

1993

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

INTERPRETATION (AMENDMENT) BILL (NO.2) 1993

EXPLANATORY MEMORANDUM

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Background

The Government, public service departments and many statutory authorities (which are referred to as "the Crown") are not automatically subject to the law in the way ordinary citizens are. If they are required to obey the law then it is said that the Crown is bound by that law.

The ACT Government has decided that as a matter of general policy the Crown should be required to obey the law like ordinary citizens. The *Interpretation (Amendment) Bill (No.2) 1993* will amend the *Interpretation Act 1967* to ensure that the Crown is always bound by ACT legislation unless a particular provision in an Act expressly provides otherwise.

It will also provide for some specific circumstances in which the Crown is not bound by statute law.

Financial Considerations

Nil

Formal Clauses and a Tidying Up Clause- Clauses 1,2 & 3

Clauses 1 and 2 of the Bill are formal clauses which give the Act a short title and provide for commencement.

Clause 3 will repeal subsection 6(2) of the Interpretation Act 1967. That subsection provides that the Interpretation Act binds the Crown. This provision will become redundant after the commencement of the new section 7 (see below under clause 4).

Substantive Clause - Clause 4

Clause 4 is the major substantive provision of the Bill. It provides for a new section 7 to be inserted in the Interpretation Act 1967.

New Subsection 7(1) - Presumption that the Crown is bound by legislation

The new subsection 7(1) ensures that the Crown is bound by all statutes unless there is a specific provision in a statute which provides otherwise. There are two important points to note in regard to this subsection.

Firstly, this provision reverses the former legal rule that the Crown is not ordinarily bound by statute law. The new section will bind the Crown to every law that is capable of binding the Crown. An Act is capable of binding the Crown where it places an obligation on the Crown.

Secondly, this provision removes the uncertainty that existed with the former rule. The former rule caused uncertainty because it left it to the Courts to imply whether or not any particular Act was binding on the Crown. The new section 7 ensures that where an Act is capable of binding the Crown it will bind the Crown unless there is an *express* statutory provision that provides otherwise.

Of course, there are some occasions where the Crown need not or should not be bound by particular provisions of laws. For instance, if provisions in legislation would make it impossible for a public servant to carry out his or her duties (eg if legislation prevents a person from removing fish from a lake but certain officers are required as part of their job to take fish from lakes) then those officers should not be bound by those provisions. There are some express

provisions in legislation which already address this fact. The *Acts Revision (Position of Crown) Bill 1993* will provide for certain other limited exceptions for the Crown where this is considered necessary. These are explained more fully in the Explanatory Memorandum for that Bill.

New Subsection 7(2) - The meaning of "the Crown"

Subsection 7(2) provides that the Crown means the Crown in right of any jurisdiction except the Commonwealth. In other words, if the Crown is bound by legislation, then the ACT, the States, other Territories and a number of Commonwealth countries will all be bound by that legislation to the extent that that is possible. The Commonwealth will not automatically be bound by the legislation because the Commonwealth can only be bound by ACT laws if a regulation is made by the Commonwealth pursuant to section 27 of the *Australian Capital Territory (Self-Government) Act 1988* (the Self-Government Act).

New Subsection s7(3), 7(4) and 7(5) - Criminal liability of the Crown

There are constitutional and administrative difficulties involved in making the Crown liable for criminal prosecution. Accordingly, the Crown will not be subject to criminal liability even where an Act binds the Crown. This is provided for in subsection 7(3). This does not mean that individual people (from the lowest rank public servant to a Minister) acting for the Crown will not be liable for prosecution where they commit criminal offences. It simply means that the abstract entity called "the Crown" will not be liable for criminal prosecution.

Under subsection (4), anyone working on behalf of the Crown will be immune from prosecution when performing that work provided they act within their lawful authority. If a person acts outside the scope of their legal authority they will be liable to prosecution in the same way as any other person. Subsection 7(5) defines an agent of the Crown to include all people and bodies who would normally be considered to work for the Crown, including public servants, statutory authorities, contractors and others who perform a function on behalf of the Crown.

New Subsection 7(6) - Liability of the Crown to pay fees, taxes or other money to itself

Under subsection (6), an Act that requires a person to pay money to the Territory will be presumed not to bind the Crown unless there is a provision in the Act to the contrary. In most circumstances it is unnecessary for the Crown to be required to pay money to itself. For instance, it may be considered a waste of resources to make an Agency which is required to use boats on a lake, pay money to itself for a licence to use boats on a lake.

As a general rule, the Crown will not be required to pay money to itself. However, in some circumstances it improves efficiency to require a government agency to pay fees and taxes to the Territory, especially where the agency is running on a commercial model. Where an Act specifically provides that an agent of the Crown is required to pay money to the Crown then the agent will be required to pay that money to the Territory.

More Tidying Up Provisions

Clause 5 makes it clear that the expression "Territory Crown" refers to the Crown in right of the ACT.

Clause 6 will repeal section 20A of the Interpretation Act 1967. Section 20A provides that if an Act is binding on the Territory then it is binding on the States and other Territories. As explained under **Clause 4 - new Subsection 7(2)**, this will now be encompassed by section 7(2) making section 20A redundant.