</b>	<b>13</b>
OVERVIEW .....	13
IDENTIFYING OFFENCE PROVISIONS .....	13
INFRINGEMENT NOTICES .....	13
LEGISLATION ACT PROVISIONS ABOUT OFFENCES.....	14
MORE INFORMATION .....	14
<b>REGULATION-MAKING POWERS.....</b>	<b>15</b>
WHAT REGULATIONS DO .....	15
GENERAL REGULATION-MAKING POWERS.....	15
SPECIFIC REGULATION-MAKING POWERS .....	15
OFFENCES UNDER REGULATIONS .....	16
<b>TRANSITIONAL PROVISIONS.....</b>	<b>17</b>
WHAT DO TRANSITIONAL PROVISIONS DO?.....	17
SAVING OPERATION OF REPEALED LAW .....	17
EXPIRING TRANSITIONAL PROVISIONS.....	17
<b>OTHER COMMON PROVISIONS.....</b>	<b>18</b>
NOTIFICATION AND REVIEW OF DECISIONS .....	18
DETERMINATION OF FEES .....	18
APPROVED FORMS .....	18
<b>INTERPRETATION—GENERAL .....</b>	<b>19</b>
OVERVIEW .....	19
READ TEXT OF LAW .....	19
READ TEXT IN CONTEXT OF LAW AS WHOLE .....	20
READ LAW IN CONTEXT OF LEGISLATIVE FRAMEWORK.....	21
READ LAW IN CONTEXT OF NON-LEGISLATIVE MATERIAL .....	22
INTERPRETATION CONSISTENT WITH HUMAN RIGHTS .....	22

INTERPRETATION THAT BEST ACHIEVES PURPOSE.....	22
MORE INFORMATION .....	23
<b>INTERPRETATION—DEFINITIONS.....</b>	<b>24</b>
WHY ARE DEFINITIONS USED?.....	24
DEFINITIONS APPLY SUBJECT TO CONTRARY INTENTION.....	24
DEFINITIONS IN DICTIONARIES AND SECTIONS.....	25
COMMONLY-USED TERMS IN LEGISLATION ACT DICTIONARY .....	25
DIFFERENT PARTS OF SPEECH AND GRAMMATICAL FORMS .....	25
FINDING DEFINITIONS.....	26
KINDS OF DEFINITIONS.....	27
<b>INTERPRETATION—NON-LEGISLATIVE MATERIAL.....</b>	<b>28</b>
WHEN NON-LEGISLATIVE MATERIAL MAY BE CONSIDERED .....	28
WHAT NON-LEGISLATIVE MATERIAL MAY BE CONSIDERED.....	28
<b>INTERPRETATION AIDS—PERIODS OF TIME.....</b>	<b>30</b>
WORKING OUT PERIODS OF TIME.....	30
PERIODS OF TIME ENDING ON NON-WORKING DAYS .....	30
DOING THINGS FOR WHICH NO TIME IS FIXED.....	32
POWER TO EXTEND TIME.....	32
CONTINUING EFFECT OF OBLIGATIONS.....	32
<b>INTERPRETATION AIDS—OTHER.....</b>	<b>33</b>
GENDER.....	33
NUMBER.....	33
MEANING OF MAY AND MUST .....	34
AGE IN YEARS.....	34
MEASUREMENT OF DISTANCE .....	34
CHANGES IN DRAFTING PRACTICE DO NOT AFFECT MEANING .....	34
<b>FRAMEWORK LAW—LEGISLATION ACT.....</b>	<b>35</b>
WHAT THE ACT IS ABOUT.....	35

PUBLIC ACCESS TO LEGISLATION .....	35
THE 'LIFE CYCLE' OF LEGISLATION .....	36
INTERPRETATION .....	36
OTHER PROVISIONS COMMONLY REQUIRED .....	37
<b>FRAMEWORK LAW—HUMAN RIGHTS ACT .....</b>	<b>38</b>
WHAT THE ACT IS ABOUT .....	38
HUMAN RIGHTS INTERPRETATION .....	38
LIMITS ON HUMAN RIGHTS .....	39
MORE INFORMATION .....	39
<b>FRAMEWORK LAW—CRIMINAL CODE .....</b>	<b>42</b>
WHAT THE ACT IS ABOUT .....	42
CODIFIED PRINCIPLES OF CRIMINAL RESPONSIBILITY .....	42
OFFENCES COVERED BY CH 2 .....	43
SUBSTANTIVE OFFENCES .....	43
<b>LEGISLATION ACT DICTIONARY .....</b>	<b>44</b>
<b>CHECKLIST FOR READING LEGISLATION .....</b>	<b>48</b>

# ABOUT THIS GUIDE

## WHO THIS GUIDE IS FOR

This guide is for anyone who uses or wants to know about ACT Legislation. It sets out the material in a way that can be easily read and understood by people who have no previous knowledge of or experience with legislation, and it contains enough detail to be a useful reference for people who use legislation regularly.

## WHAT THIS GUIDE COVERS

This guide deals with ACT legislation, covering the following topics:

- **Structure of law:** its form and contents, typical structure and how to refer to different elements of a law
- **What is (and isn't) part of a law:** what are the different components of legislation, whether they are part of the law or not and why this is important
- **Common provisions:** provisions that are common to legislation, including offences, regulation-making powers and transitional provisions
- **Interpretation:** principles, definitions, and other aids to interpretation
- **Legislative framework:** other legislation that is important to know about when reading legislation
- **Checklist:** to assist you to step through the exercise of reading and understanding legislation.

## ABBREVIATIONS USED IN THIS GUIDE

An explanation of abbreviations used in this guide is set out in Table 1.

Table 1 *Abbreviations used in this guide*

Term	Meaning
<b>amending Act</b>	an Act that makes amendments of a principal Act
<b>amending regulation</b>	a regulation that makes amendments of a principal regulation
<b>Criminal Code (or Code)</b>	<i>Criminal Code 2002</i>
<b>Cwlth</b>	Commonwealth of Australia
<b>Financial Management Act</b>	<i>Financial Management Act 1996</i>
<b>Human Rights Act (or HRA)</b>	<i>Human Rights Act 2004</i>
<b>Legislation Act (or LA)</b>	<i>Legislation Act 2001</i>
<b>Legislation Register (or Register)</b>	<a href="#">ACT Legislation Register</a> <sup>1</sup>
<b>Legislative Assembly (or Assembly)</b>	Legislative Assembly for the ACT, established under the Self-Government Act, s 8 (1)
<b>Parliamentary Counsel</b>	ACT Parliamentary Counsel
<b>PCO</b>	ACT Parliamentary Counsel's Office
<b>principal Act</b>	an Act that reflects the law on a particular subject
<b>principal regulation</b>	a regulation in force under a principal Act
<b>Standing Orders (or SO)</b>	<a href="#">Standing Orders and Continuing Resolutions of the Assembly (21 May 2020)</a> <sup>2</sup>

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<sup>1</sup> <https://www.legislation.act.gov.au>

<sup>2</sup> [https://www.parliament.act.gov.au/parliamentary-business/in-the-chamber/standing-orders/standing\\_orders](https://www.parliament.act.gov.au/parliamentary-business/in-the-chamber/standing-orders/standing_orders)

## OTHER PCO GUIDES

- [ACT Legislation—Legislation Basics](#)<sup>3</sup>

This guide sets out the basics about ACT legislation, for example, where the ACT derives its law-making power, what laws apply in the ACT and what are the different kinds of ACT legislation.

- [Developing Legislation and Working With PCO](#)<sup>4</sup>

This guide is for officers of the ACT public service who are instructing PCO to draft legislation. It includes information about how to instruct us, what the drafting process involves and some common legislative issues that arise in developing legislative proposals.

## WHO TO CONTACT ABOUT THIS GUIDE

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 6205 3700

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<sup>3</sup> <https://www.pco.act.gov.au/pages/aboutactleg/legbasics.htm>

<sup>4</sup> <https://www.pco.act.gov.au/pages/aboutactleg/developingleg.htm>

# STRUCTURE OF LAW

## FORM AND CONTENTS

Acts and regulations have a table of contents. A quick glance through the contents should help you reach a good understanding of the structure of the legislation and find provisions of particular interest.

The section is the primary unit (or building block) of legislation—every piece of legislation will have at least 1 section. Depending on the complexity of the section, it may be broken into the following:

Figure 1 Breakdown of a section



Usually, legislation has more than 1 section. Groups of sections can be organised into parts. Parts may be broken into divisions and subdivisions, and chapters may be used for particularly large and complex legislation. The following figure shows the hierarchy of groupings of provisions:

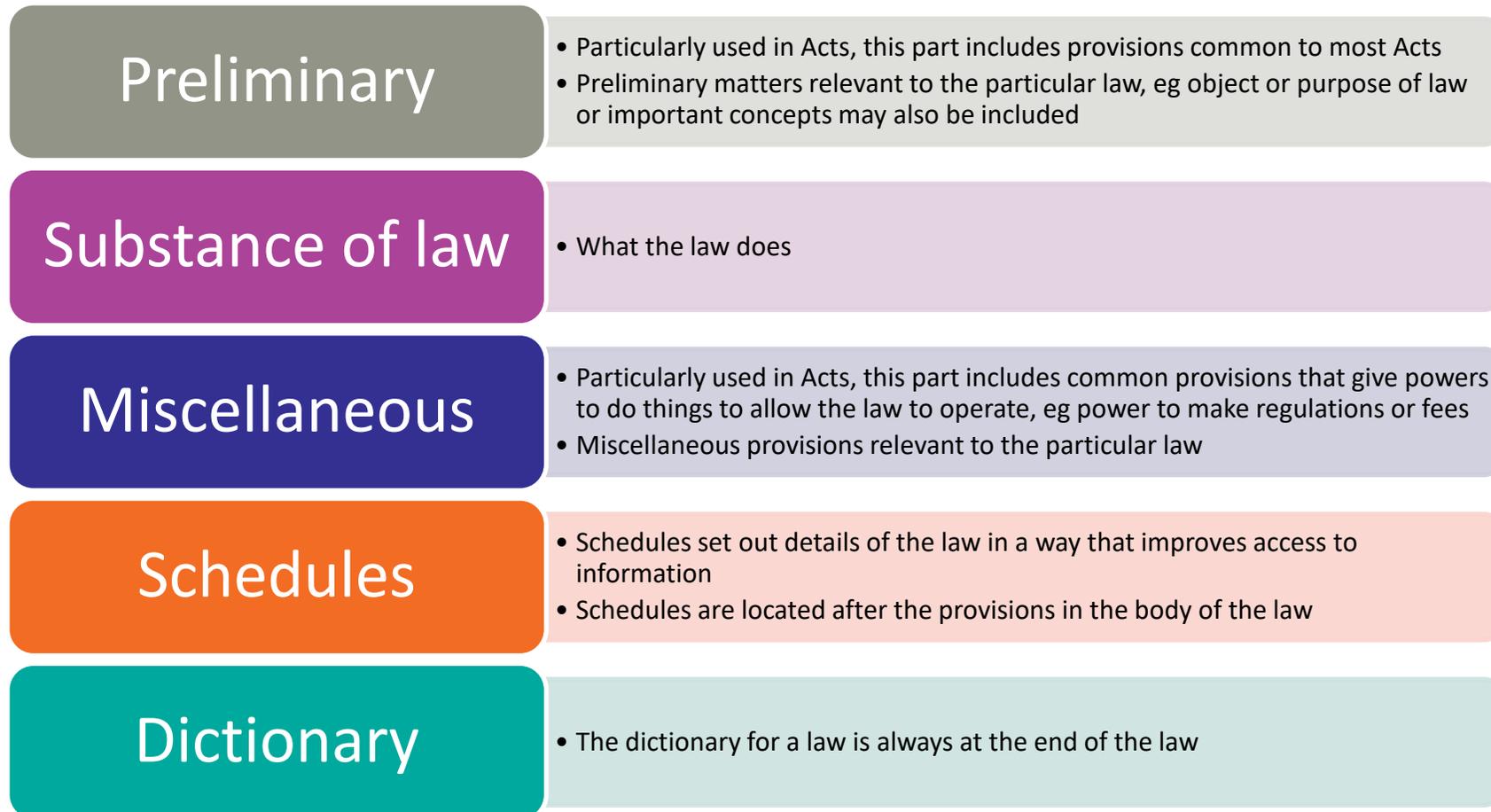
Figure 2 Hierarchy of grouping of provisions



## STRUCTURE

Acts and regulations follow a common structure—familiarise yourself with 1 Act or regulation and you will have a good sense of how to navigate another piece of legislation. Figure 1 sets out the typical structure of a law.

Figure 3 *Typical structure of ACT law*



## REFERRING TO PARTS, DIVISIONS ETC

A decimal numbering system is used in Acts and regulations. This means that all provisions have a unique reference and can be easily identified within the law. For example, part 3 of chapter 1 is referred to as part 1.3 and section 2 of schedule 1 is referred to as section 1.2.

*Table 2 Abbreviations of provision references*

Reference	Abbreviation	Reference	Abbreviation
<b>Chapter</b>	ch	<b>Paragraph</b>	par
<b>Part</b>	pt	<b>Subparagraph</b>	subpar
<b>Division</b>	div	<b>Subsubparagraph</b>	subsubpar
<b>Subdivision</b>	subdiv	<b>Schedule</b>	sch
<b>Section</b>	s	<b>Dictionary</b>	dict
<b>Subsection</b>	refer to whole section (eg s 3 (1))	<b>Definition</b>	def

# WHAT IS (AND ISN'T) PART OF A LAW?

## WHY THIS IS IMPORTANT

Legislation is made up of a combination of material that is part of the law and material that is not part of the law.

The difference becomes important when interpreting the law, as greater weight will be given to material that is part of the law than material that is not. See 'Read text in context of law as a whole' on page 20.

## PART OF LAW—PREAMBLE

A preamble to a law expresses the background to, or reasons for making, the law. If a law has a preamble, you will find it before the enacting words of the law.

Preambles are not common, usually reserved for landmark or unusual legislation. For example, the Human Rights Act includes a preamble explaining the importance of the rights of individuals, the need to balance those rights with those of other individuals, and the ability to place reasonable limits that can be justified in a free and democratic society.

A preamble to a law is part of the law (see LA, s 126 (3)).

## PART OF LAW—HEADINGS

Headings to the various provisions of a law (chapters, schedules, sections etc) give you a general indication of the contents of the provisions.

A heading to a chapter, part, division, subdivision, or other provision of a law is part of the law (see LA, s 126 (1)).

A heading to a section of a law is part of the law, but only if either of the following apply:

- the law was made after 1 January 2000
- the section heading has been amended or inserted after 1 January 2000.

(See LA, s 126 (2))

## PART OF LAW—EXAMPLES AND DIAGRAMS

You will find examples used throughout legislation. An example provides a helpful illustration of the provision that it relates to.

Common uses of examples in legislation include:

- setting out a specific case (which may be fictional) that helps give meaning to the more abstract language of a provision
- giving an example (which may be fictional) that clarifies the scope of a provision by illustrating cases that fall within, or outside, the provision.

An example used in a law is not exhaustive—it may extend the meaning of the law, but it does not limit its meaning (see LA, s 132).

Diagrams are used to provide a visual illustration of a provision. For example, road rules legislation includes diagrams of traffic control signs.

Examples and diagrams in a law are part of the law (see LA, s 126 (4)).

## PART OF LAW—DICTIONARY

There is a dictionary in most principal Acts and regulations which sets out the meanings of the terms used in the law for which a particular definition applies.

If the law has a dictionary, a dictionary provision towards the beginning of the law (usually section 3) helps raise awareness that the dictionary at the end of the law is part of the law.

The dictionary to a law is part of the law (see LA, s 126 (5)).

## PART OF LAW—SCHEDULES

Sometimes, it is helpful to include some details of a law in a schedule to improve the readability of the law.

The kind of material in schedules is broad, including material that lends itself to being set out in a table or long list, template wording (such as the wording of an oath or affirmation), or detail that is more helpfully separated into an easy to find schedule (such as the Territory privacy principles under the *Information Privacy Act 2014*).

A schedule to a law is part of the law (see LA, s 126 (5)).

## PART OF LAW—OTHER THINGS

Punctuation and provision numbers in a law are part of the law (see LA, s 126 (6) and (7)).

## NOT PART OF LAW—NOTES

Notes are often used to give extra information about a provision and to help the reader understand the relationship of the provision to other provisions. In the case of endnotes, those notes give you information about the history of the law.

Legislation containing notes will have a notes section towards the front of the Act (usually around section 5), which helps raise awareness that notes are for information only.

Notes in legislation are not part of the law (see LA, s 127 (1)).

## NOT PART OF LAW—TABLE OF CONTENTS

The table of contents gives you a quick reference guide to the law. It is not part of the law (see LA, s 127 (2)).

## NOT PART OF LAW—CERTAIN SECTION HEADINGS

A heading to a section of a law is not part of the law if both of the following apply:

- the law was made on or before 1 January 2000
- the section heading has not been amended or inserted after that date.

(See LA, s 127 (3))

## MORE INFORMATION

- The following provisions of the Legislation Act are the source of this information:
  - section 126 (Material that is part of Act or statutory instrument)
  - section 127 (Material that is not part of Act or statutory instrument).
- For information about how material that is and isn't part of a law is considered when interpreting the law, see 'Interpretation—non-legislative material' on page 28.

## NAME OF LAW

### LONG TITLE

All Acts have a long title. The long title is set out on page 1, immediately after the table of contents. The long title briefly describes what the Act is about, and usually begins 'An Act about...'. Regulations do not have a long title.

As well as providing useful information to the reader, it may be used as an aid to the interpretation of an Act and plays an important role in the debate of a bill (see SO 169). When the bill is read for the first time, it is the long title only that is read (see SO 168 (b)), and debate of the bill is confined to what is covered by the long title. For example, the debate of a bill with the long title 'An Act about the supply of liquor' could not extend to the production of liquor.

### NAMING SECTION

Each Act, regulation and other legislative instrument is given a unique identifying name and number.

The name of a law reflects its subject matter and the year it was made. It also provides a convenient way of referring to the law, and is what you should use when citing the Act, regulation or other legislative instrument.

The name of a piece of legislation is set out in its naming section. The name of legislation used to be called the citation or short title. The naming section is always the first section of a law.

The name of a regulation usually follows the name of the Act under which it is made. If 2 or more regulations are made under 1 Act, the name of each regulation will reflect the subject matter of the regulation, as well as follow (as far as practicable) the name of the Act. An example is the various infringement notice regulations made under the *Magistrates Court Act 1930*.

# COMMENCEMENT

## KINDS OF COMMENCEMENT

Each Act and regulation, and most other laws, will include a provision about when the law commences. There are a number of different ways that a law can commence:

- **Standard commencement:** A law often commences on the day after it is notified on the Legislation Register (its notification day). This is the default commencement that applies (see LA, s 73), although it is usually stated in the law for clarity.
- **Commencement on a stated day or event:** A law may state another time or day when it commences. For example, it may state that it commences on a particular day, after a stated period of time or on a particular event occurring (eg the commencement of another law).
- **Commencement by commencement notice:** A law may state that it commences ‘on a day fixed by the Minister by written notice’. In this case, the law commences on a day stated in a commencement notice signed by the Minister and notified on the Legislation Register. However, if the Minister does not fix a commencement day that is within 6 months after the law’s notification day, the law automatically commences at the end of that 6-month period (see LA, s 79).
- **Split commencement:** It may be important for different parts of a law to commence at different times. In that case, the law has a split commencement—that is, the commencement provision sets out different commencements (which may be different kinds of commencement) for different provisions of the law. For example, the commencement may provide for the law, other than part 2, to commence on the day after its notification day, and provide for part 2 to commence on a day fixed by the Minister by written notice.
- **Retrospective commencement:** Legislation usually commences after its notification day. However, sometimes it is important for a law to commence before it is notified—that is, it commences retrospectively. If a law commences retrospectively this is clearly expressed, usually in the form ‘This Act/regulation is taken to have commenced on...’.

## FINDING COMMENCEMENT INFORMATION

If you are trying to find out when a law commenced, there are a number of ways you can do this:

- You can look at the commencement section of the law. A commencement section is removed from a law (repealed) once all of the provisions of the law have commenced, so it is best to look at the first version of the law for that section (see LA, s 89 (4)).
- If there is a commencement notice for the law, you can look at that notice. You can find commencement notices on the Legislation Register.
- You can look at the endnotes for the law—located at the end of the law. Endnote 3 sets out the legislative history of the law, and the first entry will tell you when the law commenced.

# OFFENCE PROVISIONS

## OVERVIEW

Offence provisions are common in legislation, ranging from offences for the most serious violent and antisocial behaviour to regulatory offences to enforce compliance with legislative requirements. In the ACT, principles of criminal responsibility are dealt with under the Criminal Code. For more information about the Code, see 'Framework law—Criminal Code' on page 42.

## IDENTIFYING OFFENCE PROVISIONS

Sometimes you can identify an offence provision from the way it is expressed. For example, the heading may state it is an offence or the provision may open with the words 'A person commits an offence if...'.

However, it is not necessary for a provision to expressly state it is an offence if a penalty is stated to apply to the provision (see LA, s 134). This is usually expressed as the 'maximum penalty' for the offence, being a number of penalty units, a term of imprisonment, or both. The maximum penalty is usually expressed at the end of the provision that creates the offence.

## INFRINGEMENT NOTICES

Some offences may be enforced by way of infringement notices (on-the-spot fines). This is an alternative to prosecuting someone for the offence.

Infringement notices are usually used for minor offences where there is no need to demonstrate fault and which are not otherwise complex. Infringement notice offences are usually strict liability offences (although strict liability offences are not necessarily infringement notice offences).

The kinds of offences that may be enforced in this way are varied, and include littering offences, parking and other traffic infringements and keeping and controlling pets. You can find out which offences are infringement notice offences by looking for offences under:

- for road transport legislation—in the *Road Transport (Offences) Regulation 2005*
- for other legislation—at infringement notice regulations made under the *Magistrates Court Act 1930*.

## LEGISLATION ACT PROVISIONS ABOUT OFFENCES

The following provisions of the Legislation Act are particularly relevant for offence provisions:

- s 84A—provides that a law creating an offence or increasing a penalty only applies to an offence committed after the law commences. A law reducing a penalty also applies to an offence committed before the law commences (but does not affect a penalty already imposed)
- s 133—sets out the value of a penalty unit (currently \$150 for an individual and \$750 for a corporation, but this may change from time to time)
- s 134—sets out the effect of a penalty stated at the end of a section or subsection
- s 135—sets out the effect of a penalty stated in a provision
- s 152—provides for the continuing effect of obligations
- s 161—provides that offence provisions apply to corporations as well as individuals and sets out the penalty (in penalty units) for corporations convicted of an offence punishable only by imprisonment.

Chapter 18 (Offences) contains the following sections:

- s 189—provides that a reference to an offence includes a reference to related ancillary offences (attempts, aiding and abetting etc)
- s 190—defines indictable and summary offences
- s 191—provides for when an act or omission is an offence against 2 or more laws
- s 192—provides for when a prosecution must begin
- s 193—provides for the continuing commission of an offence for as long as a person fails to comply with a requirement.

## MORE INFORMATION

You may also be interested in the Justice and Community Safety Directorate's publication, [Guide for Framing Offences](#)<sup>5</sup>.

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<sup>5</sup> <https://www.justice.act.gov.au/guide-framing-offences>

# REGULATION-MAKING POWERS

## WHAT REGULATIONS DO

Regulations usually set out the detailed rules for the operation of a legislative scheme or policy established under an Act.

The main reasons why law is set out in a regulation or other statutory instrument, and not an Act, include:

- to reduce pressure on parliamentary time
- because the subject matter is too technical or detailed for parliamentary consideration
- when legislation needs to deal with rapidly changing or uncertain situations, or should be flexible and responsive to changing needs.<sup>6</sup>

Regulations can only be made for an Act if there is a power to make regulations in the Act.

## GENERAL REGULATION-MAKING POWERS

Most Acts include a power to make regulations ‘for the Act’. This is a broad power that allows regulations to be made about anything that is ‘required or permitted’ to be made under the Act, or ‘necessary or convenient’ for carrying out or giving effect to the Act (see LA, s 44).

You will find this power in a provision towards the end of the Act, usually in a part headed ‘Miscellaneous’.

## SPECIFIC REGULATION-MAKING POWERS

Often Acts include powers to make regulations for particular things. For example, a provision of an Act may state that the detail for the provision is ‘prescribed by regulation’, or the regulation-making power towards the end of the Act may list particular things that regulations can be made about.

As long as the Act includes a general power to make regulations, these specific powers do not limit the general power.

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<sup>6</sup> Pearce, DC and Argument, S 2017, *Delegated Legislation in Australia*, 5th edn, LexisNexis Butterworths, Chatswood, p 6

## OFFENCES UNDER REGULATIONS

An Act may include a power to create offences by regulation. That power will usually include a limit on the maximum penalty for those offences.

# TRANSITIONAL PROVISIONS

## WHAT DO TRANSITIONAL PROVISIONS DO?

When an existing legislative scheme is repealed and a new legislative scheme begins, it is often necessary to put in place arrangements to transition from the existing scheme to the new scheme. Legislative provisions dealing with those arrangements are referred to as transitional provisions.

Transitional provisions preserve existing rights and explain how they fit into the new scheme. It is not uncommon for an old legislative scheme, although repealed, to be taken to apply to certain proceedings or other things that happened before the commencement of the new scheme.

## SAVING OPERATION OF REPEALED LAW

The Legislation Act, section 84 saves the operation of a repealed law so that things done under the repealed law continue to be valid after the repeal takes effect. Although section 84 saves a repealed law, transitional provisions are often included to confirm the continuing effect of the repealed law if the transitional provision makes the continuing operation of the repealed law clearer or more certain for the people to whom the law applies.

As an example, a repealed law provides for the conduct of an investigation that may lead to criminal proceedings. It will be clearer, and provide more certainty, for the parties and the court in a prosecution, if the court can rely on a transitional provision that confirms the continuing validity of the investigator's powers and the investigation instead of having to establish that section 84 applies to the investigation.

You can usually find transitional provisions in the last part of an Act.

## EXPIRING TRANSITIONAL PROVISIONS

Because transitional provisions will generally only be relevant for a limited period of time, a provision is usually included to expire them after a stated period of time. Once they have expired, the law will be republished without the transitional provisions. This is one way in which PCO maintains an up-to-date relevant statute book.

Even though a transitional provision will be removed from a law, its effect will continue (unless the provision specifically states that it won't) (see LA, s 88). You can find an expired transitional provision in the relevant historical version of the law.

## OTHER COMMON PROVISIONS

### NOTIFICATION AND REVIEW OF DECISIONS

Laws often require government to make individual decisions that affect people (known as administrative decisions). Examples include decisions about issuing a driver's licence, registering a motor vehicle or applications for building or development approval.

Some administrative decisions are reviewable by the ACT Civil and Administrative Tribunal under the *ACT Civil and Administrative Tribunal Act 2008*. If an Act or regulation contains reviewable decisions, the Act or regulation will include provisions about the notification and review of decisions and identify the decisions that are reviewable. The provisions are usually located in a part towards the end of the law headed 'Notification and review of decisions', and the decisions are usually set out in a table in a schedule to the law headed 'Reviewable decisions'.

### DETERMINATION OF FEES

The government charges fees to fund services it provides. Bus fares, parking fees and fees to dump waste in landfill are examples.

A standard provision authorises fees to be determined for the law—this is usually located towards the end of the law in a part headed 'Miscellaneous'.

A fee determination is made by disallowable instrument, which gives the Legislative Assembly scrutiny of the fees the government sets (see LA, s 9 (1) (b)). However, unlike other disallowable instruments, the Assembly cannot amend a fees determination (see LA, s 68 (1)).

### APPROVED FORMS

Legislation may provide that notices are to be given or applications or other instruments used for particular purposes. A standard provision in many laws allows forms to be approved for those purposes—this is usually located towards the end of the Act in a part headed 'Miscellaneous'.

If a form is approved for a particular purpose, the standard provision in the law requires the form to be used for that purpose. The Legislation Act, section 255 also applies to the approved form and its use.

If there are no approved forms for a particular purpose under a law, the government may still make a form available for that purpose. For example, applications for birth certificates and other information on the Births, Deaths and Marriages Register may be submitted by completing an electronic form.

# INTERPRETATION—GENERAL

## OVERVIEW

The task of working out the meaning of laws can be daunting, even for legally trained people. There is a large and growing body of law on statutory interpretation. The Legislation Act sets out a number of interpretation principles, but these are not intended to be a comprehensive statement of the law of interpretation applying to legislation, and common law presumptions also apply (see LA, s 137 (2)).

However, most of the time working out the meaning of a law will not be complicated. Current drafting practices, including the use of plain English, are designed to improve clarity and readability. Most of the time you will be able to work out the meaning of a provision if you keep in mind the following:

- read the text of the law
- read the law in context
- when reading the law, keep in mind the need for the law to be consistent with human rights, so long as it can be done within the purpose of the law.

## READ TEXT OF LAW

Keep in mind the following key points about the text of a law:

- As obvious as it seems, your starting point should be to look at the text of the law—do not rely on someone else’s interpretation of the law or what might be a common understanding of the meaning of the law.
- Look at the words used in the law—it is a common law principle of interpretation that all words have meaning and effect.
- Consider whether the words or expressions used in the law are defined for the law. Definitions in laws are discussed in ‘Interpretation—definitions’ on page 24.
- If the words in the law are not defined, they are usually given their ordinary meaning. When working out the ordinary meaning of a word, look it up in the Macquarie Dictionary—it is an authoritative source of Australian English, and is the reference PCO uses in drafting legislation.
- If the word has a firmly established legal or technical meaning that is not ambiguous, that meaning will generally apply.
- Also, familiarise yourself with the interpretation aids in the Legislation Act, chapter 15 (see pp 30-34), which inform the way legislation is drafted.

## READ TEXT IN CONTEXT OF LAW AS WHOLE

The Legislation Act, s 140 reflects the common law principle that the provisions of a law should be read in the context of the law as a whole.

the Legislation Act, sections 126 and 127 let readers know what material is part of the law (including headings, examples and schedules) and what is not (such as notes and tables of contents) (As discussed in 'What is (and isn't) part of a law?' p 7).

The fact that material forming part of a law must be considered does not mean that all material forming part of the law has equal weight. Courts give different weight to different parts of a law. For example, a heading can generally be expected to be given less weight than a substantive provision.<sup>7</sup>

If you are reading a regulation or other statutory instrument, you should also consider the law it is made under.

Consider the following examples of how the legislative context affects the interpretation of provisions:

- The long title of an Act provides that it is an Act to give certain benefits to the holders of pensioner cards. Section 4 provides 'This Act applies to a holder of a pensioner card'. Section 22 provides that the commissioner may grant 'a person' an exemption from payment of rates. The Act does not contain a definition of 'person'. Section 22 must be read in the context of the Act as a whole so that the commissioner may only grant exemptions to people who are holders of pensioner cards.
- Section 12 (1) of a subordinate law refers to 'a non-conviction order under the *Crimes (Sentencing) Act 2005*'. No other kind of order is mentioned in the section and the word 'order' is not otherwise defined in the subordinate law. Subsections (2) and (4) of the same section, which only refer to 'the order', are to be understood as referring to the order mentioned in subsection (1).

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<sup>7</sup> Pearce, DC and Geddes, RS 2014 *Statutory Interpretation in Australia*, 8th ed, LexisNexis Butterworths, Chatswood, pars 4.52-4.53)

## READ LAW IN CONTEXT OF LEGISLATIVE FRAMEWORK

No piece of legislation can be fully understood without knowing the legislative framework that it operates in.

Key items of legislation are important to know about as they affect how we read and interpret legislation.

Table 3 *Framework legislation*

Framework law	Why is it important?
Legislation Act	Primary law for reading and interpreting legislation. For more information, see 'Framework law—Legislation Act', p 35
Human Rights Act	Requires interpretation of law to be consistent with human rights. For more information, see 'Framework law—Human Rights Act', p 38
Criminal Code	Sets out the principles of criminal responsibility that apply to offences made or re-made from 2003. For more information, see 'Framework law—Criminal Code', p 42
<i>Public Sector Management Act 1994</i>	Deals with the administration of the public service, including delegation of functions given to directors-general and executive officers
<i>Financial Management Act 1996</i>	Includes provisions governing territory authorities established under Acts
<i>ACT Civil and Administrative Tribunal Act 2008</i>	Includes information about how administrative decisions made under laws are to be dealt with, including requirements about when and how someone must be notified about a decision

## READ LAW IN CONTEXT OF NON-LEGISLATIVE MATERIAL

Non-legislative material can be used in the interpretation of legislation to give context (see LA, s 141).

Non-legislative material is material that is not part of the legislation being interpreted. It could include a Minister’s presentation speech, the report of an Assembly Committee or a royal commission cited in debates in the Legislative Assembly. It could also include notes, table of contents and other material in the law that is not part of the law. For more information, see the Legislation Act, s 126 and s 127 and ‘What is (and isn’t) part of a law’ on page 7.

For more information about how non-legislative material can be considered, and more examples of the kind of material that can be considered, see ‘Interpretation—non-legislative material’ on page 28.

## INTERPRETATION CONSISTENT WITH HUMAN RIGHTS

In the ACT, the Human Rights Act sets out a number of human rights (civil and political rights and economic, social and cultural rights) that apply to individuals.

When interpreting a law, it must be done in a way that is compatible with those human rights, so far as it is possible to do so consistently with the purpose of the law (see HRA, s 30). This means that, unless the law is intended to operate in a way that is inconsistent with the right in question, the interpretation that is most consistent with human rights prevails.

## INTERPRETATION THAT BEST ACHIEVES PURPOSE

When reading a law, the interpretation that best achieves the purpose of the law is to be preferred over all other interpretations (see LA, s 139). Often, this will be evident and no particular analysis of the purpose of the law is needed.

The purpose does not need to be expressly stated in the legislation, although some laws do contain a purpose or objects provision. A purpose or objects provision presents the policy objectives of legislation in a short, readily understandable form and provides an accessible overview of the legislation. It is often found towards the beginning of a law, or at the beginning of the part of the law to which it relates.

## MORE INFORMATION

- For more information about statutory interpretation in the ACT, see the Legislation Act, chapter 14 (Interpretation of Acts and statutory instruments).
- If you would like more detailed information about statutory interpretation, see Pearce and Geddes, *Statutory Interpretation in Australia*.<sup>8</sup>
- For information about PCO's drafting practices, see [PCO's website](https://www.pco.act.gov.au/).<sup>9</sup>

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<sup>8</sup>Pearce, DC and Geddes, RS 2014 *Statutory Interpretation in Australia*, 8th edn, LexisNexis Butterworths, Chatswood, 2014

<sup>9</sup> <https://www.pco.act.gov.au/>

# INTERPRETATION—DEFINITIONS

## WHY ARE DEFINITIONS USED?

A definition is a provision of a law that either gives meaning to a term, or limits or extends the meaning of a term (see LA, s 130). Sometimes it will be necessary or preferable to define a term for a law to improve the ability to read and understand the law. Definitions can:

- remove ambiguity, for example, if there is some uncertainty about the ordinary meaning of the term
- avoid tedious repetition by shortening a reference to a concept used in a number of places in legislation
- improve flow for readers
- enhance clarity by bringing out the logic and key features of substantive provisions, and allowing the most important elements to be understood more clearly.

## DEFINITIONS APPLY SUBJECT TO CONTRARY INTENTION

If a word or expression has been defined in a law, the definition will apply unless there is an intention that the definition does not apply in a particular context. That intention may be expressed or implied (see LA, s 155).

An example of an express contrary intention can be found in the definition of ‘utility’ under the *Utilities Act 2000*. The term is defined for the Act generally to mean a person licensed to provide a utility service. However, for part 9 of the Act it is defined to include a former utility. The expanded meaning applies only to part 9.

An example of an implied contrary intention can be found in the use of the word ‘function’ in the Criminal Code. The Legislation Act defines the word to include ‘authority, duty and power’, and it is used in this context a number of times in the Code. But the Code also uses the term in different contexts, including a computer function. In that instance, the context is sufficient to indicate that ‘function’ is being used in a different sense without the need for a further definition for that context.

## DEFINITIONS IN DICTIONARIES AND SECTIONS

A definition in the dictionary for a law will apply to the whole law, unless the law provides that the definition applies in a limited way (see LA, s 156 (1)). For example, if a term is defined for a part, the definition will usually be located at the beginning of the part and expressed to apply to the part. A signpost definition will usually be included in the dictionary, referring the reader to the part definition of the term, which makes it clear the term is defined for the part only.

A definition in a section applies in the section only, unless the relevant law provides for the definition to have a wider operation (see LA, s 156 (2) and (3)). Definitions that apply to a section only are not included in the dictionary for the law.

## COMMONLY-USED TERMS IN LEGISLATION ACT DICTIONARY

Legislation makes frequent use of particular defined terms. It would be cumbersome and problematic to define the terms in each law in which they are used. To overcome these issues, many commonly-used terms are collected in a single dictionary in the Legislation Act, which applies to the whole statute book. Once a term is defined in the dictionary it does not need to be defined again in other ACT legislation. The Legislation Act dictionary has 2 parts, and it is part 1 that contains definitions that apply to all legislation (part 2 contains definitions that only apply to the Legislation Act).

However, a common definition for a term won't apply to the use of the term in a particular law if the law indicates an intention (usually by way of a definition) that the term is not to have the same meaning (see LA, s 155). It is therefore important to check the dictionary of the law you are reading as well as the Legislation Act dictionary, part 1 for relevant definitions.

A table towards the end of this guide sets out most of the terms defined in the Legislation Act dictionary that apply across the statute book. You can use this as a quick reference guide.

## DIFFERENT PARTS OF SPEECH AND GRAMMATICAL FORMS

Although a particular word or expression may be given a defined meaning, the legislation in which it appears may use a number of forms of the same word or expression. It would be cumbersome and unhelpful to have to define each of these related terms. The Legislation Act, 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.

For example, if a law defines 'publish', and the law uses the terms 'publisher', 'publishes', 'published' or 'publishing', those terms will have a meaning that corresponds to 'publish'.

## FINDING DEFINITIONS

Definitions applying to a law can be found in a number of different places:

- **Dictionary at the end of the law:** There is a dictionary in most principal Acts and regulations, and most definitions that apply to the law can be found there.
- **Provision itself:** If a term is defined for a section only, it is usually found in that section (usually at the end of the section).
- **Elsewhere in a law:** Some terms that are considered to be particularly important may be defined towards the beginning of the law. If a term applies only to a part etc of a law, it will usually be defined in the part. In those cases, you can find the term in the dictionary with a signpost reference to where the definition is in the law.
- **Authorising law:** If a statutory instrument such as a regulation is made under the authority given by an Act or other law, words and expressions in the instrument will have the same meaning as in the Act or other law (see LA, s 148). This simplifies the drafting of regulations and other instruments and ensures that terms in the instrument and the authorising law are used consistently. The notes at the start of the dictionary in a regulation alert the reader to words that are used in the regulation that are defined in the Act. However, the list is not necessarily exhaustive, so it is a good idea to check the dictionary of the authorising law as well.
- **Legislation Act, dictionary part 1:** The notes at the start of the dictionary to a law alert the reader to words that are used in the law that are defined in the Legislation Act dictionary, part 1. However, the list is not necessarily exhaustive, so it is a good idea to check the Legislation Act, dictionary as well.

## KINDS OF DEFINITIONS

Definitions can take many different forms, but all defined terms in a law are bolded and italicised. Table 4 explains some of the more common forms of definition you will find in legislation.

Table 4 *Kinds of definitions*

Kind of definition	Description
Standard 'means' definition	A self-contained definition in the form ' <b>term</b> means...'. This is the whole meaning of the term for the law it applies to, and displaces any ordinary meaning of the term.
Standard 'includes' or 'does not include' definition	<p>A definition expressed to <u>include</u> or <u>not include</u> particular things.</p> <p>Often the term will not otherwise be defined in the law, so the ordinary meaning will apply, with the particular things identified either expanding or limiting the ordinary meaning (or clarifying it). For example, '<b>writing</b> includes any way of representing or reproducing words in visible form'.</p> <p>If the term is otherwise defined, the inclusion or exclusion of things will expand or limit the term as defined for the law it applies to.</p>
Signpost definition	<p>A definition that uses the word 'see' to refer you to another provision of the law or another law where the term is defined. In that case, the definition referred to applies. For example, the signpost definition '<b>adult</b>—see section 4.' in the <i>Births, Deaths and Marriages Registration Act 1997</i> (BDMR Act) means that the term 'adult' is defined in s 4 for that Act.</p>
Relational definition	A definition that applies only in relation to a stated thing. For example, ' <b>residence, in relation to a platypus</b> , means a riverbank'—this definition would not apply to a reference to a residence of another animal in the law.
Narrative definition	<p>Sometimes the defined term will appear within the definition, not at the beginning. This method is used where it will better convey the meaning of the term. For example, 'For this Act, an agency has <b>control</b> of a record if the agency has possession of the record'.</p>
Tagged-term definition	A definition that defines a concept in the provision where it is first used or most significantly used. For example, 'The parliamentary counsel must establish and maintain a register of Acts and statutory instruments (the <b>ACT Legislation Register</b> )'.

# INTERPRETATION—NON-LEGISLATIVE MATERIAL

## WHEN NON-LEGISLATIVE MATERIAL MAY BE CONSIDERED

There are criteria to be applied in deciding whether it is appropriate to consider non-legislative material and what weight to give it (see LA, s 141 (2)):

- the desirability of people being able to rely on the ordinary meaning of the Act
- the undesirability of prolonging proceedings
- the public accessibility of the material.

Material on the Legislation Register is taken to be publicly accessible (see LA, s 141 (4)).

## WHAT NON-LEGISLATIVE MATERIAL MAY BE CONSIDERED

Table 5 gives guidance about the non-legislative material that can be considered, subject to the criteria for use in LA, s 141 (2). This reflects the table in the Legislation Act, s 142, but is not an exhaustive list (see LA, s 142 (3)).

Table 5 *Non-legislative material*

Non-legislative material—Act	Non-legislative material—statutory instrument
Material not forming part of the Act contained in an authorised version of the Act (see LA, ch 3)	Material not forming part of the statutory instrument contained in an authorised version of the instrument (see LA, ch 3)
Relevant report of royal commission, law reform commission, committee of inquiry or other similar entity presented to Assembly before Act was passed	Relevant report of royal commission, law reform commission, committee of inquiry or other similar entity presented to Legislative Assembly before instrument made or, for disallowable instrument, before disallowance period ends
Relevant report of Assembly committee made to Assembly before Act was passed	Relevant report of Assembly committee made to Assembly
Explanatory statement for bill that became Act, or other relevant document, presented to Assembly before Act was passed	Explanatory statement for disallowable instrument, or any other relevant document presented to Assembly before disallowance period ends
Presentation speech made to Assembly during passage of bill that became Act	Presentation speech made to Assembly of statutory instrument presented to Assembly
Official reports of proceedings in Assembly in relation to bill that became Act	Official reports of proceedings in Assembly in relation to statutory instrument presented to Assembly
Relevant treaty or other international agreement to which Australia is party	Relevant treaty or other international agreement to which Australia is party

# INTERPRETATION AIDS—PERIODS OF TIME

## WORKING OUT PERIODS OF TIME

It is common to find provisions in legislation that require or allow you to do something within a period of time (such as apply for a licence or pay a fine), or that explain when, or for how long, something will occur (for example, the period of time for which a suspension of a driver's licence applies).

The language used to express periods of time has a particular effect, as provided for under the Legislation Act, s 151. The section applies in working out periods in the past (backwards) as well as in the future (forwards). However, it only applies to working out periods of time that are at least 1 day long. For more information, see table Table 6.

## PERIODS OF TIME ENDING ON NON-WORKING DAYS

Sometimes, the day when something must be done under a law works out to be a non-working day. If that is the case, the thing may be done on the next working day instead (see LA, s 151A).

In this context, a working day will be worked out depending on the thing that needs doing and where:

- Usually, a working day will be a day other than a Saturday, Sunday or public holiday in the place where the thing needs to be done.
- If you need to do something at a bank or other authorised deposit-taking institution, a working day will also not be a bank holiday in the place where the thing needs to be done.
- However, if you need to do something at an office of a government agency or other public entity, it will be a day that the office is open, which may include a weekend or public holiday and may exclude a week day.

(See LA, s 151A (4), def **working day**)

Table 6 Working out periods of time

If the period of time is described as—	then the period —	Example
<u>beginning at, on or with</u> a stated day, act or event	includes the stated day or the day of the stated act or event	If a licence <u>begins on</u> 1 July, the licence is in force on 1 July
<u>beginning from or after</u> a stated day, act or event	does not include the stated day or the day of the stated act or event	If a disallowable instrument <u>begins from</u> 30 June, the instrument starts to operate on 1 July
<u>ending at, by, on or with</u> , or as <u>continuing to or until</u> , a stated day, act or event	includes the stated day or the day of the stated act or event	If a person’s right to apply for review of a decision <u>ends on</u> 30 June, the person may apply for review of the decision on 30 June
<u>ending before</u> a stated day, act or event	does not include the stated day or the day of the stated act or event	If a person may apply for renewal of accreditation not later than 6 months <u>before</u> the day the accreditation period <u>ends</u> , and the accreditation period ends on 2 May, the person may apply for renewal at any time during the 6-month period ending on 1 May
<u>occurring between 2 events</u>	does not include the days when the events happen	A court rule requires a notice of motion to be served 2 days before the return date for the application. If the return date is Friday, that day and the day the application is served are not counted in working out the 2 days. For service to be valid, the application must be served on or before the Tuesday before the return date
to be done <u>within</u> a period of time <u>after</u> a stated day, act or event	includes the stated day	If a person must pay a fine within 10 days after the fine is imposed, the period includes the day the fine is imposed.

## DOING THINGS FOR WHICH NO TIME IS FIXED

Often a law will state that a person may or must do something, but will not state the time within which the thing may or must be done. In these cases, the thing may or must be done as soon as possible and as often as needed (see LA, s 151B (2)).

## POWER TO EXTEND TIME

When a law requires something to be done on a particular day, or within a particular period of time, there may also be a power for a court or other entity to extend the time for doing the thing.

In these cases, a person may apply to extend the time to do something even if the time for doing the thing has ended. Similarly, the relevant entity's power to extend the time can be exercised after the time for doing the thing has ended (see LA, s 151C).

## CONTINUING EFFECT OF OBLIGATIONS

Section 152 deals with the situation where an obligation is imposed by a law to do an act within a period or before a particular time. If the period ends, section 152 makes it clear that the obligation continues until the act is done. This applies even if someone has been convicted of an offence for failing to do the act.

## INTERPRETATION AIDS—OTHER

The Legislation Act, chapter 15, includes a number of aids to assist the reader and reduce complexity of drafting.

### GENDER

A reference to a gender in legislation (eg ‘he’ or ‘she’) includes every other gender (see LA, s 145 (a)). This achieves a number of outcomes, including:

- it provides legal recognition of transgender and intersex people in the ACT (as recommended by the report [Beyond the Binary: Legal Recognition of Sex and Gender Diversity in the ACT](https://justice.act.gov.au/beyond-binary-legal-recognition-sex-and-gender-diversity-act))<sup>10</sup>
- it clarifies that the use of a single gender in law (which was more common in older drafting styles) does not limit the application of the provision.

The need to rely on section 145 (a) is less evident today, as the ACT’s current drafting practice is to avoid using gender specific terms at all. The gender neutral language employed increasingly includes the use of ‘they’ as a singular pronoun to avoid needing to say ‘he or she’.

### NUMBER

In ACT law, the singular includes the plural (see LA, s 145 (b)). This interpretation rule simplifies the text of legislation by allowing it 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 people* must not’).

As ACT legislation is generally drafted in the singular, you should bear in mind that this will include the plural.

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<sup>10</sup><https://justice.act.gov.au/beyond-binary-legal-recognition-sex-and-gender-diversity-act>

## MEANING OF MAY AND MUST

If a person may do something under a law, the person has a discretion about doing the thing. However, if a person must do something, the person has no discretion—they are required to do the thing (see LA, s 146).

This removes the ambiguity that has crept into the use of these terms, which have sometimes been interpreted by courts in ways that depart from their ordinary meaning. Confusion can arise particularly in relation to the term ‘shall’, which has often been used to express a requirement, but may be interpreted to express a future intention. The current drafting practice is to use the term ‘must’ instead of ‘shall’ to express a requirement, although ‘shall’ is still found in some older legislation.

## AGE IN YEARS

At one time the law about when a person attained a particular age was technical and artificial. The Legislation Act, section 149 ensures that the ordinary understanding about when a person attains an age, that is at the beginning of the person’s birthday, also applies as a matter of law.

## 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). The Legislation Act, section 150 provides that distance is to be measured in a straight line on a horizontal plane.

## CHANGES IN DRAFTING PRACTICE DO NOT AFFECT MEANING

Ideally, the language of the statute book should be consistent so that, whenever an idea is expressed, it is expressed in a consistent way. 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. The same problem can arise where the law on a topic is found in a number of related Acts (for example, taxation and gambling), or where a provision is rewritten using new legislative drafting practices.

Therefore, it will often be the case that a law will contain provisions in different parts that seem to be saying the same thing although expressed in different words. The Legislation Act, section 147 provides that no inference be drawn about differing meaning in provisions only because of differences in expression.

# FRAMEWORK LAW—LEGISLATION ACT

## WHAT THE ACT IS ABOUT

If you have a query about finding, making or reading legislation, the Legislation Act is a good place to start looking. Having seen the Act referred to frequently in this guide, you probably have some sense of its importance when using legislation.

The Act deals with 3 main topics:

- public access to legislation
- the 'life cycle' of legislation (its making, commencement, amendment, repeal etc)
- interpretation and other provisions commonly required in legislation.

## PUBLIC ACCESS TO LEGISLATION

It is a basic principle of our legal system that people are presumed to know the law. This important presumption depends on the law being readily available to people, particularly the authorised text of the law as currently in force. This is achieved in the following ways:

- **Legislation Register:** Chapter 2 of the Legislation Act provides for the ACT Legislation Register to be the authorised, electronic statute book for the ACT. The register provides free public access to authorised versions of ACT legislation and other legislative material, both current and historical. Under the Legislation Act, access is not only free, convenient and comprehensive, but also backed by statutory presumptions to support its authoritative status (see ch 3).
- **Republications:** Access to law also assumes the availability of the law in an up-to-date form, and chapter 11 of the Legislation Act deals with republishing the law as currently in force.
- **Editorial changes:** Access is not just about having the text of the law. The text should also be easy to read, find and use. The ACT statute book has been created over some 90 years from various sources. Drafting practices, language usage, and printing formats and styles have changed over the years. Maintaining consistency in presentation and cohesion between legislation coming from different sources and enacted at different times can assist improved access to the law. Editorial changes may also be made when laws are prepared for republication (see ch 11). The editorial changes are designed to provide consistency across the ACT statute book in format, layout and printing style, as well as a standard approach in, for example, the use of spelling, punctuation, numbering systems and provision references.

- **Notification of legislative events:** Access also assumes knowledge about when laws have been made, amended, repealed etc. Section 19 (2) requires that the Legislation Register contain notifications of these legislative events.

## THE 'LIFE CYCLE' OF LEGISLATION

The Legislation Act contains provisions about the 'life cycle' of ACT legislation. In the case of Acts, for example, this refers to the processes of:

- numbering and notifying (ch 4)
- commencement (ch 8)
- amendment and repeal (ch 9).

For regulations and certain kinds of instruments, the relevant processes are:

- the preparation of a regulatory impact statement (ch 5)
- making, notification and numbering (ch 6)
- presentation and disallowance (ch 7)
- commencement (ch 8)
- amendment and repeal (ch 9).

## INTERPRETATION

The Legislation Act includes, in an updated form, most of the provisions of the former *Interpretation Act 1967* (which was repealed when the Legislation Act commenced). Chapter 14 provides for purposive interpretation and use of extrinsic materials. Chapter 15 provides various aids to interpretation and should be read in conjunction with the dictionary at the end of the Legislation Act.

## OTHER PROVISIONS COMMONLY REQUIRED

The remainder of the Legislation Act deals mainly with other provisions commonly required in legislation. This includes general provisions about:

- courts and other decision-makers (ch 16)
- entities and positions (ch 17)
- offences (ch 18)
- functions (pt 19.2)
- appointments and acting appointments (pt 19.3)
- delegations (pt 19.4)
- service of documents (pt 19.5)
- functions of the Executive and Ministers (pt 19.6)
- forms and records in computers (pt 19.7).

# FRAMEWORK LAW—HUMAN RIGHTS ACT

## WHAT THE ACT IS ABOUT

The Human Rights Act applies numerous individual human rights guaranteed under international covenants to the ACT.

The rights covered by the Human Rights Act are made up of civil and political rights (set out in part 3 of the Act) and economic, social and cultural rights (in part 3A). The civil and political rights are mainly sourced from the [International Covenant on Civil and Political Rights](#)<sup>11</sup> (ICCPR), and the economic, social and cultural rights from the [International Covenant on Economic, Social and Cultural Rights](#)<sup>12</sup> (ICESCR).

Table 7 sets out the rights under the Human Rights Act, tells you where in the Act you can find them and identifies the international source of the rights.

Only individuals have human rights (see s 6).

The rights expressed in the Human Rights Act are not exhaustive—individuals also have rights under domestic and international law (eg under the *Discrimination Act 1991* and other ACT laws, as well as international covenants) (see s 7).

## HUMAN RIGHTS INTERPRETATION

One of the key ways in which human rights affect legislation is the need to interpret ACT laws in a way that is compatible with human rights, to the extent it is possible to do so consistently with the purpose of the law (see s 30).

Things that can be considered in doing this include international law and judgments of foreign and international courts and tribunals (see s 31).

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<sup>11</sup> <https://legislation.act.gov.au/Static/Notes/humanrights.html>

<sup>12</sup> <https://legislation.act.gov.au/Static/Notes/humanrights.html>

## LIMITS ON HUMAN RIGHTS

An individual's human rights are not absolute, and may be limited by law. However, those limits must be reasonable and able to be 'demonstrably justified in a free and democratic society'. In deciding whether a limit is reasonable, all relevant factors must be considered, including:

- the nature of the right affected
- the importance of the purpose of the limitation
- the nature and extent of the limitation
- the relationship between the limitation and its purpose
- any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

## MORE INFORMATION

The [ACT Human Rights Commission's website](https://hrc.act.gov.au/)<sup>13</sup> has a lot of useful information about the Human Rights Act.

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<sup>13</sup> <https://hrc.act.gov.au/>

Table 7 Human rights applying to ACT laws

Civil and political rights	HRA section	ICCPR article
Right to recognition as a person	8 (1)	16
Right to enjoy rights without distinction etc	8 (2)	2 (1)
Equality before the law and equal protection	8 (3)	26
Right to life	9 (1)	6 (1)
Protection from torture and cruel, inhuman or degrading treatment etc	10	7
Protection of family	11 (1)	23 (1)
Protection of children	11 (2)	24 (1)
Privacy and reputation	12	17 (1)
Freedom of movement	13	12 (1)
Freedom of thought, conscience and religion	14 (1)	18 (1), (3)
No coercion to limit religious beliefs	14 (2)	18 (2), (3)
Peaceful assembly	15 (1)	21
Freedom of association	15 (2)	22
Right to hold opinions	16 (1)	19 (1)
Freedom of expression	16 (2)	19 (2), (3)
Taking part in public life	17	25
Right to liberty and security of person	18 (1)-(7)	9
No imprisonment for contractual obligations	18 (8)	11
Humane treatment when deprived of liberty	19	10 (1), (2) (a)
Children in the criminal process	20	10 (2) (b), (3)
Fair trial	21	14 (1)

Civil and political rights	HRA section	ICCPR article
Rights in criminal proceedings	22 (1)	14 (2)
Minimum guarantees for those charged	22 (2)	14 (3)
Rights of child charged	22 (3)	14 (4)
Right of review	22 (4)	14 (5)
Compensation for wrongful conviction	23	14 (6)
Right not to be tried or punished more than once	24	14 (7)
Retrospective criminal laws	25	15 (1)
Freedom from forced work	26	8 (1), (2), (3) (a), (3) (c)
Rights of minorities	27 (1)	27
Cultural rights of Aboriginal and Torres Strait Islander peoples	27 (2)	Primary source is <i>UN Declaration on the Rights of Indigenous Peoples</i> , arts 25 and 31
Economic, social and cultural right	HRA section	ICESCR article
Right to education	27A	13

# FRAMEWORK LAW—CRIMINAL CODE

## WHAT THE ACT IS ABOUT

In the ACT, the general principles of criminal responsibility have been codified in the *Criminal Code 2002*, chapter 2. This largely reflects the model criminal code applied first in the Commonwealth.

The Code also includes a range of substantive offences. Eventually all offences will be removed from the *Crimes Act 1900* and set out in the Code. In the process of developing the Code, some offences in other legislation have been repealed because the Code covers them. For example, offences in relation to false or misleading statements and obstructing officials were repealed when chapter 3 was enacted.

## CODIFIED PRINCIPLES OF CRIMINAL RESPONSIBILITY

The Criminal Code codifies the following principles of criminal responsibility:

- the elements of an offence (pt 2.2)—that is, it sets out what is required to establish guilt of offences, identifies the physical and fault elements of an offence and discusses when fault is not relevant (strict and absolute liability)
- the circumstances where there is no criminal responsibility (pt 2.3)—for example, what is the criminal responsibility of children and people with a mental impairment, how intoxication and mistake or ignorance are treated, and external factors, such as duress and self-defence
- extensions of criminal responsibility (pt 2.4)—for example, attempt to commit a crime, incitement and conspiracy
- corporate criminal responsibility (part 2.5)
- proof of criminal responsibility (part 2.6)
- geographical application (part 2.7).

## OFFENCES COVERED BY CH 2

Although the Code commenced on 1 January 2003, chapter 2 does not apply to all offences until its application date, that is, a date to be determined by the Minister by notifiable instrument.

We are currently in a transition period with the Code applying as follows:

- it applies to all offences created by provisions that commenced on or after 1 January 2003 (see Code, s 7 and s 8 (1))
- it applies to a pre-2003 offence if either of the following apply:
  - the Code is expressly applied to the offence (eg *Workers Compensation Amendment Act 2003 (No 2)*)
  - the offence is omitted and remade (see Code, s 8 (2)).

From its application date, the Code will apply to all offences against ACT laws, and the only offences against ACT laws will be those created under the Code or any other law of the ACT (see Code, s 5 (1)).

However, there are some provisions that apply to all offences—some from 1 January 2003, and part 2.5 (Corporate criminal responsibility) from 9 April 2004. These are set out in section 10 and include the ancillary offence provisions and provisions about proof of criminal responsibility.

If an Act or regulation includes offences to which the Criminal Code applies, it will include a provision towards the beginning of the law (often in the ‘Preliminary’ part) that lets you know this. If the law includes both offences that the Code applies to and offences that it does not, the provision will usually list the offence provisions in the law covered by the Code.

## SUBSTANTIVE OFFENCES

The later chapters of the Code contain substantive offences covering the following:

- theft, fraud, bribery and related offences (ch 3)
- property damage and computer offences (ch 4)
- serious drug offences (ch 6)
- administration of justice offences (ch 7).

# LEGISLATION ACT DICTIONARY

Table 8 *List of terms defined in the Legislation Act*

People and places	Statutory bodies and positions	Things/actions	Laws and other instruments
ACT	Attorney-General	amend	Act
Australia	auditor-general	appoint	Australian Consumer Law (ACT)
city area	Australian statistician	asset	Australian Standard (or AS)
civil partner	chief health officer	Australian driver licence	Australian/New Zealand Standards (or AS/NZS)
civil union partner	Chief Justice	bank holiday	building code
Commonwealth	Chief Magistrate	breach	by-law
Commonwealth country	Chief Minister	business day	commencement
correctional centre	chief officer (ambulance service)/(fire and rescue)/(rural fire service)/(SES)	by	commencement notice
corrections officer	chief planning executive	calendar month	Commonwealth gazette
dental prosthetist	chief police officer	calendar year	converted ordinance
dentist	chief solicitor	change	Corporations Act
detention place	children and young people commissioner	confer	Criminal Code
doctor	clerk	contravene	definition
domestic partner	commissioner for fair trading	daylight	disallowable instrument
domestic partnership	commissioner for revenue	driver licence	document
enrolled nurse	commissioner for sustainability and the environment	establish	enactment

People and places	Statutory bodies and positions	Things/actions	Laws and other instruments
external territory	commissioner of police	estate	former NSW Act
foreign country	Commonwealth DPP	exercise	former UK Act
internal territory	conservator of flora and fauna	expire	gazette
Jervis Bay Territory	construction occupations registrar	fail	Health Practitioner Regulation National Law (ACT)
judge	coroner	file	Heavy Vehicle National Law (ACT)
Lake Burley Griffin	Deputy Speaker	financial year	heritage register
Lake Ginninderra	director-general	for	Imperial Act
lawyer	director of public prosecutions (or DPP)	found guilty	indictable offence
legal practitioner	disability and community services commissioner	function	indictment
magistrate	discrimination commissioner	give	instrument
medical practitioner	electoral commission and commissioner	GST	law
Minister	emergency services commissioner	home address	legislative instrument
national land	gambling and racing commission	in relation to	modification
Northern Territory	government printer	interest	national capital plan
NSW correctional centre	government solicitor	land	National Credit Code
nurse	Governor	liability	National Electricity (ACT) Law
nurse practitioner	Governor-General	make	National Electricity (ACT) Regulation

People and places	Statutory bodies and positions	Things/actions	Laws and other instruments
officer of the Assembly	head of service	making	National Energy Retail Law (ACT)
official visitor	health services commissioner	may	National Gas (ACT) Law
optometrist	heritage council	midnight	National Gas (ACT) Regulation
parent	High Court	month	notifiable instrument
parliamentary counsel	housing commissioner	name	notification
registrar	human rights commission and commissioner	night	NSW Act
resident judge	independent competition and regulatory commission	number	omit
statutory office-holder	Industrial Court	oath	ordinance
territory land	information privacy commissioner	occupational discipline order	provision
the Territory	land development agency	occupy	regulation
tribunal	legal aid commission	office	rules
United Kingdom	Legislative Assembly	passing	Self-Government Act
veterinary surgeon	Magistrates Court	penalty unit	signpost definition
	national capital authority	position	Standards Australia
	Office of the Legislative Assembly	power	statutory declaration
	ombudsman	prescribed	statutory instrument
	planning and land authority	present	subordinate law
	public advocate	property	summary offence

People and places	Statutory bodies and positions	Things/actions	Laws and other instruments
	public sector standards commissioner	public holiday	territory law
	public trustee and guardian	public money	territory plan
	registered surveyor	public notice	transitional
	registrar of firearms	quarter	UK Act
	registrar-general	repeal	will
	remuneration tribunal	retrospectively	
	road transport authority	reviewable decision notice	
	rural fire service	self-government day	
	sentence administration board	sign	
	SES	sitting day	
	solicitor-general	swear	
	Speaker	territory lease	
	State	under	
	Supreme Court	word	
	surveyor-general	working day	
	Treasurer	writing	
	United Kingdom Parliament	year	
	victims of crime commissioner		
	work safety commissioner		

## CHECKLIST FOR READING LEGISLATION

☑	Check	Hints	See pg
Find the relevant law			
☐	Are you reading the <u>authorised, up-to-date version</u> of the law?	<ul style="list-style-type: none"> <li>Use the Legislation Register— <a href="http://www.legislation.act.gov.au">www.legislation.act.gov.au</a></li> <li>Check that you are looking at the current version</li> </ul>	
☐	Can you find the <u>relevant provision</u> ?	<ul style="list-style-type: none"> <li>Check the table of contents.</li> <li>Laws generally follow a common structure</li> </ul>	
Read the text of the law—meaning of words and expressions			
☐	Are any of the words or expressions <u>defined in the law</u> ?	<ul style="list-style-type: none"> <li>A defined term will be in <b><i>bold and italics</i></b></li> <li>Is it defined in the provision?</li> <li>Is it in the dictionary of the law?</li> <li>For a regulation or other statutory instrument, is it in the dictionary of the authorising law?</li> </ul>	24-27
☐	Are any of the words or expressions <u>defined in the Legislation Act</u> , dictionary part 1?	If you use legislation regularly, familiarise yourself with the range of terms defined in the Legislation Act	25, 44
☐	If the word or expression is not defined, is <u>another form of the word or expression defined</u> ?	Other forms of a defined word will have a meaning that corresponds to the defined meaning	25
☐	If the term is not defined, do you know its <u>ordinary meaning</u> ?	If you want to look up the meaning of a word, use the Macquarie Dictionary	19
Read the text of the law—working out periods of time			
☐	Does the provision require you to <u>work out a period of time</u> ?	<ul style="list-style-type: none"> <li>A period beginning or ending <u>at, on</u> or <u>with</u> a day includes the day</li> <li>A period beginning <u>from</u> or ending <u>before</u> a day does not include the day</li> <li>Period occurring <u>between</u> 2 days—does not include the days</li> </ul>	30-32

☑	Check	Hints	See pg
Read the text of the law—offences			
☐	Does the provision include <u>an offence</u> ?	<ul style="list-style-type: none"> <li>Look for a maximum penalty or other identifying features</li> <li>A penalty unit is \$150 for an individual and \$750 for a corporation</li> </ul>	13-14, 42-43
☐	Is the offence an <u>infringement notice offence</u> ?	<ul style="list-style-type: none"> <li>For offences under road transport legislation, check <i>Road Transport (Offences) Regulation 2005</i></li> <li>Otherwise, check infringement notice regulations made under the <i>Magistrates Court Act 1930</i></li> <li>If an offence is a strict liability offence, it may be an infringement notice offence</li> </ul>	13
☐	Does the <u>Criminal Code</u> apply to the offence?	Check for a provision 'Offences against this Act—application of Criminal Code etc' to see if the Code applies and, if so, to what offences	42
Read the text of the law—other interpretation aids			
☐	Does the provision use the term <u>may</u> or <u>must</u> ?	<ul style="list-style-type: none"> <li>If a provision says a person <u>must</u> do something, the person has an obligation to do it</li> <li>If a provision says a person <u>may</u> do something, the person has a discretion to do it</li> </ul>	34
☐	Does the provision include a list joined by <u>and</u> or <u>or</u> ?	<ul style="list-style-type: none"> <li>A list of things to be done that is joined by <u>and</u> means all the things must be done</li> <li>A list of things joined by <u>or</u> means the things may but need not be done</li> </ul>	
☐	Is the provision expressed in the <u>singular</u> or <u>plural</u> ?	The singular includes the plural and plural includes the singular	33
☐	Does the provision include a reference to a <u>gender</u> (eg 'he' or 'she')?	A reference to a gender includes every other gender	33

☑	Check	Hints	See pg
☐	Does the provision use language that is different from, but seems to mean the same as, other language in the law?	Changes in drafting practice do not affect the meaning of the law	34
Read the provision in the context of the law as a whole			
☐	Are other parts of the law relevant?	<ul style="list-style-type: none"> <li>• Read the whole provision</li> <li>• Read the surrounding provisions</li> <li>• If the provision sits within a part (chapter etc), check the application of the part, including any application provision, important concepts or definitions for the part</li> <li>• Check the table of contents for other relevant provisions</li> </ul>	20
☐	Are you reading a regulation or other statutory instrument?	Check the provision of the law the instrument was made under	20
Read the provision in the context of legislative framework			
☐	Do you need to consider any other laws?	Consider whether framework laws need to be considered, eg <i>Criminal Code</i> , <i>Financial Management Act 1996</i>	21, 35-43
Non-legislative context			
☐	Do you need to consider something else to understand the context of the law?	Guidance on the kind of material that may be considered is set out in the <i>Legislation Act</i> , table 142	22, 28
Achieving the purpose of the law			
☐	Is the provision open to more than 1 interpretation? If so, which interpretation best achieves the purpose of the law?	<ul style="list-style-type: none"> <li>• Check any purpose or objects provisions in the law</li> <li>• Non-legislative material (eg the explanatory statement or presentation speech for the bill) can also offer guidance</li> </ul>	22, 28

<input checked="" type="checkbox"/>	Check	Hints	See pg
<input type="checkbox"/>	Is the provision consistent with human rights (so far as it is possible to do so consistently with the purpose of the law)?	Check the explanatory statement, which should include information about whether it is compliant with human rights and if it limits a right, why that limitation is reasonable	22







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