

2016

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**STATUTE LAW REVISION BILL (No. 3) 2016**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Prime Minister,

The Honourable Malcolm Turnbull MP)

## **STATUTE LAW REVISION BILL (No. 3) 2016**

### **GENERAL OUTLINE**

The main purpose of this Bill is to correct technical errors that have occurred in Acts as a result of drafting and clerical mistakes.

The corrections 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.

### **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. 3) 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 purpose of this Bill is to correct technical errors that have occurred in Acts as a result of drafting and clerical mistakes.

The corrections 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. The amendments improve the ease of administration of legislation and reduce the regulatory burden. 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.

The Hon Malcolm Turnbull MP  
Prime Minister

## Notes on clauses

### *Clause 1—Short title*

1 Clause 1 provides for the Act to be cited as the *Statute Law Revision Act (No. 3) 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 Most items in Schedule 1 to the Bill correct errors in principal Acts. 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, renumbering of text or modernising language. These items do not change the substantive content of the law.

8 For these reasons it is appropriate that the whole of the Act commence 28 days after the Act receives the Royal Assent.

### *Clause 3—Schedule(s)*

9 Clause 3 provides that each Act 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.

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

10 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**

11 Part 1 contains general amendments.

#### ***Item 1***

12 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***

13 Item 2 omits a duplication of the word “the” in subparagraphs 205A(4)(a)(ii), (4)(b)(ii), (6)(a)(ii) and (6)(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***

14 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***

15 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***

16 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***

17 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***

18 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***

19 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***

20 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***

21 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***

22 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***

23 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***

24 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***

25 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***

26 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***

27 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***

28 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***

29 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***

30 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***

31 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***

32 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***

33 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***

34 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***

35 Subsection 65(1) of the *Migration Act 1958* has two notes numbered 2. Item 31 renumbers the note 2 that was inserted by item 13 of Schedule 4 to the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* as note 3.

### ***Item 32***

36 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 32 alters the heading to reflect the amendments made to the section.

### ***Item 33***

37 Item 33 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 34***

38 Subsection 3(4) of the *Remuneration and Allowances Act 1990* contains a spelling error as it refers to “overriden” rather than “overridden”. Item 34 corrects that spelling error.

## **Part 2—Amendments of listed provisions**

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



***Item 35***

40      The listed provisions contain typographical errors as they refer to “My Health Record Rules” rather than “My Health Records Rules”. Item 35 corrects the typographical errors.