

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

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*(Presented and read a first time, 25 June 1992)*

(MINISTER FOR JUSTICE, SENATOR TATE)

## A BILL

FOR

### **An Act to amend various Acts relating to law and justice, and for related purposes**

The Parliament of Australia enacts:

#### **Short title**

1. This Act may be cited as the *Law and Justice Legislation Amendment Act (No. 3) 1992*.

#### **5 Commencement**

2.(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

10 (2) Subject to subsection (3), the amendment of the *Administrative Appeals Tribunal Act 1975* made by this Act commences on a day to be fixed by Proclamation.

(3) If the amendment mentioned in subsection (2) does not commence under that subsection within the period of 6 months commencing on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

(4) Subject to subsection (5), the amendments of the *Jurisdiction of Courts (Cross-vesting) Act 1987* made by this Act commence on a day to be fixed by Proclamation. 5

(5) If the amendments mentioned in subsection (4) do not commence under that subsection within the period of 12 months commencing on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period. 10

(6) The amendment of the *Privacy Amendment Act 1990* made by this Act is taken to have commenced immediately after the commencement of section 18 of that Act.

(7) Part 2 of the Schedule commences on the 28th day after the day on which this Act receives the Royal Assent. 15

(8) Part 3 of the Schedule commences immediately after the commencement of section 9 of the *Sex Discrimination Amendment Act 1991*.

### **Application** 20

3.(1) Despite the amendments of the *Jurisdiction of Courts (Cross-vesting) Act 1987* made by this Act, that Act as in force immediately before the commencement of those amendments continues to apply in relation to a proceeding pending in a court to which section 6 of that Act applied before that commencement. 25

(2) The amendments of section 24 of the *Racial Discrimination Act 1975* made by this Act apply in relation to a decision of the Commissioner under subsection 24(2) of that Act if a notice of the decision is given under subsection 24(3) of that Act after the commencement of those amendments. 30

(3) The amendments of section 52 of the *Sex Discrimination Act 1984* made by this Act apply in relation to a decision of the Commissioner under subsection 52(2) of that Act if a notice of the decision is given under subsection 52(3) of that Act after the commencement of those amendments. 35

(4) The amendment of section 87 of the *Sex Discrimination Act 1984* made by this Act applies in relation to an act of discrimination that occurs after the commencement of that amendment.

### **Amendments of Acts**

4. The Acts specified in the Schedule are amended as set out in the Schedule. 40

**SCHEDULE**

Section 4

**AMENDMENTS OF ACTS**

**PART 1**

***Administrative Appeals Tribunal Act 1975***

**After section 27:**

Insert:

**Notice of decision and review rights to be given**

“27A.(1) Subject to subsection (2), a person who makes a reviewable decision must take such steps as are reasonable in the circumstances to give to any person whose interests are affected by the decision notice, in writing or otherwise:

- (a) of the making of the decision; and
- (b) of the right of the person to have the decision reviewed.

“(2) Subsection (1) does not apply to:

- (a) a decision that is deemed to be made because of the operation of subsection 25(5); or
- (b) a decision in respect of which provision relating to the notification of a right of review is made by another enactment; or
- (c) any of the following decisions:
  - (i) a decision not to impose a liability, penalty or any kind of limitation on a person;
  - (ii) a decision making an adjustment to the level of periodic payments to be made to a person as a member of a class of persons where a similar adjustment is being made to the level of such payments to the other members of the class;
  - (iii) if an enactment establishes several categories of entitlement to a monetary benefit—a decision that determines a person to be in the most favourable of those categories;

if the decision does not adversely affect the interests of any other person.

“(3) A failure to do what this section requires does not affect the validity of the decision.

“(4) In this section:

‘reviewable decision’ means:

**SCHEDULE—continued**

- (a) a decision that is reviewable by the Tribunal; or
- (b) a decision that is reviewable by:
  - (i) a person whose decision on review is reviewable by the Tribunal; or
  - (ii) a person whose decision on review, because of subparagraph (i), is a reviewable decision.

**Review—Code of Practice**

“27B.(1) The Attorney-General may determine, in writing, a Code of Practice for the purpose of facilitating the operation of subsection 27A(1).

“(2) A person, in taking action under subsection 27A(1), must have regard to any such Code of Practice that is then in force.

“(3) A Code of Practice is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.”

***Freedom of Information Act 1982***

**After subsection 7(2):**

Insert:

“(2AA) A body corporate established by or under an Act specified in Part III of Schedule 2 is exempt from the operation of this Act in relation to documents in respect of the commercial activities of the body corporate.”.

**Subsection 7(3):**

Omit “In Part II of Schedule 2”, substitute “In subsection (2AA) and Part II of Schedule 2”.

**Subsection 7(4):**

Omit “In Part II of Schedule 2”, substitute “In subsection (2AA) and Part II of Schedule 2”.

**At the end of paragraph 12(1)(a):**

Add “or”.

**Before paragraph 12(1)(c):**

Insert:

“(ba) a document that is open to public access, as part of a land title register, in accordance with a law of a State or Territory where that access is subject to a fee or other charge; or”.

**SCHEDULE—continued**

**Paragraph 16(3)(a):**

After “Part II of Schedule 2”, insert “or an agency that is a body corporate established by or under an Act specified in Part III of Schedule 2”.

**Paragraph 51C(3)(a):**

After “Part II of Schedule 2”, insert “or an agency that is a body corporate established by or under an Act specified in Part III of Schedule 2”.

**After paragraph 58A(3)(b):**

Add:

“; and (c) on having caused a copy of the notice to be laid in the House in which the Minister sits, read the notice to the House.”.

**Part I of Schedule 2:**

Omit the following items:

“Canberra Commercial Development Authority  
Superannuation Fund Investment Trust”.

**Part II of Schedule 2:**

Omit the following items:

“Australian Apple and Pear Corporation, in relation to documents in respect of its commercial activities

Australian Canned Fruits Corporation, in relation to documents in respect of its commercial activities

Australian Dairy Corporation, in relation to documents in respect of its commercial activities

Australian Dried Fruits Corporation, in relation to documents in respect of its commercial activities

Australian Honey Board, in relation to documents in respect of its commercial activities

Australian Meat and Live-stock Corporation, in relation to documents in respect of its commercial activities

Australian Wheat Board, in relation to documents in respect of its commercial activities

Australian Wine and Brandy Corporation, in relation to documents in respect of its commercial activities

Australian Wool Corporation, in relation to documents in respect of its commercial activities”.

**SCHEDULE—continued**

**Part II of Schedule 2:**

Insert the following items (in the appropriate alphabetical position, determined on a letter-by-letter basis):

“Attorney-General’s Department, in relation to documents in respect of commercial activities it undertakes

Australian Government Solicitor, in relation to documents in respect of its commercial activities

Australian Pork Corporation, in relation to documents in respect of its commercial activities”.

**After Part II of Schedule 2:**

Insert in Schedule 2:

**“PART III**

*Legislation relating to agencies exempt in respect of documents in relation to their commercial activities*

*Australian Horticultural Corporation Act 1987*

*Australian Meat and Live-stock Corporation Act 1977*

*Australian Wine and Brandy Corporation Act 1980*

*Australian Wool Corporation Act 1991*

*Australian Wool Realisation Commission Act 1991*

*Dairy Produce Act 1986*

*Fishing Industry Research and Development Act 1987*

*Honey Marketing Act 1988*

*Horticultural Research and Development Corporation Act 1987*

*Meat Research Corporation Act 1985*

*Primary Industries and Energy Research and Development Act 1989*

*Rural Industries Research Act 1985*

*Wheat Marketing Act 1989”.*

***Judiciary Act 1903***

**Section 2:**

Insert:

“ ‘Australian Government Solicitor’ means the Australian Government Solicitor established by subsection 55E(1);”.

**Subsection 40(1):**

After “Attorney-General of a State” (last occurring) insert “, the Attorney-General of the Australian Capital Territory”.

**SCHEDULE—continued**

**Subsection 55E(3):**

- (a) Omit “as solicitor”.
- (b) Omit all the words after paragraph (j) and substitute:  
“and, for the purpose of so acting:
  - (k) is entitled to practise as a barrister, solicitor, or barrister and solicitor, in any court, or in any State or Territory; and
  - (l) is entitled to all the rights and privileges of a barrister, solicitor, or barrister and solicitor, as the case may be, in that court, State or Territory.”.

**Subsection 55E(8):**

Omit all the words after “Government”, substitute:

“Solicitor:

- (a) entitled to do all things necessary or convenient for the purpose of so acting; and
- (b) entitled to:
  - (i) practise as a barrister, solicitor, or barrister and solicitor, in any court, or in any State or Territory; and
  - (ii) all the rights and privileges of a barrister, solicitor, or barrister and solicitor, as the case may be, in that court, State or Territory;

whether or not he or she is so entitled apart from this subsection.”.

**Subsection 55E(9):**

Omit “as a solicitor”, substitute “as a barrister, solicitor, or barrister and solicitor,”.

**After subsection 55E(10):**

Insert:

“(10A) If the Australian Government Solicitor is acting for a person or body (**‘client’**):

- (a) in proceedings in any court or tribunal, or in an inquest or inquiry, in respect of a matter; or
- (b) otherwise in relation to a matter;

an officer of, or an employee in, the Attorney-General’s Department whose name is on a roll referred to in subsection 55D(1) (**‘A-G’s lawyer’**) may:

- (c) represent the client in the proceedings, inquest or inquiry; or
- (d) through the Australian Government Solicitor, provide advice to the client in relation to the matter.

**SCHEDULE—continued**

“(10B) For the purpose of subsection (10A), the A-G’s lawyer:

- (a) is entitled to practise as a barrister, solicitor, or barrister and solicitor, in any court, or in any State or Territory; and
- (b) is entitled to all the rights and privileges of a barrister, solicitor, or barrister and solicitor, as the case may be, in that court, State or Territory;

whether or not he or she is so entitled apart from this subsection.

“(10C) Any act or thing done by an A-G’s lawyer under subsection (10A) is taken to have been done by the Australian Government Solicitor.

“(10D) In spite of subsection (10C), but subject to subsection (10B), in respect of any act or thing that is:

- (a) in relation to a matter in a State or Territory; and
- (b) done or omitted to be done by an A-G’s lawyer in the course of acting in relation to a client under subsection (10A);

the A-G’s lawyer is subject to the same duties and obligations as if that act or thing had been done or omitted to be done in the course of practice by the A-G’s lawyer as a barrister, solicitor, or barrister and solicitor, in that State or Territory.”.

**After section 55E:**

Insert in Part VIIIA:

**Australian Government Solicitor may charge for services**

“55F.(1) The Australian Government Solicitor (‘AGS’) is entitled to charge a person or body (‘client’) for services rendered and for disbursements incurred in the course of acting for the client.

“(2) The AGS may:

- (a) charge a client an amount under subsection (1); or
- (b) recover that amount from the client or another person;

whether or not the client is the Commonwealth or an authority of the Commonwealth.

“(3) If the AGS has charged a client an amount under subsection (1), the amount may be recovered by the client as costs incurred by the client.

“(4) If an amount charged under subsection (1) is not an amount of disbursement, then, for the following purposes:

- (a) an application to a court or tribunal for the award of costs incurred by the client;
- (b) the taxation of those costs;
- (c) the recovery of those costs by the client;



**SCHEDULE—continued**

the amount charged is taken to have been paid by the client.”.

***Jurisdiction of Courts (Cross-vesting) Act 1987***

**Subsection 3(1) (after paragraph (a) of the definition of “special federal matter”):**

Insert:

“(ab) a matter arising under section 60AA of the *Family Law Act 1975* in a court other than the Family Court of Western Australia or the Supreme Court of the Northern Territory;”.

**Section 6:**

Repeal the section, substitute:

**Special federal matters**

“6.(1) If:

- (a) a matter for determination in a proceeding that is pending in the Supreme Court of a State or Territory is a special federal matter; and
- (b) the court does not make an order under subsection (3) in respect of the matter;

the court must transfer the proceeding in accordance with this section to the Federal Court or a court mentioned in paragraph (2)(b).

“(2) If the court orders that a proceeding be transferred, the proceeding must be transferred:

- (a) if the matter for determination in the proceeding is a matter mentioned in paragraph (a), (b), (c), (d) or (e) of the definition of ‘special federal matter’ in subsection 3(1)—to the Federal Court; or
- (b) if the matter for determination in the proceeding is a matter mentioned in paragraph (ab) of that definition—to whichever of the Family Court, the Family Court of Western Australia or the Supreme Court of the Northern Territory, in the opinion of the court, is appropriate in the circumstances.

“(3) The Supreme Court may order that the proceeding be determined by that court if it is satisfied that there are special reasons for doing so in the particular circumstances of the proceeding other than reasons relevant to the convenience of the parties.

“(4) Before making an order under subsection (3), the court must be satisfied that:

- (a) a written notice specifying the nature of the special federal matter has been given to the Attorney-General of the

**SCHEDULE—continued**

Commonwealth and the Attorney-General of the State or Territory where the proceeding is pending; and

- (b) a reasonable time has elapsed since the giving of the notice for the Attorneys-General to consider whether submissions to the court should be made in relation to the proceeding.

“(5) For the purposes of subsection (4), the court:

- (a) may adjourn the proceeding for such time as the court thinks necessary and may make such order as to costs in relation to an adjournment as it thinks fit; and
- (b) may direct a party to the proceeding to give a notice in accordance with that subsection.

“(6) In considering whether there are special reasons for the purposes of subsection (3), the court must:

- (a) have regard to the general rule that special federal matters should be heard by the Federal Court or a court mentioned in paragraph (2)(b), whichever is appropriate in the particular case; and
- (b) take into account any submission made in relation to the proceeding by an Attorney-General mentioned in subsection (4).

“(7) The Attorney-General may authorise the payment by the Commonwealth to a party of an amount in respect of costs arising out of the adjournment of a proceeding under this section, under a corresponding provision of a law of a State or under this section and under such a provision.

“(8) Nothing in this section prevents the court granting urgent relief of an interlocutory nature if it is in the interests of justice to do so.

“(9) Where, through inadvertence, the Supreme Court of a State or Territory determines a proceeding of the kind mentioned in subsection (1) without:

- (a) the court making an order under subsection (3) that the proceeding be determined by that court; or
  - (b) a notice mentioned in subsection (2) being given;
- nothing in this section invalidates the decision of that court.

“(10) This section does not apply to an appeal that is instituted in the Full Court of the Supreme Court of a State or Territory if the court whose decision is the subject of the appeal had made an order under subsection (3), or under subsection 6(1) as in force before the commencement of the amendments of this Act made by the *Law and Justice Legislation Amendment Act (No. 3) 1992*, in relation to the special federal matter.”.

**SCHEDULE—continued**  
***Privacy Amendment Act 1990***

**Section 18:**

Repeal the section, substitute:

**Report following monitoring of certain activities**

“18. Section 32 of the Principal Act is amended by omitting all the words from and including ‘paragraph’ to and including ‘or (f)’ and substituting ‘paragraph 27(1)(c), (h), (j), (k), (m) or (r), 28(1)(e), (f) or (h) or 28A(1)(g), (h), (j) or (k)’.”.

**PART 2**

***Racial Discrimination Act 1975***

**Subsection 24(4):**

(a) After “subsection (3)”, insert “relating to a decision”.

(b) Omit all the words after “served”, substitute:

“on the Commissioner:

(a) if paragraph (2)(a) applies—require the Commissioner to refer the complaint to the Commission; or

(b) in any other case—require the Commissioner to refer the decision to the President.”.

**Subsection 24(5):**

Omit “subsection (4)”, substitute “paragraph (4)(a)”.

**After subsection 24(5):**

Insert:

“(5A) If the Commissioner receives a notice under paragraph (4)(b), the Commissioner must refer the decision to the President together with a report about the decision.

“(5B) A report for the purposes of subsection (5A) must not set out or describe anything said or done in the course of conciliation proceedings under this Division (including anything said or done at a conference held under this Division).”.

**SCHEDULE—continued**

**After section 24:**

Insert:

**President may review a decision of the Commissioner not to hold an inquiry or to discontinue an inquiry**

“24AA.(1) This section applies if a decision of the Commissioner not to inquire into an act, or not to continue to inquire into an act, is referred to the President under subsection 24(5A).

“(2) The President:

- (a) must review the Commissioner’s decision; and
- (b) must decide either:

- (i) to confirm the Commissioner’s decision; or
- (ii) to set aside the Commissioner’s decision and to direct the Commissioner to inquire into the act, or to continue to inquire into the act, in accordance with section 24.

“(3) In spite of subsection (2), the President may refuse to review the Commissioner’s decision unless the complainant gives the President such relevant information as the President requires.

“(4) The President must give written notice of a decision of the President under paragraph (2)(b) to the complainant and to the Commissioner.

“(5) The notice must set out the reasons for the decision.

“(6) In spite of subsection 24(2), the Commissioner must comply with a direction of the President under subparagraph (2)(b)(ii) of this section unless the complainant notifies, or all the complainants notify, the Commissioner that the complainant does not wish, or the complainants do not wish, the inquiry to be held or continued.

**Review by President—interim determination**

“24AB.(1) This section applies if a decision of the Commissioner not to inquire into an act, or not to continue to inquire into an act, is referred to the President under subsection 24(5A).

“(2) If the President has not completed a review of the Commissioner’s decision, the Commission or the President may make an interim determination of such a nature as would, if it were binding and conclusive upon the parties, preserve:

- (a) the status quo between the parties to the complaint; or
- (b) the rights of the parties to the complaint;

pending completion of the matter the subject of the complaint.

“(3) The Commission or the President may vary or revoke an interim determination made under this section.

**SCHEDULE**—continued

“(4) The functions conferred on the Commission by subsection (2) or (3) may only be performed on an application made by the President.

“(5) The functions conferred on the President by subsection (2) or (3) may only be performed:

- (a) on the President’s own initiative; and
- (b) if the President thinks that it is expedient that the President should perform those functions.

“(6) An interim determination under this section is not binding or conclusive between any of the parties to the determination.”.

**Subsection 25ZA(1):**

After “pursuant to” insert “section 24AB or”.

***Sex Discrimination Act 1984***

**Subsection 41(4):**

Omit the subsection, substitute:

“(4) Nothing in Division 1 or 2 makes discrimination by one person (the ‘insurer’) against another person (the ‘client’) unlawful if:

- (a) the discrimination is on the ground of the client’s sex; and
- (b) the discrimination is in the terms on which an insurance policy is offered to, or may be obtained by, the client; and
- (c) the discrimination is based on actuarial or statistical data from a source on which it is reasonable for the insurer to rely; and
- (d) the discrimination is reasonable having regard to the data; and
- (e) if the client gives the insurer a written request for access to the data—either:
  - (i) the insurer gives the client a document containing the data; or
  - (ii) the insurer:
    - (A) makes a document containing the data available for inspection by the client at such time or times, and at such place or places, as are reasonable; and
    - (B) if the client inspects the document—allows the client to make a copy of, or take extracts from, the document.

“(5) Paragraph (4)(e) does not apply if the Commission has, under section 44, granted an exemption from the operation of that paragraph.

**SCHEDULE—continued**

“(6) In this section:

**‘insurance policy’** includes an annuity, a life assurance policy, an accident insurance policy and an illness insurance policy.”.

**Subsection 44(1):**

After “Division 1 or 2, or” insert “paragraph 41(4)(e), or”.

**Subsection 44(2):**

After “Division 1 or 2” insert “, or paragraph 41(4)(e),”.

**Subsection 44(3):**

After “Division 1 or 2” insert “, or paragraph 41(4)(e)”.

**Subsection 52(4):**

(a) After “subsection (3)”, insert “relating to a decision”.

(b) Omit all the words after “served”, substitute:

“on the Commissioner:

(a) if paragraph (2)(a) applies—require the Commissioner to refer the complaint to the Commission; or

(b) in any other case—require the Commissioner to refer the decision to the President.”.

**Subsection 52(5):**

Omit “subsection (4)”, substitute “paragraph (4)(a)”.

**After subsection 52(5):**

Insert:

“(5A) If the Commissioner receives a notice under paragraph (4)(b), the Commissioner must refer the decision to the President together with a report about the decision.

“(5B) A report for the purposes of subsection (5A) must not set out or describe anything said or done in the course of conciliation proceedings under this Division (including anything said or done at a conference held under this Division).”.

**After section 52:**

Insert:

**President may review a decision of the Commissioner not to hold an inquiry or to discontinue an inquiry**

“52A.(1) This section applies if a decision of the Commissioner not to inquire into an act, or not to continue to inquire into an act, is referred to the President under subsection 52(5A).

**SCHEDULE—continued**

“(2) The President:

(a) must review the Commissioner’s decision; and

(b) must decide either:

(i) to confirm the Commissioner’s decision; or

(ii) to set aside the Commissioner’s decision and to direct the Commissioner to inquire into the act, or to continue to inquire into the act, in accordance with section 52.

“(3) In spite of subsection (2), the President may refuse to review the Commissioner’s decision unless the complainant gives the President such relevant information as the President requires.

“(4) The President must give written notice of a decision of the President under paragraph (2)(b) to the complainant and to the Commissioner.

“(5) The notice must set out the reasons for the decision.

“(6) In spite of subsection 52(2), the Commissioner must comply with a direction of the President under subparagraph (2)(b)(ii) of this section unless the complainant notifies, or all the complainants notify, the Commissioner that the complainant does not wish, or the complainants do not wish, the inquiry to be held or continued.

**Review by President—interim determination**

“52B.(1) This section applies if a decision of the Commissioner not to inquire into an act, or not to continue to inquire into an act, is referred to the President under subsection 52(5A).

“(2) If the President has not completed a review of the Commissioner’s decision, the Commission or the President may make an interim determination of such a nature as would, if it were binding and conclusive upon the parties, preserve:

(a) the status quo between the parties to the complaint; or

(b) the rights of the parties to the complaint;

pending completion of the matter the subject of the complaint.

“(3) The Commission or the President may vary or revoke an interim determination made under this section.

“(4) The functions conferred on the Commission by subsection (2) or (3) may only be performed on an application made by the President.

“(5) The functions conferred on the President by subsection (2) or (3) may only be performed:

(a) on the President’s own initiative; and

(b) if the President thinks that it is expedient that the President should perform those functions.

**SCHEDULE—continued**

“(6) An interim determination under this section is not binding or conclusive between any of the parties to the determination.”.

**Subsection 82(1):**

After “pursuant to” insert “section 52B or”.

**After subparagraph 92(1)(b)(i):**

Insert:

- “(ia) if the President decides, under subparagraph 52A(2)(b)(i), to confirm the Commissioner’s decision not to inquire into the act—written notice of the President’s decision is given to the complainant; or
- (ib) if the President decides, under subparagraph 52A(2)(b)(ii), to direct the Commissioner to inquire into the act:
  - (A) the Commissioner commences to inquire into the act; or
  - (B) the complainant notifies the Commissioner that the complainant does not wish the inquiry to be held;
 whichever is the earlier; or”.

***Statutory Declarations Act 1959***

**Section 11:**

Repeal the section, substitute:

**False declarations**

“11. A person must not wilfully make a false statement in a statutory declaration.

Penalty: Imprisonment for 4 years.”.

**PART 3**

***Sex Discrimination Act 1984***

**Paragraph 41(1)(d):**

Omit “those data and any other relevant factors”, substitute “the data”.

**Subsection 41(1):**

Add at the end:

“; and (e) if the client gives the insurer a written request for access to the data—either:

- (i) the insurer gives the client a document containing the data; or



**SCHEDULE—continued**

(ii) the insurer:

- (A) makes a document containing the data available for inspection by the client at such time or times, and at such place or places, as are reasonable; and
- (B) if the client inspects the document—allows the client to make a copy of, or take extracts from, the document.”.

**After subsection 41(1):**

Insert:

“(1A) Paragraph (1)(e) does not apply if the Commission has, under section 44, granted an exemption from the operation of that paragraph.”.

**Section 44:**

Omit “paragraph 41(4)(e)” (wherever occurring), substitute “paragraph 41(1)(e)”.

**Section 87:**

Omit “but for subsection 41(4)”, substitute “apart from subsection 41(1)”.

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**NOTE ABOUT SECTION HEADING**

1. On the day on which this Act receives the Royal Assent, the heading to section 14 of the *Parliamentary Privileges Act 1987* is altered by omitting “attendance” and substituting “attendance”.