

# AUSTRALIAN CAPITAL TERRITORY

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## Subordinate Laws Ordinance 1989

No. 24 of 1989

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 April 1989.

BILL HAYDEN  
Governor-General

By His Excellency's Command,

CLYDE HOLDING  
Minister of State for the Arts  
and Territories

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An Ordinance relating to subordinate laws consequential upon the establishment of the Territory as a body politic under the Crown

(Ord. 22/89)—Cat. No.

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

**Short title**

1. This Ordinance may be cited as the *Subordinate Laws Ordinance 1989*.<sup>1</sup>

**Commencement**

2. (1) Section 1 and this section commence on the day on which this Ordinance is notified in the *Gazette*.

- (2) The remaining provisions commence on the date of commencement of section 22 of the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth.

**Exercise of regulation-making power**

3. Where an Act empowers the Executive to make regulations under the Act, it shall be sufficient if the regulations are signed by any 2 Ministers who are members of the Executive.

**Numbering and citation**

4. (1) The subordinate laws made in each calendar year shall be numbered in regular arithmetic series as nearly as may be in the order in which they are made.

- (2) A subordinate law may, without prejudice to any other mode of citation provided by law, be cited by its number and the calendar year in which made.

- (3) In this section, “subordinate law” means regulations, rules or by-laws but does not include rules of court that relate only to dates of sittings of a court.

**Exercise of certain powers between notification and commencement of Act**

5. (1) Where an Act (in this section referred to as the Act concerned) being—

- (a) an Act that is not to commence on the day on which it is notified in the *Gazette*; or
- (b) a converted Ordinance that did not commence before self-government day;

confers power, or amends another Act in such a manner that the other Act, as amended, confers power, to make an appointment or to make a subordinate law or an instrument of an administrative nature, then, unless the contrary intention appears, the power may be exercised, and anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment,

subordinate law or instrument into effect, before the Act concerned commences as if it had commenced.

(2) An appointment, subordinate law or instrument made by virtue of subsection (1) or, if such a law or instrument contains 2 or more provisions, each of those provisions, takes effect—

- (a) on the day on which the Act concerned commences; or
- (b) on the day on which the appointment, subordinate law, instrument or provision, as the case may be, would have taken effect if the Act concerned had been in operation when the appointment, subordinate law or instrument was made;

whichever is the later.

(3) Where an Act is to commence on such date as is fixed by a Minister by notice in the *Gazette*, the notice may be published in the *Gazette* at any time after the date on which the Act is notified in the *Gazette*.

(4) Where this section applies to an Act because the Act amends another Act in the manner referred to in subsection (1) and that other Act has not commenced, this section has effect as if the references in subsections (1) and (2) to the commencement of the Act concerned were references to the commencement of the other Act as amended by the Act concerned.

(5) In subsections (1), (2), (3) and (4), a reference to an Act shall be read as including a reference to any provision or provisions of an Act.

(6) This section applies, so far as the context permits, to a subordinate law as if it were an Act, and in that application references in this section to the Act concerned shall be read as references to the subordinate law and references in this section to an Act other than the Act concerned shall be read as references to another subordinate law.

#### **Notification, tabling and disallowance**

6. (1) A subordinate law—

- (a) shall be notified in the *Gazette*;
- (b) takes effect on the day of notification or, if that law otherwise provides, as so provided; and
- (c) shall be laid before the Legislative Assembly within 15 sitting days after the day of notification.

(2) Publication in the *Gazette* of a notice of regulations, rules or by-laws having been made and of the place or places where copies can be purchased shall be taken to be sufficient compliance with paragraph (1) (a).

(3) On the day of publication of a notice under subsection (2) or as soon as practicable after that day, copies of the regulations, rules or by-laws to which the notice relates shall be made available for purchase at the place, or at each of the places, specified in the notice.

(4) Where, on the day of publication of a notice under subsection (2), there are no copies of the regulations, rules or by-laws to which the notice relates available for purchase at the place, or at any of the places, specified in the notice, the relevant Minister shall cause to be laid before the Legislative Assembly within 15 sitting days a statement that copies of those regulations, rules or by-laws were not so available and the reason why they were not so available.

(5) Failure to comply with the requirement of subsection (3) or (4) shall not be taken to constitute a failure to comply with subsection (1).

(6) If a subordinate law is not laid before the Legislative Assembly in accordance with paragraph (1) (c), it shall be taken to be void and of no effect.

(7) If the Legislative Assembly, within 15 sitting days after a subordinate law has been laid before it, passes a resolution disallowing that law or a provision of that law, that law or provision shall cease to have effect.

(8) Where a subordinate law or a provision of a subordinate law is disallowed or becomes void and of no effect under this section, that has the same effect as a repeal of that law or provision.

(9) Where—

- (a) a subordinate law or a provision of a subordinate law (in this subsection called “the relevant law”) is disallowed or becomes void and of no effect under this section; and
- (b) the relevant law repealed, in whole or in part, a previous law that was in force immediately before the relevant law commenced;

the previous law is revived from and including the date of the disallowance or the date on which the relevant law became void and of no effect, as if the relevant law had not been made.

(10) If—

- (a) a subordinate law or a provision of a subordinate law is disallowed under this section; and
- (b) another subordinate law the same in substance, or containing a provision the same in substance, as the law or provision so disallowed is made within 6 months;

that other law or provision is void and of no effect unless the Legislative Assembly has rescinded the resolution by which the previous law or provision was disallowed.

**(11)** In subsection (4), “relevant Minister”, in relation to a subordinate law, means—

- (a) the Minister administering the Act under which, or the part of the Act for the purposes of which, the subordinate law was made; or
- (b) if there are 2 or more such Ministers—either or any of them.

**(12)** In this section, “subordinate law” means—

- (a) regulations, rules or by-laws; or
- (b) a determination made by a Minister pursuant to a provision of an Act empowering him or her to determine, by notice in writing, fees or charges for the purposes of the Act.

### **Retrospectivity**

**7.** A subordinate law shall not be expressed to take effect from a date before the date of its notification in the *Gazette* where, if the law so took effect—

- (a) the rights of a person (other than the Territory or a Territory authority) existing at the date of notification would be affected in a manner prejudicial to that person; or
- (b) liabilities would be imposed on a person (other than the Territory or a Territory authority) in respect of any act or omission before the date of notification;

and where any subordinate law contains a provision in contravention of this subsection, that provision is void and of no effect.

### **Prescribing matters by reference to other instruments**

**8. (1)** Where an Act authorises or requires provision to be made for or in relation to any matter by a subordinate law or disallowable instrument, the subordinate law or disallowable instrument may, unless the contrary intention

appears, make provision for or in relation to that matter by applying, adopting or incorporating, with or without modification—

- (a) the provisions—
  - (i) of any Act, of any subordinate law or of any disallowable instrument under an Act;
  - (ii) of any Commonwealth Act, or of any regulations, rules or disallowable instrument under a Commonwealth Act; or
  - (iii) of any State Act, or of any regulations or rules under a State Act;

as in force at a particular time or as in force from time to time; or

- (b) any matter contained in any other instrument or writing as in force or existing at the commencement of the subordinate law or disallowable instrument;

but, unless the contrary intention appears, the subordinate law or disallowable instrument shall not, except as provided by this section, make provision for or in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

(2) In subsection (1), “disallowable instrument” means an instrument that is, under the Act or Commonwealth Act pursuant to which it is made, a disallowable instrument for the purposes of section 10 of this Act or section 46A of the *Acts Interpretation Act 1901* of the Commonwealth (as the case requires).

### **Application of *Interpretation Act 1967***

9. (1) Parts I, II and III of the *Interpretation Act 1967* apply in relation to a subordinate law or an instrument of an administrative nature made, granted or issued under an Act as if the subordinate law or instrument were an Act and as if each of its provisions were a section of an Act.

(2) Unless the contrary intention appears, an expression used in a subordinate law or in an instrument referred to in subsection (1) has the same meaning as in the Act under which the subordinate law or instrument was made, granted or issued or the part of that Act for the purposes of which the subordinate law or instrument was made, granted or issued (as the case requires).

(3) A subordinate law or an instrument referred to in subsection (1) shall be read and construed subject to the Act under which it was made, granted or issued and so as not to exceed the power conferred on the person or body by which it was made, granted or issued, to the intent that where the subordinate law or instrument would, but for this subsection, have been construed as being in excess of the power conferred upon that person or body, it shall be deemed to be a valid law or instrument to the extent to which it is not in excess of that power.

### **Disallowable instruments**

10. Where an Act or a subordinate law confers power 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 Act or subordinate law otherwise provides—

- (a) section 6 of this Act and section 38 of the *Interpretation Act 1967* apply in relation to the instrument as if—
  - (i) references to a subordinate law or to an Act were references to the instrument;
  - (ii) references to a provision of a subordinate law or to a part of an Act were references to a provision of the instrument; and
  - (iii) references to repeal were references to revocation; and
- (b) section 7 applies in relation to the instrument as if the instrument were a subordinate law.

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### **NOTE**

1. Notified in the *Commonwealth of Australia Gazette* on 3 May 1989.