

AUSTRALIAN CAPITAL TERRITORY

Interpretation (Amendment) Ordinance 1988

No. 36 of 1988

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 30 June 1988.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

GARY PUNCH
Minister of State for the Arts
and Territories

An Ordinance to amend the *Interpretation Ordinance 1967*

Short title

1. This Ordinance may be cited as the *Interpretation (Amendment) Ordinance 1988*.¹

Principal Ordinance

2. In this Ordinance, "Principal Ordinance" means the *Interpretation Ordinance 1967*.²

Insertion

3. After section 8 of the Principal Ordinance the following sections are inserted:

(Ord. 13/88)—Cat. No.

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Commencement—time of day

“8A. Where an Ordinance, or any instrument (including regulations, rules or by-laws) made, granted or issued under an Ordinance, is expressed to come into operation on a particular day (whether the expression ‘come into operation’ or ‘commence’ is used), it shall come into operation immediately on the expiration of the last preceding day.

Commencement of amending paragraphs etc.

“8B. Where an Ordinance amends another Ordinance by means of—

- (a) a paragraph of a provision of the amending Ordinance;
- (b) an item (whether or not so described) in a Schedule to the amending Ordinance; or
- (c) a paragraph of such an item;

a separate commencement may be provided for the amendment, paragraph or item as if the paragraph or item were a self-contained provision of the amending Ordinance.”.

Insertion

4. After section 11B of the Principal Ordinance the following sections are inserted:

Change of style—effect on meaning

“11C. Where—

- (a) an Ordinance has expressed an idea or concept in particular words; and
- (b) a later Ordinance appears to have expressed the same idea or concept in different words for the purpose of using a clearer style;

the ideas or concepts shall not be taken to be different merely because different words were used.

Examples

“11D. Where an Ordinance includes what purports to be an example of the operation of a provision of the Ordinance—

- (a) the example shall not be taken to be exhaustive; and
- (b) if the example is inconsistent with the provision, the provision prevails.”.

Insertion

5. After section 12 of the Principal Ordinance the following section is inserted:

Paragraphs

“12A. Where a provision of an Ordinance contains a reference to a paragraph of a provision of that Ordinance or any other Ordinance in a particular context or application (however described), the reference shall be read as a reference to that paragraph together with such other words (if any) in the provision containing it (whether preceding or following the paragraph) as are necessary to make that reference meaningful and the first-mentioned provision effective.”.

Division 2 of Part III—heading

6. The heading to Division 2 of Part III of the Principal Ordinance is amended by omitting “*References*” and substituting “*phrases*”.

Meaning of certain words

7. Section 14 of the Principal Ordinance is amended by inserting in subsection (1) the following definitions:

“ ‘appoint’ includes reappoint;

‘law of the Territory’ includes the common law;

‘the Federal Court’ means the Federal Court of Australia;”.

Repeal

8. Sections 24A to 24D (inclusive) of the Principal Ordinance are repealed.

Insertion

9. After section 25 of the Principal Ordinance the following section is inserted in Division 2 of Part III:

Chairperson

“25A. Where an Ordinance establishes an office of Chairperson of a body, the Chairperson may be referred to as the Chairman or Chairwoman, as the case requires.”.

Repeal

10. Divisions 2A, 2B and 2C of Part III of the Principal Ordinance are repealed.

Exercise of powers and duties

11. Section 26 of the Principal Ordinance is amended by adding at the end the following subsections:

“(3) Where an Ordinance that commences after the commencement of this subsection provides, by using the word ‘may’, that a person, court or body may do a particular act or thing, the act or thing may be done at the discretion of the person, court or body.

“(4) Where an Ordinance confers a power or function, or imposes a duty, on a body, whether incorporated or unincorporated, the exercise of the power or the performance of the function or duty is not affected merely because of a vacancy or vacancies in the membership of the body.”.

Power to make etc. instruments

12. Section 27 of the Principal Ordinance is amended by inserting in subsection (2) “(however described)” after “particular matters”.

Insertion

13. After section 28 of the Principal Ordinance the following section is inserted:

Acting appointments

“28A. Where a provision of an Ordinance (other than subsection 28 (1) of this Ordinance) confers on a person or body (in this section called the ‘appointer’) a power to appoint a person (in this section called the ‘appointee’) to act in a particular office, then, except so far as the Ordinance otherwise provides, the following paragraphs apply in relation to an appointment made under the provision:

- (a) the appointment may be expressed to have effect only in the circumstances specified in the instrument of appointment;
- (b) the appointer may—
 - (i) determine the terms and conditions of the appointment, including remuneration and allowances; and
 - (ii) terminate the appointment at any time;

- (c) where the appointee is acting in an office other than a vacant office and the office becomes vacant while the appointee is acting, then, subject to paragraph (a), the appointee may continue so to act until—
 - (i) the appointer otherwise directs;
 - (ii) the vacancy is filled; or
 - (iii) the expiration of the period of 12 months that commenced on the day of the vacancy;whichever happens first;
- (d) the appointment ceases to have effect if the appointee resigns in writing delivered to the appointer;
- (e) while the appointee is acting in the office—
 - (i) the appointee has and may exercise all the powers, and shall perform all the functions and duties, of the holder of the office; and
 - (ii) the Ordinance applies in relation to the appointee as if the appointee were the holder of the office.”.

Insertion

14. After section 29A of the Principal Ordinance the following section is inserted:

Effect of delegation

“29B. Where an Ordinance confers power on a person or body (in this section called the ‘authority’) to delegate a power or function—

- (a) the delegation may be made either generally or as otherwise provided by the instrument of delegation;
- (b) the powers that may be delegated do not include that power to delegate;
- (c) a power or function so delegated, when exercised or performed by the delegate, shall, for the purposes of the Ordinance, be deemed to have been exercised or performed by the authority;
- (d) a delegation by the authority does not prevent the exercise or performance of a power or function by the authority; and
- (e) if the authority is not a person, section 30 applies as if it were.”.

Continuing offences

15. Section 33B of the Principal Ordinance is amended by adding at the end the following subsection:

“(2) Where a refusal or failure to comply with a requirement referred to in subsection (1) is an offence under an Ordinance, a person is guilty of an offence in respect of each day during which the person refuses or fails to comply with that requirement, including the day of a conviction for any such offence or any later day.”.

Substitution

16. Section 33F of the Principal Ordinance is repealed and the following section substituted:

Offences under 2 or more laws

“33F. (1) Where an act or omission constitutes an offence under each of 2 or more laws of the Territory, the offender is, unless the contrary intention appears, liable to be prosecuted and convicted under either or any of those laws but is not liable to be punished more than once in respect of that act or omission.

“(2) Where an act or omission constitutes an offence under both—

- (a) a law of the Territory and a law of the Commonwealth; or
- (b) a law of the Territory and a law of a State;

and the offender has been punished for the offence under the law of the Commonwealth or the law of the State, as the case may be, the offender is not liable to be punished for the offence under the law of the Territory.”.

Insertion

17. After section 40 of the Principal Ordinance the following section is inserted:

Definitions inserted by amending Ordinance

“40A. Where an amending Ordinance inserts a definition in a provision of the Ordinance being amended but does not specify the position in that provision where it is to be inserted, it shall be deemed to be inserted in the appropriate alphabetical position determined on a letter-by-letter basis.”.

Insertion

18. After section 49 of the Principal Ordinance the following section is inserted:

Disallowable instruments

“49A. (1) Where a provision (in this section called the ‘enabling provision’) of a law confers powers to make an instrument (however described) and expressly provides that the instrument is a disallowable instrument for the purposes of this section, then, except so far as the law otherwise provides—

- (a) subsections 12 (2) to (7) (inclusive) of the *Seat of Government (Administration) Act 1910* and section 38 of this Ordinance apply in relation to the instrument as if—
 - (i) references to an Ordinance were references to the instrument;
 - (ii) references to a part of an Ordinance were references to a provision of the instrument; and
 - (iii) references to repeal were references to revocation;
- (b) subsection 50 (2) applies in relation to the instrument as if the instrument were regulations under an Ordinance;
- (c) for the purpose of the application of subsection 12 (2C) of the *Seat of Government (Administration) Act 1910* by virtue of paragraph (a), the reference in that subsection to the Minister specified in that subsection shall be read as a reference to the Minister administering the enabling provision; and
- (d) if the instrument is not an order made by or under authority of a Minister, section 5 of the *Evidence Act 1905* applies in relation to the instrument as if it were such an order.

“(2) In subsection (1), ‘law’ means an Ordinance or regulations under an Ordinance.”.

Regulations

19. Section 50 of the Principal Ordinance is amended—

- (a) by omitting paragraph (1) (b) and substituting the following paragraph:
 - “(b) the regulations shall take effect—
 - (i) if the regulations so provide—

- (A) on a specified date;
 - (B) at a specified time on a specified date;
 - (C) on the commencement of a specified Ordinance or a specified provision of an Ordinance; or
 - (D) on such date as is fixed by the relevant Minister by notice in the *Gazette*; or
- (ii) in any other case—on the date on which the notice referred to in paragraph (a) is published.”;
- (b) by omitting from subsection (1B) “Minister of State for Administrative Services” and substituting “relevant Minister”;
 - (c) by omitting from subsection (2) “referred to in paragraph (1) (a)” and substituting “of making”; and
 - (d) by adding at the end the following subsection:
- “(3) In this section, ‘relevant Minister’, in relation to regulations, means—
- (a) the Minister administering the Ordinance or continued State law under which, or the part of the Ordinance or continued State law for the purposes of which, the regulations are made; or
 - (b) if there are 2 or more such Ministers—either or any of them.”.

Prescribing matters by reference to other instruments

20. Section 52 of the Principal Ordinance is amended—

- (a) by omitting “regulations or rules” (wherever occurring, other than in subparagraph (a) (ii) and paragraph (b)) and substituting “regulations, rules or disallowable instrument”;
- (b) by omitting from paragraph (b) “time when the first-mentioned regulations or rules take effect” and substituting “commencement of the regulations, rules or disallowable instrument”; and
- (c) by adding at the end the following subsection:

“(2) In subsection (1), ‘disallowable instrument’ means an instrument that is, under the Ordinance or Act pursuant to which it is

made, a disallowable instrument for the purposes of section 49A of this Ordinance or section 46A of the *Acts Interpretation Act 1901* (as the case requires).”.

Saving

21. (1) Notwithstanding the repeals effected by sections 8 and 10—

- (a) an Ordinance to which any of the repealed provisions applied (being an Ordinance in force immediately before the relevant date) shall, on and after that date, continue to have effect as if this Ordinance had not been made;
- (b) an appointment or instrument, or anything done, referred to in any of the repealed provisions (being an appointment, instrument or thing having force and effect immediately before the relevant date) shall, on and after that date, continue to have force and effect as if this Ordinance had not been made; and
- (c) a notice or other document referred to in any of the repealed provisions (being a notice or document having effect immediately before the relevant date) shall, on and after that date, have effect according to its tenor as if this Ordinance had not been made.

(2) Subsection (1) has effect subject to any other law of the Territory or an instrument made, granted, issued or given under such a law.

(3) In subsection (1)—

“relevant date” means the date of commencement of this Ordinance;

“repealed provisions” means the provisions repealed by sections 8 and 10.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 6 July 1988.
2. No. 48, 1967 as amended by Nos. 18 and 42, 1972; No. 23, 1973; No. 6, 1975; No. 30, 1976; Nos. 24 and 65, 1977; No. 46, 1978; No. 4, 1979; No. 31, 1980; No. 28, 1982; No. 5, 1983; No. 73, 1984; Nos. 24, 58 and 67, 1985; No. 92, 1986; No. 37, 1987.