

AUSTRALIAN CAPITAL TERRITORY

INTERPRETATION (AMENDMENT) ORDINANCE 1985

No. 24 of 1985

EXPLANATORY STATEMENT

The main purpose of this Ordinance is to amend the Interpretation Ordinance 1967 ('the Principal Ordinance') to reflect amendments made to the Commonwealth Acts Interpretation Act 1901 ('the Act') by the Acts Interpretation Amendment Act 1984 ('the amending Act').

The Principal Ordinance contains provisions to assist in the interpretation of A.C.T. Ordinances and to enable the language used in them to be shortened. Many of its provisions are based closely on provisions of the Act which serves the same purpose in relation to Commonwealth Acts.

Use of Extrinsic Material in the Interpretation of an Ordinance

Section 6 of the Ordinance inserts a new section 11B in the Principal Ordinance. This section follows, as far as is applicable, the provisions of section 15AB inserted by the amending Act.

New sub-section 11B(1) provides that, if any material not forming part of an Ordinance is capable of assisting in the ascertainment of the meaning of a provision of the Ordinance, consideration may be given to that material. Such material may be used for one of two purposes.—

- (a) to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision taking into account its context in the Ordinance and the purpose or object underlying the Ordinance; or

- (b) to determine the meaning of the provision when either the provision is ambiguous or obscure, or the ordinary meaning is manifestly absurd or is unreasonable.

New sub-section 11B(2) specifies, in a non-exhaustive way, the main categories of extrinsic materials that can assist in the interpretation of Ordinances. As well as headings and marginal notes to provisions, and end notes in the text of the Ordinance as printed by the Government Printer, the following categories are covered -

- . any relevant reports laid before Parliament or referred, furnished or presented to the A.C.T House of Assembly, before the time when the provision was made;
- . any treaty or other international agreement that is referred to in the Ordinance;
- . the explanatory statement relating to the Ordinance containing the provision, or any other relevant document, that was laid before either House of the Parliament when that Ordinance was laid before that House pursuant to sub-section 12(2) of the Seat of Government (Administration) Act 1910; and
- . any document that is expressly declared by the Ordinance in question to be a relevant document for the purposes of section 11B.

New sub-section 11B (3) provides that in applying section 11B regard shall be had to -

the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision, taking into account the purpose or object underlying the Ordinance; and

the need to avoid prolonging legal or other proceedings without compensating advantage.

Reference to Gender in Ordinances

The Principal Ordinance provides in section 19, that words importing the masculine gender include females, and words importing the feminine gender include males, unless the contrary intention appears. In accordance with the amending Act the Ordinance amends the provision to simply provide that, unless the contrary intention appears, words importing a gender include the other gender.

Modern Methods of Recording Information

The Ordinance inserts a new section 17 in the Principal Ordinance to define "documents" and "writing" so as to include modern modes of storing and reproducing words, figures, symbols etc. A provision has also been inserted to provide for the production of records kept in a computer or in similar facilities, where an Ordinance requires a person to produce the information in question. This is dealt with in the new section 13A.

Statement of Reasons

A new standard provision is inserted by the Ordinance stating that where an Ordinance requires the giving of written reasons for a decision, the instrument giving the reasons shall also set out the findings on material questions of fact and refer to the evidence or other material on which those findings are based.

Attaining a particular age

There is a little known legal rule of medieval origin that a person attains a particular age at the first moment of the day immediately before the anniversary of his birth. Thus a person becomes sixty, not on the first instant of the sixtieth anniversary of his day of birth, but on the first instant of the day immediately before that birthday.

References to age in A.C.T. legislation need to be brought into line with the common understanding that a person attains a particular age on the first moment of the actual anniversary of his birth. This is brought about by the new section 13D inserted by the Ordinance. This provision will apply on and after 1 January 1986.

Alterations in Penalties

The Ordinance inserts a new section 33A providing that, where an Ordinance increases a penalty for an offence, the penalty is to apply only to offences committed after the commencement of the provision of the Ordinance increasing the penalty.

This section also provides that where an Ordinance reduces the penalty the penalty as reduced extends to offences committed before the commencement of the provision reducing the penalty - but not so as to affect any penalty imposed before that commencement. Both these provisions accord with the requirements of Article 15 of the International Covenant on Civil and Political Rights.

Repeal of Interpretation Ordinance 1937

Almost all the provisions of the Interpretation Ordinance 1937 were repealed on the introduction of the Interpretation Ordinance 1967. The Ordinance repeals the rest

and the sole remaining operative provision (which applies certain sections of the Commonwealth Crimes Act 1914 to Ordinances) has been incorporated into the Interpretation Ordinance 1967. This results in the one Ordinance containing all the statutory interpretation provisions having general application to the laws of the Territory.

Other Amendments

As was the case with the amending Act, the Ordinance contains a number of amendments of a technical nature. These are dealt with in the Section Notes below. They deal with deficiencies that have come to light over a period of time.

Definitions have also been included of 'Commissioner of Police' 'Department', 'House of Assembly' and 'Standards Association of Australia', and the interpretative provision relating to 'Australian Standard', because of the frequency with which those expressions have been used in recent A.C.T. legislation.

In addition, the Ordinance includes provisions based on sections 42 and 43 of the Act. The first of these provisions (new section 33D) provides that an offence under any Ordinance punishable by imprisonment for a period exceeding 1 year is an indictable offence. The second, (new section 33E) provides that an offence punishable by imprisonment for a period not exceeding 1 year (or not being punishable by imprisonment is not declared to be indictable) is punishable on summary conviction. Both provisions are subject to a contrary intention appearing in the Ordinance concerned. Previously, all offences under A.C.T. Ordinances were punishable on summary conviction unless declared to be indictable.

Details of the Ordinance are as follows:

Section 1 provides that the Ordinance may be cited as the Interpretation (Amendment) Ordinance 1985.

Section 2 defines the 'Principal Ordinance' to mean the Interpretation Ordinance 1967.

Section 3 provides, except as otherwise stated, for the amendments effected by the Ordinance to apply to all Ordinances whether passed before or after the commencement of the Ordinance.

Section 4 repeals section 4 of the Principal Ordinance. Section 4 repealed and amended certain Ordinances of the Territory and declared certain NSW Acts no longer to be in force in the Territory. The retention of section 4 is not necessary as its operation is spent. Its repeal does not revive the legislation specified in it.

Section 5 omits sub-section 11A(2) of the Principal Ordinance as a consequence of the insertion of section 11B. The sub-section was a holding provision that was intended to preserve whatever the existing law was in relation to use of extrinsic materials pending the examination of this topic.

Section 6 inserts new section 11B, which provides that, if material extrinsic to an Ordinance is capable of assisting in the ascertainment of the meaning of a provision of the Ordinance, consideration may be given to that material in interpreting the provision. It sets forth, in a non-exhaustive way, the main categories of extrinsic materials that can assist in the interpretation of Ordinances (sub-section 2). Sub-section (3) expresses the intention that in applying section 11B

regard shall be had to the the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision taking into account the purpose or object underlying the Ordinance and the need to avoid prolonging legal or other proceedings without compensating advantage.

Section 7 inserts sections 13A, 13B, 13C and 13D in the Principal Ordinance dealing with production of records kept in computers etc, alteration of names and constitutions, content of statements of reasons for decisions and attainment of particular age, respectively.

Section 13A provides for the production of records kept in a computer etc where an Ordinance requires a person to produce the information in question. The person concerned is to produce a writing that reproduces the information in a form capable of being understood by the court, tribunal or person as the case requires.

Section 13B provides that, where a change is made in the name of a body or the title of an office, the references in any legislation, order, contract or other instrument to the former name or title shall be construed, in respect of matters that occur after the change, as references to the new name or title.

Sub-section 13B(2) provides that where an Ordinance alters the constitution of a body, the body continues in existence as newly constituted so that its identity, functions, powers, property, rights, liabilities and obligations are not affected.

Section 13C provides that, where an Ordinance requires the giving of written reasons for a decision, the instrument giving the reasons shall

also set out the findings on material questions of fact and refer to the evidence or other material on which those findings were based.

Section 13D provides that, for the purposes of any Ordinance, the time at which a person attains a particular age expressed in years is the commencement of the relevant anniversary of the date of the birth of that person.

Sub-section 13D(2) provides that section 13D only applies where the relevant anniversary falls on or after 1 January 1986.

Section 8 amends section 14 of the Principal Ordinance by inserting new definitions of calendar month, calendar year, commencement, Commissioner of Police, contravene, Department, financial year, House of Assembly, Lake Ginninderra and Standards Association of Australia.

The section inserts a new sub-section 14(2) containing an interpretative provision relating to 'Australian Standard'. It also inserts a new sub-section 14(3) which clarifies that references in an Ordinance to companies, bodies corporate or corporations does not imply that references in the Ordinance to persons do not include references to companies, corporations or bodies corporate.

Section 9 amends section 16 of the Principal Ordinance by omitting the reference to the Chief Judge and substituting a reference to the Chief Justice. This amendment is consequential upon the change in title of the Chief Judge of the Supreme Court of the A.C.T. to that of Chief Justice.

Section 10 repeals section 17 of the Principal Ordinance and substitutes a new section 17. The new section defines what is meant by a document and is intended to cover all advances that have been made in the methods that are used for recording information. The new definitions of 'document' and 'writing' make reference to modern modes of storing and reproducing words, figures, symbols etc.

Section 10 also inserts section 17A to deal with service of documents on a natural person and on a body corporate. Sub-section 17A(1) specifies the basis upon which valid service can be effected. Sub-section 17A(2) provides that the operation of sub-section 17A(1) will not affect contrary provisions in any other specific Territory legislation, dealing with service of documents or the power of a court to authorize service of a document.

Section 11 repeals section 19 and substitutes a new section. Previously section 19 provided that, unless the contrary intention appears, words importing the masculine gender include females and words importing the feminine gender include males. It also dealt with singular and plural references. The new section 19 provides that, unless the contrary intention appears, words importing a gender include every other gender and re-enacts the previous provision regarding singular and plural.

Section 12 amends section 25 of the Ordinance (which relates, among other matters, to references in an Ordinance to an officer or office) by extending the operation of that section to all persons who, at any time, occupy an office or position for the time being.

Section 13 inserts three new sub-sections in section 27 of the Principal Ordinance in relation to the exercise of powers and duties. Sub-section 27(2) provides that where an Ordinance confers the power to make an instrument (including rules, regulations or by-laws) with respect to particular matters, such power includes a power to make, grant or issue such instruments with respect to some of those matters, or classes of those matters and to make different provisions in respect of different matters or different classes of matters.

Sub-section 27(3) provides that where an Ordinance confers a power to make, grant or issue any instrument such grant of power shall not preclude, by implication, the power to make provision in respect of a particular aspect of a matter if the Ordinance in question contains a reference to another aspect of that matter or to another matter.

Sub-section 27(4) provides that, where an Ordinance empowers the making of an instrument prescribing penalties, the limitation on the penalties that may be prescribed does not prevent the instrument requiring the making of a statutory declaration.

Section 14 amends sub-section 28(1) of the Principal Ordinance by providing for the making of an acting appointment to a vacant office provided such appointment does not exceed 12 months.

Section 15 inserts a new section 29A which provides, that, unless the contrary intention appears, where an Ordinance confers a power to delegate a function or power the power may be delegated to the person for the time being holding or performing the duties of a particular office as well as to a specified person.

Section 16 substitutes a new heading 'Legal Proceedings' for Division 4 of Part III of the Principal Ordinance to reflect more accurately the contents of the Division.

Section 17 inserts a new section 31A in the Ordinance vesting jurisdiction in a court where an enactment provides for civil or criminal proceedings to be instituted in a particular court. This provision is intended to be declaratory of the present law.

Section 18 updates the penalties in section 32 of the Ordinance and brings them into line with those that, in 1982, were inserted in the Crimes Act 1914. The amendment applies only to offences committed after the commencement of the Ordinance.

Section 19 inserts new sections 33A to 33G relating to the effect of alterations in penalties, continuing offences, joinder of charges, indictable offences, offences punishable on summary conviction, offences under 2 or more laws and application of certain sections of the Crimes Act to Ordinances, respectively.

Sub-section 33A(1) provides that where an Ordinance increases the penalty or maximum penalty for an offence such increase applies only to offences committed after the commencement of the provision increasing the penalty.

Sub-section 33A(2) provides that where an Ordinance reduces a penalty or maximum penalty for an offence, such reduction extends to offences committed before the commencement of the provision, but the reduction does not affect any penalty actually imposed before the commencement of the provision.

Section 33B provides where an act or thing is required to be done within a particular period the obligation to do that thing continues until the act or thing is done even though that period has expired.

Sub-section 33C(1) provides that charges against the same person for a number of offences against the same provision of an Ordinance may be included in the same information, complaint or summons if those charges are founded on the same facts or form, or are part of, a series of offences of the same or a similar character.

Sub-section 33C(2) provides that if a person is convicted of 2 or more such offences, the court may impose one penalty in respect of both or all those offences but that penalty is not to exceed the aggregate of the maximum penalties that could have been imposed if separate penalties were imposed.

Section 33D provides that an offence under any Ordinance that is punishable by imprisonment for a period exceeding 1 year is, unless the contrary intention appears, an indictable offence.

Section 33E provides that, unless the contrary intention appears, an offence under any Ordinance that is punishable by imprisonment for a period not exceeding 1 year or an offence not punishable by imprisonment and not declared to be indictable, is punishable summarily.

Section 33F contains provisions analogous to those in section 11 of the Crimes Act 1914. The section precludes an offender being punished more than once in respect of an act or omission which constitutes an offence under 2 or more Ordinances or under an

Ordinance and at common law. The section also provides that where an act or omission constitutes an offence under an Ordinance and an Act and the offender has been punished for the offence under the Act, he is not liable to be punished for the offence under the Ordinance.

Section 33G supersedes section 7 of the Interpretation Ordinance 1937. Section 7 applied certain sections of the Commonwealth Crimes Act 1914 to Ordinances. The section has been revised to take account of the fact that a number of sections of the Crimes Act were amended recently to refer specifically to a law of the Territory as well as a law of the Commonwealth. Consequently there is no longer any need to apply them to Ordinances as if an Ordinance were a law of the Commonwealth.

Section 20 inserts new sections 39, 39A and 39B dealing with, respectively, implied repeals, the effect of expiration of Ordinances and references to part of an Ordinance. The proposed sections clarify and expand the operation of existing sections 37 and 38 (effect of repeal of Ordinances). The new sections cover what is commonly known as 'sunset' legislation.

Section 21 inserts a new section 41A into the Ordinance concerning references in Ordinances to a law of a State or another Territory. The provision deals with the situation where that law is amended or re-enacted along lines similar to those in existing section 41 relating to references to amended or re-made Ordinances and amended or re-enacted Commonwealth Acts.

Section 22 makes a drafting amendment of section 49 of the Principal Ordinance to put beyond doubt that an expression in an instrument under an Ordinance or continued State law has the same meaning as it has in a provision of the Ordinance or continued State law to which the provision of the instrument is referable.

Clause 23 repeals the Interpretation Ordinance 1937, the Interpretation Ordinance 1955 and the Interpretation Ordinance 1959. The latter two Ordinances amended the Interpretation Ordinance 1937. The Ordinance incorporates the remaining provisions of the Interpretation Ordinance 1937 into the Principal Ordinance. This results in all the statutory interpretation provisions having general application to the law of the Territory being found in the one Ordinance.

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Authorized by the
Attorney-General