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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

STATUTE LAW REVISION (SPRING 2016) BILL 2016

EXPLANATORY MEMORANDUM

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

STATUTE LAW REVISION (SPRING 2016) BILL 2016

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) reduce the need for reliance on substituted reference orders under section 19B of the *Acts Interpretation Act 1901*, and the need for such orders to be made in the future by inserting generic references to Ministers and Departments in Commonwealth Acts (see Schedule 3); and
- (c) repeal spent and obsolete provisions and Acts, which will result in the repeal of approximately 27 pages of spent and obsolete provisions (see Schedules 4 and 5).

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 (Spring 2016) Bill 2016

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 spent or obsolete amending Acts.

The corrections and repeals are desirable in order to improve the quality of the text of Commonwealth legislation. Repealing the Acts is desirable because it will reduce the regulatory burden and make accessing the law simpler for both businesses and individuals. The Bill will also 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 amending 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 short title of the Act to be the *Statute Law Revision (Spring 2016) Act 2016*.

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 Table item 1 of the table in subclause 2(1) provides for sections 1 to 3 of the Act to commence on the day on which it receives the Royal Assent. This commencement is in keeping with current Commonwealth drafting practice, which is to avoid retrospective commencements where practicable.

6 Most items in Schedule 1 to the Bill correct errors in principal Acts. All items in the Schedule commence 28 days after the 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.

7 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.

8 Other items in Schedule 1 to the Bill relate to removals of redundant text, renumbering of text or modernising language and it is appropriate that these items commence 28 days after the Act receives the Royal Assent because they do not change the substantive content of the law.

9 Schedule 2 to the Bill corrects errors in amending Acts. Most of the amendments 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. One amendment fixes an incorrect citation of a short title of an Act in the commencement provision of an amending Act. The commencement of that item is tied to the time specified in the amending Act for the commencement of the commencement provision of the amending Act.

10 Schedule 3 to the Bill amends a number of Acts to ensure that Commonwealth Ministers are consistently mentioned by reference to the administration of identified legislation rather than by name. The Schedule is to commence 28 days after the Act receives the Royal Assent.

11 Schedule 4 to the Bill repeals spent and obsolete provisions of Acts. The Schedule is to commence 28 days after the Act receives the Royal Assent.

12 Schedule 5 to the Bill repeals amending Acts. It commences 28 days after the Act receives the Royal Assent.

Clause 3—Schedules

13 Clause 3 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 concerned 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.

Schedule 1—Amendments of principal Acts

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

Part 1—General amendments

15 Part 1 contains general amendments.

Item 1

16 The Convention on International Civil Aviation is also known as the Chicago Convention. Subsection 3(4) of the *Aviation Transport Security Act 2004* refers to that Convention. However, it contains a citation error as it refers to the “Convention on International Aviation” not the “Convention on International Civil Aviation”. Item 1 fixes the citation.

Item 2

17 Item 2 omits a duplication of the word “the” in subparagraphs 205A(4)(a)(ii) and (b)(ii) and (6)(a)(ii) and (b)(ii) of the *Bankruptcy Act 1966* that resulted from amendments made by items 81, 84, 90 and 94 of Schedule 1 to the *Bankruptcy Legislation Amendment Act 2004*.

Items 3 to 7

18 Items 3 to 7 are related. Notes to subsections 177(2), 273(1), 278(1), 280(1) and 434(1) of the *Biosecurity Act 2015* contain incorrect cross-references as they refer to paragraph 592(4)(e) of the Act. However, there is no such provision. The correct provision to refer to is paragraph 592(4)(b) of the Act, as the provision relates to application fees that may be required, which the notes refer to. Items 3 to 7 correct the cross-references.

Item 8

19 Item 19 of the table in subsection 523(1) of the *Biosecurity Act 2015* contains an incorrect cross-reference as it refers to subsection 220(3) of the Act rather than subsection 221(3) of the Act. The table lists strict liability offence provisions and civil penalty provisions for the contravention of which a person can be given an infringement notice under Part 5 of the *Regulatory Powers (Standard Provisions) Act 2014*. However, subsection 220(3) is not a strict liability offence provision or civil penalty provision. The correct provision to refer to is subsection 221(3) of the Act, as it is a strict liability offence provision. Item 8 corrects the cross-reference.

Item 9

20 Paragraph 641(3)(c) of the *Biosecurity Act 2015* contains an error as it mentions “the partner” of an unincorporated association rather than “the member”. Section 641 concerns the imposition of obligations on, and commissions of offences by, members of an unincorporated association’s committee of management. The error arose as a result of a transcription error when cloning the provision from section 640 of the Act, which concerns the treatment of partnerships. Item 9 omits the incorrect concept and substitutes the correct one.

Item 10

21 Item 65 of Schedule 4 to the *Tribunals Amalgamation Act 2015* repealed section 103ZB of the *Child Support (Registration and Collection) Act 1988*. It substituted text that did not include a section number or section heading. Item 10 inserts the missing text.

Item 11

22 Paragraph 26(2)(a) of the *Civil Aviation Act 1988* contains an incorrect cross-reference as it refers to “subsection 14(1) of the *Air Navigation Act 1920*”. However, the other subsections of section 14 were repealed and subsection 14(1) was renumbered as section 14 of that Act. The correct provision to refer to is section 14 of the *Air Navigation Act 1920*. Item 11 corrects the cross-reference.

Item 12

23 Item 12 repeals the redundant subsection 32AHO(4) of the *Civil Aviation Act 1988*. That subsection is redundant as it provides that a provision that has been repealed continues to apply to a thing through a specified period and that period has expired.

Item 13

24 Part 8 of the *Classification (Publications, Films and Computer Games) Act 1995* contains two provisions numbered 86. The second of them is the simplified outline of the Part, which should be the first section in the Part. Item 13 renumbers that provision, which was inserted by item 9 of Schedule 7 to the *Classification (Publications, Films and Computer Games) Amendment (Classification Tools and Other Measures) Act 2014*, as section 85A. It also moves that provision to be located in its appropriate position.

Item 14

25 Paragraph 3ZM(7)(b) of the *Crimes Act 1914* contains a spelling error as it refers to “admissable” rather than “admissible”. Item 14 corrects that spelling error.

Item 15

26 Subsection 22(6) of the *Crimes Act 1914* contains a grammatical error as it refers to “a Australian travel document” rather than “an Australian travel document”. Item 15 corrects the grammatical error.

Item 16

27 Item 16 omits a duplication of the word “the” in paragraph 203D(2)(c) of the *Customs Act 1901* that resulted from an amendment made by item 9 of Schedule 4 to the *Customs Legislation Amendment Act (No. 1) 2002*.

Item 17

28 Subsections 227F(5) and (7) of the *Customs Act 1901* each contain a grammatical error as they refer to “a item” rather than “an item”. Item 17 corrects the grammatical errors.

Item 18

29 Subsection 100(1) of the *Excise Act 1901* states that an officer or police officer may without warrant arrest any person whom he or she has reasonable cause to believe is guilty of various offences which were created by other provisions, like sections 25, 26 and 27 of the Act. Current Commonwealth drafting practice is to use the expression “commits an offence”, which recognises that it is the role of the courts to find persons guilty of an offence. This was acknowledged by Justice Deane in the High Court decision of *Polyukhovich v Commonwealth* (1991) 101 ALR 545. Subsection 100(2) takes this current drafting approach. Item 18 updates subsection 100(1) to accord with current Commonwealth drafting practice.

Items 19 and 20

30 Paragraphs 100(1)(a), (b) and (c) of the *Excise Act 1901* each contain a typographical error as their first word starts with a capital letter rather than a lower case letter. Items 19 and 20 correct the typographical errors.

Item 21

31 Section 103 of the *Excise Act 1901* contains some numbering errors, as its paragraphs are numbered with numbers, not letters. Also, it contains some typographical errors as their first words start with a capitalised letter rather than a lower case letter. Item 21 corrects these errors.

Item 22

32 Section 103 of the *Excise Act 1901* contains a typographical error, as the conjunction “or” is bracketed. Item 22 corrects this typographical error.

Item 23

33 Section 103 of the *Excise Act 1901* contains some numbering errors, as its paragraphs are numbered with numbers, not letters. Also, it contains some typographical errors as their first words start with a capitalised letter rather than a lower case letter. Item 23 corrects these errors.

Items 24 to 26

34 Paragraphs 104(1)(a), (b) and (c) of the *Excise Act 1901* each contain a typographical error as their first word starts with a capital letter rather than a lower case letter. Items 24 to 26 correct the typographical errors.

Item 27

35 Table item 38 in subsection 539(2) of the *Fair Work Act 2009* contains an error as it refers to a court incorrectly as the “Federal Magistrates Court”. That title is incorrect as the Federal Magistrates Court created under Chapter III of the Constitution has been continued in existence as the Federal Circuit Court of Australia. Item 27, together with a definition of ***Federal Circuit Court*** in section 12 of the *Fair Work Act 2009*, corrects the reference to that title.

Item 28

36 Subparagraph 90M(1)(a)(i) of the *Family Law Act 1975* contains a typographical error as it refers to “the parties to a marriage or either or them” rather than “the parties to a marriage or either of them”. Item 28 corrects the typographical error.

Item 29

37 The text of the UNCITRAL Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on 21 June 1985 and amended by the United Nations Commission on International Trade Law on 7 July 2006 is set out in Schedule 2 to the *International Arbitration Act 1974*. The reproduction in the Schedule contains a typographical error as it refers to “telexor” rather than “telex or” in article 7(4). Item 29 corrects the typographical error.

Item 30

38 The definition of **Regulatory Powers Act** in subsection 5(1) of the *Migration Act 1958* contains a citation error as it refers to the *Regulatory Powers (Standard Provisions) Act 2013*. However, it is correct to refer to the *Regulatory Powers (Standard Provisions) Act 2014*, as the incorrectly cited Act was before Parliament at the time the provision was enacted but the incorrectly cited Act was enacted in a later year. Item 30 fixes the citation.

Item 31

39 Item 46 of Schedule 3 to the *Customs and Other Legislation Amendment (Australian Border Force) Act 2015* amended section 267 of the *Migration Act 1958* to provide that the Australian Border Force Commissioner could freeze amounts to secure future debts. However, the heading to section 267 was not altered to reflect this change. Item 31 alters the heading to reflect the amendments made to the section.

Item 32

40 Item 32 omits a duplication of a comma in paragraph 336E(2)(f) of the *Migration Act 1958* that resulted from amendments made by items 24 and 152 of Schedule 2 to the *Tribunals Amalgamation Act 2015*.

Item 33

41 Subsection 3(4) of the *Remuneration and Allowances Act 1990* contains a spelling error as it refers to “overriden” rather than “overridden”. Item 33 corrects that spelling error.

Part 2—Amendments of listed provisions

42 Part 2 amends the listed provisions from the *My Health Records Act 2012*.

Item 34

43 The listed provisions contain typographical errors as they refer to “My Health Record Rules” rather than “My Health Records Rules”. Item 34 corrects the typographical errors.

Schedule 2—Amendments of amending Acts

Item 1

44 Item 28 of Schedule 1 to the *Australian Radiation Protection and Nuclear Safety Amendment Act 2015* purported to repeal and substitute paragraph 42(2)(b) of the *Australian Radiation Protection and Nuclear Safety Act 1998*. However, it did not include a complete amending form, leaving out the “Repeal the paragraph, substitute:” instruction. Item 1 corrects this misdescription.

Item 2

45 Item 160 of Schedule 1 to the *Indirect Tax Laws Amendment (Assessment) Act 2012* purported to amend paragraph 71AAAL(7)(b) of the *Customs Act 1901*. However, the amendment was misdescribed as there is no subsection 71AAAL(7). The intended amendment was to paragraph 71C(7)(b). The error arose as a result of a transcription error when cloning the amending item from item 155 of Schedule 1 to the *Indirect Tax Laws Amendment (Assessment) Act 2012*, which similarly amended paragraph 71AAAL(3)(b). Item 2 corrects the misdescription.

Item 3

46 The commencement of Part 2 of Schedule 5 to the *Migration Amendment (Temporary Sponsored Visas) Act 2013* in subsection 2(1) of that Act contains a citation error as it refers to the *Regulatory Powers (Standard Provisions) Act 2013*. However, it is correct to refer to the *Regulatory Powers (Standard Provisions) Act 2014*, as the incorrectly cited Act was before Parliament at the time the provision was enacted but the incorrectly cited Act was enacted in a later year. Item 3 fixes the citation and corrects the commencement allowing the amendments to commence.

Item 4

47 Item 55 of Schedule 2 to the *Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010* purported to amend the note to section 25A of the *Inspector-General of Intelligence and Security Act 1986* to replace a reference to “Section 3EC of” with “Subdivision 355-C in Schedule 1 to”. However, the amendment was misdescribed as the words in the text to be omitted are “section 3EC of”. Item 4 corrects the misdescription.

Schedule 3—References to specific Ministers and Departments

48 The items in this Schedule contain amendments relating to references to Ministers and Departments in Acts.

49 The items in Part 1 make amendments to the *Public Lending Right Act 1985* to ensure it reflects the legal effect of alterations made to it via an order made under the former section 19BA of the *Acts Interpretation Act 1901*.

50 The items in Part 2 include provision for transitional, saving and application provisions to ensure that the amendments made by this Schedule do not result in any unintended consequences.

Schedule 4—Repeals of spent and obsolete provisions

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

Item 1

52 The *International Labour Organisation (Compliance with Conventions) Act 1992* received the Royal Assent on 24 December 1992. On that day, Parts 3 and 4 made amendments to the *Migration Act 1958* and the *Navigation Act 1912*. After those amendments were made, Parts 3 and 4 were spent. Item 1 repeals the spent Parts.

Items 2 to 4

53 Items 2 to 4 are related as they all repeal spent provisions and definitions. Subsection 85AC(1) of the *National Health Act 1953* empowers the Minister to determine that certain drugs are in Part A or Part T of F2. However, under subsection 85AC(5) the determination ceased to be in force on 1 December 2010. Section 85AC as a whole became spent. This also meant that subsections 84AD(1) and (3) became spent as they relied on determinations being in force under section 85AC. Subsections 84AD(2), (4) and (5) of the *National Health Act 1953* empower the regulations to prescribe that drugs are in Part A of F2 or Part T of F2 or that drugs on F2 are in Part A or Part T of F2. Subsections 84AD(6) and (7) provide that those regulations ceased to be in force on 1 December 2010 to the extent that they did those things. Subsections 84AD(6) and (7) (which are the remainder of section 84AD) are spent as are the definitions of drug is in Part A of F2 and drug is in Part T of F2 in subsection 84(1) of the Act, which are only used in the provisions being repealed by items 2 to 4.

Schedule 5—Repeals of amending Acts

54 This Schedule repeals an amending Act that also contains application, saving and transitional provisions.

Items 1 and 2

55 Item 1 provides for the repeal of the spent *Forestry Marketing and Research and Development Services (Transitional and Consequential Provisions) Act 2007*. The Act provided for the cessation of the Forest and Wood Products Research and Development Corporation (FWPRDC) and dealt with matters arising from the transition to its successor organisation—Forest and Wood Products Australia (FWPA). These transitional matters included the transfer of assets, liabilities and employees from FWPRDC to FWPA and the preparation of the final annual report from the FWPRDC. All of the transfers of assets, liabilities and employment arrangements from FWPRDC to FWPA were effected under the Act. There are no outstanding assets, liabilities or employees to be transferred under that Act. The final annual report was prepared in accordance with the Act and tabled in Parliament on 11 November 2008.

56 The amendments and repeals made by the Act have happened, and therefore are no longer required. It is considered that none of the application, saving or transitional provisions in the Act have ongoing effect. However, the operation of those provisions is preserved to provide certainty in the event that their effect is not in fact completely spent. The Act does not contain any other substantive provisions which are not already spent.

57 The repeal of this Act does not affect any amendment or repeal made (see section 7 of the *Acts Interpretation Act 1901*), or affect the continuing operation of any application, saving or transitional provision (see item 2).