

## EXPLANATORY STATEMENT

### AUSTRALIAN CAPITAL TERRITORY INTERPRETATION (AMENDMENT) ORDINANCE 1988 ORDINANCE NO 56 OF 1988

The Interpretation (Amendment) Ordinance 1988 is the latest in a number of reforms introduced in recent years for the purpose of facilitating the interpretation of ACT Ordinances and the shortening of their language.. It will further modernise and improve the style of ACT Ordinances—

- . by inserting certain standard provisions, thereby avoiding the need to reproduce them frequently in different Ordinances; and
- . by introducing other interpretative devices that will enable Ordinances to be drafted in future with even greater conciseness.

Some of the amendments reflect changes made recently to the Acts Interpretation Act 1901. Others are suggested by the needs of the local legislative scene.

Details of the Ordinance are set out in the attachment.

ISSUED BY THE AUTHORITY OF THE  
MINISTER OF STATE FOR THE ARTS  
AND TERRITORIES

Interpretation (Amendment) Ordinance 1988

Section 1 provides for the citation of the amending Ordinance.

Section 2 provides that the Principal Ordinance referred to is the Interpretation Ordinance 1967.

Section 3 inserts 2 new sections in the Principal Ordinance.

New section 8A clarifies at what time of day a new law takes effect by providing that it shall come into operation immediately on the expiration of the day preceding the day on which it is expressed to commence.

New section 8B allows paragraphs or Schedule items in an Ordinance to be given separate commencements.

Section 4 inserts 2 new sections in the Principal Ordinance.

New section 11C meets the situation where a new provision expressing a concept or idea in a new style is inserted in an Ordinance that already contains a similar concept or idea expressed in an older style. There would be a risk that a court would construe the provisions as having different meanings because of the different language employed. The section will prevent this construction.

New section 11D allows, in appropriate cases, examples to be included in an Ordinance to illustrate the operation of difficult provisions. It will make it clear that such an example is not to be regarded as exhaustive and that, in the event of an inconsistency, the provision will prevail.

Section 5 inserts a new section 12A in the Principal Ordinance to invite abridged references to paragraphs in particular contexts. Even though a paragraph is not a complete grammatical sentence, such a reference will be meaningful because it will be construed with any necessary supporting words in the same provision.

Section 6 makes a formal correction to the heading to Division 2 of Part III of the Principal Ordinance.

Section 7 amends section 17 of the Principal Ordinance by inserting 3 new definitions. The first defines 'appoint' to include reappoint, the second makes it clear that "law of the Territory" includes the common law and the third allows shorter references to the Federal Court.

Section 8 repeals certain obsolete provisions of the Principal Ordinance that catered for changes to administrative arrangements made in 1972.

Section 9 inserts a new section 25A in the Principal Ordinance recognising that when establishing an office of Chairperson of a body, it is customary to include a provision that the office holder may be referred to as Chairman or Chairwoman, as the case requires.

Section 10 repeals 3 Divisions of the Principal Ordinance that contain now obsolete provisions relevant to periods following changed administrative arrangements. It is the intention in future not to clutter the Interpretation Ordinance with provisions of this nature.

Section 11 adds 2 new subsections to section 26 of the Principal Ordinance. New subsection (3) makes it clear that the use of the word 'may' creates a discretionary power, thereby overcoming, in respect of Ordinances that commence after the subsection takes effect, the rule of interpretation that 'may' can mean 'shall' in certain circumstances without the need to employ extra cumbersome language in each such Ordinance. New subsection (4) provides in effect that things done by a body are not affected by any vacancy in its membership.

Section 12 amends subsection 27(2) of the Principal Ordinance (giving power to be selective in making, granting or issuing an instrument with respect to particular matters) to allow the subsection to apply irrespective of how the matters are described.

Section 13 inserts a new section 28A in the Principal Ordinance setting out the standard provisions dealing with acting appointments to statutory offices.

Section 14 inserts a new section 29B in the Principal Ordinance setting out the standard provisions that usually accompany a power of delegation. It provides that the delegation power may be exercised generally or specially and may not itself be delegated, that a power exercised by the delegate shall be deemed to have been exercised by the delegating authority and that a delegation does not prevent the exercise of a power by that authority.

Section 15 adds a new subsection (2) to section 33B of the Principal Ordinance to make it clear that a refusal or failure to comply with an ongoing requirement in law constitutes a continuing offence.

Section 16 repeals existing section 33F of the Principal Ordinance and substitutes a new section to provide that a person is not liable to be punished more than once for conduct that constitutes offences under 2 or more laws. The previous section had a shortcoming in that the protection only arose where, for example, different Ordinances were involved.

Section 17 inserts a new section 40A in the Principal Ordinance to shorten the amending formula employed when definitions are being inserted by amending Ordinances. It has been the practice to specify, by the use of 'locating' words, exactly where the definition would come in sequence. The effect of the new section will be that the definition shall be deemed to be inserted in its appropriate alphabetical position.

Section 18 inserts a new section 49A in the Principal Ordinance recognising the increasing frequency with which instruments under Ordinances are required to be tabled in Parliament and to be made subject to disallowance. The provisions of several other relevant laws will be attracted merely by describing, in the particular Ordinance under which the instrument is made, that the instrument is a disallowable instrument for the purposes of the section.

Section 19 amends section 50 of the Principal Ordinance to expand the range of options for fixing the commencement of regulations made under an Ordinance. The restrictions of the past in this area have proved inhibiting and inconvenient. It will be possible henceforth to tie regulations to the commencement of an Ordinance or a particular provision of an Ordinance or to commence them at a specified time of day or on a date fixed by ministerial gazette notice. The amendment will also impose on the Minister administering the particular regulations responsibility for causing the explanatory statement to be tabled in Parliament when copies of the new regulations are not available for purchase at the place and time specified in their notice of making.

Section 20 amends section 52 of the Principal Ordinance to accommodate the new 'disallowable instruments' within the rules relating to the extent to which regulations etc may make provision for a matter by applying, adopting or incorporating the provisions of other legislation or instruments.

Section 21 is a saving provision. Certain provisions, instruments, etc are referred to in the provisions repealed by sections 8 and 10 and would otherwise be affected by those repeals. This provision preserves any residual operation that those provisions, instruments, etc may need to have.