



AUSTRALIAN CAPITAL TERRITORY

IMPERIAL ACTS (SUBSTITUTED PROVISIONS) ACT 1986

This consolidation has been prepared by the ACT Parliamentary Counsel's Office

Repealed by 1999 No 66 (in force 10/11/99)

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SUBSTITUTED PROVISIONS FOR CERTAIN APPLIED IMPERIAL ACTS

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PROVISIONS SUBSTITUTED FOR CERTAIN PROVISIONS OF IMPERIAL ACTS



AUSTRALIAN CAPITAL TERRITORY

IMPERIAL ACTS (SUBSTITUTED PROVISIONS) ACT 1986

An Act to make provisions in substitution for certain Acts of the United Kingdom, and for purposes connected therewith

1. Short title

This Act may be cited as the *Imperial Acts (Substituted Provisions) Act 1986*.¹

2. Interpretation

(1) In this Act, unless the contrary intention appears—

“applied Imperial Act” means—

- (a) an Imperial Act that—
 - (i) extended to the Territory as part of the law of the Territory of its own force immediately before 3 September 1939; and
 - (ii) had not ceased so to extend to the Territory before the commencing date; and
- (b) an Imperial Act, other than an Imperial Act referred to in paragraph (a)—

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- (i) that came into force as part of the law of the Colony of New South Wales—
 - (A) by virtue of the common law upon the foundation of that Colony; or
 - (B) by virtue of section 24 of the Australian Courts Act, 1828 of the United Kingdom;
- (ii) that was in force in the State immediately before 1 January 1911;
- (iii) that was continued in force in the Territory by section 6 of the *Seat of Government Acceptance Act 1909* of the Commonwealth; and
- (iv) that had not ceased to be in force in the Territory before the commencing date;

“commencing date” means the date on which notice of this Act having been made was published in the *Gazette*;

“Imperial Act” means—

- (a) a public Act of the Parliament of England included in the public Acts of the Parliament of England from and including the Act 20 Hen. 3 c. 1 (the Statute of Merton), enacted in 1235, to and including the Act 6 Anne c. 34, enacted in 1706;
- (b) a public Act of the Parliament of Great Britain included in the public Acts of the Parliament of Great Britain from and including the Act 6 Anne c. 35, enacted in 1707, to and including the Act 41 Geo. 3 c. 32, enacted in 1800; or
- (c) a public Act of the Parliament of the United Kingdom included in the public Acts of the Parliament of the United Kingdom from and including the Act 41 Geo. 3 c. 1, enacted in 1801, to and including the Act 2 and 3 Geo. 6 c. 80, enacted in 1939;

“State” means the State of New South Wales.

(2) Where an applied Imperial Act that extended to the Territory as part of the law of the Territory of its own force immediately before the

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commencing date had been amended before 3 September 1939 under a provision of that Act or by or under a provision of another Imperial Act, a reference in this Act to that applied Imperial Act shall be read as a reference to that applied Imperial Act as so amended.

(3) A reference in this Act to an applied Imperial Act other than such an Act to which subsection (2) applies shall be read as a reference to that applied Imperial Act—

- (a) as amended before 25 July 1828 under a provision of that Act or by or under a provision of another Imperial Act;
- (b) as amended on or after that date and before 1 January 1911 by or under a provision of another Imperial Act that extended to the State as part of the law of the State of its own force; and
- (c) as amended on or after 1 January 1911 and before 3 September 1939 by or under a provision of another Imperial Act that extended to the Territory as part of the law of the Territory of its own force;

as the case requires.

2A. Application of certain provisions of Act

Where a Part is inserted in Schedule 2 after the commencing date, sections 3, 4, 5 and 6 apply to and in relation to the provisions set out in that Part, and to and in relation to the Imperial Act for which, or for certain provisions of which, the provisions so set out are substituted, as if references in those sections to the commencing date were read as references to the date on which that Part was inserted in Schedule 2.

3. Repeal and replacement of applied Imperial Acts

(1) An applied Imperial Act the citation of which is specified in column 1 of Schedule 1 ceases to be in force in the Territory on the commencing date but, by force of this subsection, there is substituted for the provisions of the whole of that Act, or, if a particular section is specified, or particular sections are specified, in column 3 of that Schedule opposite to the citation of that Act in column 1, for the provisions of that section or those sections, as in force in the Territory immediately before the commencing date, the provisions set out in the Part of Schedule 2 specified in column 4 of Schedule 1 opposite to the citation of that Act in column 1.

(2) The provisions set out in a Part of Schedule 2 have effect, subject to, and in accordance with, the provisions of this Act, as laws of the Territory.

4. Substituted provisions

(1) Unless the context otherwise requires, the rules of law applicable to the interpreting of consolidating acts apply to and in relation to the interpreting of the provisions in a Part of Schedule 2 as if those provisions comprised an Act consolidating the provisions of the applied Imperial Act, or applied Imperial Acts, for which the provisions in that Part are substituted by this Act.

(2) Where a provision set out in a Part of Schedule 2 is, on the commencing date, inconsistent with a provision of another law in force in the Territory, not being an applied Imperial Act that continues to be in force in the Territory on that date, the provision of that other law prevails and the provision so set out, to the extent of the inconsistency, has no force or effect in the Territory.

5. Application of substituted provisions

(1) If an Imperial Act the citation of which is specified in column 1 of Schedule 1, or a part of such an Act specified in column 3 of that Schedule opposite to the citation of that Act in column 1—

- (a) has never had effect in the Territory as part of the law of the Territory; or
- (b) ceased, before the commencing date, to have effect in the Territory as part of the law of the Territory;

nevertheless—

- (c) the provisions set out in the Part of Schedule 2 specified in column 4 of Schedule 1 opposite to the citation of that Act in column 1 of Schedule 1 have effect as provided in subsection 3 (2); and
- (d) sections 4, 6 and 9 and subsection 10 (1) apply to and in relation to those provisions as if—
 - (i) that Imperial Act or that part of that Imperial Act, as the case may be, were an applied Imperial Act for the purpose

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of this Act and had been in force in the Territory immediately before the commencing date; and

- (ii) those provisions were substituted for that Imperial Act or that part of that Imperial Act by virtue of subsection 3 (1).

(2) Nothing in subsection (1)—

- (a) shall be taken to alter the law of the Territory as in force at any time before the commencing date; or
- (b) shall be taken to render invalid, on and after the commencing date, any act or thing that was done or suffered before that date and was duly and validly done or suffered according to the law in force in the Territory when the act or thing was done or suffered.

6. References to certain Imperial Acts

(1) Where, by virtue of section 3, the provisions of a Part of Schedule 2 are substituted for the whole of an applied Imperial Act the citation of which is specified in column 1 of Schedule 1, a reference to that Act in an Act that was in force immediately before the commencing date shall, unless the contrary intention appears, be read as a reference to the provisions of that Part of Schedule 2.

(2) Where, by virtue of section 3, the provisions of a Part of Schedule 2 are substituted for the provisions of a section or sections specified in column 3 of Schedule 1, opposite to the citation of an applied Imperial Act in column 1 of Schedule 1, a reference to those sections, or any of those sections, in an Act that was in force immediately before the commencing date shall, unless the contrary intention appears, be read as a reference to the provisions of that Part of Schedule 2.

7. Savings

(1) The ceasing of an applied Imperial Act, or of a part of an applied Imperial Act, to be in force in the Territory by virtue of this Act does not—

- (a) revive anything not in force or existing within the Territory at the time when that Act, or that part of the Act, so ceased to be in force;

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- (b) affect the previous operation of that Act, or of that part of that Act, within the Territory, or anything duly done or suffered under that Act, or that part of that Act, in its application in the Territory;
- (c) affect a right, privilege, obligation or liability acquired, accrued or incurred under that Act, or that part of that Act, in its application in the Territory, or an investigation, legal proceeding or remedy in respect of such a right, privilege, obligation or liability; or
- (d) affect a penalty, forfeiture or punishment incurred in respect of an offence committed against that Act, or that part of the Act, in its application in the Territory, or an investigation, legal proceeding or remedy in respect of such a penalty, forfeiture or punishment;

and such an investigation, legal proceeding or remedy may be instituted, continued or enforced, and such a penalty, forfeiture or punishment may be imposed, as if this Act had not been made.

(2) Without limiting the generality of subsection (1)—

- (a) the applied Imperial Act 29 Chas. 2. c. 3 (The Statute of Frauds, 1677) continues to be in force in the Territory on and after the commencing date, notwithstanding sections 3 and 4, in relation to promises or agreements made before the commencing date; and
- (b) the ceasing of any applied Imperial Act, or of any part of any such Act, to be in force in the Territory by virtue of this Act does not affect any rule of law or equity applying in the Territory otherwise than by virtue of that Act, or of that part of that Act.

(3) Where an applied Imperial Act, or a part of such an Act, that ceases, by virtue of this Act, to be in force in the Territory repealed (expressly or by necessary implication), confirmed, revived or perpetuated another Imperial Act, or a 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 by reason that the first-mentioned Imperial Act, or the part of the first-mentioned Imperial Act, so ceased to be in force in the Territory.

8. Headings in Schedules

The headings to a Part of Schedule 2, or to a clause in a Part of Schedule 2, shall be treated as descriptive only and not as affecting the construction of the provisions contained in that Part or that clause, as the case may be.

10. Application of Act

(1) This Act, and each substituted provision in Schedule 2, shall be read and construed subject to the Constitution, and so as not to exceed the legislative power in respect of the Territory, to the intent that where any part of this Act, or of such a provision, would, but for this subsection, have been construed as being in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.

(2) Nothing in section 3 or 4 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 by express words or necessary implication.

SCHEDULE 1

Subsection 3 (1)

SUBSTITUTED PROVISIONS FOR CERTAIN APPLIED IMPERIAL ACTS

Column 1	Column 2	Column 3	Column 4
Year and Citation of Act	and Subject-matter of Act	Provisions in Schedule 2 substituted for—	Part of Schedule 2 where substituted provisions printed
(1267) 52 Hen. c. 17	3 Guardians, other than testamentary guardians, of children	Whole Act	Part 1A
(1267) 52 Hen. 23	3 c. Waste by tenant	Whole Act	Part 1
(1290) 18 Edw. St. 1, c. 1	1, Fee simple in land	Whole Act	Part 2
(1351) 25 Edw. St. 5, c. 5	3, Duties of executor of executor	Whole Act	Part 3
(1357) 31 Edw. St. 1, c. 11	3, Duties of administrator on intestacy	Whole Act	Part 4
(1539) 31 Hen. 8 c. 1	1 Partition	Whole Act	Part 4A
(1540) 32 Hen. 16	8 c. Aliens	Whole Act	Part 5
(1540) 32 Hen. 32	8 c. Partition	Whole Act	Part 4A

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SCHEDULE 1—continued

SUBSTITUTED PROVISIONS FOR CERTAIN APPLIED IMPERIAL ACTS

Column 1	Column 2	Column 3	Column 4
Year and Citation of Act	Subject-matter of Act	Provisions in Schedule 2 substituted for—	Part of Schedule 2 where substituted provisions printed
(1540) 32 Hen. 8 c. 34	Covenants in lease run with reversion	Whole Act	Part 6
(1571) 13 Eliz. 1 c. 5	Alienation of property to defraud creditors	Whole Act	Part 7
(1585) 27 Eliz. 1 c. 4	Alienation of property to defraud subsequent purchaser	Whole Act	Part 7
(1601) 43 Eliz. 1 c. 8	Intermeddling in estate of intestate	Whole Act	Part 8
(1660) 12 Chas. 2 c. 24	Free and common socage tenure	Sections 1 and 4	Part 9
(1666) 18 and 19 Chas. 2 c. 11	Absence for 7 years evidence of death	Whole Act	Part 10
(1677) 29 Chas. 2 c. 3	Instruments required to be in writing	Sections 1, 2, 3, 7, 8 and 9	Part 11
(1678) 30 Chas. 2 c. 7	Liability of estate of executor for waste	Whole Act	Part 12
(1685) 1 Jas. 2 c. 17	Administration of estate of intestate	Section 6	Part 4
(1692) 4 Will. and Mary c. 24	Liability of estate of personal representative for waste	Section 12	Part 12
(1698) 11 Will. 3 c. 6	Aliens may hold property	Whole Act	Part 6
(1707) 6 Anne c. 72	Proof of death of life-tenant, &c.	Whole Act	Part 11
(1709) 8 Anne c. 18	Tenant for life may be sued for rent	Section 4	Part 13
(1730) 4 Geo. 2 c. 28	Renewals of head leases	Section 6	Part 14
(1737) 11 Geo. 2 c. 19	Actions for use and occupation	Section 14	Part 15

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SCHEDULE 1—continued

SUBSTITUTED PROVISIONS FOR CERTAIN APPLIED IMPERIAL ACTS

Column 1	Column 2	Column 3	Column 4
Year and Citation of Act	Subject-matter of Act	Provisions in Schedule 2 substituted for—	Part of Schedule 2 where substituted provisions printed
(1774) 24 Geo. 3 c. 78	Liability for damage by fire	Section 86	Part 15A
(1792) 32 Geo. 3 c. 60	Libel (Fox's Act)	Whole Act	Part 16
(1800) 39 and 40 Geo. 3 c. 93	Trials for treason	Whole Act	Part 17
(1812) 52 Geo. 3 c. 101	Powers of court in respect of charitable trusts	Whole Act	Part 18
(1816) 56 Geo. 3 c. 100	Return of writ of habeas corpus	Whole Act	Part 19
(1819) 60 Geo. 3 and 1 Geo. 4 c. 8	Seizure of libellous papers	Whole Act	Part 20
(1874) 37 and 38 Vic. c. 37	Appointments of property	Whole Act	Part 20A
(1877) 40 and 41 Vic. c. 59	Colonial stock	Sections 17 and 18	Part 21

SCHEDULE 2

Subsection 3 (1)
and section 4

PROVISIONS SUBSTITUTED FOR CERTAIN PROVISIONS OF IMPERIAL ACTS

PART 1A—GUARDIANS, OTHER THAN TESTAMENTARY GUARDIANS, OF CHILDREN

(52 Hen. 3 c. 17 (1267)—Statute of Marlborough)

PART 3—EXECUTOR OF EXECUTOR REPRESENTS ORIGINAL TESTATOR

(25 Edw. 3, St. 5, c. 5 (1351))

4. Application

This Part applies to and in relation to a testator whether the testator died before, or dies on or after, the commencing date.

PART 4—RIGHTS AND DUTIES OF ADMINISTRATOR OF DECEASED ESTATE

(31 Edw. 3, St. 1, c. 11 (1357) and 1 Jas. 2 c. 17, section 6 (1685))

2. Application

This Part applies to and in relation to the administration of the estate of a deceased person whether that person died before, or dies on or after, the commencing date.

PART 4A—PARTITION OF LAND OWNED JOINTLY

(31 Hen. 8 c. 1 (1539) and 32 Hen. 8 c. 32 (1540))

2. Partition Act not affected

Nothing in clause 1 affects the operation in the Territory of the Partition Act, 1900 of New South Wales.

PART 5—RIGHTS AND LIABILITIES OF ALIENS

(32 Hen. 8 c. 16 (1540) and 11 Will. 3 c. 6 (1698))

1. Person who is not an Australian citizen may hold property

Real or personal property of any kind may be acquired, held and disposed of by a person who is not an Australian citizen in the same manner as it may be acquired, held and disposed of by a person who is an Australian citizen.

SCHEDULE 2—continued

2. Person who is not an Australian citizen may deal in property

Title to real or personal property of any kind may be derived from, through or in succession to a person who is not an Australian citizen in the same manner as it may be derived from, through or in succession to a person who is an Australian citizen.

3. Exceptions

Nothing in clause 1 or 2 shall be taken—

- (a) to qualify a person who is not an Australian citizen for any office or to confer on such a person a right to be enrolled on any electoral roll;
- (b) to qualify a person who is not an Australian citizen to be the owner of a British ship or a share in a British ship; or
- (c) to entitle a person who is not an Australian citizen to any rights and privileges in the Territory as an Australian citizen.

PART 6—LESSEE’S COVENANTS AND LESSOR’S COVENANTS

(32 Hen . 8 c. 34 (1540))

**PART 7—ALIENATION OF PROPERTY WITH INTENT TO DEFRAUD
CREDITORS OR SUBSEQUENT PURCHASERS**

(13 Eliz. 1 c. 5 (1571) and 27 Eliz. 1 c. 4 (1585))

**PART 8—FRAUDULENTLY OBTAINING OR RETAINING PROPERTY OF
DECEASED PERSON**

(43 Eliz. 1 c. 8 (1601))

PART 10—DETERMINATION OF ESTATE OR INTEREST FOR LIFE

(18 and 19 Chas. 2 c. 11 (1666) and 6 Anne c. 72 (1707))

PART 11—INSTRUMENTS REQUIRED TO BE IN WRITING

(29 Chas. 2 c. 3, sections 1, 2, 3, 7, 8 and 9 (1677)—The Statute of Frauds, 1677)

**PART 12—LIABILITY OF PERSONAL REPRESENTATIVE OF
DECEASED PERSON FOR WASTE COMMITTED BY THAT PERSON**

(30 Chas. 2 c. 7 (1678) and 4 Will. and Mary c. 24, section 12 (1692))

SCHEDULE 2—continued

PART 14—RENEWAL OF HEAD LEASE WITHOUT SURRENDER OF UNDER-LEASES

(4 Geo. 2 c. 28, section 6 (1730))

PART 15—ACTION FOR USE AND OCCUPATION OF LAND

(11 Geo. 2 c. 19, section 14 (1737))

PART 15A—LIABILITY FOR FIRES ACCIDENTALLY BEGUN

(24 Geo. 3 c. 78, section 86 (1774))

PART 17—TRIALS FOR TREASON

(39 and 40 Geo. 3 c. 93 (1800))

PART 18—POWERS OF SUPREME COURT IN RESPECT OF CHARITABLE TRUSTS

(52 Geo. 3 c. 101 (1812))

6. Interpretation

For the purposes of this Part the reference in clause 5 to an order made by the Supreme Court under clause 2, shall, in a case where an appeal has been instituted against such an order, be read as a reference to the order as affirmed or varied on appeal or, if another order is made in place of it on appeal, as a reference to that other order.

PART 19—WRITS OF HABEAS CORPUS

(56 Geo. 3 c. 100 (1816))

PART 20A—POWER TO APPOINT PROPERTY

(37 and 38 Vic. c. 37 (1874))

2. Application

This Part applies to appointments made after the commencement of this Part in exercise of powers created before or after the commencement of this Part.

PART 21—EVIDENCE OF MATTERS RELATING TO COLONIAL STOCK

(40 and 41 Vic. c. 59, sections 17 and 18 (1877))

Imperial Acts (Substituted Provisions) Act 1986

SCHEDULE 2—continued

**Part 21—Evidence of Matters Relating to Colonial Stock—
CONTINUED**

Imperial Acts (Substituted Provisions) Act 1986

NOTES

1. The *Imperial Acts (Substituted Provisions) Act 1986* as shown in this reprint comprises Act No. 19, 1986 amended as indicated in the Tables below.

The Australian Capital Territory received Self-Government on 11 May 1989.

For details regarding the application of the *Imperial Acts (Substituted Provisions) Act 1986* from 11 May 1989 to 1 July 1990 see the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth (No. 106, 1988) and the *A.C.T. Self-Government (Consequential Provisions) Act 1988* of the Commonwealth (No. 109, 1988), in particular sections 3, 34 and Schedules 3 and 5 and section 12 respectively. The *Self-Government (Citation of Laws) Act 1989* (No. 21, 1989) and the *Reserved Laws (Interpretation) Ordinance 1989* (No. 25, 1989) effect the citation change of Ordinance to Act and affect references to Commonwealth legislation.

2. The *Legislation (Republication) Act 1996* (No. 51, 1996) authorises the Parliamentary Counsel in preparing a law for republication, to make certain editorial and other formal amendments in accordance with current legislative drafting practice. Those amendments make no change in the law. Amendments made pursuant to that Act do not appear in the Table of Amendments but details may be obtained on request from the Parliamentary Counsel's Office.

Table of Laws

Law	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Imperial Acts (Substituted Provisions) Ordinance 1986</i>	19, 1986	26 June 1986	26 June 1986	
<i>Administrative Arrangements (Consequential Amendments) Ordinance 1987</i>	37, 1987	24 July 1987	S. 6: 24 July 1987 (a)	—
<i>Imperial Acts (Substituted Provisions) (Amendment) Ordinance 1987</i>	45, 1987	2 Sept 1987	2 Sept 1987	—
<i>Administrative Arrangements (Consequential Amendments) Ordinance 1988</i>	17, 1988	22 Apr 1988	22 Apr 1988	S. 4
<i>Self-Government (Consequential Amendments) Ordinance 1989</i>	38, 1989	10 May 1989	Ss. 1 and 2: 10 May 1989 Remainder: 11 May 1989 (see s. 2 (2) and <i>Gazette</i> 1989, No. S164)	—

(Reprinted as at 31 March 1992)

Imperial Acts (Substituted Provisions) Act 1986

NOTES—continued

Table of Laws—continued

Law	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Statutory Offices (Miscellaneous Provisions) Act 1994</i>	97, 1994	15 Dec 1994	Ss. 1 and 2: 15 Dec 1994 Remainder: 15 Dec 1994 (see <i>Gazette</i> 1994, No. S293)	Part III (ss. 4-9)
<i>Land Titles (Consequential Amendments) Act 1995</i>	54, 1995	20 Dec 1995	20 June 1996 (see s. 2)	—
<i>Law Reform (Abolitions and Repeals) Act 1996</i>	1, 1996	4 Mar 1996	4 Mar 1996	—
<i>Law Reform (Miscellaneous Provisions) Act 1999</i>	1999 No 66	10 Nov 1999	10 Nov 1999	—

- (a) The *Imperial Acts (Substituted Provisions) Act 1986* was amended by section 6 only of the *Administrative Arrangements (Consequential Amendments) Ordinance 1987*, subsection 2 (2) of which provides as follows:

“(2) The remaining provisions of this Ordinance shall come into operation on the day on which this Ordinance is notified in the *Gazette*.”

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
S. 2	am. No. 17, 1988; No. 38, 1989
S. 2A	ad. No. 45, 1987
S. 9	rep. No. 38, 1989
S. 11	rep. No. 17, 1988
Schedule 1	am. No. 45, 1987; No. 17, 1988; No. 38, 1989
Schedule 2	am. Nos. 37 and 45, 1987; No. 38, 1989; Act No. 97, 1994; No. 54, 1995; No. 1, 1996; 1999 No 66 s 6 sch 3