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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**STATUTE LAW REVISION BILL (No. 2) 2015**

EXPLANATORY MEMORANDUM

(Circulated by authority of the  
Attorney-General, Senator the Hon George Brandis QC)

## **STATUTE LAW REVISION BILL (No. 2) 2015**

### **GENERAL OUTLINE**

The main purposes of this Bill are to:

- (a) correct technical errors that have occurred in laws as a result of drafting and clerical mistakes (see Schedules 1 and 2); and
- (b) make clear on the face of Acts that the Crown in right of the Australian Capital Territory and of the Northern Territory is bound and modernise the form of provisions about whether the Crown is liable to be prosecuted for an offence (see Schedule 3); and
- (c) modernise language by replacing references to “reference base” with references to “index reference period” and by removing gender-specific language (see Schedule 4); and
- (d) repeal spent and obsolete provisions and Acts, which will result in the repeal of approximately 85 pages of spent and obsolete provisions, including 6 spent Acts (see Schedules 5 and 6).

The corrections and repeals are desirable in order to improve the quality of the text of Commonwealth legislation and to reduce the regulatory burden by making the statute book clearer and more efficient to use. They facilitate the publication of consolidated versions of Acts by the Commonwealth and by private publishers of legislation.

None of the corrections makes any change to the substance of the law.

### **FINANCIAL IMPACT STATEMENT**

This Bill will have no financial impact.

## **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Statute Law Revision Bill (No. 2) 2015**

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Bill**

The main purposes of this Bill are to correct technical errors that have occurred in laws as a result of drafting and clerical mistakes and to repeal spent or obsolete provisions and Acts.

The corrections and repeals are desirable in order to improve the quality of the text of Commonwealth legislation and, in particular, to facilitate the publication of consolidated versions of Acts by the Commonwealth and by private publishers of legislation.

None of the corrections makes any change to the substance of the law.

#### **Human rights implications**

The amendments make technical corrections and technical improvements to legislation. They also repeal spent and obsolete provisions and Acts. The amendments improve the ease of administration of legislation and reduce the regulatory burden by making the statute book clearer and more efficient to use. They do not engage any human rights issues.

#### **Conclusion**

The Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*, as it does not engage any of the applicable rights or freedoms or alter any human rights safeguards currently in place.

Senator the Hon George Brandis QC  
Attorney-General

## NOTES ON CLAUSES

### *Clause 1—Short title*

1 Clause 1 provides for the Act to be cited as the *Statute Law Revision Act (No. 2) 2015*.

### *Clause 2—Commencement*

2 Subclause 2(1) provides that each provision of the Act specified in column 1 of the table set out in the subclause commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

3 The note at the end of the table explains that the table relates only to the provisions of the Act as originally enacted. The table will not be amended to deal with any later amendments of the Act.

4 Subclause 2(2) provides that any information in column 3 of the table is not part of the Act. It also clarifies that information may be inserted in column 3, or information in it may be edited, in any published version of the Act.

5 Most items in Schedule 1 to the Bill correct errors in principal Acts. All items in the Schedule commence 28 days after this Act receives the Royal Assent. This is because the “slip rule” will have been applied to each error since the enactment of the erroneous provision. This means that the text of the law will have been taken to have been correct, despite the error.

6 Current Commonwealth drafting practice is to avoid retrospective commencement where practicable. Given the application of the “slip rule”, it is appropriate for these amendments to commence soon after Royal Assent. The amendments ensure that the text of the law accords with how it would be interpreted.

7 Other items in Schedule 1 to the Bill relate to removals of redundant text or renumbering of text and it is appropriate that these items commence on the 28th day after the day this Act receives the Royal Assent because they do not change the substantive content of the law.

8 Schedule 2 to the Bill corrects errors in amending laws. The items in Part 1 of the Schedule correct errors in amending Acts. Some of the items remove redundant headings and it is appropriate that these items commence on the 28th day after the day this Act receives the Royal Assent because they do not change the substantive content of the law. Other items in the Part relate to misdescribed amendments contained in amending Acts. The commencement of items dealing with misdescribed amendments is tied to the time specified in the amending Act for the commencement of the amendment. The item in Part 2 of the Schedule corrects an error in an amending Regulation. It corrects an error that the slip rule would have applied to from enactment. The correction has a retrospective commencement in order to fix the error before the repeal of the Regulation.

9 Schedule 3 to the Bill makes clear on the face of Acts that the Crown in right of the Australian Capital Territory and of the Northern Territory is bound and modernises the form of provisions about whether the Crown is liable to be prosecuted for an offence. The Schedule is to commence 28 days after this Act receives the Royal Assent.

10 Schedule 4 to the Bill modernises terminology in accordance with current drafting practice by changing “reference base” to “index reference period” and by removing gender-specific language. The Schedule is to commence 28 days after this Act receives the Royal Assent.

11 Schedule 5 to the Bill repeals spent and obsolete provisions of Acts. The Schedule is to commence 28 days after this Act receives the Royal Assent.

12 Schedule 6 to the Bill repeals spent and obsolete Acts. The Schedule is to commence 28 days after this Act receives the Royal Assent.

***Clause 3—Schedules***

13 Subclause 3(1) provides that legislation that is specified in a Schedule to the Act is amended or repealed as set out in the applicable items in the Schedule and any other item in a Schedule has effect according to its terms. This is a technical provision to give operational effect to the amendments contained in the Schedules. Subclause 3(2) provides that the amendment of any regulation under subsection (1) does not prevent the regulation, as so amended, from being amended or repealed by the Governor-General. This is a further technical provision to ensure that Regulations amended by the Act can continue to be amended or repealed in the usual manner.

## **Schedule 1—Amendments of principal Acts**

14 The items in this Schedule amend errors contained in principal Acts, remove redundant text from principal Acts or renumber text within principal Acts.

### ***Item 1***

15 The note to subsection 42-2(3) of the *Aged Care Act 1997* contains an incorrect cross-reference as it refers to “section 58-6” of the Act. However, that provision was repealed by item 157 of Schedule 3 to the *Aged Care (Living Longer Living Better) Act 2013*. The correct provision to refer to is section 52C-5 of the Act, as that section now provides for the maximum fee in respect of a day that can be charged for reserving a place in a residential care service. Item 1 corrects the cross-reference.

### ***Item 2***

16 Subsection 5(1) of the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994* contains a grammatical error as it refers to “an veterinary chemical product” rather than “a veterinary chemical product”. Item 2 corrects that grammatical error.

### ***Item 3***

17 Paragraph 167(1)(c) of the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994* contains an incorrect cross-reference as it refers to “a decision under subsection 26C(2) to refuse an application”. However, that provision is about the wrong topic. The correct provision to refer to is paragraph 26C(1)(b) of the Act, as the provision deals with the right topic following the remaking of the section by item 31 of Schedule 2 to the *Agricultural and Veterinary Chemicals Legislation Amendment (Removing Re-approval and Re-registration) Act 2014*. Item 3 corrects the cross-reference.

### ***Item 4***

18 Subclauses 9(2) and (3) and 10(6) of the Schedule to the *Australian Grape and Wine Authority Act 2013* contain incorrect cross-references as they refer to “subsections” of the Schedule to the Act. However, the Schedule contains clauses and subclauses. Item 4 corrects the references.

### ***Item 5***

19 Subsection 97(10) of the *Carbon Credits (Carbon Farming Initiative) Act 2011* contains an error as it refers to “benchmark storage level”. However, there is no other reference in the Act to “benchmark storage level”, only to “benchmark sequestration level”, which is defined in subsection 97(8). Item 5 omits the non-existent concept and substitutes the correct one.

### ***Item 6***

20 The note to subclause 43(3) of Schedule 2 to the *Dairy Produce Act 1986* contains a reference to paragraphs 43(3)(e) and (f) of the Schedule. However, those paragraphs were

repealed by item 23 of Schedule 2 to the *Farm Household Support (Consequential and Transitional Provisions) Act 2014*. Item 6 omits the redundant references.

#### **Item 7**

21 Paragraph (a) of the note to subsection 20(2) of the *Federal Circuit Court of Australia Act 1999* contains a punctuation error as it refers to “section “94AAA of the *Family Law Act 1975*” rather than “section 94AAA of the *Family Law Act 1975*”. Item 7 corrects that punctuation error.

#### **Item 8**

22 Item 8 substitutes the definition of ***national standard*** in subsection 3(1) of the *Imported Food Control Act 1992* to repeal a redundant paragraph (a). Paragraph (a) is redundant as it referred to standards “in force as a standard adopted by the Australia New Zealand Food Standards Council”. The Australia New Zealand Food Standards Code was adopted in 2000 and phased in over a 2-year period. It replaced standards adopted by the Australia New Zealand Food Standards Council.

#### **Item 9**

23 Paragraph 100C(1)(a) of the *Industrial Chemicals (Notification and Assessment) Act 1989* contains a grammatical error as it refers to “a purpose of the Industrial Chemicals Account as being to make payments to further the object of the Act”. However, section 3 of the Act sets out the objects of the Act. Item 9 amends that paragraph to refer to objects of the Act rather than object of the Act and corrects that grammatical error.

#### **Item 10**

24 Subsection 158(1) of the *Personal Property Securities Act 2009* was enacted with 2 paragraphs (b). Item 10 reletters the first occurring paragraph (b) as paragraph (a).

#### **Item 11**

25 Item 11 amends subsection 9(5) of the *Plant Health Australia (Plant Industries) Funding Act 2002* to remove a redundant paragraph. Paragraph 9(5)(b) is redundant as it refers to section 35 of the *Primary Industries Research and Development Act 1989*, which was repealed by the *Primary Industries Levies and Charges Collection (Consequential Provisions) Act 1991*.

#### **Item 12**

26 Paragraph 7(9)(ad) of the *Remuneration Tribunal Act 1973* contains a grammatical error as it causes subsection 7(9) to refer to “Remuneration (including salary) or allowances to which a subsisting determination applies shall...to be paid” rather than “Remuneration (including salary) or allowances to which a subsisting determination applies shall...be paid”. Item 12 corrects that grammatical error.

#### **Item 13**

27 Paragraph 106(1)(a) of the *Sex Discrimination Act 1984* contains a spelling error as it refers to “Divison” rather than “Division”. Item 13 corrects that spelling error.

#### **Item 14**

28 Subsections 17(1), (2) and (3) and 34(1) and (3) of the *South Pacific Nuclear Free Zone Treaty Act 1986* contain a citation error as they refer to the *Nuclear Non-Proliferation (Safeguards) Act 1986*. However, it is correct to refer to the *Nuclear Non-Proliferation (Safeguards) Act 1987*, as section 1 of the incorrectly cited Act states it may be cited that way. Item 14 fixes the citations.

#### **Item 15**

29 Paragraph 45(7)(b) of the *Surveillance Devices Act 2004* contains a typographical error as it refers to agencies “within the meaning if the *Intelligence Services Act 2001*” rather than “within the meaning of the *Intelligence Services Act 2001*”. Item 15 corrects that typographical error.

#### **Item 16**

30 Item 16 repeals the redundant paragraph 1(jb) of Schedule 4 to the *Telecommunications Act 1997*. That paragraph is redundant as it covers a decision of a kind referred to in subsection 101A(3) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*. That subsection was repealed by item 207 of Schedule 2 to the *Omnibus Repeal Day (Autumn 2014) Act 2014*.

#### **Items 17 and 18**

31 Items 17 and 18 are related. Section 3 of the *Telstra Corporation Act 1991* contains definitions of **Transport Department** and **Transport Minister**. However, no substantive provision of that Act relies on these definitions. Items 17 and 18 repeal the redundant definitions.



## **Schedule 2—Amendment of amending laws**

### **Part 1—Amendments of amending Acts**

32 The items in this Part relate to misdescribed or redundant amendments, or errors contained in amending Acts.

#### ***Items 1 to 3***

33 Items 1 to 3 are related. Those items repeal the redundant headings to Divisions 2 and 4 of Part 2, and Part 3, of the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992*. The Divisions and Part used to consist of sections 5 to 16, 21 and 28 to 30 of the Act. Those provisions were repealed by the *Omnibus Repeal Day (Autumn 2014) Act 2014*, but the headings were not repealed by that Act even though all the content of the Divisions and Part was repealed.

#### ***Item 4***

34 Item 6 of the table in subsection 2(1) to the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014* purported to commence item 4 of Schedule 7 to the Act immediately after the commencement of the provisions covered by table item 1 (3 November 2014). However, the amendment was misdescribed as it purports to amend subsection 487ZI(1) of the *Migration Act 1958*, which the Act only inserted in the Migration Act 1958 on 4 November 2014. Item 4 corrects the misdescription.

#### ***Item 5***

35 Subitem 20(10) of Schedule 2 to the *Medibank Private Sale Act 2006* contains a typographical error as the first word of subitem (10) does not have an initial capital letter. Item 5 corrects that typographical error.

### **Part 2—Amendments of amending Regulations**

36 The items in this Part relate to an error contained in an amending Regulation.

#### ***Item 6***

37 The *Civil Aviation Legislation Amendment (Flight Crew Licensing) Regulation 2014* purports to commence immediately after the commencement of the *Civil Aviation Legislation Amendment (Flight Crew Licensing and Other Matters) Regulation 2013*. However, the *Civil Aviation Legislation Amendment (Flight Crew Licensing and Other Matters) Regulation 2013* commences at 2 different times. The preliminary sections and Schedule 2 commenced on 18 December 2013. Schedule 1 commences on 1 September 2014. The *Civil Aviation Legislation Amendment (Flight Crew Licensing) Regulation 2014* would have been of no effect if it had commenced on 18 December 2013, as it would have contravened paragraph 12(2)(b) of the *Legislative Instruments Act 2003*. It was clearly intended to commence on 1 September 2014, immediately after Schedule 1 to the *Civil Aviation Legislation Amendment (Flight Crew Licensing) Regulation 2014*. Item 6 fixes the commencement text.

### **Schedule 3—Binding the Crown**

38 Many provisions of Acts that predate ACT self-government contain provisions binding the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and, in some cases, of Norfolk Island. They do not mention the Australian Capital Territory. There are also provisions of Acts that predate NT self-government binding the Crown in right of the Commonwealth and of each State. They do not mention the Northern Territory. Some of the provisions go on to say that “nothing in this Act renders the Crown liable to be prosecuted for an offence”.

39 Section 69A of the *Australian Capital Territory (Self-Government) Act 1988* provides that if an Act (whether or not by express provision) binds each of the States, or the Crown in right of each of the States, that Act binds the Territory, or the Crown in right of the Territory, unless that Act specifically provides otherwise.

40 Section 51 of the *Northern Territory (Self-Government) Act 1978* provides that if an Act (whether or not by express provision) binds each of the States, or the Crown in right of each of the States, that Act binds the Territory, or the Crown in right of the Territory, unless that Act specifically provides otherwise.

41 This Schedule amends the provisions of relevant Acts, to make clear on the face of Acts the legal position that the Crown in right of the Australian Capital Territory and of the Northern Territory is bound.

42 In addition, for appropriate Acts, the Schedule also modernises the form of associated statements about whether the Crown is liable to be prosecuted for an offence.

## **Schedule 4—Terminology changes**

### **Part 1—Indexation provisions**

43 Many indexation provisions on the statute book that rely on the Consumer Price Index refer to the “reference base” for the Consumer Price Index. The Australian Bureau of Statistics now prefers the terminology of “index reference period” rather than “reference base”. The items in this Schedule make amendments to those indexation provisions to refer to the index reference period for the Consumer Price Index. The changes are technical in nature and do not change the legal effect of the provisions.

### **Part 2—Gender-specific language**

44 It has been Commonwealth practice since the early 1980s for legislation to be drafted to avoid the use of gender-specific language. Exclusive references to one or another gender are not permitted, except in the case of legislation intended to apply to people of one sex but not the other.

45 While paragraph 23(a) of the *Acts Interpretation Act 1901* provides that words importing a gender include every other gender, existing statutory provisions that use gender-specific language have been progressively amended so as to replace such language with gender-neutral language. The use of gender-neutral language in Acts is intended to make them more inclusive.

46 The items of this Part amend Acts to replace gender-specific language with gender-neutral language.

## **Schedule 5—Repeal of spent and obsolete provisions**

47 This Schedule contains items that repeal spent and obsolete provisions and make amendments consequential on the repeals.

### ***Item 1***

48 Paragraph (k) of Schedule 2 to the *Administrative Decisions (Judicial Review) Act 1977* contains redundant references to the ceased Australian Honey Board, Australian Meat and Live-stock Corporation, Australian Wheat Board and Australian Wool Corporation. Item 1 repeals the redundant references.

### ***Items 2 and 3***

49 Item 2 repeals the redundant section 8 of the *Parliamentary Entitlements Act 1990*. That section is redundant as its only effect was to, on its commencement, validate people's entitlements to various benefits. Item 3 ensures any validating effect is preserved after repeal. Item 2 also repeals the redundant section 13 of the *Parliamentary Entitlements Act 1990*. That section is redundant as its only effect was to, on its commencement, continue in force determinations made under section 7 of the *Remuneration Tribunal Act 1973* as if they had been made under that Act as amended. Item 3 ensures any effect is preserved after repeal. Item 2 also repeals the redundant section 14 of the *Parliamentary Entitlements Act 1990*. That section is redundant as its only effect was to operate as a transitional provision in respect of the 1989-1990 financial year.

## **Schedule 6—Repeal of spent Acts**

50 This Schedule contains items that repeal spent and obsolete Acts and items that make amendments consequential on those repeals.

### ***Item 1***

51 Item 1 repeals the redundant *Captains Flat (Abatement of Pollution) Agreement Act 1975*. That Act established the legal framework for the provision of financial assistance from the Commonwealth to the New South Wales Government for the purpose of the abatement of pollution resulting from mine wastes at Captains Flat, New South Wales. The agreement mentioned by the Act was executed. All payments and repayments required under the Act are now complete and the Act is therefore spent.

### ***Item 2***

52 Item 2 repeals the redundant *G20 (Safety and Security) Complementary Act 2014*. Section 10 of the Act provides that it ceased to have effect at the end of 18 November 2014 or an earlier date stated in a regulation made for the purposes of subsection 102(3) of the *G20 (Safety and Security) Act 2013* (Qld).

### ***Item 3***

53 Item 3 repeals the redundant *States Grants (Advanced Education) Act 1976*. The Act provided funding for colleges of Advanced Education, which were abolished during the late 1980s. As there are no outstanding or ongoing financial obligations, this Act is now spent.

### ***Item 4***

54 Item 4 repeals the redundant *States Grants (Science Laboratories) Act 1971*. The period to which the Act applied was from 1 July 1971 to 30 June 1975. The Act was part of the Government's recurrent funding arrangements with States for education purposes. The Act authorised funding to the States for science laboratories and equipment in government and non-government secondary schools up until 30 June 1975. As there are no outstanding obligations for the States in respect of the grants, this Act is now spent.

### ***Item 5***

55 Item 5 repeals the redundant *Tasmania Agreement (Hydro-Electric Power Development) Act 1968*. The Act established the legal framework for the provision of financial assistance from the Commonwealth to the Tasmanian Government for the purpose of the hydro-electric power development. The agreement mentioned by the Act was executed. All payments and repayments required under the Act are now complete and the Act is therefore spent.

### ***Item 6***

56 Item 6 repeals the redundant *Wheat Tax Regulations (Validation) Act 1987*. The Act validated certain regulations made under the *Wheat Tax Act 1957*. That Act was itself repealed on 20 November 1996. The *Wheat Tax Regulations (Validation) Act 1987* is therefore spent.