

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

NEW SOUTH WALES ACTS APPLICATION ORDINANCE 1984

NO. 41 of 1984

The purpose of this Ordinance is to:

- . omit from certain New South Wales Acts that are in force in the Australian Capital Territory such parts of those Acts as are unnecessary, obsolete or incapable of operating in the A.C.T. or are inconsistent with other laws in force in the A.C.T.;
- . make clear the manner in which these Acts operate in the A.C.T.; and
- . make available definitive texts of these Acts in the form in which they have effect in the A.C.T.

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 continue in force, as far as applicable, 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 1909, and later Acts, give only general guidance on how the 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 these 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 these Reports, it made detailed recommendations for -

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 the omission of provisions inconsistent with later laws and, therefore, impliedly repealed by these later laws;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

The Ordinance is the first of two Ordinances (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 the Commission insofar as they deal with continuation of N.S.W. laws in force in the A.C.T.) which are intended to achieve these aims.

This Ordinance deals with those N.S.W. Acts, listed in Schedule 1 of the Ordinance, which continued in force in the Territory on 1 January 1911.

This Ordinance does not affect any N.S.W. Act not specified in it and such Acts will continue in force, in their existing terms, until the second Ordinance is made. It does not alter the law contained in the New South Wales Acts set out in Schedule 2 except to clarify the manner in which they operate in the Territory, nor does it attempt to re-state

those Acts in modern drafting form, although some drafting changes have been made.

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

The second Ordinance will deal with all other N.S.W. Acts, continued in force in the A.C.T. on 1 January 1911, which are to remain in force in the A.C.T. It will also repeal in full all other N.S.W. Acts, i.e. those which are totally unnecessary or obsolete.

Section 1 provides that the Ordinance may be cited as the New South Wales Acts Application Ordinance 1984

Section 2 defines:

- . 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 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;
- . 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 amends the 23 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.

It preserves the operation of any provisions of an Act not printed in the text of that Act if those provisions merely amend another such Act and the amendments are incorporated in the text of that other Act. This is consistent with the principles on which consolidated reprints of Acts are prepared.

This section makes it unnecessary to set out all the textual changes in detail. However, notes at the foot of the text of an Act in Schedule 2 refer to sections and sub-sections that have been omitted in full.

Section 4 makes it clear that the Acts in Schedule 2 will 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 5 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 an 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 6 states that the footnotes to the Acts set out in Schedule 2 do not form part of those Acts or this Ordinance. They are for information and guidance only.

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

. the Supreme Court, the Court of Petty Sessions 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 Act;
- . references to the police are references to members of the Australian Federal Police;
- . references to the Registrar of Titles are references to the Registrar of Titles of the Territory.

This avoids the need to alter all references to these courts, etc. to make it clear that they apply to courts, etc. of the Territory and not New South Wales.

Section 8 repeals section 3 of the Gaming and Betting (Amendment) Act 1906 in its application in the Territory. That section sets out the date of commencement of that Act. The repeal of the section will not affect the continuing operation of the Act in the Territory. The only other section in force in the Territory is section 2 and the amendments made by it to the Gaming and Betting Act 1906 have been incorporated in the text of that Act in Part 18 of Schedule 2.

Section 9 makes provision for a New South Wales Act specified in Schedule 1 to be administered, in its application as a law of the Territory, by the Commonwealth Minister specified in that Schedule.

Schedule 1 sets out the Acts the texts of which are contained in Schedule 2 and the Ministers responsible for their administration.

#### Schedule 2 - General Comments

Schedule 2 sets out the texts of 23 New South Wales Acts as now 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.

Sections of Acts that merely repealed pre-existing Acts, either with or without savings, have been omitted. By reason of sections 37, 38 and 39 of the Interpretation Ordinance 1967, this omission will not revive the pre-existing Acts or affect any rights, privileges or liabilities arising under the pre-existing Acts, in the unlikely event that any such rights, etc., still exist. These are not mentioned in detail in the following notes.

As mentioned above some formal drafting changes have been made, for example, the substitution of figures for words and the insertion of some punctuation to break up long and involved sentences. These are not mentioned in the following notes.

In the following comments, the Law Reform Commission of the Territory is referred to as the Commission.

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

#### Comments on Acts

##### Part 1 - Ancient Lights Declaratory Act 1904

This Act abolishes the ancient law under which rights to light could be acquired by the owner of land by presumption of a lost grant or by the fact that, over a long period, his neighbour had not blocked, by a building, the access of light to the land or to a building on the land. The Commission recommended that it continue in force:

### Part 2 - Apportionment Act 1905

This Act provides for the apportionment of certain periodical payments so that they accrue from day to day.

The Commission recommended that it continue in force.

This Ordinance repeals section 3, which deals with quit rents payable to the Crown on some grants of freehold crown land in New South Wales. There are no such rents reserved in respect of any of the remaining freehold land in the Territory.

### Part 3 - Arbitration Act 1902

This Act provides a framework for commercial arbitrations as an alternative method of resolving disputes over commercial transactions to litigation in the courts.

The Commission recommended that it continue in force but with modifications set out in its Report. These merely relate to the manner of its application in the Territory.

Except for 2 proposed modifications mentioned below, these modifications have been made.

First, the Commission recommended that section 18 be amended to enable a court to order the Sheriff to secure the attendance of a prisoner in New South Wales before an arbitrator under the Commonwealth Removal of Prisoners (Australian Capital Territory) Act 1968. As it is doubtful whether an Ordinance, or a New South Wales Act in force in the Territory, could extend the operation of the Commonwealth Act by conferring powers under the Act on the Sheriff which the Act itself does not confer on him, the modification was not made. Secondly, the Commission recommended that section 20 be

modified to make it clear that rules could be made by the Judges of the Supreme Court under section 28 of the Australian Capital Territory Supreme Court Act. This was not done, partly because of doubts concerning the validity of such a provision for the same reason as is set out in relation to the proposed modifications of section 18 and partly because it is considered that the power to make rules conferred by that Act extends to the making of rules of court for the purpose of other laws of the Territory, thus making the suggested modification unnecessary.

#### Part 4 - Arrest of Mesne Process Act 1902

The purpose of this Act is to enable a Judge of the Supreme Court to order the arrest of a defendant in civil litigation if he is about to leave the Territory. Provision is also made for granting bail to a person arrested under an order of a Judge.

The Commission recommended that Parts I, II and III continue in force, but modified as set out in its Report. It recommended the repeal of Part IV, which cannot apply in the Territory as it relates only to proceedings at Newcastle.

The modifications recommended by the Commission have been made except for its recommendations concerning section 15. That is a section conferring power on the Judges to make rules of court. For reasons mentioned above in respect of section 20 of the Arbitration Act 1902, the section has been repealed.

#### Part 5 - Common Carriers Act 1902

This Act regulates the liabilities of transport operators by land.

The Commission recommended that it continue in force.

Part 6 - Contractors' Debts Act 1897

This Act contains provisions to enable workmen and suppliers of material to obtain payment, to a limited extent, directly from the person for whom the contractor is working in case of default by the contractor.

The Commission recommended that it continue in force.

Part 7 - Conveyancing and Law of Property Act 1898

This Act contains the basic law applicable to real property, particularly real property not registered under the Torrens system.

The Commission did not comment on it in detail, as it proposed to consider it in detail later, but recommended that it continue in force. It has never made a detailed report on this Act.

The Act probably has only limited application in the Territory now.

The following provisions have been omitted as inapplicable in the Territory.

- . Sections 2 to 15, which deal with Crown Grants made by the Government of New South Wales.
- . Sections 16 to 25, which deal with claims to be entitled to grants of land by the Government of New South Wales.
- . Sections 26 to 28, which deal with land transactions by married women. These sections have become inoperative since the Married Women's Property Act allowed married women to hold and deal with land without the assent of their husbands.

- . Section 35, which deals with the execution of deeds. The matter is now covered by the provisions of section 28 of the N.S.W. Conveyancing Act 1919 which applies in the Territory by virtue of the Conveyancing Ordinance 1951.
- . Sections 71, 72 and 73, which deal with the execution of leases by married women. These sections have become inoperative since the Married Women's Property Act allowed married women to deal with land without the assent of their husbands.
- . Section 81, which relates to Rules of Court. This matter is now covered by the Australian Capital Territory Supreme Court Act.
- . Sections 82 to 89, which deal with leaseholds held by infants and married women. They have been modified by the omission of provisions relating to married women.

All the schedules relate to sections which have been omitted. Hence, the schedules have also been omitted.

Part 8 - Conveyancing and Law of Property (Supplemental) Act  
1901

This Act deals with married women's reversionary interests in personal property, dower, illusory appointments under powers of appointments and powers of attorney. It also amends the Conveyancing and Law of Property Act 1898.

The Commission recommended that it continue in force but did not deal with it in detail as it proposed to do so later.

Only section 1 (short title) and sections 11, 12 and 13 (illusory appointments) are continued in force. The provisions

relating to married women, including dower, are no longer operative in the Territory as they are inconsistent with the status of married women under the Married Women's Property Act. The provisions relating to powers of attorney have been superseded by the Powers of Attorney Ordinance 1956.

Part 9 - Crown Lands Act 1884

This Act makes detailed provision for the granting of rights to occupy Crown Land in New South Wales.

The Commission recommended its repeal, subject to preserving any terms and conditions governing land held under that Act on 1 January 1911 that was situated in the Territory.

The Department of Territories and Local Government has advised that section 111 of the Act still has application in the Territory. That section provides for giving access to land which is not bounded by a public road, over other Commonwealth land.

This Ordinance repeals the whole of the Act except section 1, section 4 insofar as it contains definitions relevant to section 111 and section 111 itself. The definitions in section 4 and section 111 have been modified to show clearly how section 111 is to apply in the Territory.

No express provision has been included to preserve terms and conditions under the Crown Lands Act 1884 that may possibly still govern land in the Territory. These will be preserved by section 38 of the Interpretation Ordinance 1967, which applies to New South Wales Acts on their ceasing to be in force in the Territory by virtue of section 43 of that Ordinance.

Part 10 - Dedication by User Limitation Act 1902

This Act provides that no dedication or grant of a right of way shall be presumed against the Crown or persons holding land in trust for public purposes.

The Commission recommended that it continue in force, but with a modification set out in its Report to clarify the reference to the Crown in section 3.

The modification has been made.

Part 11 - Defamation Act 1901

This Act contains the basic law on civil and criminal proceedings for defamation.

The Commission recommended that it continue in force but with modifications set out in its Report to omit unnecessary provisions and bring procedures into line with the practice and procedures of the Supreme Court of the Territory.

These modifications have been made.

Part 12 - Defamation (Amendment) Act 1909

This is a supplementary Act dealing mainly with obscene and blasphemous matter, privilege and mitigation of damages.

The Commission recommended that it continue in force but with modifications set out in its Report to bring its procedures into line with the practice and procedure of the Supreme Court of the Territory.

These modifications have been made.

Part 13 - Fertilizers Act 1904

This Act requires the vendor of artificial fertilizers to furnish to the purchaser a statement of the contents of the goods.

The Commission recommended that it continue in force but drew attention to difficulty concerning the New South Wales Regulations under the Act, which are necessary for the Act to operate.

The Act has been amended to incorporate the substance of the New South Wales Regulations in section 3 and a new Schedule to the Act and also allow the Minister to make regulations prescribing a different form to be used instead of the form in the Schedule.

#### Part 14 - Forfeiture of Leases Act 1901

This Act provides relief against forfeiture of a lease by requiring the lessor to give the lessee notice of breach of the lease and an opportunity to remedy the breach or pay reasonable compensation before the lessor takes any step to forfeit the lease.

The Commission recommended that it continue in force, but with modifications set out in its Report to clarify its application in the Territory.

These modifications have been made.

#### Part 15 - Forfeiture and Validation of Leases Act 1905

This Act validates certain leases granted by a person who had a power to lease but did not expressly grant the leases under that power. The Commission recommended that it continue in force, but with modifications set out in its Report to make its procedural provisions consistent with other law of the Territory.

These modifications have been made.

Part 16 - Free Education Act 1906

This Act abolishes fees for "primary schools" and "superior public schools".

The Commission recommended that it continue in force but that the provisions amending the Public Instruction Act 1880 be omitted. This has been done.

Part 17 - Games Wagers and Betting-houses Act 1901

This Act deals with a variety of matters concerning gaming, in particular, gaming houses, cheating at cards or games, avoidance of betting contracts and betting houses.

The Commission recommended that it continue in force, but with modifications set out in its Report designed to identify the police officers entitled to take action and omit provisions now covered by the Police Offences Ordinance.

Except as mentioned below, these modifications have been made.

- . Section 24 has been repealed as it deals only with the procedure where a defendant does not appear, on summons, before the Court of Petty Sessions. This is covered by the Court of Petty Sessions Ordinance and the rules under that Ordinance.
- . Section 25 deals with the arrest of a person charged with an offence who is about to leave New South Wales. The Commission regarded it as inapplicable. It has been amended to deal with a person charged with an offence who is about to leave the Territory.

Part 18 - Gaming and Betting Act 1906

This Act amends the Games, Wagers and Betting-houses Act 1901 and contains new provisions with respect to gaming and betting houses, street betting, betting on sports grounds and racecourses, and betting with infants.

The Commission recommended that it continue in force, but with modifications to identify the police officers entitled to take action and omit provisions now covered by the Police Offences Ordinance and the Racecourses Ordinance.

These modifications have been made.

Part 19 - Innkeepers' Liability Act 1902

This Act enables an innkeeper to limit his liability for loss or damage of goods belonging to his guests.

The Commission recommended that it continue in force.

Part 20 - Judgment Creditors' Remedies Act 1901

This Act consolidates the law on the enforcement of judgments. Part III deals with execution against property and Part IV with execution against the person.

The Commission considered that Part II, which dealt with judgments at law, was inapplicable as law and equity are administered together in the Territory. It considered that Part III could be repealed as it had been superseded by Rules of Court of the Supreme Court and of the Court of Petty Sessions. It recommended that Part IV continue in force but with modifications set out in its Report, which deal with matters of practice and procedure. It further recommended that Part V, which deals with charging orders, be repealed as being now covered by Rules of Court.

The text of the Act in Part 20 is in accordance with the Commission's recommendations.

Part 21 - Landlord and Tenant Act 1899

This Act consolidates the law relating to landlord and tenant. It has been superseded by the Landlord and Tenant Ordinance so far as it relates to ejectment proceedings in the Court of Petty Sessions other than ejectment proceedings in respect of farms, business premises and premises licenced to sell spirituous liquor.

The Commission recommended that it be repealed in the Territory.

The Act has not been repealed in full, as it contains some provisions basic to the legal relationship of landlord and tenant. The Parts retained are as follows:

Part I, which facilitates the preparation of leases.

Part II, which requires a tenant to notify his landlord if proceedings for ejectment are instituted against him by a third person.

Part IV, which relates to ejectment in the Court of Petty Sessions, reduced to sections 22 and 23, conferring a general jurisdiction in ejectment on that court.

Part VI, which deals with waiver of a breach of a lease, and the granting, by the landlord, of a licence to do things which would, but for the licence, constitute a breach of a lease.

Part 22 - Life, Fire, and Marine Insurance Act 1902

The Act deals with life, fire and marine insurance. Part II deals with the protection of life insurance policies and trusts of life insurance policies. Part III deals with lost life insurance policies. Part IV deals with the assignment of fire insurance policies. Part V deals with marine insurance.

The Commission recommended that Parts I and IV continue in force but that the remainder be repealed as being now covered by the Commonwealth Life Insurance Act and the Commonwealth Marine Insurance Act.

The text of the Act in Part 22 is in accordance with these recommendations.

Part 23 - Limitation of Actions for Trespass Act 1884

This Act imposes a limitation period of 12 months for actions for trespass to land.

The Commission recommended that sections 1 and 2 continue in force, but section 4 be omitted as its operation was exhausted.

The text of the Act in Part 23 is in accordance with these recommendations.