**EXPLANTATORY STATEMENT**

Issued by the Authority of the Minister for Regional Development, Local Government and Territories

*Australian Capital Territory (Self-Government) Act 1988*

***Australian Capital Territory (Self-Government) Amendment Regulations 2024***

**Authority**

The *Australian Capital Territory (Self-Government) Act 1988* (the Act) provides for the Government of the Australian Capital Territory (ACT) and related purposes. Section 74 of the Act provides that the Governor‑General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 27 of the Act provides that, except as provided by the regulations, an enactment does not bind the Crown in right of the Commonwealth. The *Australian Capital Territory (Self-Government) Regulations 2021* (the Principal Regulations) are made under section 74 of the Act. Subsection 5(1) of the Principal Regulations prescribes enactments that bind the Crown in right of the Commonwealth for the purposes of section 27 of the Act.

Subsection 33(3) of the *Acts Interpretation Act 1901* permits the Principal Regulations to be amended. This subsection provides that, where an Act confers a power to make a legislative instrument, the power is construed as including a power to, amongst other things, amend the legislative instrument.

**Purpose**

The purpose of the *Australian Capital Territory (Self-Government) Amendment Regulations 2024* (the Amendment Regulations) is to amend subsection 5(1) of the Principal Regulations to specify additional enactments that bind the Crown in right of the Commonwealth for the purposes of section 27 of the Act. These enactments include those relating to the establishment and operation of the ACT courts, along with the *Personal Violence Act 2016* (ACT). The primary effect of specifying each of these enactments is to ensure that the Commonwealth will be required to comply with each specified enactment in accordance with its terms.

**Background**

An ‘enactment’ is defined under section 3 of the Act as including a law made by the ACT Legislative Assembly or a law, or part of a law, that is an enactment because of section 34. Section 8 establishes the ACT Legislative Assembly, and its power to make laws is provided for under section 22. Section 34 converts certain laws in force in the ACT before the commencement of the Act (that is, before the Commonwealth conferred self-government on the ACT) into enactments.

Subsection 5(1) of the Regulations lists enactments that bind the Crown in right of the Commonwealth for the purposes of section 27 of the Act.

Specifying these enactments ensures that, as far as possible, the Commonwealth takes on the same legal burdens and obligations as other parties when participating in ACT courts, and similarly removes any doubt that the Commonwealth may take the correlative benefits of those enactments.

**Summary of the Amendment Regulations**

The Amendment Regulations amends subsection 5(1) of the Regulations to specify the following enactments as enactments that bind the Crown in right of the Commonwealth for the purposes of section 27 of the Act:

* the *Court Procedures Act 2004* (ACT)
* the *Evidence Act 2011* (ACT)
* the *Magistrates Court Act 1930* (ACT)
* the *Personal Violence Act 2016* (ACT), and
* the *Supreme Court Act 1933* (ACT)*.*

The Amendment Regulations are a legislative instrument for the purposes of the *Legislation Act 2003* and subject to sunsetting and disallowance under that Act.

The Amendment Regulationscommence the day after it is registered.

Details of the instrument are set out in Attachment A.

**Consultation**

Consultation on the Amendment Regulations was undertaken within the Australian Government with the Attorney-General’s Department and heads of legal of Commonwealth departments and other large agencies, in which the amendments provided by the Amendment Regulations were supported. The ACT Government was also consulted to advise them of the Amendment Regulations. No other consultation occurred outside the Commonwealth as the effect of the Amendment Regulations is to bind the Crown in right of the Commonwealth to the specified enactments.

**Office of Impact Analysis**

The Office of Impact Analysis (OIA) advised that an Impact Analysis is not required for the Amendment Regulations (OIA reference number: OIA24-07850).

**Statement of Compatibility with Human Rights**

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at Attachment B.

**Attachment A**

**Details of the** ***Australian Capital Territory (Self-Government) Amendment Regulations 2024***

Section 1 – Name

This section provides that the name of this instrument is the *Australian Capital Territory (Self-Government) Amendment Regulations 2024* (the Amendment Regulations)*.*

Section 2 – Commencement

This section provides for the Amendment Regulations to commence on the day after it is registered.

Section 3 – Authority

This section provides that the Amendment Regulations are made under the *Australian Capital Territory (Self-Government) Act 1988* (the Act).

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the Amendment Regulations is amended or repealed as set out in the applicable item in the Schedule concerned, and that any other item in a Schedule to the Amendment Regulations has effect according to its terms.

**Schedule 1—Amendments**

***Australian Capital Territory (Self-Government) Regulations 2021***

Items 1 to 5 – subsection 5(1)

These items amend subsection 5(1) of the *Australian Capital Territory (Self-Government) Regulations 2021* to specify the following enactments as enactments that bind the Crown in right of the Commonwealth for the purposes of section 27 of the Act:

* the *Court Procedures Act 2004* (ACT)
* the *Evidence Act 2011* (ACT)
* the *Magistrates Court Act 1930* (ACT)
* the *Personal Violence Act 2016* (ACT), and
* the *Supreme Court Act 1933* (ACT).

Section 27 of the Act provides that, except as provided by the regulations, an enactment does not bind the Crown in right of the Commonwealth.

**Attachment B**

## Statement of Compatibility with Human Rights

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

**Australian Capital Territory (Self-Government) Regulations 2024**

This Disallowable Legislative Instrument 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 Disallowable Legislative Instrument**

The *Australian Capital Territory (Self-Government) Regulations 2024* (the Amendment Regulations) amend subsection 5(1) of the *Australian Capital Territory (Self-Government)* Regulations *2021* (the Regulations) to specify additional enactments that bind the Crown in right of the Commonwealth for the purposes of section 27 of the *Australian Capital Territory (Self-Government) Act 1988* (the Act). Section 27 of the Act provides that, except as provided by the regulations, an enactment does not bind the Crown in right of the Commonwealth.

The specified enactments include those relating to the establishment and operation of the ACT courts, which include the *Court Procedures Act 2004* (ACT), the *Evidence Act 2011* (ACT), the *Magistrates Court Act 1930* (ACT) and the *Supreme Court Act 1933* (ACT), along with the *Personal Violence Act 2016* (ACT).

**Human rights implications**

The Amendment Regulations promotes fair trial and fair hearing rights enshrined in Article 14(1) of the *International Covenant on Civil and Political Rights*. These include that all persons are equal before the courts and tribunals, and the right to a fair and public hearing by a competent, independent and impartial court or tribunal established by law.

Specifying enactments relating to the exercise of the powers of the ACT courts as binding the Commonwealth for the purposes of section 27 of the Act expands the range of matters to which the ACT courts may make orders that bind the Commonwealth. Additionally, because this measure ensures that, as far as possible, the Commonwealth takes on the same legal burdens and obligations as other parties when participating in ACT courts, it ensures that the Commonwealth does not enjoy a more privileged position compared to other parties in matters arising under the specified enactments.

**Conclusion**

The Amendment Regulations are compatible with human rights as it promotes the protection of human rights.

**Minister for Regional Development, Local Government and Territories**

**The Hon Kristy McBain MP**