

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

NEW SOUTH WALES ACTS ORDINANCE 1986

NO. 91, 1986

The purpose of this Ordinance is to:

- . restore amendments (other than amendments by way of repeal) which were made to certain New South Wales Acts in force in the A.C.T. by the New South Wales Acts Application Ordinance 1985, and which ceased to be in effect when that Ordinance was deemed to be disallowed;
- . make available definitive texts of those Acts in the form in which they are to have effect in the A.C.T.; and
- . repeal, in their application in the A.C.T., two N.S.W. Acts.

Section 6 of the Seat of Government Acceptance Act 1909 provides that all laws in force in the Territory immediately before 1 January 1911 shall, as far as applicable, continue in force until other provision is made. The laws so continued in force included New South Wales Acts in force on 31 December 1910.

The Seat of Government Acceptance Act, and later Acts, give only general guidance on how New South Wales Acts are to operate in the Territory and, in particular, as to which authorities of the Commonwealth or the Territory are to exercise powers and perform functions conferred by those Acts on New South Wales authorities.

The Law Reform Commission of the Australian Capital Territory made several Reports concerning the New South Wales Acts in force in the Territory. In those Reports, it made detailed recommendations for -

- . the omission of provisions not, in its opinion, applicable in the Territory;
- . the omission of provisions inconsistent with later laws and, therefore, impliedly repealed by these later laws; and
- . the amendment of provisions referring to New South Wales authorities to refer to the relevant Commonwealth or Territory authorities.

Two Ordinances, which were largely based on the Report on the Review of New South Wales Acts in force in the Australian Capital Territory by the Law Reform Commission of the Territory in 1974 (and other Reports of that Commission insofar as they deal with the continuation of New South Wales laws in force in the A.C.T.) have been made, prior to this Ordinance, to achieve these aims. These Ordinances were the New South Wales Acts Application Ordinance 1984, which was made on 2 August 1984 and the New South Wales Acts Application Ordinance 1985 which was made on 21 June 1985.

The latter Ordinance was deemed to be disallowed at the expiration of 28 November 1985 pursuant to sub-section 12(5) of the Seat of Government (Administration) Act 1910.

That Ordinance had -

- . repealed, in their application in the A.C.T., all N.S.W. Acts other than those specified in sub-section 3(1) of that Ordinance; and

amended the Acts specified in Schedule 1 to that Ordinance to the extent necessary for those Acts to have effect in the Territory in the terms set out in Schedule 2 of that Ordinance.

On disallowance, by virtue of sub-section 12(6) of the Seat of Government (Administration) Act 1910 the amendments made by the New South Wales Acts Application Ordinance 1985 (other than those by way of repeal) ceased to have effect. However, the N.S.W. Acts which were repealed by that Ordinance were not revived nor were the provisions which had been amended by that Ordinance restored to what they were before the amendment.

The result was that in effect, there were 'gaps' in the N.S.W. Acts amended by that Ordinance where the Acts had been amended by the Ordinance, and the provisions inserted by those amendments had, on disallowance, ceased to be in force. The proposed Ordinance will close these gaps from the date the Ordinance comes into effect. The Ordinance will not affect acts done prior to its commencement.

Some of the Acts amended by the New South Wales Acts Application Ordinance 1985 have subsequently been repealed in their application in the A.C.T.

The Ordinance does not make substantive reform of New South Wales Acts. The purpose of the amendments made by the Ordinance is to clarify the manner in which these N.S.W. Acts operate in the Territory. The Ordinance does not attempt to restate the Acts in modern language or form but formal drafting changes have been made.

Details of the Ordinance are set out below.

Section 1 provides that the Ordinance may be cited as the New South Wales Acts Ordinance 1986.

Section 2 defines:

- . a continued State Act to mean a New South Wales Act that was continued in force in the Territory by section 6 of the Seat of Government Acceptance Act 1909, as it now has effect in the Territory, that is to say, as amended in New South Wales before 1 January 1911 or by a law of the Territory after that date;
- . an amendment of a continued State Act as the modification of the Act by the repeal, omission, substitution, insertion or addition of a provision.

Section 3 provides that the Public Gates 1901 and the Stock Act 1901 of the State of New South Wales cease to be in force in the Territory.

Section 4 amends the 7 New South Wales Acts specified in Schedule 1 to the extent necessary for them to have effect in the Territory in the terms set out in Schedule 2.

Sub-section 4(2) preserves the operation of any provisions of an Act specified in Schedule 1 that are not printed in the text of that Act in Schedule 2 if those provisions merely amended another Act specified in Schedule 1 and those amendments have been incorporated in the text of that other Act in Schedule 2. This is consistent with the principles on which consolidated reprints of Acts are prepared.

The purpose of this section is to facilitate provision of a complete text of the Acts as amended and to make it unnecessary to set out all the textual changes in detail. However, notes at the foot of the text of each Act in Schedule 2 refer to sections and sub-sections that have been omitted in full or substituted.

Section 5 makes it clear that the New South Wales Acts in Schedule 2 continue to have the same effect in the Territory as they have had in the past, that is to say, effect as New South Wales Acts in force in the Territory and not as Ordinances of the Territory.

Section 6 preserves the existing situation whereby the New South Wales Acts apply only to the extent to which they are not inconsistent with later laws of the Territory. The section makes it clear that any law of the Territory made after 1 January 1911 that is inconsistent with a provision of a New South Wales Act set out in Schedule 2 will prevail. While any provisions of those Acts clearly inconsistent with laws of the Territory have been omitted, there may be other provisions which a Court will decide are inconsistent with later laws.

Section 7 interprets various terms used in the New South Wales Acts set out in Schedule 2:

- . the Supreme Court, the Magistrates Court and Magistrate mean those courts and magistrates of the Territory;
- . the Minister means the Minister administering the Act. Schedule 1 lists the Commonwealth Minister administering each New South Wales Act set out in Schedule 2; and

the police and particular officers of police, mean the Australian Federal Police or those officers of the Australian Federal Police

Section 8 states that the footnotes to the New South Wales Acts set out in Schedule 2 do not form part of those Acts or of the Ordinance. They are for information and guidance only.

Section 9 provides for a New South Wales Act specified in sub-sections 9(2) or 9(3) or in Schedule 1 to be administered, in its application as a law of the Territory, by the Commonwealth Minister specified in those sub-sections or in that Schedule.

Section 10 provides that the Ordinance, and the New South Wales Acts Application Ordinance 1984, are to be administered by the Attorney-General except where these Ordinances otherwise provide.

Section 11 amends the New South Wales Acts Application Ordinance 1984 to correct an error in the description of relevant Imperial Acts in the definition of a prescribed law for the purpose of section 5 of that Ordinance.

Schedule 1 contains a list of the New South Wales Acts, the texts of which are set out in Schedule 2, and the Commonwealth Ministers responsible for their administration.

#### Schedule 2 - General Comments

Schedule 2 sets out the texts of 7 New South Wales Acts as they are in force in the Territory, that is to say, as amended in New South Wales before 1 January 1911 and as amended by laws of the Territory (including this Ordinance) after 1 January 1911.

In the following notes, the Law Reform Commission of the Territory is referred to as the Commission and the New South Wales Acts Ordinance 1986 is referred to as the Ordinance.

The Schedule is divided into Parts, each Act constituting a separate Part.

Part 1 - Partition Act 1900

This Act regulates the jurisdiction of the courts to order the partition of property among the persons entitled to it jointly.

The Commission recommended that it continue in force but with modifications set out in its Report.

Section 14, which deals with persons under disability (for example, mentally ill persons), has been altered to bring it into line with the Rules of the Supreme Court. This change is not covered by the Commission's Report.

Part 2 - Pawnbrokers Act 1902

This Act regulates the operations of pawnbrokers in the Territory.

The Commission recommended that it continue in force but with modifications set out in its Report.

On the instructions of the Department of Territories the rate of interest in section 4 has been increased to 14%. Section 4 excludes certain loans from the application of the Act.

On the instructions of the Department of Territories, the minimum amount in sub-section 19(1) has been increased to \$10. Section 19 requires all pawned articles on which more than this amount has been lent to be sold at auction if not redeemed.

The Commission reported that section 39 was partly superseded by section 76 of the Police Offences Ordinance. The view has been taken that the two sections cover different circumstances and that section 39 should be retained, but modified to allow the Magistrates Court to operate under it instead of Justices of the Peace.

#### Part 3 - Piracy Punishment Act 1902

This Act sets out the maximum penalties that may be imposed on conviction for the crime of piracy under certain Imperial Acts in force in the Territory.

The Commission recommended that it continue in force.

#### Part 4 - Public Instruction Act 1880

This Act regulated the provision of public education in the Territory until the Education Ordinance 1937 came into operation. Since then, the provisions of the Act and of the Ordinance have, together, regulated public education.

The Commission reported that most of the provisions of the Public Instruction Act 1880 have been superseded by, or have become unnecessary as a result of, that Ordinance. The Commission's Report was presented before the enactment of the Schools Authority Ordinance 1976. That Ordinance has superseded other sections of the Public Instruction Act 1880.



The only sections of the Act that are still applicable are sections 7, 17, 18, 39 and 40. These require education in government schools to be "non-sectarian", but permit persons authorised by the churches to provide religious education for pupils unless their parents or guardians object.

Part 5 - Public Roads Act 1901

This Act regulates the opening, closing, alteration and improving of public roads.

The Commission recommended that those provisions not obsolete and not superseded by laws of the Territory be continued in force with such modifications as were necessary. It indicated in its Report provisions that, in its view, were obsolete or had been superseded and the kind of modifications required.

The Commission recommended the omission of sections 25 and 35 as being inapplicable. They make administrative provision for the re-marking of the boundaries of roads and notification in the Gazette of the new boundaries. These sections have been retained, but modified to apply to the Territory Administration.

Part 6 - Second-hand Dealers and Collectors Act 1906

This Act provides for the licensing of dealers in second-hand articles and collectors of second-hand articles who collect them for sale to dealers.

The Commission recommended that the Act continue in force but with modifications set out in its Report.

On the instructions of the Department of Territories, the fees for a second-hand dealer's licence and for a collector's licence have been increased to \$25.

The relevant parts of the New South Wales Regulations that were in force under this Act in New South Wales on 1 January 1911 have been incorporated in the text of the Act.

Part 7 - Truck Act 1900

This Act prohibits the payment of wages otherwise than in money.

The Commission recommended that it continue in force but with modifications set out in its Report.

Section 10 was amended in New South Wales by the Truck Act Amendment Act 1901 but the amendment applied only in a part of New South Wales which did not include what is now the A.C.T. The Ordinance omits the amendment as being inapplicable in the Territory.

The Commission recommended an amendment of section 11. That section confers power on Justices to deal with the recovery of penalties. The section is unnecessary and has been omitted as the Magistrates Court has general power to impose penalties for contraventions of laws of the Territory.

The Ordinance also brings up to date the definition of "money" in section 12. This was not covered by the Commission's Report.

Authorised by the  
Attorney-General

Ord 15/86