

AUSTRALIAN CAPITAL TERRITORY
SEAT OF GOVERNMENT (ADMINISTRATION) ACT 1910
SELF-GOVERNMENT (CONSEQUENTIAL AMENDMENTS) ORDINANCE 1990

EXPLANATORY STATEMENT

No. 5, 1990

The Ordinance makes a number of consequential amendments to reflect the transfer of administrative responsibility from the Commonwealth to the A.C.T Government by deleting references to Commonwealth officers and institutions and substituting references to A.C.T officers and institutions. The Ordinance also makes a number of formal amendments relating to gender and some minor drafting corrections.

In addition the Ordinance amends the Small Claims Ordinance 1974 and the Small Claims Regulations to increase the jurisdiction of the Small Claims Court from \$2000 to \$5000 and to increase the application fee for lodging a claim from \$20 to \$50 for claims exceeding \$2000.

The amending provisions in the Ordinance are to commence on 1 July 1990.

Details of the sections in the Ordinance are set out in the Attachment.

Authorised by the
Parliamentary Secretary
to the Treasurer
for and on behalf of the
Attorney-General

Attachment

Self-Government (Consequential Amendments) Ordinance 1990

Section 1 provides that the Ordinance may be cited as the Self-Government (Consequential Amendments) Ordinance 1990.

Section 2 provides for the commencement of the Ordinance, clause 1 is to commence upon notification in the Gazette, the remaining provisions are to commence on 1 July 1990.

Section 3 provides that the Ordinances specified in Schedule 1 are amended as set out in the Schedule.

Section 4 provides that the Crimes Act, 1900 of NSW in its application in the Territory is amended as set out in Schedule 2.

Section 5 provides that the regulations and rules specified in Schedule 3 are amended as set out in the schedule.

Section 6 provides for formal amendments relating to gender for the legislation listed in Schedules 1,2 and 3. The amendments insert a reference to the female gender where there is currently only a reference to the male gender.

Schedule 1 amends the Children's Services Act 1986, PART III of the Territory, the Coroners Ordinance 1956, the Criminal Injuries Compensation Ordinance 1983, the Legal Practitioners Ordinance 1970, the Limitation Ordinance 1985, the Magistrates Court Ordinance 1930, the Magistrates Court (Civil Jurisdiction) Ordinance 1982, the Police Ordinance 1927, the Small Claims Ordinance 1974 and the Supreme Court Ordinance 1952.

Schedule 2 amends the Crimes Act, 1900 of the State of New South Wales in its application in the Territory.

Schedule 3 amends the Magistrates Court Rules, the Small Claims Regulations and the Workmen's Compensation Rules.

Details of Amendments

Schedule 1

Coroners Ordinance 1956

Section 4, the definition of medical practitioner is amended to differentiate between the A.C.T and other Commonwealth Territories.

Subsection 6(1) is amended by substituting 'Executive' for 'Attorney-General' to transfer the power to appoint Deputy Coroners to the A.C.T. Executive. The reference to 'under his hand' is deleted as it is no longer appropriate.

Section 7 is amended to substitute 'Executive' for 'Attorney-General' so that a Deputy Coroner holds office during the pleasure of the A.C.T. Executive.

Section 22(4) is amended to insert a reference to property of the Territory as well as property of the Commonwealth.

Criminal Injuries Compensation Ordinance 1983

Paragraph 31(a) is amended to provide that Compensation payable is not subject to attachment unless provided for by a Commonwealth Act in force in the Territory.

Subsection 35(2) is amended to translate the reference to the Commonwealth Parliament to the A.C.T. Legislative Assembly.

Legal Practitioners Ordinance 1970

Subsections 6(6) and (7) and paragraphs 6(7)(a) and (b) are amended by substituting the references to the Governor-General to the Attorney-General. This is to permit amendments of the Constitution of the Law Society of the A.C.T. to be approved by the Attorney-General.

Paragraphs 42M(3)(d), 65(1)(e) and 2(e) and 68(1)(e) and (2)(e) are amended by altering the reference to police officer to include both genders.

Subsection 123(3) definition of public officer is amended to refer to appropriate public officers of the Territory.

Subparagraph 124(2)(b)(i) is amended to omit the reference to the Interpretation Act 1967 of the Territory as this will be redundant when the legislation is transferred to the Territory.

The following provisions are amended by substituting the reference to Chairman and inserting a reference to Chairperson wherever occurring.

Subsections 9(2), (3), (4) and (5), 25(7), 25A(2), 28(2), (3) and (4) and 32(1), section 33, subsections 36(4) and (6) and 39(1) and paragraph 39(2)(a).

Magistrates Court Ordinance 1930

Subsection 6(2) is omitted as section 11 of the Seat of Government (Administration) Act has been repealed.

Section 10P(2) is amended to provide that the oath of office of Magistrates is to be made before the Chief Justice of the Supreme Court.

Subsection 19(2) is amended by inserting a reference to the Imperial Acts Application Act 1986 which also provides for laws in force in the Territory which give jurisdiction to the Magistrates Court.

Subsection 37(4) is deleted as the Interpretation Act of the Territory will apply automatically after 1 July 1990.

Subsections 43(1) and 90(A)(8) are amended by inserting a reference to the Commonwealth Attorney-General to cover the possibility of indictments being filed by the Commonwealth Attorney-General after 1 July 1990.

Subparagraph 54(5A)(iv) is amended to refer to the correct Commonwealth Act.

Paragraph 258(e) is consequentially amended to permit regulations to be made in respect of costs, fees and charges in respect of proceedings under any other law in force in the Territory.

Magistrates Court (Civil Jurisdiction) Ordinance 1982

Paragraph 83(2)(a) is amended to omit the reference to the Director of Legal Services, Australian Capital Territory and substitute a reference to the Australian Government Solicitor.

Police Ordinance 1927

Subsection 13(2) is amended to insert a reference to 'the Territory' to permit officers of the Territory to practise as detectives.

Small Claims Ordinance 1974

Subsection 4(2) is amended to increase the maximum jurisdiction of the Small Claims Court from \$2000 to \$5000.

Section 8 and subsections 17(1) and (3), and 24(1) are consequentially amended to reflect the increased jurisdiction of the Small Claims Court.

Subsection 27(6) is amended to provide that where the Court appoints an investigator that person is to be remunerated by the Territory.

Supreme Court Ordinance 1952

Section 3 is amended to substitute 'Commonwealth' for 'Territory'. Subsection 3(2) is inserted to define 'officer of the Territory'.

Schedule 2

Crimes Act, 1900 (NSW)

Subsection 4(1) amends the definition of 'the Crimes Act'.

Subsection 92L(4) is amended to remove the need to require consent of the Director of Public Prosecutions before initiating a prosecution, for incest and similar offences, under section 92L.

Subsection 131(2) is amended by inserting references to the Territory as appropriate to provide an offence for defacing property of the Territory.

Section 468 is amended to refer to 'section 347'.

Subsections 475(1) and (4) are amended by substituting references to the Governor-General to the Executive to permit the Executive to direct inquiries into convictions.

Third Schedule, forms 3 and 4 are amended to include the female gender.

Schedule 5, forms 1 and 2 are amended to alter the references to the Crimes Act to reflect the amendments subsection 4(1).

Schedule 3

Magistrate Court Rules

Paragraph 92(b) is amended by altering the reference to husband and wife to non-gender specific terms.

Subrules 97A(3) and 97B(4) and (6) are amended to provide that the service of documents on consular officials is to be facilitated by the Attorney-General of the Commonwealth.

First Schedule, Form 4

Consequential amendments to use non-gender specific terms.

Small Claims Regulations

Regulation 3 is amended to provide for a fee of \$50 for claims exceeding \$2000.

In addition the following amendments are proposed.

Regulation and Rule Making Power

The following provisions are amended by substituting 'Executive' for 'Attorney-General' in the regulation or rule making provision.

Schedule 1

Subsection 22(2) of the Children's Services Act 1986, PART III

section 46 of the Coroners Ordinance 1956

section 36 of the Criminal Injuries Compensation Ordinance 1930

section 133 of the Legal Practitioners Ordinance 1970

section 258 of the Magistrates Court Ordinance 1930

subsection 307A(1) and section 308 of the Magistrates Court (Civil Jurisdiction) Ordinance 1982

section 51 of the Police Ordinance 1927

References to 'of the Territory'

The following provisions are amended by deleting the reference to 'of the Territory' after the reference to A.C.T legislation. When the Ordinances are transferred to the Territory on 1 July 1990 the words 'of the Territory' will no longer be necessary.

Schedule 1

Subsection 42L(3), subparagraph 74A(1)(b) and section 77 of the Legal Practitioners Ordinance 1970.
Subsection 8(1), section 16, subsection 21(1), section 22 and subsections 37(2) and 36(5) of the Limitation Ordinance 1985.

Subsection 5(1), paragraphs 54A(5A)(i) and (v), subsections 80(2), 116A(1), 141(1A), 147(2), and 190(1), paragraph 245A(1)(a), subsections 248(2A) and (2B) and 248(4A) and paragraph 254(1)(a) of the Magistrates Court Ordinance 1930.

Paragraphs 4(c) and (d), 83(1)(a), (c) and (2)(aa), 95(1)(b) and 292(5)(b), subsections 307A(1) and 307A(2) and the Schedule (Form 30) of the Magistrates Court (Civil Jurisdiction) Ordinance 1982.

Section 20, and subsections 21(1) and 24(2A) of the Police Ordinance 1927.

Schedule 2

Subsection 29(1) of the Crimes Act, 1900 NSW.

Schedule 3

Subrule 5(1) and the First Schedule (Forms 5, 6, 7, 20, 27, 42, 43, 45, 48, 49, 50, 62, 63 and 69) and the Third Schedule of the Workmen's Compensation Rules.

References to the 'Commonwealth'

The following provisions are amended by deleting references to the 'Commonwealth' wherever occurring and inserting a reference to the 'Territory'. As the Commonwealth will no longer administer the legislation it is not appropriate to retain the reference to the Commonwealth.

Schedule 1

Sections 27, 28 and 34 and subsections 29(1) and (2) of the Criminal Injuries Compensation Ordinance 1983.

Subsection 6A(3), subsections 130(1) and (4) of the Legal Practitioners Ordinance 1970.

Schedule 2

Subsections 116(3) and 145(2), paragraphs 527A(3)(c) and (d), subsection 527A4, subparagraph 556B(1)(a)(iii) and subsections 556E(1) and (2) of the Crimes Act, 1900 (NSW).

References to 'Secretary'

The following provisions translate the reference to 'Secretary' to 'administrative head' and delete the definition of Secretary as required. The office of Secretary does not exist within the A.C.T. Administration.

Schedule 1

Section 2, paragraphs 10(4)(a), 12(2)(c) and 21(1)(c), subsection 29(2), paragraphs 30(1)(b) and 2(b), subsection 30(3) of the Criminal Injuries Compensation Ordinance 1983.

Subsection 130(1)(b) of the Legal Practitioners Ordinance 1970.

References to 'Governor-General'

The following provisions delete a reference to the 'Governor-General' and insert a reference to the 'Executive' in provisions dealing with the appointment and terms and conditions of statutory office holders and make other consequential changes as necessary.

Schedule 1

Subsection 6A(1) and (1A) of the Legal Practitioners Ordinance 1970.

Subsection 7(2), sections 10 and 10B, subsections 10C(1), (5), (6) and (7) and sections 10H, 10K and 10L of the Magistrates Court Ordinance 1930.

Director of Public Prosecutions

The following provisions insert a definition of the Director of Public Prosecutions so as to refer to the Commonwealth or A.C.T. Director as the case requires.

Schedule 1

Subsection 5(1) of the Magistrates Court Ordinance 1930.

Schedule 2

Subsection 4(1) of the Crimes Act, 1900(NSW).

Notifications

The following provisions translate the references to proclamations to notifications in the Gazette.

Schedule 1

Subsection 18(1) of the Magistrates Court Ordinance 1930.

Schedule 2

Subsection 358A(3) of the Crimes Act, 1900 of NSW.

Continued operation of Ordinances

The following provisions are amended to ensure the continued operation of the provisions to any Ordinances that may be made by the Commonwealth after 1 July 1990.

Schedule 1

Section 17, subsections 27(2) and 31(2), sections 59 and 164, subsection 188(2), section 193 and subsection 255(1) of the Magistrates Court Ordinance 1930.

Subsection 282B(2) of the Magistrates Court (Civil Jurisdiction) Ordinance 1982.