



Australian Capital Territory

# **Subordinate Laws Act 1989**

**A1989-24**

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Authorised by the ACT Parliamentary Counsel

## **About this republication**

### **The republished law**

This is a republication of the *Subordinate Laws Act 1989* effective from 10 November 1999 to 20 December 2000.

### **Kinds of republications**

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- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.



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# SUBORDINATE LAWS ACT 1989

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

Updated as at 10 November 1999

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

### 1. Short title

This Act may be cited as the *Subordinate Laws Act 1989*.

### 2. Commencement

(1) Section 1 and this section commence on the day on which this Act 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.

### 2A. Ambit of regulation-making power

(1) A provision of an Act empowering the Executive to make regulations for the Act shall be taken to empower the Executive to make regulations, not inconsistent with the Act, prescribing matters—

- (a) required or permitted by the Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to the Act.

(2) The application of subsection (1) in relation to a provision of an Act is not displaced by reason only that the Act also empowers the Executive to make regulations under the Act in relation to specified matters.

(3) In this section—

*for* an Act includes for the purposes of the Act.

**3. Exercise of regulation-making power**

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.

**4. Numbering and citation**

(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.

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

- (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.

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- (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.

**6. Notification, tabling and disallowance**

- (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 6 sitting days after the day of notification.
- (2) Publication in the *Gazette* of a notice of a subordinate law having been made and of the place or places where copies can be purchased shall be taken to be sufficient compliance with—
- (a) paragraph (1) (a); and
  - (b) any requirement in any Act or subordinate law that the first-mentioned subordinate law be published or notified in the *Gazette*.
- (3) On the day of publication of a notice under subsection (2) or as soon as practicable after that day, copies of the subordinate law 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 subordinate law 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

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12 sitting days a statement that copies of the subordinate law 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 ceases to have effect.

**(7)** If the Legislative Assembly, pursuant to a motion of which notice has been given within 6 sitting days after a subordinate law has been laid before it, by resolution disallows that law or a provision of that law, that law or provision ceases to have effect.

**(7A)** If, at the expiration of 6 sitting days after notice of a motion to disallow or amend a subordinate law or a provision of a subordinate law has been given in the Legislative Assembly (being notice given within 6 sitting days after the subordinate law was laid before the Legislative Assembly)—

- (a) the notice has not been withdrawn and the motion has not been called on; or
- (b) the motion has been called on and moved and has not been withdrawn or otherwise disposed of;

the subordinate law or provision specified in the motion shall be deemed to have been disallowed and ceases to have effect, or shall be deemed to have been amended, as the case requires.

**(7B)** If, before the expiration of 6 sitting days after notice of a motion to disallow or amend a subordinate law or a provision of a subordinate law has been given in the Legislative Assembly (being notice given within 6 sitting days after the subordinate law was laid before the Legislative Assembly)—

- (a) the Legislative Assembly is dissolved or expires; and
- (b) at the time of the dissolution or expiry—
  - (i) the notice has not been withdrawn and the motion has not been called on; or
  - (ii) the motion has been called on and moved and has not been withdrawn or otherwise disposed of;

the subordinate law shall, for the purposes of subsections (7), (7A) and (11), be deemed to have been laid before the Legislative Assembly on the first sitting day of the Legislative Assembly after the next general election of members of the Legislative Assembly.



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**(8)** Where a subordinate law or a provision of a subordinate law ceases to have 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”) ceases to have 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 on which the relevant law ceased to have 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 or is to be deemed to have been 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 or to be deemed to have been disallowed is made within 6 months;

that other law or provision is of no effect unless—

- (c) if the first-mentioned law or provision was disallowed by resolution—the Legislative Assembly has rescinded the resolution; or
- (d) if the first-mentioned law or provision was to be deemed to have been disallowed—the Legislative Assembly by resolution has approved the making of a subordinate law the same in substance, or containing a provision the same in substance, as the law or provision to be deemed to have been disallowed.

**(11)** If the Legislative Assembly, pursuant to a motion of which notice has been given within 6 sitting days after a subordinate law has been laid before it, by resolution amends that law, then, subject to this section, that law is amended and has effect accordingly.

**(12)** The relevant Minister shall cause notice of—

- (a) a resolution referred to in subsection (11); or
- (b) the fact that a subordinate law is to be deemed to have been amended by virtue of subsection (7A);

to be published in the *Gazette*.

**(13)** An amendment made, or to be deemed to have been made, under this section takes effect—

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- (a) on the day on which the notice referred to in subsection (12) is published in the *Gazette*; or
- (b) on the commencement of the subordinate law, or the part of the subordinate law, amended or to be deemed to have been amended, as the case requires;

whichever is the later or, if the amendment otherwise provides, as so provided.

**(14)** An amendment made, or to be deemed to have been made, under this section shall, for the purposes of the application of sections 7, 8 and 9, be taken to have been made—

- (a) by a subordinate law under the Act containing the power to make the subordinate law amended or to be deemed to have been amended;
- (b) by the person or body so empowered; and
- (c) in compliance with any condition precedent, and in accordance with any procedural requirement, applicable to the making of such a subordinate law.

**(15)** Subject to subsection (16), an amendment of a subordinate law made, or to be deemed to have been made, under this section does not prevent the further amendment or repeal of that subordinate law by a later subordinate law.

**(16)** Subsection (10) applies in relation to a subordinate law amended, or to be deemed to have been amended, under this section as if the reference in that subsection to a subordinate law disallowed or to be deemed to have been disallowed were a reference to the first-mentioned subordinate law before being so amended or deemed to have been amended, as the case requires.

**(17)** Notwithstanding subsections (7A) and (11), an amendment of a subordinate law made, or to be deemed to have been made, under this section which would, but for this subsection, have the effect of waiving or altering any fee, charge, penalty or other amount payable to the Territory is of no effect.

**(18)** Notwithstanding subsections (7A) and (11), an amendment of a subordinate law, other than a regulation, rule or by-law, made, or to be deemed to have been made, under this section is of no effect.

**(19)** In this section—

“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;

“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.

**7. Retrospectivity**

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 section, that provision is void and of no effect.

**8. Prescribing matters by reference to other instruments**

(1) Where an Act authorises or requires provision to be made for or in relation to any matter by a subordinate law, the subordinate law 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 or subordinate law; or
  - (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;

but, unless the contrary intention appears, the subordinate law 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 this section—

***disallowable instrument*** means—

- (a) for an instrument under an Act—a disallowable instrument under section 10; or
- (b) for an instrument under a Commonwealth Act—a disallowable instrument under section 46A of the *Acts Interpretation Act 1901* (Cwlth).

#### **8A. Amendment by Act**

- (1) Where a subordinate law made under an Act has been amended by any Act, that subordinate law as so amended may be amended or repealed by a subordinate law made under the first-mentioned Act.
- (2) Subsection (1) applies in relation to amendments effected before or after the commencement of this section.

#### **9. Application of *Interpretation Act 1967***

- (1) The *Interpretation Act 1967* applies in relation to a subordinate law or an instrument of an administrative nature made 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 or the part of that Act for the purposes of which the subordinate law or instrument was made (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 and so as not to exceed the power conferred on the person or body by which it was made, 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.

#### **10 Disallowable instruments**

- (1) In this section—

***disallowable instrument*** means a statutory instrument that is declared by an Act or subordinate law to be a disallowable instrument for this Act, whether or not the instrument is declared to be a disallowable instrument for the purposes of this section.

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(2) The following sections of this Act apply to a disallowable instrument as if it were a subordinate law:

- section 6 (Notification, tabling and disallowance)
- section 7 (Retrospectivity)
- section 8 (Prescribing matters by reference to other instruments)
- section 8A (Amendment by Act)
- section 9 (Application of *Interpretation Act 1967*).

**11 Transitional provision—change of tabling and disallowance period etc**

(1) Section 6 as in force immediately before the commencement of this section continues to apply to a subordinate law (within the meaning of that section) that was notified in the *Gazette* before the commencement.

(2) The reference in subsection (1) to section 6 includes a reference to that section as applied by section 10.

(3) This section ceases to have effect 1 year after the day it commences.

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**NOTE**

1. The *Subordinate Laws Act 1989* as shown in this reprint comprises Act No. 24, 1989 amended as indicated in the Tables below.

Citation of Laws—The *Self-Government (Citation of Laws) Act 1989* (No. 21, 1989) altered the citation of most Ordinances so that after Self-Government day they are to be cited as Acts. That Act also affects references in ACT laws to Commonwealth Acts.

Table 1

**Table of Ordinances**

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Subordinate Laws Ordinance 1989</i>	24, 1989	3 May 1989	Ss. 1 and 2: 3 May 1989 Remainder: 11 May 1989 (see s. 2 (2) and <i>Gazette</i> 1989, No. S164)	

**Self-Government day 11 May 1989**

Table 2

**Table of Acts**

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Subordinate Laws (Amendment) Act 1991</i>	15, 1991	30 Apr 1991	30 Apr 1991	—
<i>Subordinate Laws (Amendment) Act 1994</i>	12, 1994	6 May 1994	6 May 1994	S. 5
<i>Subordinate Laws (Amendment) Act (No. 2) 1994</i>	20, 1994	20 May 1994	20 May 1994	—
<i>Subordinate Laws (Amendment) Act (No. 3) 1994</i>	106, 1994	22 Dec 1994	22 Dec 1994	S. 5
<i>Subordinate Laws (Amendment) Act 1999</i>	1999 No 52	17 Sept 1999	17 Sept 1999	s 5
<i>Law Reform (Miscellaneous Provisions) Act 1999</i>	1999 No 66	10 Nov 1999	10 Nov 1999	—

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**NOTE—continued**

**Table of Amendments**

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

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Provision	How affected
s 2A.....	ins 1994 No 20 am 1999 No 66 s 6 sch 3
s 6.....	am 1991 No 15; 1994 Nos 12, 20 and 106; 1999 No 52 s 4
ss 7, 8.....	am 1999 No 66 s 6 sch 3
s 9.....	am 1999 No 66 s 6 sch 3
s 10.....	rs 1999 No 66 s 6 sch 3
s 11.....	ins 1999 No 52 s 5

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