

AUSTRALIAN CAPITAL TERRITORY

Imperial Acts (Substituted Provisions) (Amendment) Ordinance 1987

No. 45 of 1987

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 27 August 1987.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

MICHAEL TATE

Parliamentary Secretary for Justice and a member of the Executive
Council for and on behalf of the Attorney-General

An Ordinance to amend the *Imperial Acts (Substituted Provisions) Ordinance 1986*

Short title

1. This Ordinance may be cited as the *Imperial Acts (Substituted Provisions) (Amendment) Ordinance 1987*.¹

Principal Ordinance

2. In this Ordinance, "Principal Ordinance" means the *Imperial Acts (Substituted Provisions) Ordinance 1986*.²

3. After section 2 of the Principal Ordinance the following section is inserted:

(Ord. 86/86)—Cat. No.

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Application of certain provisions of Ordinance

“2A. Where a Part is inserted in Schedule 2 after the commencing date, sections 3, 4, 5 and 6 apply to and in relation to the provisions set out in that Part, and to and in relation to the Imperial Act for which, or for certain provisions of which, the provisions so set out are substituted, as if references in those sections to the commencing date were read as references to the date on which that Part was inserted in Schedule 2.”.

Schedule 1**4. (1)** Schedule 1 to the Principal Ordinance is amended by inserting:

“(1267) 52 Hen. 3 c. 17	Guardians, other than testamentary guardians, of children	Whole Act	Part 1A	Minister of State for the Arts, Sport, the Environment, Tourism and Territories”
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in the table before:

“(1267) 52 Hen. 3 c. 23	Waste by tenant	Whole Act	Part 1	Minister of State for the Arts, Sport, the Environment, Tourism and Territories”.
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(2) Schedule 1 to the Principal Ordinance is amended by omitting from the table:

“(1540) 32 Hen. 8 c. 16	Aliens	Whole Act	Part 5	Minister of State for the Arts, Sport, the Environment, Tourism and Territories”
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and substituting:

“(1539) 31 Hen. 8 c. 1	Partition	Whole Act	Part 4A	Minister of State for the Arts, Sport, the Environment, Tourism and Territories
“(1540) 32 Hen. 8 c. 16	Aliens	Whole Act	Part 5	Minister of State for the Arts, Sport, the Environment, Tourism and Territories
“(1540) 32 Hen. 8 c. 32	Partition	Whole Act	Part 4A	Minister of State for the Arts, Sport, the Environment, Tourism and Territories”.

(3) Schedule 1 to the Principal Ordinance is amended by omitting “Eliz.” (wherever occurring in column 1) and substituting “Eliz. 1”.

(4) Schedule 1 to the Principal Ordinance is amended by inserting:

“(1774) 24 Geo. 3 c. 78	Liability for damage by fire	Section 86	Part 15A	Minister of State for the Arts, Sport, the Environment, Tourism and Territories”
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in the table after:

“(1737) 11 Geo. 2 c. 19	Actions for use and occupation	Section 14	Part 15	Minister of State for the Arts, Sport, the Environment, Tourism and Territories”.
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(5) Schedule 1 to the Principal Ordinance is amended by inserting:

“(1874) 37 and 38 Vic. c. 37	Appointments of property	Whole Act	Part 20A	Minister of State for the Arts, Sport, the Environment, Tourism and Territories”
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in the table after:

“(1819) 60 Geo. 3 and 1 Geo. 4 c. 8	Seizure of libellous papers	Whole Act	Part 20	Attorney-General”.
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Schedule 2—new Part 1A

5. Before Part 1 of Schedule 2 to the Principal Ordinance the following Part is inserted:

“PART 1A—GUARDIANS, OTHER THAN TESTAMENTARY GUARDIANS, OF CHILDREN

(52 Hen. 3 c. 17 (1267)—Statute of Marlborough)

Powers and duties of guardian

“1. A guardian of a child:

- (a) may take into his or her custody, and may manage, the real and personal property of the child (not being property held by a trustee under a trust) until he or she ceases to be the guardian of the child;
- (b) holds any real and personal property of the child that comes into his or her custody as trustee for the child;

- (c) may bring such proceedings as may be necessary to give effect to all or any of his or her powers under this section, including his or her powers as trustee for the child; and
 - (d) is responsible for accounting to the child, when the child attains the age of 18 years, for his or her custody and management of that property.
- “2. Clause 1 does not apply to or in relation to:
- (a) the Director of Welfare acting as guardian of a child who:
 - (i) is a ward of the Director of Welfare by reason of an order or declaration made under the *Children's Services Ordinance 1986*; or
 - (ii) became a ward of the Director of Welfare by reason of the operation of subsection 3 (3) of that Ordinance; or
 - (b) a testamentary guardian of a child.”.

Schedule 2—new Part 4A

6. After Part 4 of Schedule 2 to the Principal Ordinance the following Part is inserted:

“PART 4A—PARTITION OF LAND OWNED JOINTLY

(31 Hen. 8 c. 1 (1539) and 32 Hen. 8 c. 32 (1540))

Court may order a partition of land

“1. Where:

- (a) an estate of freehold in land is held by 2 or more persons as joint tenants or tenants in common;
- (b) 2 or more persons hold an estate or interest in land for a term of life, or for a term of one year or more, as joint tenants or tenants in common; or
- (c) 2 or more persons hold an estate or interest in land as joint tenants or tenants in common and some one or more of those persons hold an estate or interest in the land for a term of life, or for a term of one year or more and the other or others of those persons hold an estate or estates of freehold in the land;

the Supreme Court may, upon application made by any one or more of those persons, order a partition of the estate or interest in the land held by those persons as joint tenants or tenants in common, and may give all necessary or proper consequential directions.

Partition Act not affected

“2. Nothing in clause 1 affects the operation in the Territory of the Partition Act, 1900 of New South Wales.”.

Schedule 2—amendments of Parts 7 and 8

7. Schedule 2 to the Principal Ordinance is amended by omitting from the headings to Parts 7 and 8 “Eliz.” (wherever occurring) and substituting “Eliz. 1”.

8. After Part 15 of Schedule 2 to the Principal Ordinance the following Part is inserted:

“PART 15A—LIABILITY FOR FIRES ACCIDENTALLY BEGUN

(24 Geo. 3 c. 78, section 86 (1774))

Actions do not lie in respect of damage caused by fires that begin accidentally

“1. (1) An action does not lie against a person in whose house, room or other building, or on whose property, a fire accidentally begins for, or in respect of, damage caused by the fire to another person, or to the property of another person.

“(2) Subclause (1) applies notwithstanding any other law, usage or custom in force in the Territory.

“(3) For the purpose of subclause (1), a fire shall not be taken to have begun accidentally if it was started deliberately or negligently.

Contract between landlord and tenant not affected

“2. Nothing in clause 1 affects, or renders void, any term of a contract or agreement made between a landlord and his or her tenant relating to the leasing or letting of premises, or a part of premises, by the landlord to the tenant.”.

Schedule 2—amendments of Part 20

9. Schedule 2 to the Principal Ordinance is amended by omitting from clause 1 of Part 20 “with such assistance as the person thinks necessary, to enter at any time any house, vessel or place named or described in the warrant, if necessary by force,” and substituting “with such assistance as is necessary and reasonable and by such force as is necessary and reasonable, to enter, at any time, any house, vessel or place named or described in the warrant”.

Schedule 2—new Part 20A

10. After Part 20 of Schedule 2 to the Principal Ordinance the following Part is inserted:

“PART 20A—POWER TO APPOINT PROPERTY

(37 and 38 Vic. c. 37 (1874))

Appointments to be valid notwithstanding one or more objects excluded

“1. (1) An appointment in exercise of a power to appoint property among several objects is valid and effectual notwithstanding that one of the objects does not take a share, or 2 or more of the objects do not take shares, in that property either by virtue of the appointment or in default of an appointment in exercise of the power.

“(2) Nothing in subclause (1) prejudices or affects a provision in a deed, will or other instrument creating a power to appoint property among several objects that declares the amount of the share from which no object of the power shall be excluded or some one or more of the objects of the power shall not be excluded.

Application

“2. This Part applies to appointments made after the commencement of this Part in exercise of powers created before or after the commencement of this Part.”.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 2 September 1987.
2. No. 19, 1986.