
ACTS INTERPRETATION AMENDMENT ACT 1981

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**ACTS INTERPRETATION AMENDMENT ACT 1981**

No. 39 of 1981

AN ACT to amend the Acts Interpretation Act 1931 to make further provision with respect to the interpretation of Acts of Parliament and instruments made under the authority of those Acts and to provide for certain related matters.

[Royal Assent 30 September 1981]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—This Act may be cited as the *Acts Interpretation Amendment Act 1981*. Short title.

2—(1) Except as provided in subsections (2) and (3), this Act shall commence on the date of assent to this Act. Commencement.

(2) Sections 8, 18, and 21 shall commence on 1st January 1982.

(3) Section 19 (1) (a) shall commence on the date of assent to this Act or, if the *Coastal Waters (State Powers) Act 1980* of the Commonwealth has not commenced at that date, on the date on which that Act commences.

Principal Act.

3—In this Act, the *Acts Interpretation Act 1931** is referred to as the Principal Act.

Amendment of
section 4 of
Principal Act
(Application
of Act).

4—(1) Section 4 of the Principal Act is amended by inserting the following subsection after subsection (1):—

(1A) For the purposes of applying this Act in the interpretation and construction of regulations made under an Act—

(a) a reference in this Act to the passing of an Act, or to the time of the passing of an Act, shall be construed as a reference to the making of the regulations or the time when the regulations are made, as the case may be;

(b) a reference in this Act to the Minister of the Crown for the time being administering an Act or enactment shall be construed as a reference to the Minister of the Crown administering the Act or enactment under which the regulations are made; and

(c) a reference in this Act to a section or other division of an Act or to a subsection or other division of a section shall be construed as a reference to—

(i) in the case of regulations, a regulation or other division of the regulations or, as the case may be, a subregulation or other division of such a regulation;

(ii) in the case of rules, a rule or other division of the rules or, as the case may be, a subrule or other division of such a rule; or

(iii) in the case of by-laws, a clause or other division of the by-laws or, as the case may be, a subclause or other division of such a clause.

(2) Section 4 of the Principal Act (as amended by subsection (1)) applies in the interpretation and construction of regulations that—

(a) are in operation at the commencement of this section;
or

(b) take effect after that commencement.

* See 22 Geo. V No. 59. For the Act, as amended to 1st July 1977, see the continuing Reprint of Statutes, Vol. 1. Subsequently amended by No. 11 of 1979.

5—(1) Section 5 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:—

Amendment of section 5 of Principal Act (Meaning of word "Act").

(2) In any Act, including this Act, a reference to an Act (including a reference to the Act in which the reference occurs) or to an Imperial Act or a Commonwealth Act includes a reference to any regulation made under that Act, Imperial Act, or Commonwealth Act.

(2) Section 5 of the Principal Act (as amended by subsection (1)) applies to a reference to an Act that—

(a) is in operation at the commencement of this section; or

(b) comes into operation after that commencement,

and whether the reference is contained in an Act passed before or after that commencement.

6—(1) Section 7 of the Principal Act is repealed and the following section is substituted:—

Substitution of section 7 of Principal Act.

7—In any Act, the expression "prescribed"—

Meaning of "prescribed".

(a) means prescribed by, or by regulations made under, the Act in which the word appears; and

(b) where reference is made to anything prescribed by an Act other than the Act in which the word appears, includes anything prescribed by any regulation made under that other Act.

(2) Section 7 of the Principal Act (as substituted by subsection (1)) applies to a reference to the expression "prescribed" where the expression appears in an Act—

(a) passed before and in force at the commencement of this section; or

(b) passed after that commencement.

7—(1) Section 7A of the Principal Act is repealed and the following section is substituted:—

Substitution of section 7A of Principal Act.

7A—(1) Where in an Act reference is made to a Part, division, section, Schedule, or form without anything in the context to indicate that a reference to a Part, division, section, Schedule, or form of some other Act is intended, the reference shall be construed as a reference to a Part, division, section, Schedule, or form of the Act in which the reference is made.

Construction of references to provisions of Acts, &c.

(2) Where in a section of an Act reference is made to a subsection, paragraph, subparagraph, or other division without anything in the context to indicate that a reference to a subsection, paragraph, subparagraph, or other division of some other section or provision is intended, the reference shall be construed as a reference to a subsection, paragraph, subparagraph, or other division of the section in which the reference is made.

(3) Where in a Schedule or part of a Schedule to an Act reference is made to a clause, subclause, paragraph, subparagraph, or other division without anything in the context to indicate that a reference to a clause, subclause, paragraph, subparagraph, or other division of some other provision is intended, the reference shall be construed as a reference to the clause, subclause, paragraph, subparagraph, or other division of the Schedule or the part of the Schedule in which the reference is made.

(2) Section 7A of the Principal Act (as substituted by subsection (1)) applies to and in relation to an Act that—

- (a) is in operation at the commencement of this section; or
- (b) comes into operation after that commencement.

Amendment of
section 9 of
Principal Act
(Meaning of
"commence-
ment").

8—Section 9 of the Principal Act is amended by omitting subsections (2) and (3) and substituting the following subsections:—

(2) Every Act to which the royal assent has been given by the Governor for or on behalf of the Sovereign before the commencement of section 8 of the *Acts Interpretation Amendment Act* 1981 shall, unless the contrary intention appears in the first-mentioned Act, be deemed to have come into operation on the day on which that Act received the royal assent.

(3) Every Act to which the royal assent is given by the Governor for and on behalf of the Sovereign on or after the date of commencement of section 8 of the *Acts Interpretation Amendment Act* 1981 shall, unless the contrary intention appears in the first-mentioned Act, come into operation on the fourteenth day after the day on which that Act receives the royal assent.

(4) Every Act reserved for the signification of the Sovereign's pleasure after the commencement of section 8 of the *Acts Interpretation Amendment Act 1981* shall, unless the contrary intention appears in that Act, come into operation on the day after the day on which a proclamation of the Governor signifying the Sovereign's assent is published or notified in the *Gazette*.

(5) Where an Act, or a regulation or other instrument or document made, issued, or granted under an Act, is expressed to commence, come into operation, or take effect on a particular day, it shall commence, come into operation, or take effect immediately on the expiration of the last preceding day.

9—(1) Section 11 of the Principal Act is repealed and the following section is substituted:—

Substitution of
section 11 of
Principal Act.

11—(1) Where a provision of an Act does not commence on the passing of the Act and that provision would, if it had commenced, confer power to—

Anticipatory
exercise of
powers.

(a) make an instrument of a legislative or administrative character;

(b) give or serve a notice or other document;

(c) appoint a person to a specified office;

(d) establish a specified body of persons, whether incorporated or not; or

(e) do any other thing for the purposes of the Act, then, unless the contrary intention appears, the power may, notwithstanding that that provision has not commenced, but subject to subsections (3) and (4), be exercised at any time after the passing of the Act to the extent that it is necessary or expedient for the purpose of bringing the Act, or specified provisions of the Act, into operation, or giving full effect to the Act, or specified provisions of the Act, when or after that provision commences.

(2) Where—

(a) a provision of an Act does not commence on the passing of the Act and the provision would, if it had commenced, amend another Act; and

(b) a provision of that other Act would, if the first-mentioned provision had commenced, confer power to—

- (i) make an instrument of a legislative or administrative character;
- (ii) give or serve a notice or other document;
- (iii) appoint a person to a specified office;
- (iv) establish a specified body of persons, whether incorporated or not; or
- (v) do any other thing for the purposes of that other Act,

then, unless the contrary intention appears, the power may, notwithstanding that the first-mentioned provision has not commenced, but subject to subsections (3) and (4), be exercised at any time after the passing of the Act in which the first-mentioned provision is contained to the extent that it is necessary or expedient for the purpose of giving full effect to that other Act, or specified provisions of that other Act, when or after the first-mentioned provision commences.

(3) Where a power to make an instrument of a legislative or administrative character, or to give or serve a notice or other document, is exercised as provided in subsection (1) or in subsection (2), that instrument, notice, or document shall take effect—

- (a) on the day on which the provision referred to in subsection (1) or, as the case may be, the provision first mentioned in subsection (2) commences; or
- (b) on the day on which it would have taken effect, if at the time when the instrument was made or the notice or document was served, the provision so mentioned or first mentioned had commenced,

whichever is the later.

(4) Where a power to appoint a person to a specified office, or to establish a specified body of persons, is exercised as provided in subsection (1) or subsection (2), the person so appointed may act in that office, or, as the case may be, the body so established may meet and perform and exercise its functions, duties, and powers, but only for a purpose referred to in subsection (1) or subsection (2) (whichever of those subsections is applicable).

(2) A power conferred by section 11 of the Principal Act (as substituted by subsection (1)), the exercise of which is dependent on the existence of a provision of the kind referred to in subsection (1) of that section or, as the case may be, first referred to in subsection (2) of that section, is exercisable where the Act in which the provision is contained—

- (a) is passed after the commencement of this section; or
- (b) was passed before that commencement but the provision had not come into operation before that commencement.

10—(1) Section 12 (1) of the Principal Act is amended by inserting “, in any Act, instrument, or document,” after “may”. Amendment of section 12 of Principal Act (References to Acts).

(2) Section 12 (2) of the Principal Act is amended by inserting “, in any Act, instrument, or document,” after “may”, where secondly occurring.

(3) Section 12 (3) of the Principal Act is amended as follows:—

- (a) by inserting “, in any Act, instrument, or document,” after “may”;
- (b) by inserting “or ‘Act of the Commonwealth’” after “‘Commonwealth Act’”.

11—(1) Section 13 of the Principal Act is amended by inserting the following subsection after subsection (5):— Amendment of section 13 of Principal Act (Citation of Acts).

(6) In any Act, a reference to or citation of an Imperial Act or a Commonwealth Act shall be deemed to include a reference to or citation of all subsequent enactments passed in amendment or substitution of the Imperial or Commonwealth Act so referred to or cited, whether those subsequent enactments are, or any of them is, passed before or after the passing of the Act in which the reference occurs.

(2) Section 13 of the Principal Act (as amended by subsection (1))—

- (a) applies to a reference to an Imperial Act or a Commonwealth Act that—
 - (i) is in operation at the commencement of this section; or

(ii) comes into operation after that commencement, and whether the reference is contained in an Act passed before or after that commencement; and

- (b) applies, in the case of a reference contained in an Act that came into operation before the commencement of this section, whether or not the reference is followed by words indicating that the reference includes subsequent amendments of the Imperial or Commonwealth Act referred to.

Amendment of
section 16 of
Principal Act
(Effect
of repeal,
expiry, &c.).

12—(1) Section 16 of the Principal Act is amended by omitting subsections (2) and (3) and substituting the following subsections:—

(2) Where an enactment expires or has expired, then, unless the contrary is expressly provided, the expiry shall not—

- (a) revive anything not in force or existing at the time the expiry took, or takes, effect;
- (b) affect the previous operation of any enactment so expired or anything duly done or suffered under any enactment so expired;
- (c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so expired;
- (d) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so expired; 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 enactment had not expired.

(3) Subsections (1) and (2) apply to and in relation to any regulations that—

- (a) are rescinded or expire; or
- (b) cease to have effect owing to the repeal or expiry of the enactment under which the regulations are made,

in the same way as those subsections apply to and in relation to enactments that are or have been repealed or, as the case may be, that expire or have expired.

(4) Where an Act, or a regulation or other instrument or document made, issued, or granted under an Act, is expressed to expire or cease to have effect on a particular day, it shall expire or cease to have effect at the end of that day.

(2) Section 16 of the Principal Act (as amended by subsection (1)) applies only—

- (a) to an Act, whether passed before or after the commencement of this section, which expires after that commencement;
- (b) to regulations, whether made before or after that commencement, which are rescinded, expire, or cease to have effect after that commencement; and
- (c) to any other instrument or document, whether made before or after that commencement, which expires or ceases to have effect after that commencement.

13—(1) Section 21 of the Principal Act is amended by omitting subsection (1) and substituting the following subsections: —

Amendment of section 21 of Principal Act (Power to appoint includes power to remove, &c.).

(1) Subject to subsection (1A), where an Act confers a power to appoint a person to an office or position, the power includes—

- (a) a power to remove or suspend a person appointed to hold such an office or position;
- (b) where a person so appointed is removed from, or otherwise ceases to hold, the office or position—
 - (i) a power to appoint another person in place of the first-mentioned person for a period not exceeding the remainder of the period for which the first-mentioned person was appointed; and
 - (ii) a power to appoint another person to act in place of the first-mentioned person pending the making of an appointment under subparagraph (i); and

- (c) where a person holding any such office or position is unable to perform the duties or functions of the office or position for any reason—a power to appoint another person to act in that office or position during the period that the holder of that office or position is unable to perform those duties or functions.

(1A) For the purpose of subsection (1) (c), the expression “reason” includes, without limiting the generality of that expression—

- (a) illness;
- (b) temporary absence from the State;
- (c) suspension from holding the office or position; and
- (d) conflict of interest.

(1B) Where the power to appoint a person to an office or position is exercisable only on the recommendation, or with the approval or consent, of some other person, the powers conferred by subsection (1) are exercisable only on such a recommendation or, as the case may be, with such an approval or consent.

(2) Section 21 (2) of the Principal Act is amended as follows:—

- (a) by omitting “any such power as aforesaid” and substituting “a power referred to in subsection (1)”;
- (b) by omitting “place”, where first occurring, and substituting “position”;
- (c) by omitting “such office or place” and substituting “the office or position”.

(3) Section 21 of the Principal Act (as amended by subsections (1) and (2)) applies to an Act which confers a power to appoint a person to an office or position where the Act conferring the power—

- (a) is in operation at the commencement of this section; or
- (b) comes into operation after that commencement.

Amendment of section 24 of Principal Act (Construction of certain references, expressions, and words).

14—(1) Section 24 of the Principal Act is amended as follows:—

- (a) by omitting from paragraph (a) “such Act” and substituting “that Act, or to the Crown,”;
- (b) by inserting in paragraph (b) “, figures, or symbols” after “words”;

(c) by inserting the following paragraphs after paragraph (b):—

(ba) expressions referring to printing shall be construed as including references to typewriting and writing reproduced by lithography or by any mechanical or electrical means;

(bb) references to a document shall be construed as including references to—

(i) any paper or other material on which there is printing or writing or on which there are marks, symbols, or perforations having a meaning for persons qualified to interpret them; and

(ii) a disc, tape, or other article from which sounds, images, writing, or messages are capable of being reproduced;

(2) Section 24 of the Principal Act (as amended by subsection (1)) applies to and in relation to the interpretation and construction of expressions and references referred to in that section whether the Act in which those expressions or references are contained was passed before or after the commencement of this section.

15—Section 29 (1) of the Principal Act is amended by omitting “time or”, where twice occurring.

Amendment of section 29 of Principal Act (Reckoning of time).

16—(1) Section 37 of the Principal Act is repealed and the following section is substituted:—

Substitution of section 37 of Principal Act.

37—(1) Where in an Act a penalty is specified in respect of a contravention of, or a failure to comply with, that Act or a provision of that Act, then, unless the contrary is expressly provided, that specification indicates that the contravention or failure to comply is an offence punishable by a penalty not exceeding that so specified.

Effect of specifying penalties in Acts.

(2) Where in an Act a penalty is specified in respect of an offence against that Act, or a provision of that Act, then, unless the contrary is expressly provided, that specification indicates that the offence is punishable by a penalty not exceeding that so specified.

(3) Where in an Act a penalty—

- (a) is specified without qualification at the foot of a section of an Act;
- (b) is specified at the foot of a subsection of a section of the Act, but not at the foot of the section; or
- (c) is specified at the foot of a section of the Act and expressed to apply to a specified subsection or specified subsections of the section,

then, unless the contrary is expressly provided, that specification indicates that a contravention of, or failure to comply with, the section or subsection, or, as the case may be, any of the subsections, is an offence and that the offence is punishable by a penalty not exceeding that so specified.

(4) Where in an Act a maximum penalty and a minimum penalty are specified in respect of an offence against the Act or a provision of the Act, that specification indicates that the offence is punishable by a penalty not less than that minimum nor greater than that maximum.

(5) Where in an Act a penalty specified in respect of an offence against the Act, or a provision of the Act, is referred to as being a daily penalty, that reference indicates that a penalty not exceeding that daily penalty may, in addition to any other penalty that may be imposed in respect of the offence, be imposed for each day or part of a day during which the offence continues.

(2) Section 37 of the Principal Act (as substituted by subsection (1)) applies to and in relation to a penalty specified in an Act that—

- (a) is in operation at the commencement of this section; or
- (b) comes into operation after that commencement.

Substitution of
section 38 of
Principal Act

17—(1) Section 38 of the Principal Act is repealed and the following section is substituted:—

Summary pro-
ceedings,
proceedings by
indictment, &c.

38—(1) Where a provision of an Act expressly or by implication provides—

- (a) that any matter or proceeding is to be heard and determined, or dealt with, summarily or by or before justices or a court of summary jurisdiction;
- or

- (b) that an offence is punishable on summary conviction or that a person is liable on summary conviction to a specified penalty or to a penalty not exceeding a specified penalty,

the matter or proceeding shall be heard and determined, or shall be dealt with, or, as the case may be, the proceedings in respect of the offence shall be taken, in accordance with the *Justices Act* 1959, and any penalty imposed in respect of the matter, proceeding, or offence may be enforced and recovered as provided by that Act.

(2) Where a provision of an Act—

- (a) constitutes a crime;
- (b) makes an offence punishable on indictment; or
- (c) makes an offence punishable by imprisonment for a term exceeding 3 years without specifying or indicating that the offence is to be dealt with summarily,

proceedings in respect of the crime or offence shall be by indictment in accordance with the provisions of the *Criminal Code*.

(3) Subject to subsection (2), where—

- (a) by a provision of an Act an offence not declared expressly or by implication to be a crime is constituted or made punishable, or any penalty or forfeiture may be imposed in respect of any matter; and
- (b) that Act does not contain provisions relating to the manner in which proceedings in respect of the offence shall be taken, or the matter shall be heard and determined,

the proceedings in respect of the offence shall be taken, or, as the case may be, the matter shall be heard and determined, in accordance with the *Justices Act* 1959, and any penalty or forfeiture which may be imposed in respect of the offence or matter may be enforced and recovered as provided by that Act.

(2) Section 38 of the Principal Act (as substituted by subsection (1)) applies to a provision of an Act that—

- (a) is in operation at the commencement of this section; or
- (b) comes into operation after that commencement.

Substitution of
section 38A of
Principal Act.

18—(1) Section 38A of the Principal Act is repealed and the following section is substituted:—

Publication,
&c., of
proclamations.

38A—The following provisions apply in respect of every proclamation or order-in-council made under an Act or Imperial Act unless that Act or Imperial Act expressly provides otherwise and in respect of every proclamation or order-in-council made in the exercise of a prerogative right of the Crown:—

- (a) if the proclamation or order is not a statutory rule within the meaning of the *Rules Publication Act* 1953, the proclamation or order shall be published in the *Gazette*;
- (b) if the proclamation or order is a statutory rule within that meaning, the making of the proclamation or order shall be notified in the *Gazette*;
- (c) the proclamation or order shall take effect—
 - (i) on the day after the date of publication of the proclamation or order in the *Gazette* or, as the case may be, on the day after the date of notification in the *Gazette* of the making of the proclamation or order; or
 - (ii) on or from a later day or date that is specified for the purpose in the proclamation or order, or that is ascertainable by reference to a period of time reckoned from that date of publication or notification.

(2) Section 38A of the Principal Act (as substituted by subsection (1)) applies to a proclamation or an order-in-council that—

- (a) is made after the commencement of this section; or
- (b) has been made before that commencement but has not taken effect before that commencement,

and, where made under an Act or Imperial Act, so applies whether the Act or Imperial Act was passed before or after that commencement.

19—(1) Section 43 (1) of the Principal Act is amended as follows:—

Amendment of section 43 of Principal Act (Meaning of certain titles, &c.).

- (a) by inserting the following definition after the definition of “British possession”:

“coastal waters”, when used in relation to Tasmania, has the same meaning as the expression “coastal waters of the State” has in relation to Tasmania under the *Coastal Waters (State Powers) Act* 1980 of the Commonwealth;

- (b) by omitting the definition of “‘His Majesty’ or ‘the King’ or ‘the Crown’”;

- (c) by omitting the definition of “‘the State’ or ‘this State’”.

(2) Section 43 of the Principal Act is further amended by inserting the following subsection after subsection (1):—

(1A) In any Act, a reference to the State, this State, or Tasmania is a reference to the State of Tasmania and its dependencies.

20—(1) Section 46 of the Principal Act is amended as follows:—

Amendment of section 46 of Principal Act (Definitions of certain common phrases).

- (a) by omitting the definition of “offence” and substituting the following definition:—

“offence” means any contravention of, or failure to comply with, a law for which a person is liable to be punished, whether summarily or otherwise;

- (b) by inserting the following definition after the definition of “offence”:

“penalty” means a fine, imprisonment, or other form of punishment;

(2) Section 46 of the Principal Act (as amended by subsection (1)) applies to and in relation to the interpretation and construction of the expressions “offence” and “penalty” whether the Act in which those expressions occur was passed before or after the commencement of this section.

Amendment of
section 47 of
Principal Act
(Regulations).

21—(1) Section 47 (1) of the Principal Act is amended as follows:—

- (a) by omitting “such regulations” and substituting “those regulations”;
- (b) by omitting “such Act”, wherever occurring, and substituting “that Act”;
- (c) by omitting paragraph (d) and substituting the following paragraphs:—
 - (d) as an offence any specified contravention of, or failure to comply with, any of the regulations; and
 - (e) a penalty in respect of any such offence of an amount not exceeding such maximum as may be specified in that Act or, where no such maximum amount is so specified, not exceeding \$200 and, if the offence is of a continuing nature, a daily penalty of such maximum amount as may be specified in that Act or, where no such maximum amount is so specified, not exceeding \$40.

(2) Section 47 of the Principal Act is further amended by omitting subsections (3) and (3A) and substituting the following subsections:—

(3) The following provisions apply to regulations made under the authority of an Act unless the authorizing Act expressly provides otherwise:—

- (a) if the regulations are not statutory rules within the meaning of the *Rules Publication Act 1953*, the regulations shall be published in the *Gazette*;
- (b) if the regulations are statutory rules within that meaning, the making of the regulations shall be notified in the *Gazette*;

(c) the regulations shall be laid before each House of Parliament within the first 10 sitting days of the House after the regulations are so published or, as the case may be, the making of the regulations is so notified;

(d) the regulations shall take effect—

(i) on or from a day or date that is specified for the purpose in the regulations or that is ascertainable by reference to a period of time reckoned prospectively or retrospectively from the date of publication of the regulations in the *Gazette* or, as the case may be, the date of notification in the *Gazette* of the making of the regulations; or

(ii) if no such day or date is so specified or ascertainable, on the day after the date of publication of the regulations in the *Gazette* or, as the case may be, on the day after the date of notification in the *Gazette* of the making of the regulations,

but the regulations shall not be expressed to take effect on, or on or from a day or date preceding, that date of publication or notification in the *Gazette* where, if the regulations were so to take effect—

(iii) the rights or privileges of a person (other than the Crown in right of the State, or any department, instrumentality, authority, or agency of the State) existing at the date of that notification or publication would be prejudiced; or

(iv) liabilities or obligations would be imposed on any person (other than the Crown in right of the State, or any department, instrumentality, authority, or agency of the State) in respect of anything done or omitted to be done on or before that date of notification or publication.

(3A) Where in relation to any regulations subsection (3) is not complied with, or is contravened, in any respect, those regulations shall be of no effect or, if they have taken effect, shall cease to have effect.

(3) Section 47 of the Principal Act (as amended by subsections (1) and (2)) applies to regulations made after the commencement of this section and so applies whether the Act under which they are made was passed before or after that commencement, and that section (as in force before that commencement) shall continue to apply to regulations made before that commencement as if this section had not been enacted.