

AUSTRALIAN CAPITAL TERRITORY

Imperial Acts Application (Amendment) Ordinance 1987

No. 44 of 1987

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 27 August 1987.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

MICHAEL TATE
Parliamentary Secretary for Justice
and a member of the Executive Council
for and on behalf of the Attorney-General

An Ordinance to amend the *Imperial Acts Application Ordinance 1986*

Short title

1. This Ordinance may be cited as the *Imperial Acts Application (Amendment) Ordinance 1987*.¹

Principal Ordinance

2. In this Ordinance, "Principal Ordinance" means the *Imperial Acts Application Ordinance 1986*.²

Interpretation

(Ord. 28/87)—Cat. No.

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

3. Section 3 of the Principal Ordinance is amended by inserting after the definition of “commencing date” in subsection (1) the following definition:

“continued applied Imperial Act” means an applied Imperial Act:

- (a) the citation of which is specified in Schedule 1 or 2; or
- (b) the citation of which is specified in subsection 4 (1), being an Act that had not ceased to be in force in the Territory before the commencement of this definition by virtue of subsection 4 (2) or (3);

and includes any other applied Imperial Act, or any part of any other applied Imperial Act, that is in force in the Territory as part of the law of the Territory;”.

4. After section 6 of the Principal Ordinance the following sections are inserted:

Interpretation of continued applied Imperial Acts

“6A. (1) The provisions of Schedule 5 apply, in accordance with this section, to and in relation to the construction and operation of Acts for the purpose of facilitating their interpretation.

“(2) Where the words ‘all Acts’ are set out at the end of:

- (a) a clause or subclause of Schedule 5; or
- (b) a definition in subclause 5 (1) of Schedule 5;

that clause, subclause or definition applies, so far as applicable, to all Acts whenever passed.

“(3) Where a year or a date is set out at the end of:

- (a) a clause or subclause of Schedule 5; or
- (b) a definition in subclause 5 (1) of Schedule 5;

that clause, subclause or definition applies, so far as applicable, to Acts passed after the end of that year, or on or after that date, as the case may be.

“(4) Where a reference to subsection (5), (6), (7) or (8) of this section is set out at the end of a clause or subclause of Schedule 5, that clause or subclause applies to Acts as set out in that subsection.

“(5) Clause 6 of Schedule 5 applies:

- (a) to Acts passed in or before the year 1850 in relation to offences punishable on indictment or summary conviction; and
- (b) to Acts passed after the year 1850.

“(6) Clause 10 of Schedule 5 applies to Acts, whenever passed, in so far as they relate to subordinate legislation made after the year 1889.

“(7) Clause 12 of Schedule 5 applies to Acts passed after the year 1889 in so far as they relate to rules, regulations and by-laws.

“(8) Subclause 15 (2) applies:

- (a) in so far as it relates to references in another enactment to a repealed enactment, to Acts passed after the year 1889; and
- (b) in so far as it relates to subordinate legislation, to Acts whenever passed.

“(9) Where a preceding subsection of this section does not apply to a clause or subclause of Schedule 5 or to a definition in subclause 5 (1) of Schedule 5, then that clause, subclause or definition applies to Acts according to its tenor.

“(10) The words ‘all Acts’, a year, a date or a reference to a subsection of this section set out at the end of a clause or subclause of Schedule 5, or of a definition in subclause 5 (1) of Schedule 5, is so set out for the purpose of the application of this section and does not form part of the clause, subclause or definition at the end of which it is set out.

“(11) In this section, ‘Act’ has the same meaning as it has in Schedule 5.

Citation of continued applied Imperial Acts

“6B. A continued applied Imperial Act that has been given a citation by the Imperial Act 59 and 60 Vic. c. 14 (Short Titles Act, 1896) or by the Imperial Act 11 and 12 Geo. 6 c. 62 (Statute Law Revision Act, 1948) may, in its application as a law of the Territory, be cited by the citation so given to it.

Multiple offences

“6C. (1) Where an act or omission constitutes an offence under:

- (a) 2 or more continued applied Imperial Acts; or
- (b) a continued applied Imperial Act and another law (not being a law of the Commonwealth or another continued applied Imperial Act) in force in the Territory as part of the law of the Territory;

the offender shall, unless the contrary intention appears, be liable to be punished under either or any of those continued applied Imperial Acts, or under that continued applied Imperial Act or that law, as the case may be, but shall not be liable to be punished more than once for the same offence.

“(2) Where an act or omission constitutes an offence under a continued applied Imperial Act and a law of the Commonwealth, unless the contrary intention appears, the offender shall not be liable to be punished under that continued applied Imperial Act if the offender has been charged with that offence under that law of the Commonwealth and the charge has been heard and determined.”.

5. After Schedule 4 of the Principal Ordinance the following Schedule is added:

“SCHEDULE 5

Section 6A

“Part 1—Preliminary

Interpretation of this Schedule

“1. (1) In this Schedule:

‘Act’ means a continued applied Imperial Act;

‘subordinate legislation’ means Orders in Council, orders, rules, regulations, schemes, warrants, by-laws and other instruments made under an Act.

“(2) In this Schedule, a reference to the Crown shall be read as a reference to the Sovereign, for the time being, of England, Great Britain or the United Kingdom, as the case requires.

“(3) In a provision of this Schedule, a reference to an Act shall be read as a reference to an Act to which that provision applies, but this subsection does not apply to references to enactments or to other Acts in subclause 16 (2).

“Part 2—General provisions as to enactment and operation

Words of enactment

“2. Every section of an Act takes effect as a substantive enactment without introductory words. (1850)

Judicial notice

“3. Every Act is a public Act to be judicially noticed as such. (all Acts)

Time of commencement

“4. An Act or provision of an Act shall be taken to have come into force:

- (a) where provision was made for it to come into force on a particular day, at the beginning of that day; or

SCHEDULE 5—continued

- (b) where no provision was made for its coming into force, at the beginning of the day on which the Act received the Royal Assent. (1889)

“Part 3—Interpretation and construction

Definitions

“5. (1) In an Act, unless the contrary intention appears:

‘Bank of England’ means, as the context requires, the Governor and Company of the Bank of England or the bank of the Governor and Company of the Bank of England; (all Acts)

‘British Islands’ means:

- (a) in an Act passed after the year 1889 and before the establishment of the Irish Free State—the United Kingdom, the Channel Islands and the Isle of Man; and
- (b) in an Act passed after the establishment of the Irish Free State—the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland;

‘British possession’ means any part of the dominions of the Crown outside the United Kingdom; and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature are deemed, for the purposes of this definition, to be one British possession; (1889)

‘British subject’ and ‘Commonwealth citizen’ mean, respectively:

- (a) a person who, under the *Australian Citizenship Act 1948* of the Commonwealth, is an Australian citizen or who, by a law of a country to which section 7 of that Act applies, is a citizen of that country; or
- (b) any other person who has the status of a British subject under that Act; (all Acts)

‘Colonial legislature’ and ‘legislature’ in relation to a British possession, mean the authority, other than the Parliament of the United Kingdom or the Crown in Council, competent to make laws for the possession; (1889)

‘colony’ means any part of the dominions of the Crown outside the British Islands and, in an Act passed in or after the year 1889, includes any such part of those dominions that has, after the passing of that Act, ceased, by virtue of a provision of a later Act of the United Kingdom, to be a colony, but only in the application of that first-mentioned Act before that provision of that later Act came into operation, but does not include:

- (a) countries having fully responsible status within the Commonwealth of Nations; and
- (b) associated states;

SCHEDULE 5—continued

and where parts of such dominions are under both a central and local legislature, all parts under the central legislature are deemed for the purposes of this definition to be one colony; (1889)

‘commencement’, in relation to an Act or enactment, means the time when the Act or enactment comes into force; (all Acts)

‘Comptroller and Auditor General’ means the Comptroller-General of the receipt and issue of the Crown’s Exchequer and Auditor-General of Public Accounts appointed in pursuance of the Imperial Exchequer and Audit Departments Act 1866; (all Acts)

‘Consular officer’ has the meaning assigned by Article 1 of the Vienna Convention set out in the Schedule to the *Consular Privileges and Immunities Act 1972* of the Commonwealth; (all Acts)

‘Governor-General’ includes any person who for the time being has the powers of the Governor-General, and ‘Governor’, in relation to any British possession, includes the officer for the time being administering the government of that possession; (1889)

‘land’ includes messuages, tenements and hereditaments, and houses and buildings, of any tenure; (1850)

‘Lord Chancellor’ means the Lord High Chancellor of Great Britain; (all Acts)

‘month’ means calendar month; (1850)

‘oath’ and ‘affidavit’ include affirmation and declaration, and ‘swear’ includes affirm and declare; (all Acts)

‘person’:

(a) in relation to a provision of an Act, whenever passed, relating to an offence punishable or indictment or on summary conviction—includes a body corporate; and

(b) in relation to a provision of an Act, passed in or after the year 1889—includes a body of persons corporate or unincorporate;

‘the Privy Council’ means the Lords and others of the Crown’s Most Honourable Privy Council; (all Acts)

‘rules of court’, in relation to any court, means rules made by the authority having power to make rules or orders regulating the practice and procedure of that court, and the power of the authority to make rules of court (as above defined) includes power to make such rules for the purpose of any Act which directs or authorises anything to be done by rules of court; (1889)

‘Secretary of State’ means one of the Principal Secretaries of State of the Crown; (all Acts)

‘statutory declaration’ means a declaration made by virtue of the *Statutory Declarations Act 1959* of the Commonwealth or of a law of a State or Territory, or of a country

SCHEDULE 5—continued

other than Australia that authorises a declaration to be made otherwise than in the course of legal proceedings; (all Acts)

‘United Kingdom’ means Great Britain and Northern Ireland; (12 April 1927)

‘writing’ includes typing, printing, lithography, photography and other modes of representing or reproducing words in a visible form, and expressions referring to writing are construed accordingly. (all Acts)

“(2) In an Act, unless the contrary intention appears:

- (a) a reference to a court of summary jurisdiction or to a Magistrate’s Court shall be read as a reference to the Magistrates Court of the Territory; and
- (b) a reference to any other court shall be read as a reference to the Supreme Court of the Territory. (all Acts)

Gender and number

“6. In any Act, unless the contrary intention appears:

- (a) words importing the masculine gender include the feminine;
- (b) words importing the feminine gender include the masculine; and
- (c) words in the singular include the plural and words in the plural include the singular. (subsection 6A (5))

References to service by post

“7. Where an Act authorises or requires any document to be served by post (whether the expression ‘serve’ or the expression ‘give’ or ‘send’ or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. (1889)

References to distance

“8. In the measurement of any distance for the purposes of an Act, that distance shall, unless the contrary intention appears, be measured in a straight line on a horizontal plane. (1889)

References to the Sovereign

“9. In any Act a reference to the Sovereign reigning at the time of the passing of the Act is to be construed, unless the contrary intention appears, as a reference to the Sovereign for the time being. (all Acts)

Construction of subordinate legislation

“10. Where an Act confers power to make subordinate legislation, expressions used in that legislation have, unless the contrary intention appears, the meaning that they bear in the Act. (subsection 6A (6))

SCHEDULE 5—continued**“Part 4—Statutory powers and duties****Continuity of powers and duties**

“11. (1) Where an Act confers a power or imposes a duty it is implied, unless the contrary intention appears, that the power may be exercised, or the duty is to be performed, from time to time as occasion requires. (1889)

“(2) Where an Act confers a power or imposes a duty on the holder of an office as such, it is implied, unless the contrary intention appears, that the power may be exercised, or the duty is to be performed, by the holder for the time being of the office. (1889)

Implied power to amend

“12. Where an Act confers power to make:

- (a) rules, regulations or by-laws; or
- (b) Orders in Council, orders or other subordinate legislation to be made by statutory instrument;

it implies, unless the contrary intention appears, a power, exercisable in the same manner and subject to the same conditions or limitations, to revoke, amend or re-enact any instrument made under the power. (subsection 6A (7))

“Part 5—Repealing enactments**Repeal of repeal**

“13. Where an Act repeals a repealing enactment, the repeal does not revive any enactment previously repealed unless words are added reviving it. (1850)

General savings

“14. Without prejudice to clause 13, where an Act repeals an enactment, the repeal does not, unless the contrary intention appears:

- (a) revive anything not in force or existing at the time at which the repeal takes effect;
- (b) affect the previous operation of the enactment repealed or anything duly done or suffered under that enactment;
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under that enactment;
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against that enactment; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed. (1889)

SCHEDULE 5—continued

Repeal and re-enactment

“15. (1) Where an Act repeals a previous enactment and substitutes provisions for the enactment repealed, the repealed enactment remains in force until the substituted provisions come into force. (1850)

“(2) Where an Act repeals and re-enacts, with or without modification, a previous enactment, then, unless the contrary intention appears:

- (a) any reference in any other enactment to the enactment so repealed shall be construed as a reference to the provision re-enacted; and
- (b) in so far as any subordinate legislation made or other thing done under the enactment so repealed, or having effect as if so made or done, could have been made or done under the provision re-enacted, it shall have effect as if made or done under that provision. (subsection 6A (8))

“Part 6—Miscellaneous

Citation of other Acts

“16. (1) Where a continued applied Imperial Act refers to another continued applied Imperial Act (being an Act the citation of which is set out in column 1 of Schedule 2 of this Ordinance) by year, statute, session or chapter, or to a section or other portion of such another continued applied Imperial Act by number of letter, the reference shall, unless the contrary intention appears, be read as a reference:

- (a) subject to paragraph (b), to that other Act as printed in Schedule 3 of this Ordinance, or to the section or other portion having that number or letter of that Act as so printed, as the case may be; or
- (b) if, on or after the commencement of the *Imperial Acts Application (Amendment) Ordinance 1987*, that Act has been amended by an Ordinance, to that Act as so printed and so amended, or to the section or other portion having that number or letter of that Act as so printed and so amended, as the case may be. (all Acts)

“(2) Subject to subclause (1), where an Act cites another Act by year, statute, session or chapter, or a section or other portion of another Act by number or letter, the reference shall, unless the contrary intention appears, be read as referring:

- (a) in the case of Acts included in any revised edition of the Imperial statutes printed by authority, to that edition;
- (b) in the case of Acts not so included but included in the edition prepared under the direction of the Record Commission, to that edition; and
- (c) in any other case, to the Acts printed by the Printer to the Crown, or under the superintendence or authority of the Crown’s Stationery Office. (1889)

“(3) An Act may continue to be cited by the short title authorised by any enactment notwithstanding the repeal of that enactment. (all Acts)

SCHEDULE 5—continued**References to other enactments**

“17. (1) Where an Act describes or cites a portion of an enactment by referring to words, sections or other parts from or to which (or from and to which) the portion extends, the portion described or cited includes the words, sections or other parts referred to unless the contrary intention appears. (1889)

“(2) Subject to subclause (3), where an Act refers to an enactment, the reference, unless the contrary intention appears, is a reference to that enactment as amended, and includes a reference thereto as extended or applied, by or under any other enactment, including any other provision of that Act. (1889)

“(3) Where a continued applied Imperial Act refers to another continued applied Imperial Act, the reference, unless the contrary intention appears, shall be read as a reference to that other Act as for the time being amended and in force in the Territory as part of this law of the Territory. (all Acts)

Application to other instruments

“18. Paragraph 4 (a), clause 16, and the definition of the United Kingdom in clause 5 apply, so far as applicable and unless the contrary intention appears, to subordinate legislation in force in the Territory under a continued applied Imperial Act in like manner as they apply to Acts. (all Acts).”

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 2 September 1987.
2. No. 93, 1986.