



# Public Lending Right Act 1985

No. 200, 1985

## Compilation No. 9

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Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### **This compilation**

This is a compilation of the *Public Lending Right Act 1985* that shows the text of the law as amended and in force on 22 March 2017 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

### **Uncommenced amendments**

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### **Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### **Editorial changes**

For more information about any editorial changes made in this compilation, see the endnotes.

### **Modifications**

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### **Self-repealing provisions**

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# **An Act to provide for payments in respect of Australian books held in Australian libraries**

## **1 Short title**

This Act may be cited as the *Public Lending Right Act 1985*.

## **2 Commencement**

This Act shall come into operation on a day to be fixed by Proclamation.

## **2A Objects of Act**

The objects of this Act are:

- (a) to make payments to Australian creators of books, and to publishers of books in Australia, in recognition of their loss of income from their books being available for loan from, or for use in, public lending libraries in Australia; and
- (b) to support the enrichment of Australian culture by encouraging Australian persons to create books and by encouraging publishers to publish books in Australia.

## **3 Interpretation**

- (1) In this Act, unless the contrary intention appears:

*Australia* includes the external Territories.

*Chairperson* means the Chairperson of the Committee.

*claim* means a claim for a payment under the scheme.

*claimant* means a person who makes a claim.

*Committee* means the Public Lending Right Committee established by section 7.

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***member*** means a member of the Committee and includes the Chairperson.

***previous scheme*** means the Public Lending Right Scheme administered by the Department as in force immediately before the commencement of this Act.

***scheme*** means the scheme approved under section 5, or, if that scheme has been modified under that section, that scheme as so modified.

- (2) A reference in this Act to an Australian author or an Australian person is a reference to an author or a person, as the case may be, who:
  - (a) is an Australian citizen, wherever resident; or
  - (b) is ordinarily resident in Australia.
- (3) Where a book has been written by an Australian author or Australian authors and by another person or other persons, this Act applies as if the book had been written by the Australian author or Australian authors.
- (4) A reference in this Act to modifying the scheme includes a reference to omitting or adding a provision, or substituting a provision for another provision.
- (5) A person who, by virtue of a determination under the previous scheme, was eligible to receive payments under that scheme in respect of a book shall be taken, for the purposes of this Act and the scheme, to be a claimant in respect of that book unless, by virtue of a determination under the previous scheme, the person was not eligible to continue to receive payments under that scheme in respect of that book.

### **4 Extension to external Territories**

This Act extends to every external Territory.

## 5 Public Lending Right Scheme

- (1) The Minister may, by notice published in the *Gazette*:
  - (a) approve a scheme for and in relation to the making of payments to persons in respect of books; and
  - (b) modify the scheme so approved.
- (2) The Minister shall not approve a scheme under paragraph (1)(a) if it provides:
  - (a) for the making of payments in respect of books other than books that are held in libraries in Australia; or
  - (b) for the making of payments in respect of books to persons who are not prescribed persons in relation to those books.
- (3) The Minister shall not modify the scheme under paragraph (1)(b) if subsection (2) would have prohibited the Minister from approving the scheme, as so modified, under paragraph (1)(a).
- (4) In this section, ***prescribed person***, in relation to a book, means any of the following:
  - (a) an Australian author of the book;
  - (c) an Australian person who illustrated, translated, compiled or edited the book;
  - (e) a publisher of the book who is included in a class of publishers specified in the scheme.

## 6 Payments under scheme

- (1) The Committee shall, in accordance with the scheme, determine the eligibility of a claimant and the amount of the payment (if any) to be made to the claimant.
- (2) A payment under the scheme to a claimant shall not be made except in accordance with a determination of the Committee.
- (3) The Committee may, for the purpose of the performance of its functions under this Act or the scheme, require a claimant:

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- (a) to furnish to the Committee such information, or to make available to the Committee such documents, as the Committee specifies in writing; and
  - (b) to verify, by statutory declaration, any information or documents furnished or made available to the Committee.
- (4) The Committee may refuse to consider a claim unless the claimant complies with any requirement made by the Committee under subsection (3).

## 7 Public Lending Right Committee

For the purposes of this Act, there shall be a Public Lending Right Committee.

## 8 Functions of Committee

- (1) The functions of the Committee are:
- (a) to determine the eligibility of a claimant and the amount of the payment (if any) to be made to the claimant;
  - (b) to approve payments under the scheme;
  - (c) to furnish advice to the Minister, either of its own motion or upon request made to it by the Minister, in respect of matters relating to the operation of this Act or of the scheme;
  - (d) to make recommendations to the Minister with respect to:
    - (i) the modification of the scheme, including modification of the payments, or rates of payments, under the scheme; and
    - (ii) other matters relating to the operation of the scheme or this Act; and
  - (e) such other functions as the Minister determines in writing.
- (2) For the purpose of carrying out its functions, the Committee may consult or co-operate with any person or body, including a body established by a State, by the Australian Capital Territory or the Northern Territory or by a local government body, that may be able to provide assistance to the Committee.



## 9 Membership of Committee

- (1) The Committee shall consist of:
  - (a) a Chairperson;
  - (b) 2 members to represent Australian authors;
  - (c) a member to represent publishers of books written by Australian authors;
  - (d) a member to represent libraries in which books written by Australian authors are held;
  - (e) a member, being an officer of the Department administered by the Minister administering the *Copyright Act 1968*, nominated by that Minister; and
  - (f) a member, being an officer of the National Library of Australia, nominated by the Director-General of the National Library.
- (2) A member of the Committee:
  - (a) shall be appointed by the Minister;
  - (b) shall be appointed on a part-time basis; and
  - (c) subject to subsection (5), holds office for such period, not exceeding 4 years, as is specified in the instrument of the member's appointment, but is eligible for re-appointment.
- (3) Subject to subsection (5), a person shall not hold office under subsection (2) for a continuous period of more than 8 years.
- (4) A person who has held office under subsection (2) for a continuous period of 8 years is not eligible for re-appointment for a term of office commencing within 12 months after the expiration of that period.
- (5) A member referred to in paragraph (1)(e) or (f) holds office until the Minister terminates that member's appointment in accordance with subsection (6).
- (6) The Minister shall terminate the appointment of a member referred to in paragraph (1)(e) or (f) if, and only if, the Minister administering the *Copyright Act 1968* or the Director-General of

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the National Library, as the case may be, requests the termination of the appointment.

- (8) The performance of the Committee's functions and the exercise of its powers are not affected merely because of vacancies in the Committee's membership.

### **10 Remuneration and allowances**

- (1) A member (other than a member referred to in paragraph 9(1)(e) or (f)) shall be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration by the Tribunal is in operation, the member shall be paid such remuneration as is prescribed.
- (2) A member shall be paid such allowances as are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

### **11 Resignation**

A member may resign from the office of member by writing signed by the member and delivered to the Minister.

### **12 Termination of office**

- (1) The Minister may terminate the appointment of a member for misbehaviour or physical or mental incapacity.
- (2) If a member is absent, except with the leave of the Minister, from 3 consecutive meetings of the Committee, the Minister may terminate the member's appointment.
- (3) In this section, *member* does not include a member referred to in paragraph 9(1)(e) or (f).

### **13 Acting Chairperson**

The Minister may appoint a person to act as Chairperson:

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- (a) during a vacancy in the office of Chairperson, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Chairperson is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office of Chairperson.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

#### 14 Acting members

- (1) The Minister may appoint a person to act as a member:
  - (a) during a vacancy in the office of a member, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when a member is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office of member.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

- (8) In this section, **member** does not include the Chairperson.

#### 15 Disclosure of interests

- (1) A member who has a direct or indirect pecuniary interest in a matter being considered by the Committee shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Committee.
- (2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Committee and the member shall not, unless the Minister or the Committee otherwise determines:
  - (a) be present during any deliberation of the Committee with respect to that matter; or
  - (b) take any part in any decision of the Committee with respect to that matter.

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- (3) For the purposes of the making of a determination by the Committee under subsection (2) in relation to a member who has made a disclosure under subsection (1), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not:
  - (a) be present during any deliberation of the Committee for the purposes of making the determination; or
  - (b) take part in the making by the Committee of the determination.

### **16 Meetings**

- (1) The Committee shall hold such meetings as are necessary for the performance of its functions.
- (2) The Chairperson:
  - (a) may, at any time, convene a meeting of the Committee; and
  - (b) shall, on receipt of a written request signed by not less than 3 members, convene a meeting of the Committee.
- (3) The Minister may, at any time, convene a meeting of the Committee.
- (4) The Chairperson shall preside at all meetings of the Committee at which the Chairperson is present.
- (5) Where the Chairperson is not present at a meeting of the Committee, the members present shall appoint one of their number to preside at the meeting.
- (6) At a meeting of the Committee, 4 members constitute a quorum.
- (7) Questions arising at a meeting of the Committee shall be determined by a majority of the votes of the members present and voting.
- (8) The person presiding at a meeting of the Committee has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(9) In this section:

*Chairperson* includes a person acting as Chairperson.

*member* includes an acting member.

### **16A Conduct of meetings**

- (1) If the Committee so determines, a member may participate in, and form part of a quorum at, a meeting of the Committee by means of any of the following methods of communication:
  - (a) telephone;
  - (b) closed circuit television;
  - (c) another method of communication determined by the Committee.
- (2) A determination may be made in respect of a particular meeting, or in respect of all meetings of the Committee.
- (3) A member who participates in a meeting as provided by subsection (1) is taken to be present at the meeting.

### **16B Resolutions without meetings**

Where the Committee so determines, a resolution is taken to have been passed at a meeting of the Committee if:

- (a) without meeting, a majority of the number of members indicate agreement with the resolution in accordance with the method determined by the Committee; and
- (b) that majority would, if present at a meeting of the Committee and entitled to vote on the resolution at that meeting, have constituted a quorum.

### **17 Delegation**

- (1) The Committee may, by resolution, either generally or as otherwise provided by the resolution, delegate to a member, an acting member or a member of the staff assisting the Committee, all or

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any of its powers under this Act or under the scheme, other than this power of delegation.

- (2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act and of the scheme, be deemed to have been exercised by the Committee.
- (3) A delegation of a power under this section:
  - (a) may be revoked by a resolution of the Committee (whether or not constituted by the persons constituting the Committee at the time the power was delegated);
  - (b) does not prevent the exercise of the power by the Committee; and
  - (c) continues in force notwithstanding a change in the membership of the Committee.
- (4) A delegation under this section, or the revocation of such a delegation, shall be notified to the Minister by the Chairperson.
- (5) Section 34A of the *Acts Interpretation Act 1901* applies in relation to a delegation of power under this section as if the Committee were a person and so applies in relation to a delegation of a power of the Committee under the scheme as if the reference in section 34A of that Act to any Act were a reference to the scheme.
- (6) A certificate signed by the Chairperson or a person acting as Chairperson stating any matter with respect to a delegation of a power under this section is prima facie evidence of that matter.
- (7) A document purporting to be a certificate mentioned in subsection (6) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

## 18 Staff

The staff necessary to assist the Committee shall be persons engaged under the *Public Service Act 1999*.

## 19 Annual report

- (1) The Committee shall, as soon as practicable after 30 June in each year, prepare and furnish to the Minister a report of the operation of the scheme and of this Act, with particular reference to their operation during the year that ended on that 30 June.
- (2) A report under subsection (1) may include:
  - (a) information or comments concerning the effect of the scheme; and
  - (b) recommendations relating to any matters concerning the operation of the scheme or of this Act.
- (3) The Minister shall cause a copy of a report furnished to the Minister under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.
- (4) The Committee shall furnish to the Minister such additional reports as the Minister from time to time requires and may from time to time furnish such other reports as the Committee thinks fit.

## 20 Review of certain decisions of Committee

- (1) In this section:

*decision* has the same meaning as that expression has in the *Administrative Appeals Tribunal Act 1975*.

*decision of the Committee* means a decision of the Committee under this Act in connection with a claim.

- (2) The Committee shall, by notice in writing given to a claimant affected by a decision of the Committee, inform the claimant of the decision of the Committee.
- (3) A claimant who is dissatisfied with a decision of the Committee may, by notice in writing given to the Committee within a period of 28 days after the day on which the decision first comes to the notice of the claimant, or within such further period as the

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Committee allows, request the Committee to reconsider the decision.

- (4) There shall be set out in a request under subsection (3) the ground on which the request is made.
- (5) Upon receipt of a request under subsection (3), the Committee shall reconsider its decision and may:
  - (a) confirm the decision;
  - (b) vary the decision; or
  - (c) set the decision aside and make a new decision in substitution for the decision so set aside.
- (6) Where, pursuant to a request under subsection (3), the Committee reconsiders a decision under subsection (5), the Committee shall, by notice in writing given to the claimant who made the request, inform the claimant of the result of the reconsideration.
- (7) Where:
  - (a) a person has made a request under subsection (3) for the reconsideration of a decision; and
  - (b) at the expiration of the period of 90 days after the day on which the request was made, the person has not received notice of the result of the reconsideration of the decision;the Committee shall thereupon be deemed to have confirmed the decision under subsection (5).
- (8) An application may be made to the Administrative Appeals Tribunal for review of:
  - (a) a decision that has been confirmed, or is deemed to have been confirmed;
  - (b) a decision as varied; or
  - (c) a decision made in substitution for a decision set aside; under subsection (5).



## 21 Statements to accompany notification of decisions

- (1) A notice given to a claimant in accordance with subsection 20(2) in relation to a decision (in this subsection referred to as the *original decision*) shall include a statement to the effect that:
  - (a) if the claimant is dissatisfied with the original decision the claimant may, in accordance with subsection 20(3), request the Committee to reconsider the original decision; and
  - (b) subject to the *Administrative Appeals Tribunal Act 1975*, if a person whose interests are affected by the original decision is dissatisfied with:
    - (i) the decision resulting from the reconsideration; or
    - (ii) where the person has not been notified of the results of the reconsideration within the period of 90 days after the day on which the request for the reconsideration was made—the original decision;the person may make application to the Administrative Appeals Tribunal for review of the decision resulting from the reconsideration, or the original decision, as the case may be.
- (2) A notice given to a claimant under subsection 20(6) in relation to a reconsideration of a decision shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, if a person whose interests are affected by the decision resulting from the reconsideration is dissatisfied with that last-mentioned decision, the person may make application to the Administrative Appeals Tribunal for review of that last-mentioned decision.
- (3) A failure to comply with the requirements of subsection (1) or (2) does not affect the validity of the decision.

## 22 Offences

- (2) Where a person is convicted of an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Act, the court may, in addition to imposing a penalty, order the person to repay to the Commonwealth the amount of any payment under the scheme paid

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to the person in consequence of the making of the statement or the presentation of the document.

- (3) Where a court has made an order under subsection (2), a certificate signed by the appropriate officer of the court specifying the amount ordered to be repaid and the person by whom the amount is payable may be filed in a court having civil jurisdiction to the extent of that amount and is thereupon enforceable in all respects as a final judgment of that court.

### **23 Recovery of overpayments**

Where an amount by way of a payment under the scheme has been paid to a person in consequence of the making of a statement, or the presentation of a document, by or on behalf of the person, being a statement or document that was, whether to the knowledge of the person or not, false or misleading in a material particular, an amount equal to the amount of the payment is recoverable from the person by the Commonwealth in a court of competent jurisdiction as a debt due to the Commonwealth.

### **24 Evidence of payment**

For the purposes of sections 22 and 23, a certificate purporting to be signed by the Chairperson or a person acting as Chairperson and stating that an amount by way of a payment under the scheme has been paid in consequence of the making of a statement, or the presentation of a document, is prima facie evidence of the matters stated in the certificate.

### **25 Payments inalienable**

Subject to section 26, a right (if any) to receive a payment under the scheme is inalienable, whether by way of, or in consequence of, assignment, charge or otherwise, and is not liable to be taken in execution or be dealt with under the law relating to bankruptcy.

## **26 Payment to personal representative**

Where the Committee has determined that a person is to receive a payment under the scheme and the payment has not been made at the date of the death of that person, the amount of that payment is payable to the legal personal representative of that person.

## **27 Regulations**

The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## Endnotes

Endnote 1—About the endnotes

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

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Endnote 1—About the endnotes

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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnote 3—Legislation history

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Public Lending Right Act 1985	200, 1985	16 Dec 1985	1 July 1987 (s 2 and gaz 1987, No S131)	
Arts, Environment, Tourism and Territories Legislation Amendment Act 1990	88, 1990	20 Nov 1990	s 25 and 26: 20 Nov 1990 (s 2(1))	—
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Sch 4 (items 1, 124): 25 Oct 1996 (s 2(1))	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (item 753): 5 Dec 1999 (s 2(1), (2))	—
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000	137, 2000	24 Nov 2000	Sch 2 (items 335–338, 418, 419): 24 May 2001 (s 2(3))	Sch 2 (items 418, 419)
Communications and the Arts Legislation Amendment Act 2001	46, 2001	5 June 2001	s 4 and Sch 1 (items 1–5): 5 June 2001 (s 2)	s 4
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 944–952) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) items 7, 12)	Sch 3 (items 10, 11)
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 7 (item 9): 24 June 2014 (s 2(1) item 9)	—
Statute Law Revision (Spring 2016) Act 2016	67, 2016	20 Oct 2016	Sch 3: 17 Nov 2016 (s 2(1) item 7)	Sch 3 (items 4, 5)

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## Endnotes

### Endnote 3—Legislation history

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<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Statute Update (A.C.T. Self-Government (Consequential Provisions) Regulations) Act 2017	13, 2017	22 Feb 2017	Sch 1 (item 26): 22 Mar 2017 (s 2(1) item 2)	—

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## Endnote 4—Amendment history

**Endnote 4—Amendment history**

<b>Provision affected</b>	<b>How affected</b>
s 2A.....	ad No 46, 2001
s 5 .....	am No 46, 2001
s 8 .....	am No 13, 2017
s 9 .....	am No 88, 1990; No 31, 2014; No 67, 2016 ed C8
s 10 .....	am No 43, 1996
s 13 .....	am No 46, 2011
s 14 .....	am No 46, 2011
s 16A.....	ad No 88, 1990
s 16B.....	ad No 88, 1990
s 17 .....	ed C8
s 18 .....	am No 146, 1999
s 22 .....	am No 137, 2000
s 24 .....	ed C8