

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

IMPERIAL ACTS APPLICATION (AMENDMENT) ORDINANCE 1987

No. 44 of 1987

The purpose of this Ordinance is to make provision for the interpretation of Imperial Acts that continue to be in force in the Territory.

The Interpretation Ordinance 1967 does not apply to the interpretation of Imperial Acts in force in the Territory.

The Imperial Acts that were continued in force in the Territory by the Imperial Acts Application Ordinance 1986 consist of:

- (a) certain Imperial Acts that came into force in the Colony of New South Wales at common law on the foundation of the Colony;
- (b) certain Imperial Acts that came into force in the Colony of New South Wales on 25 July 1828 by virtue of section 24 of the Australian Courts Act 1828; and
- (c) certain Imperial Acts that extend throughout the possessions of the Crown either by express provision or necessary intendment.

The first Imperial Act making provision generally for the interpretation of Imperial Acts was 13 and 14 Vic. c.21 passed in 1850. It was repealed and replaced by a much more detailed Act, the Interpretation Act 1889 (52 and 53 Vic. c.63). Neither Act was expressed to extend throughout the possessions of the Crown, but it is probable that Courts in an overseas possession would have looked at these Acts for assistance in interpreting an Imperial Act in force in that possession.

The Interpretation Act 1889 was repealed in the United Kingdom

by the Interpretation Act 1978. However, as that Act was passed after the Statute of Westminster came into force in respect of Australia, it does not extend to the Territory and the repeal of the 1889 Act would not affect the operation of the 1889 Act in the Territory if it did apply by necessary intendment.

It is desirable that the general rules of interpretation of Imperial Acts applicable to Acts in the United Kingdom should apply to the interpretation of Imperial Acts that are in force in the Territory so far as those rules are applicable to the circumstances of the Territory.

This Ordinance achieves this by setting out in a new Schedule 5 of the Imperial Acts Application Ordinance 1986, provisions based on those parts of the Imperial Interpretation Act 1978 that may be relevant to the interpretation of Imperial Acts in force in the Territory with modifications to adapt those rules to the circumstances of the Territory.

Details of the Ordinance are set out in Attachment A.

Authorised by the
Parliamentary
Secretary for
Justice and Member
of the Executive
Council

28/87

ATTACHMENT A

DETAILS OF ORDINANCE

NOTES ON SECTIONS

Section 1 provides that the Ordinance may be cited as the Imperial Acts Application (Amendment) Ordinance 1987.

Section 2 defines "Principal Ordinance" as the Imperial Acts Application Ordinance 1986.

Section 3 inserts in subsection 3(1) of the Principal Ordinance a definition of "continued applied Imperial Act" to mean:

(a) An Act the citation of which is set out in Schedule 1 or 2; or

(b) an Act the citation of which is set out in subsection 4(1) and is still in force;

and other Imperial Acts in force in the Territory as laws of the Territory.

Section 4 inserts in the Principal Ordinance 3 new sections, as follows:

Subsection 6A(1) provides for the provisions of Schedule 5 to apply to the construction of Imperial Acts in force in the Territory as laws of the Territory.

Subsection 6A(2) provides that where "all Acts" is set out at the end of a provision in Schedule 5, it applies to Imperial Acts, whenever passed.

Subsection 6A(3) provides that where a year or a date is set out at the end of a provision in Schedule 5, it applies to Imperial Acts passed after the end of that year or on or after that date.

Subsection 6A(4) provides that where a reference to subsection 6A(5), (6), (7) or (8) is set out at the end of a provision in Schedule 5, that provision applies to Acts as set out in that sub-section.

Subsection 6A(5) provides that clause 6 of Schedule 5 applies to Acts passed in or before 1850 in relation to offences and to all Acts passed after 1850.

Subsection 6A(6) provides that clause 10 of Schedule 5 applies to Acts, whenever passed, in relation to subordinate legislation made after 1889.

Subsection 6A(7) provides that clause 12 of Schedule 5 applies to Acts passed after 1889 in relation to rules, regulations and by-laws.

Subsection 6A(8) provides that subclause 15(2) applies, in relation to references in other enactments to repealed enactments, to Acts passed after 1889 and, in relation to subordinate legislation, to Acts whenever passed.

Subsection 6A(9) provides that where there is not set out at the end of a provision in Schedule 5 "all Acts", a year or a date, or a reference to subsection 6A(5), (6), (7) or (8), the provision applies according to its tenor.

Subsection 6A(10) provides that matters set out at the end of a provision of Schedule 5 as provided above do not form part of the provision at the end of which it is set out.

Subsection 6A(11) provides that, in section 6A, "Acts" has the same meaning as it has in Schedule 5

Section 6B provides that a continued applied Imperial Act may be cited by the citation given to it by the Short Titles Act, 1890 of the United Kingdom or the Statute Law Revision Act, 1948 of the United Kingdom.

Subsection 6C(1) prevents a person being punished for the same offence more than once when it is an offence against 2 or more continued applied Imperial Acts or a continued applied Imperial Act and a law of the Territory.

Subsection 6C(2) prevents a person being convicted of an offence against an Imperial Act if he has been charged with the same offence under a Commonwealth Act and convicted or acquitted.

Section 5 adds a new Schedule 5 at the end of the Principal Ordinance.

Schedule 5 sets out rules for interpreting Imperial Acts in force in the Territory as laws of the Territory. These rules are, in effect, substituted provisions for certain provisions of the Imperial Interpretation Act 1978 with such modifications as are necessary to enable those provisions to apply in the Territory.

Subclause 1(1) interprets:

"Act" as meaning a continued applied Imperial Act.

"subordinate legislation" as Orders in Council, orders, rules, regulations, schemes, warrants, by-laws and other instruments made under an Act.

Subclause 1(2) interprets references to the Crown as references to the Sovereign for the time being.

Subclause 1(3) interprets references in a provision of Schedule 5 to an Act as references to an Act to which the provision applies, but without affecting the meaning of enactment or of "other Acts" in subclause 16(2).

Clause 2 provides that sections of an Act take effect as substantive provisions without enacting words.

Clause 3 provides that all Imperial Acts in force in the Territory are public Acts to be judicially noticed as such.

Clause 4 provides for the commencement of an Imperial Act:

- (a) at the beginning of the day specified for it to come into force; or
- (b) at the beginning of the day on which it received the Royal Assent.

Clause 5 defines the following expressions:

Bank of England as the Governor and Company of that Bank or as the bank of the Governor and Company of that Bank, as the context requires.

British Islands as including the Republic of Ireland, the Channel Islands and the Isle of Man.

British possession as a part of the dominions of the Crown outside the United Kingdom and, in the case of a federation, the countries under the central legislature.

British subject and Commonwealth citizen as Australian citizens and citizens of countries to which section 7 of the Australian Citizenship Act 1948 applies and other persons having the status of a British subject under that Act.

Colonial legislature and legislature as the authority having power to make laws for a possession other than the British Parliament or the Crown in Council.

Colony as a part of the dominions of the Crown outside the British Islands and, in an Act passed in or after 1889, as including possessions that have ceased to be colonies but only until they ceased to be colonies. Colonies having fully responsible status within the Commonwealth of Nations and associated states are excluded from the definition. Where 2 or more possessions are in a federation all possessions under the central legislature are a single colony.

Commencement as the date when an Act comes into force.

Comptroller and Auditor-General as a certain person appointed under the Exchequer and Audit Departments Act 1866.

Consular officer as having the meaning given in Article 1 of the Vienna Convention.

Governor-General as the person for the time being having the powers of Governor-General in a possession.

Governor as including the person for the time being administering the government of a possession.

Land as including messuages, tenements and hereditaments, and houses and buildings of any tenure.

Lord Chancellor as the Lord High Chancellor of Great Britain.

Month as a calendar month.

Oath and Affidavit as including affirmation and declaration.

Swear as including affirm and declare.

Person as including a body corporate in a provision of an Act, passed before 1889, relating to an offence, and as including a body incorporated or unincorporated in any provision of an Act passed in or after 1889.

Privy Council as the Lords and others of the Most Honourable Privy Council.

Rules of Court as rules made by the authority having power to make rules regulating the practice and procedure of a court and as extending to rules for the purpose of any Act that authorises anything to be done by rules of court.

Secretary of State as one of the Principal Secretaries of State of the Crown.

Statutory declaration as a declaration made under the Commonwealth Statutory Declarations Act 1959 or an Act of a State, Territory or country authorising the making of a declaration otherwise than for legal proceedings.

United Kingdom as Great Britain and Northern Ireland.

Writing as including typing, printing and other modes of reproducing words in visible form.

Subclause 5(2) defines references to a court of summary jurisdiction as references to the Magistrates Court of the Territory and references to any other Court as references to the Supreme Court of the Territory.

Clause 6 provides that the masculine includes the feminine and vice versa and the singular includes the plural and vice versa.

Clause 7 provides for service by post to be effected by addressing, pre-paying and posting a letter containing the document and for service to be deemed to have been effected, unless the contrary is proved, when the letter would be delivered in the ordinary course of post.

Clause 8 requires distance to be measured in a straight line on a horizontal plane.

Clause 9 requires references to the Sovereign reigning at the time of passing an Act to be construed as references to the Sovereign for the time being.

Clause 10 requires expressions used in subordinate legislation to have the same meanings as they bear in the Act under which the legislation is made.

Subclause 11(1) provides that a power or duty is to be exercised or performed from time to time as the occasion requires.

Subclause 11(2) provides that a power or duty conferred or imposed on the holder of an office may be exercised or performed by the holder for the time being.

Clause 12 provides that a power to make statutory instruments implies a power to revoke, amend or re-enact any such instrument.

Clause 13 provides that the repeal of a repealing enactment does not revive an enactment previously repealed.

Clause 14 provides that the repeal of an Act does not:

- (a) revive anything not in force when the repeal takes effect;
- (b) affect the previous operation of the repealed Act;
- (c) affect any right, privilege, obligation or liability under the repealed Act;

- (d) affect any penalty, forfeiture or punishment in respect of an offence under the repealed Act; or
- (e) affect any legal proceeding, investigation or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment.

Any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the repealing Act had not been passed.

Subclause 15(1) provides that where an Act repeals a previous Act and substitutes provisions for it, the repealed enactment remains in force until the substituted provisions come into force.

Subclause 15(2) provides that where an Act repeals and re-enacts a previous Act, then:

- (a) references in other Acts to the repealed Act shall be construed as references to the new Act; and
- (b) subordinate legislation under the repealed Act shall have effect under the new Act to the extent to which it could be made under the new Act.

Subclause 16(1) provides for references in a continued applied Imperial Act to another continued applied Imperial Act the citation of which is set out in Schedule 2 to be read as references to the other Act as set out in Schedule 3 or, if it has been amended by an Ordinance, to the other Act as so set out and amended.

Subclause 16(2) provides that, subject to subclause 16(1), a reference in one Act to another Act shall be read as a reference to that other Act;

- (a) as printed in a revised edition of Imperial Statutes printed by authority;
- (b) if not printed in such an edition, as printed in an edition prepared by direction of the Record Commission; or
- (c) in any other case, as printed by the United Kingdom Government Printer.

Subclause 16(3) provides that an Act may be cited by the short title given by another Act notwithstanding the repeal of the other Act.

Subclause 17(1) provides that where an Act describes or cites a part of another Act by reference to the words, section or other parts from or to which, or from and to which, the part extends, the part so described or cited includes the words, section or other parts referred to.

Subclause 17(2) provides that a reference to an Act is a reference to the Act as amended, extended or applied by another Act or by a provision of the Act itself.

Subclause 17(3) provides that a reference in a continued applied Imperial Act to another continued applied Imperial Act is a reference to that other Act as for the time being amended and in force in the Territory.

Clause 18 applies paragraph 4(a), clause 16 and the definition of "United Kingdom" in subclause 5(1) to subordinate legislation in force in the Territory under a continued applied Imperial Act.