

AUSTRALIAN CAPITAL TERRITORY

IMPERIAL ACTS APPLICATION ORDINANCE 1986

EXPLANATORY STATEMENT

No. 43, 1986

INTRODUCTION

The purpose of this Ordinance is to omit from certain Imperial Acts that are in force in the Territory provisions that are obsolete or inapplicable to the Territory and provide definitive texts of those Acts as they apply in the Territory.

The Ordinance implements part of the recommendations of the Law Reform Commission of the Australian Capital Territory in its Report on Imperial Acts in force in the Australian Capital Territory furnished in 1972 and its Supplementary Report furnished in 1973.

The former Report recommended that the Imperial Acts specified in Appendix 1 Part A of that Report be preserved in their existing form because of their major constitutional and historical significance. Except as mentioned below, this Ordinance gives effect to this recommendation.

This Ordinance does not implement the further recommendation of the Commission that Acts listed in Appendix 2 of the Report be repealed.

It is intended that a subsequent Ordinance will repeal unnecessary and obsolete Acts.

It has become increasingly difficult to identify those Imperial Acts that apply in the A.C.T. Imperial Acts apply in the A.C.T. because they extend, by reason of their express provisions or by necessary intendment, throughout the dominions of the Crown or because they were in force in New South Wales on 1 January 1911. Imperial Acts in force in N.S.W. on that date were, 'so far as applicable', continued in

force in the A.C.T. by section 6 of the Seat of Government Acceptance Act 1909. Imperial Acts in force in N.S.W. before 1911 consisted, in addition to those Acts applying by express provision or necessary intendment, of Acts that came into force in that State when it was founded as a British Colony or in 1828 pursuant to section 24 of the Australian Courts Act, 1828.

Texts of Imperial Acts in force in the ACT are not readily available in the form in which they are so in force because many have been repealed in the United Kingdom and are no longer printed in recent editions of the laws of the United Kingdom, or because they have been amended in the United Kingdom by Acts not in force in the ACT and are printed in those editions only in their amended forms.

The Ordinance is intended to clear away those difficulties. So far as the Acts specified in Schedule 1 are concerned, the Ordinance will confirm their application as Acts in force in the Territory but will not provide texts of those Acts, because of the length of the Act in the case of the Merchant Shipping Act, 1894, because the Acts only operate in time of war and would require substantial revision in the case of the Prize Acts, or because it is expected that the Acts will be repealed and dealt with in the Criminal Code for the Territory in the near future.

The Ordinance does not attempt to make reforms of a substantive nature in the Acts printed in Schedule 3. Substantive reforms of the law dealt with in these Acts should appropriately be made by separate Ordinances dealing with the subjects covered by these Acts. However, the opportunity has been taken to spell words according to modern usage and to include punctuation to help the understanding of the texts. As mentioned above, obsolete provisions and provisions having no force or effect in the Territory are omitted.

Although the nature of the changes made to the texts of the Acts printed in Schedule 3 have not been set out in detail, omissions from those Acts and changes of a substantial nature are referred to in notes set out at the end of the Parts to Schedule 3.

#### Background

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

- (a) had come into force in N.S.W. at common law on the foundation of the colony;
- (b) had come into force in N.S.W. by virtue of section 24 of the Australian Courts Act, 1828, on 25 July 1828 by reason that they were in force in the United Kingdom on that date and were capable of being applied in N.S.W; or
- (c) that had been expressly adopted by a N.S.W. Act.

In addition, certain Imperial Acts continued in force in the A.C.T. because they applied, by express provision or necessary intendment, throughout the dominions of the Crown. Moreover, certain Imperial Acts passed after 31 December 1910 and before the Statute of Westminster applied to the Commonwealth on 3 September 1939 also are in force in the A.C.T. because they so applied throughout the dominions of the Crown.

As mentioned above, the Law Reform Commission of the Territory recommended that some of these Acts be continued in force in the Territory. The Law Reform Commission of the Territory considered, in preparing its Reports, a report prepared by the Law Reform Commission of New South Wales in 1967 on the Application of Imperial Laws. Subsequent to the preparation of the Reports of the Law Reform Commission of the Territory, a report was prepared in 1975 by Gretchen Kewley on the Imperial Acts Application Act, 1922, of Victoria and by the Law Reform Committee of the South Australia and the Law Reform Commission of Queensland on Imperial laws in force in those States.

This Ordinance has been prepared after careful consideration of all those Reports and a New Zealand draft Imperial Laws Application Bill 1986. For reasons set out below, there are some variations from the recommendations of the Commission concerning Acts to be continued in force and the Ordinance contains a few Acts that were not included in those recommended by the Commission to be continued in force.

#### Schedule 1

The Acts specified in Schedule 1 have been continued in force, to the extent specified in column 3 of that Schedule, but the texts are not being printed in the Ordinance. The Acts specified in Schedule 1 fall into 4 classes, namely, Acts dealing with the law of the sea, including piracy, Acts dealing with slavery, the Merchant Shipping Act, 1894, and Acts dealing with prize. The first two classes deal with matters unlikely to arise in the Territory. It is intended that the matters dealt with be covered by amendments of the criminal laws of the Territory, and that these Acts be repealed, in the near future. The Merchant Shipping Act is not being printed in the Ordinance because of its length. The Acts concerning prize operate only in time of war and could not be amended to operate satisfactorily in the Territory without substantial revision. All these Acts are included in Part A of Appendix 1 to the Commission's Report as Acts that should be continued in force in their existing form.

Acts recommended to be continued in force but not included in Schedules 1 and 2.

Part A of Appendix 1 to the Commission's Report recommended that the following Imperial Acts be continued in force in their existing form, but, for reasons set out below, these Acts are not included in the Ordinance.

52 Hen. 3 c.17

12 Chas. 2 c.24, sections 8 and 9

24 Geo. 2 c.23

58 and 59 Vic.c.34

63 and 64 Vic.12

22 and 23 Geo.V.c.4

52 Hen. 3 c.17 This Act sets out the duties and responsibilities of some guardians of children. It is not being continued in force as this matter is being covered by amendment of the Testamentary Guardianship Ordinance 1984 in respect of testamentary guardians and by amendment of the Imperial Acts (Substituted Provisions) Ordinance 1986 in respect of other guardians.

12 Chas 2 c.24 Sections 8 and 9 dealt with testamentary guardians of children. Since the Commission made its Report, the Testamentary Guardianship Ordinance 1984 has made provision for this matter and has repealed section 8 and 9.

24 Geo 2 c.23 This Act, passed in 1750, replaced the old Julian Calendar with the Gregorian Calendar still in use today. The Law Reform Commission of N.S.W. recommended the replacement of the Act by a modern provision. The Law Reform Commission of the A.C.T. considered that the NSW provision served little practical purpose as it "required, for its full understanding, reference to the Act of 1750". It recommended the retention of the Act in its existing form. In addition to

providing for the transition in 1750 from the old Julian Calendar to the new Gregorian Calendar, and for determining which years shall be leap years, the Act contains detailed provisions for establishing the date of Easter in each year, for determining the dates of other movable feasts celebrated by the Church of England and the table of Lessons to be read in the Church of England at Morning Prayer and Evening Prayer, respectively, on each day of the year.

The view has been taken that it is unnecessary to continue the Act in force in the Territory. In so far as it changed the Calendar in 1750, its operation is exhausted. Clause 7 of the Ordinance provides, in effect, that the ceasing of the Act to be in force in the Territory does not revive the old Julian Calendar. The existing Calendar is well established and there appears to be no need for a law to continue its operation. The provisions relating to Easter and the Church of England are either obsolete or inappropriate to be prescribed by law.

58 and 59 Vic.c.34 This act dealt with the alteration of boundaries of the Colonies. The Commission recommended that it be continued in force as it is referred to in the Constitution of the Commonwealth. However, as the ACT is not, and never was, a Colony, the Act cannot apply to any future alteration of the boundary of the ACT. The view has been taken that it has probably never been capable of applying in the ACT as law of the Territory.

63 and 64 Vic.c.12 This is the Commonwealth of Australia Constitution Act 1900. The Commission recommended that it continue in force. It applies throughout Australia as law of Australia, and not in each State and Territory as law of that State or Territory. Its operation as law of Australia is not affected by this Ordinance (see clause 12(2) of this Ordinance).

22 and 23 Geo.V.c.4 This Act is the Statute of Westminster. The Commission recommended that it continue in force in its existing form. It has applied to the Commonwealth as law of the Commonwealth since 3 September 1939. Its operation as a law of Australia is not affected by this Ordinance (see clause 12(2) of this Ordinance).

Acts proposed to be continued in force in the Territory but not so recommended by the Commission.

For reasons set out below, the Ordinance continues in force the following Imperial Acts although the Commission did not recommend that this be done.

13 Edw. 1 c.22	Waste by tenant in common
2 Hen. 4 c.1	Free access to courts
1 Edw. 6 c.7 ) 1 Anne c.2 ) 6 Anne c.2 ) 1 Geo. 3 c.23 ) 1 Edw. 7 c.5 )	Death of the Crown
2 Geo. 2 c.22 ) 8 Geo. 2 c.24 )	Set off
9 Geo. 4 c.83 ) 28 & 29 Vic. c.63 )	Colonial law
19 & 20 Vic. c.113 ) 27 Vic. c.20 ) 22 & 23 Vic. c.63 )	Legal Proceedings
41 & 42 Vic. c.73	Territorial Waters Jurisdiction.
53 & 54 Vic. c.27	Colonial Courts of Admiralty

13 Edw. 1 c.22 This Act confers on one tenant in common of land a right to sue the other tenant in common for waste committed by that other tenant. The Commission reported that it was obsolete. However, the Law Reform Committee of South Australia considered that it established a principle of substantive law that should be preserved. It is considered that the safer course is to continue the Act in force.

2 Hen. 4 c.1 This is an Act, supplementing Magna Carta, establishing the right of all persons to access to the courts of the land. It is a fundamental liberty not expressly referred to in Magna Carta. It is not referred to in the Commission's Report but is referred to by the South Australian Law Reform Committee as a law of major constitutional importance.

Statutes relating to the death of the Crown.

The Commission recommended that these Acts be repealed and replaced by a modern provision. However, as these Acts apply in their existing form to the Commonwealth, and Commonwealth Courts and instrumentalities, it is considered more appropriate that they continue to apply to the Territory and its Courts and instrumentalities in their existing form until replaced by Commonwealth law.

Acts relating to set-off.

The Commission considered these Acts unnecessary in view of NSW legislation in force in the Territory and Rules of Court of the Supreme Court. There is no NSW legislation with respect to set-off now in force in the Territory. The Rules of Court set out the practice in respect of pleading a set-off in an action in the Supreme Court. The Law Reform Committee of South Australia reported that the Acts should continue in force because they set out the substantive basis on which



debts could be set off one against the other and that Rules of Court merely established the procedures for establishing a set-off in an action but not the substantive right to set off debts. The safer course is to continue the Acts in force until the matter is dealt with by Ordinance of the Territory.

9 Geo.4 c.83, section 24 and 28 and 29 Vic.c.63

The first of these Acts is the Australian Courts Act, 1828. Section 24 extended Imperial Acts in force on 25 July 1828 in the United Kingdom to New South Wales in so far as they were capable of applying there. The second Act is the Colonial Laws Validity Act, 1865 which limited the powers of colonial legislatures to pass Acts. The Commission recommended their repeal. However, they are of great historical significance to the development of law in the Territory and may be of practical importance in determining whether an Imperial Act or a NSW Act continued in force in the Territory on 1 January 1911 by virtue of the Seat of Government Acceptance Act 1909.

Acts relating to legal proceedings

These Acts deal with the taking of evidence outside Australia on commission at the request of the Supreme Court, or within the Territory at the request of a Court in another part of the dominions of the Crown, and with the ascertainment of the law of another country in proceedings in the Territory. They are not referred to in the Reports of the Commission, but are believed to be used occasionally by the Supreme Court.

41 and 42 Vic c.73 This Act confers jurisdiction on the Supreme Court, under the admiralty jurisdiction of that Court, in respect of offences committed within the territorial waters of a part of the dominions of the Crown, including offences committed by foreigners. The Commission recommended its replacement by a modern provision. However, as the law relating to admiralty jurisdiction of the Supreme Court is under review, it is considered better to continue this Act in force in its existing form for the present.

53 and 54 Vic c.27 This Act confers admiralty jurisdiction on the Supreme Court. The Commission recommended its repeal on the basis that the Supreme Court acquired this jurisdiction by virtue of paragraph 11(a) of the Australian Capital Territory Supreme Court Act 1933. That Act conferred on the Supreme Court the same jurisdiction as the Supreme Court of NSW had before 1 January 1911. However, the Commission appears to have overlooked the fact that 53 and 54 Vic c.27 did not apply to NSW until 1 July 1911. Accordingly, paragraph 11(a) referred to above did not attract this jurisdiction. The Act is therefore being continued in force in its existing form.

Details of the Ordinance are set out in Attachment "A".

Approved by the  
Attorney-General

/86

ATTACHMENT "A"

DETAILS OF ORDINANCE

NOTES ON SECTIONS

Section 1 provides that the Ordinance may be cited as the Imperial Acts Application Ordinance 1986.

Section 2 provides for dates of commencement of the various parts of the Ordinance. The whole Ordinance, except for sub-sections 4(2) and (3) came into operation on the day on which notice of the Ordinance having been made was published in the Gazette. Sub-sections 4(2) and (3) will come into operation on dates to be fixed by the Minister by notice published in the Gazette. These dates will be fixed when the Judges of the Supreme Court have made the rules of court referred to in the notes on those sub-sections.

Section 3(1) defines-

an applied Imperial Act as an Imperial Act that extended to the Territory of its own force or that was in force in New South Wales on 31 December 1910 and is in force in the Territory by virtue of section 6 of the Seat of Government Acceptance Act 1909;

commencing date as the date on which notice of the Ordinance having been made was published in the Gazette;

Imperial Act as a public Act of England, Great Britain or the United Kingdom, as the case may be, enacted between 1235 and 1939;

State as the State of New South Wales.

Sub-section 3(2) provides that, subject to sub-section 3(4), where an applied Imperial Act that extends to the Territory of its own force had been amended before 3 September 1939 (the date on which the Statute of Westminster commenced to apply to Australia) by another Imperial Act then a reference to that Act is to be read as a reference to that Act as so amended.

Sub-section 3(3) provides that, subject to sub-section 3(4), a reference to an applied Imperial Act, other than one that extends to the Territory of its own force, is to be read as a reference to that Act as amended in the United Kingdom before 25 July 1928, as amended between that date and 31 December 1910 by an Imperial Act that extended to New South Wales of its own force and as amended between 1 January 1911 and 3 September 1939 by a United Kingdom Act that applied to the Territory of its own force.

Sub-section 3(4) provides that where an applied Imperial Act has been amended by a law of the Commonwealth or of the Territory before the commencing date, a reference to that Act is to be read as a reference to that Act as so amended.

Sub-section 4(1) repeals all the sections of the Imperial Act 8 and 9 Will. 3 c.11 other than section 8, and all the sections of the Act 4 and 5 Anne c.3 other than sections 12 and 13, but continues those sections in force in the Territory. Those sections regulated court procedures in suits on bonds. The Commission recommended that they be replaced by Rules of Court (as has been done in the United Kingdom) and that the other sections be repealed. The other sections of 8 and 9 Will. 3 c.11 deal with the awarding of costs in proceedings and the death of a party before proceedings have been completed. These provisions have been superseded by other laws of the Territory. The other sections of 4 and 5 Anne c.3 deal with court procedures that are obsolete or have been superseded by other laws of the Territory.

Sub-section 4(2) repeals the Imperial Act 8 and 9 Will. 3.c.11 on the date fixed for the commencement of the sub-section. The date will be fixed after Rules of Court have been made by the Judges of the Supreme Court in lieu of section 8.

Sub-section 4(3) repeals the Imperial Act 4 and 5 Anne c.3 on the date fixed for the commencement of the sub-section. The date will be fixed when Rules of Court have been made by the Judges of the Supreme Court in lieu of sections 12 and 13.

Sub-section 4(4) provides that, subject to sub-section 4(6), where a section is, or sections are, specified in column 3 of Schedule 1 opposite to the citation of an applied Imperial Act in column 1, the remaining sections cease to be in force in the Territory on the commencing date.

Sub-section 4(5) provides that the Charitable Uses Act, 1601 ceases to be in force in the Territory on the commencing date. The repeal of this Act was recommended by the Commission.

Sub-section 4(6) provides that where a provision of an applied Imperial Act that would otherwise cease, by virtue of section 4(1),(2),(3),(4) or (5), to be in force in the Territory amends a provision of another Imperial Act that continues in force in the Territory, it remains in force until the provision of the other Act that it amends ceases to be in force in the Territory.

Sub-section 5(1) amends the Imperial Acts cited in column 1 of Schedule 2 to the extent necessary for them to be in force in the Territory in the terms set out in the relevant Part of Schedule 3.

Sub-section 5(2) provides that, subject to sub-section 5(3), where a section or another part of an applied Imperial Act is omitted from the text of the Act printed in Schedule 3, then, that section or other part, if it was in force in the Territory immediately before the commencing date, ceases to be so in force on the commencing date.

Sub-section 5(3) provides that where a section or other part of an applied Imperial Act that would cease to be in force in the Territory by virtue of sub-section 5(2) amends a provision of an applied Imperial Act that continues in force in the Territory, then it does not so cease to be in force until the provision that it amends ceases so to be in force.

Sub-section 5(4) deems the translations from the Latin or Norman French of Acts enacted before the reign of Henry 7 to be for all purposes correct.

Sub-section 5(5) deems the conversion of words in Acts enacted before the reign of George 2 from the spelling of the day into modern spelling to be for all purposes correct.

Sub-section 6(1) provides that Imperial Acts specified in column 1 of Schedule 2 that extended to the Territory of their own force continue so to extend as amended by this Ordinance and the other applied Imperial Acts so specified continue to apply in the Territory, as amended by this Ordinance, in accordance with section 6 of the Seat of Government Acceptance Act 1909. Thus this Ordinance does not alter the status of the Acts continued in force.

Sub-sections 6(2) and (3) provide that if an Imperial Act specified in column 1 of Schedule 1, column 1 of Schedule 2 or in sub-section 4(1) had never been in force in the Territory or had ceased so to be in force before the commencing date, nevertheless that Act, or the part of that Act specified in column 3 of Schedule 1, has effect on and after the commencing date in the Territory as amended by this Ordinance and this Ordinance applies to and in relation to it.

Sub-section 6(4) provides that sub-section 6(3) does not alter the law in force in the Territory before the commencing date or render invalid on or after the commencing date anything done or suffered before that date that was valid when done or suffered.

Sub-section 7(1) contains saving provisions, corresponding with section 38 of the Interpretation Ordinance, saving things done, rights acquired and liabilities incurred under a part of an applied Imperial Act that ceases to be in force in the Territory by virtue of this Ordinance.

Sub-section 7(2) provides that, without affecting sub-section 7(1), the ceasing of the Charitable Uses Act, 1601, to be in force in the Territory (under sub-section 4(5)) does not prevent references to charities in and under the law of the Territory from continuing to be construed as references to charities within the meaning and scope of the Preamble to that Act and that the ceasing of any Imperial Act, or part of such an Act, to be in force in the Territory does not affect any rule of law or of equity in force in the Territory otherwise than by virtue of that Act or that part of that Act. Under the general law of the Territory, what is a charity has always been determined by reference to the Preamble to the Charitable Uses Act, 1601. The text of the Preamble is printed in Schedule 4.

Sub-section 7(3) provides that for all purposes of the law of the Territory, the text set out in Schedule 4 shall be taken to be the text of the Preamble to the Charitable Uses Act, 1601.

Sub-section 7(4) provides that where an applied Imperial Act, or a part of such an Act, that ceases to be in force in the Territory by virtue of this Ordinance repealed, confirmed, revived or perpetuated another Imperial Act, or part of another such Act, that did not so cease to be in force in the Territory, that repeal, confirmation, revivor or perpetuation is not affected.

Section 8 provides that where a provision of an applied Imperial Act continued in force in the Territory is inconsistent with a law of the Territory (not being another applied Imperial Act), the provision is, to the extent of the inconsistency, of no force or effect in the Territory. It thus gives paramountcy to local law. If there is inconsistency between 2 applied Imperial Acts, then the inconsistency would be resolved according to the ordinary rules of statutory interpretation.

Section 9 provides that the headnotes to sections in an applied Imperial Act, and the footnotes to a Part of Schedule 3 do not form part of the Imperial Act or of this Ordinance.

Section 10 provides that an applied Imperial Act specified in Schedule 1 is to be administered by the Minister specified in column 4 of that Schedule opposite to the citation of the Act in column 1 and makes similar provision for the administration of the Acts specified in Schedule 2.

Section 11 interprets references to the Sovereign reigning at the time of the enactment of the Act, or to the Crown, as references to the Sovereign for the time being.

Sub-section 12(1) requires the Ordinance and the applied Imperial Acts continued in force by it to be read subject to the Constitution and so as not to exceed the legislative power in respect of the Territory and to be read down to the extent (if any) to which they exceed that power.

Sub-section 12(2) provides that nothing in the Ordinance affects the operation in the Territory of an Imperial Act that extends to, or has force or effect in, the Commonwealth as part of the law of the Commonwealth.

Section 13 provides for the Ordinance to be administered by the Attorney-General.



## NOTES ON SCHEDULES

Schedule 1 lists 16 Imperial Acts that continue in force in the Territory (either in whole or in part) although, for reasons set out above, their texts are not printed in the Ordinance. It also lists the Ministers responsible for the administration of these Acts. Brief particulars of the Acts specified in Schedule 1 are as follows:

- . Act 28 Hen. 8 c.15 enables offences committed at sea to be dealt with as if committed within the realm.
- . Acts 11 Will. 3 c.7 to 18 Geo. 2 c.30 (inclusive) are Acts dealing with piracy and extending the jurisdiction of courts to deal with acts of piracy, and with aiding and abetting piracy, committed outside the ordinary jurisdiction of the courts.
- . Acts 5 Geo. 4 c.113 to 6 and 7 Vic. c.98 (inclusive), and Act 36 and 37 Vic. c. 88 are a series of Acts abolishing slavery and freeing slaves throughout the dominions of the Crown.
- . Act 57 and 58 Vic. c. 60 - the Merchant Shipping Act, 1894 is a comprehensive Act dealing with the registration of British ships and the construction, operation and maintenance of ships. It has been superseded, in part, by the Navigation Act 1912 and the Shipping Registration Act 1981 of the Commonwealth.

The remaining Acts deal with prize taken in time of war.

Schedule 2 contains a list of Imperial Acts of constitutional, historical or other significance continuing to be in force in the Territory. It indicates the subject matter or short title of each Act, the Part of Schedule 3 in which the text is printed and the Minister by whom it is administered.

Schedule 3 contains the texts of the Imperial Acts of constitutional, historical or other significance that are being continued in force in the Territory. Notes at the end of each Part indicate whether the Act has been amended and, if it has been amended by the Ordinance (otherwise than formally in respect of spelling and punctuation), the general nature of the amendments so made. The notes also refer to some Commonwealth Acts that may affect the application of the Imperial Act in the Territory. As mentioned above in relation to clause 9 of the Ordinance, the notes do not form part of the Imperial Act concerned or of the Ordinance. They are included for general information only. Notes on each Part follow.

Part 1 - 13 Edw. 1c.22 s.1(1285)

This Act confers a right on a person who holds land as a tenant in common with another person to bring an action against the other person for waste committed by the other person. It confers a right that would not otherwise be available.

Part 2 - Magna Carta (1297)

The Commission recommended that chapter 29 continue in force in its existing form. This chapter established the fundamental principle of constitutional law that the Crown will not deprive a person of rights or property, and will not judge or condemn a person, except by due process of law and will not sell, deny, or defer justice or right to any person. The Statute has been printed in the traditional form as if the various chapters were the equivalent of sections of a modern Act and not each a separate Act. The other chapters in the Statute have, in accordance with the recommendation of the Commission, been omitted. They are either obsolete or superseded by other law of the Territory.

Part 3 - 25 Edw.3 St.5c.4 (1351)

The Commission recommended that this Act continue in force in this existing form. It refers to Magna Carta and spells out the right of all to due process of law.

Part 4 - 28 Edw. 3 c.3 (1354)

The Commission recommended that this Act continue in force in its existing form. It spells out the extent of due process of law to cover deprivation of lands, disinheriting and putting to death.

Part 5 - 42 Edw. 3 c.3 (1368)

The Commission recommended that this Act continue in force in its existing form. It is a further exposition of "due process of law", making it clear that persons cannot be brought before the courts except upon presentment before justices or by ordinary writ and states expressly that anything done contrary to this principle is void.

Part 6 - 2 Hen. 4 c.1,ss. 4 and 5 (1400)

This Act is not referred to by the Commission in its Reports. It is referred to in the Ninety-Sixth Report of the Law Reform Committee of South Australia as a constitutional statute that should be preserved. It guarantees a general right of access to the courts and requires justice to be done to the poor as well as the rich.

Part 7 - 1 Edw. 6 c.7,s.1 (1547)

This is the first of several statutes that deal with problems that have arisen as a result of the death of the Crown. The Commission recommended their replacement by modern provisions, but, for reasons set out above, they are being continued in force in their existing form. This Act ensures that proceedings in the Courts do not abate on the death of the Crown.

Part 8 - 18 Eliz. 1 c.5. (1575)

The Commission recommended that this Act continue in force in its existing form. It regulates the prosecution of offences by "common informers", that is to say, persons who were not involved in the offence and were not responsible for the enforcement of the law. It was designed to prevent procedural abuses that had evolved over the years. It regulates the manner in which proceedings may be instituted by a common informer, the settlement by agreement of such a proceeding and costs and penalties in such a proceeding.

Part 9 - 21 Jas. 1 c.16, ss. 5 and 6 (1623)

The Commission recommended that this Act continue in force in its existing form pending a complete review of the law fixing times within which proceedings may be brought in the courts. This review has been completed and the Limitation Ordinance 1985 repealed sections 3,4, and 7 of this Act. Sections 1 and 2 are either exhausted in their operation or superseded by later statutes. Sections 5 and 6 alone are still in force in the Territory. These sections were not referred to in the Reports of the Commission. Section 5 confers on a person sued for trespass to lands a right to plead that the trespass was due to negligence or was involuntary and to pay into court an amount by way of amends for the trespass. Section 6 is intended to discourage frivolous actions for slander. It provides that if the damages recovered do not exceed \$4, then the plaintiff cannot recover costs greater than the amount of the damages.

Part 10 - The Petition of Right (1627)

The Commission recommended that this Act continue in force in its existing form because of its major constitutional importance. It is the Petition presented by Parliament to Charles 1 setting forth ancient privileges that had been ignored by the King and praying that the King would declare that neither he nor his officers and ministers would in future infringe the privileges referred to. It contains the Kings response to the petition "So be it as is desired".

Part 11 - The Bill of Rights (1688)

The Commission recommended that this Act continue in force in its existing form because of its major constitutional importance. It lists various infringements of the liberties and privileges of the people committed by James 2 before his abdication. It re-declared certain rights and privileges that had been claimed and granted by the Crown in the past. It then offered the throne to William and Mary in succession to James 2 on his abdication and dealt with the succession to the Crown.

Part 12 - The Act of Settlement (1700)

The Commission recommended that this Act continue in force in its existing form because it is a constitutional statute of fundamental importance. The Act deals with the succession to the throne upon the death of William 3 in the light of the death of his wife, Mary, without issue surviving her.

Part 13 - 1 Anne c.2, ss, 4 and 6 (1702).

This is the second Act continued in force concerning the death of the Crown. Section 4 continues in force after the death of the Crown proceedings for offences or for debts or account due to the Crown. Section 6 extends the Act to all Her Majesty's dominions. Sections, 1,2,3,5, and 7 are operation exhausted or have been superseded by other laws of the Territory. They are no longer in force in the United Kingdom.

Part 14 - The Succession to the Crown Act, 1707, section 9

This is the third Act continued in force concerning the death of the Crown. Section 9 enables the State seals to continue to be used after the death of the Crown until new ones are approved. Sections 1,2, and 3 relate to treason, which is now dealt with in the Commonwealth Crimes Act. Sections 4 to 8 and 10 to 30 relate to the Parliament and Privy Council of the United Kingdom and to the administration of Great Britain if the successor to the Throne is outside Great Britain on the death of the Crown.

Part 15 - 2 Geo. 2 c. 22, s.13 (1729)

The Commission reported that this Act was unnecessary in view of New South Wales legislation in force in the Territory and the Rules of Court. Section 13 confers a right to set off mutual debts one against the other. The Rules of Court make provision for the form of judgment to be entered when a set-off is established. The Law Reform Committee of South Australia has expressed the view that the Rules of Court do not confer a right to set off mutual debts but only the procedure by which this is done in proceedings where such a right exists. It considered that the right was conferred by this Act and 8 Geo. 2 c. 24 ss 4 and 5. The other sections of 2 Geo. 2 c.22 deal with procedures that are obsolete.

Part 16 - 8 Geo. 2 c. 24, s. 4 and 5 (1735)

Section 4 made permanent section 13 of 2 Geo. 2 c.22 and section 3 dealt with setting off a debt occurring by reason of a penalty under a bond or specialty. The other sections of 8 Geo. 2 c.24 are obsolete or operation exhausted.

Part 17 - 1 Geo. 3 c 23, s.1 (1760)

This is the fourth Act continued in force concerning the death of the Crown. Section 1 continues judges in office on the death of the Crown. The other sections dealt with the removal of judges from office and payment of their salaries and have been superseded by the Australian Capital Territory Supreme Court Act 1933.

Part 18 - Royal Marriages Act, 1772

The Commission recommended that this Act continue in force in its existing form. It declares, but subject to a modification, the common law privilege of the Crown to prevent a member of the royal family from contracting a valid marriage without the consent of the Crown. The modification is to permit such a marriage 12 months after notice has been given unless both Houses of the Parliament of the United Kingdom have disapproved the intended marriage.

Part 19 - Australian Courts Act, 1828, s.24

The Commission regarded the Act as no more than a matter of history in the Territory. In one sense this is true. However, section 24, which applied all Imperial Acts in force on 25 July 1828 as laws of the Colony of New South Wales to the extent to which they could be applied, is the basis on which many Imperial Acts are in force in the Territory. It is, thus, a cornerstone of the legal system in the Territory and is being continued in force because of its legal and historical significance. The other sections relate to the Supreme Court of New South Wales and have never been in force in the Territory.

Part 20 - Foreign Tribunals Evidence Act, 1856

This Act was not referred to in the Reports of the Commission. However, it confers powers on all courts and judges in the dominions of the Crown. It enables courts of a foreign country to obtain assistance from the Supreme Court of the Territory in having a person within the Territory examined as the Territory as a witness in proceedings before that foreign court.

Part 21 - Evidence by Commission Act, 1859

This Act was not referred to in the Reports of the Commission. However, it confers powers on all courts and judges in the dominions of the Crown. It enables a person in the Territory to be examined as a witness in proceedings pending in another part of the dominions of the Crown. It also enables the Supreme Court of the Territory to arrange for a witness in proceedings in the court to be examined and give evidence in another part of the dominions of the Crown.

Part 22 - British Law Ascertainment Act, 1859

This Act was not referred to in the Reports of the Commission. However, it confers powers on certain specified courts in England, Scotland and Ireland and on the superior courts of law or equity in any other part of the dominions of the Crown. It enables such a court to obtain from such a court in another country an opinion on a question of the law of that other country arising in a proceeding before the first mentioned court.

Part 23 - Colonial Laws Validity Act, 1865

The Commission reported that, since the Statute of Westminster applied to the Commonwealth on 3 September 1939, the Colonial Laws Validity Act has not applied to the Commonwealth Parliament. It therefore recommended that the Act cease to be in force in the Territory. The Act prevented the legislature of any possession of the Crown abroad from passing laws inconsistent with any Imperial law in force in the possession. The Act applied to all New South Wales Acts passed before 1 January 1911 and is therefore relevant to the question which of those Acts were continued in force in the Territory on that date. The Act is being continued in force because of its legal and historical significance in the development of the law of the Territory.

Part 24 - The Courts (Colonial) Jurisdiction Act, 1874

The Commission recommended that this Act continue in force but be reconsidered in connection with a review of the criminal law of the Territory. It fixed the penalty that may be imposed upon the trial in a colony of a person for an offence against an Imperial law committed on the high seas outside the territorial limits of the colony.



Part 25 - Territorial Waters Jurisdiction Act, 1878

The Commission recommended that this Act be replaced by a modern provision. It expressed the view that it was important to maintain the status quo and unwise to make any change applicable only to the Territory. It seemed that the better method of giving effect to this view was to continue the Act in force in the Territory in its existing form. The Act confers jurisdiction on the Supreme Court of the Territory to punish offences committed by a person, whether a subject of the Crown or not, on the open seas within the territorial waters of any of the dominions of the Crown.

Part 26 - Evidence by Commission Act, 1885

This Act is not referred to in the Reports of the Commission. However, the Act supplements the Evidence by Commission Act 1859. It enables the Supreme Court to nominate a person to take, within the Territory, the evidence of a witness in civil proceedings pending in a court of another part of the dominions of the Crown. It also provides for the taking of evidence in the Territory in connection with criminal proceedings in another part of the dominions of the Crown.

Part 27 - Colonial Courts of Admiralty Act, 1890

The Commission recommended that this Act be repealed. It confers admiralty jurisdiction on every court of law in a British possession that has original unlimited civil jurisdiction, but, subject to an exception mentioned below in the case of some courts, including the Supreme Court of New South Wales. The Commission regarded the Act as unnecessary because the Supreme Court has admiralty jurisdiction by virtue of section 11(a) of the Australian Capital Territory Supreme Court Act 1933. That section conferred on the Supreme Court of the Territory the same original jurisdiction as the Supreme Court of New South Wales had immediately before 1 January 1911. The Supreme Court of New South Wales did not have, on 31 December 1910, the admiralty jurisdiction conferred by the Colonial Courts of Admiralty Act because that Act only came into operation in New South Wales on 1 July 1911.

It seems therefore necessary for the Act to continue in force in the Territory in order that the Supreme Court may continue to have the admiralty jurisdiction that is conferred on it directly by this Imperial Act.

Part 28 - Demise of the Crown Act, 1901

This is the fifth Act continued in force concerning the death of the Crown. It declares that the death of the Crown does not affect the holding of any office under the Crown.

Schedule 4

This Schedule contains the text of the Preamble to the Charitable Uses Act, 1601. The Preamble is still relevant to the operation of the law of the Territory concerning charities.

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