

ACTS INTERPRETATION AMENDMENT ACT 1985

No. 40 of 1985

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ACTS INTERPRETATION AMENDMENT ACT 1985

No. 40 of 1985

AN ACT to amend the Acts Interpretation Act 1931.

[Royal Assent 14 May 1985]

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 1985*. Short title.

2—(1) Where this Act receives the royal assent before the day fixed under section 2 (2) of the *Tasmanian State Service (Miscellaneous Amendments) Act 1984*, this Act, other than section 10 (2) and (3) and Schedule 2, shall commence on the day on which it receives the Royal assent and section 10 (2) and (3) and Schedule 2 shall be repealed on that last-mentioned day. Commence-ment.

(2) Where this Act receives the Royal assent on or after the day fixed under section 2 (2) of the *Tasmanian State Service (Miscellaneous Amendments) Act* 1984, this Act, other than sections 8 and 10 (1) and Schedule 1, shall commence on the day on which it receives the Royal assent and sections 8 and 10 (1) and Schedule 1 shall be repealed on that last-mentioned day.

Principal Act.

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

Amendment of section 9 of the Principal Act (Meaning of "commencement").

4—Section 9 of the Principal Act is amended—

- (a) by omitting from subsection (2) "royal", where twice occurring, and substituting in each case "Royal"; and
- (b) by omitting from subsection (3) "royal", where twice occurring, and substituting in each case "Royal".

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

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

- (a) by omitting from paragraph (b) "so appointed" and substituting "appointed to hold any such office or position for a fixed term";
- (b) by omitting from paragraph (b) (i) "the period" and substituting "the term";
- (c) by omitting from paragraph (b) (ii) "subparagraph (i); and" and substituting "subparagraph (i);";
- (d) by inserting the following paragraph after paragraph (b):—
 - (ba) where a person appointed to hold any such office or position otherwise than for a fixed term 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 such period as is specified in the instrument appointing that other person pursuant to this subparagraph; and

* 22 Geo. V No. 59. For this Act, as amended to 1st July 1977, see the continuing Reprint of Statutes. Subsequently amended by No. 11 of 1979, No. 39 of 1981, and No. 29 of 1984.

- (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

(2) Section 21 (1) of the Principal Act (as amended by subsection (1)) applies to an Act which confers a power to appoint a person to any 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.

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

Substitution of section 38A of Principal Act.

38A—(1) Except as provided in subsection (3), the provisions prescribed in subsection (2) apply in respect of—

Publication, &c., of proclamations, orders-in-council, and other instruments.

- (a) every proclamation or order-in-council made in the exercise of a prerogative right of the Crown;
- (b) every proclamation or order-in-council made under an Act or Imperial Act; and
- (c) every prescribed instrument made under an Act.

(2) For the purposes of subsection (1), the following provisions are prescribed as the provisions that apply in respect of every proclamation or order-in-council referred to in that subsection and in respect of every prescribed instrument:—

- (a) if the proclamation, order-in-council, or prescribed instrument is not a statutory rule within the meaning of the *Rules Publication Act* 1953, the proclamation, order-in-council, or prescribed instrument shall be published in the *Gazette*;
- (b) if the proclamation, order-in-council, or prescribed instrument is a statutory rule within that meaning, the making of the proclamation, order-in-council, or prescribed instrument shall be notified in the *Gazette*;
- (c) in the case of—
 - (i) a proclamation made under an Act that fixes the day of the commencement of that Act or a provision of that Act;

- (ii) an order-in-council made under an Act that fixes the day of the commencement of a provision of that Act; or
- (iii) a prescribed instrument that fixes the day of the commencement of a provision of an Act,

the day so fixed shall be a day on or after the date of publication of the proclamation, order-in-council, or prescribed instrument in the *Gazette* or, as the case may be, a day on or after the date of notification in the *Gazette* of the making of the proclamation, order-in-council, or prescribed instrument;

- (d) except in the case of any proclamation, order-in-council, or prescribed instrument to which paragraph (c) applies, the proclamation, order-in-council, or prescribed instrument shall take effect—

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

- (ii) if no such day or date is so specified or ascertainable, on the date of publication of the proclamation, order-in-council, or prescribed instrument in the *Gazette* or, as the case may be, on the date of notification in the *Gazette* of the making of the proclamation, order-in-council, or prescribed instrument,

but the proclamation, order-in-council, or prescribed instrument shall not be expressed to take effect on or from a day or date preceding that date of publication or notification in the *Gazette* where, if the proclamation, order-in-council, or prescribed instrument 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 publication or notification 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 publication or notification.

(3) The provisions prescribed in subsection (2) do not apply in respect of any proclamation or order-in-council made under an Act or Imperial Act or in respect of a prescribed instrument made under an Act where that Act or Imperial Act expressly provides otherwise.

(4) In this section, “prescribed instrument” means an instrument of a legislative character, other than any proclamation or order-in-council referred to in subsection (1) or a regulation.

(2) Section 38A (as substituted by subsection (1)) applies to any proclamation or order-in-council or to a prescribed instrument within the meaning of that section 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, in the case of—

- (c) a proclamation or an order-in-council made under an Act or Imperial Act, so applies, whether the Act or Imperial Act was passed before or after that commencement; or
- (d) a prescribed instrument, so applies, whether the Act under which the instrument is made was passed before or after that commencement.

Insertion in
Principal Act
of new
section 39A.

Regulations
to be
judicially
noticed.

7—(1) After section 39 of the Principal Act, the following section is inserted:—

39A—(1) Subject to subsection (2), judicial notice shall be taken of regulations made or purporting to be made under an Act—

(a) that are published in the *Gazette*, in the case of regulations that are not statutory rules within the meaning of the *Rules Publication Act 1953*; or

(b) the making of which is notified in the *Gazette*, in the case of regulations that are statutory rules within that meaning.

(2) Notwithstanding subsection (1), a court, judge, or justice may require proof of the making of any regulations referred to in that subsection or of their publication in the *Gazette*, or, as the case may be, of the notification in the *Gazette* of their making.

(2) Section 39A of the Principal Act (as inserted by subsection (1)) applies to regulations referred to in subsection (1) of that section that—

(a) are in force at the commencement of that section; or

(b) come into force after that commencement.

Insertion in
Principal Act
of new
section 40A.

Alteration of
references in
Acts, &c., to
Government
departments, &c.

8—(1) After section 40 of the Principal Act, the following section is inserted:—

40A—(1) Subject to subsection (3), where there is a reference in an Act to a Government department that has ceased to exist or to a part of a Government department that has ceased to exist as part of that department, the Governor may make an order-in-council providing that that reference shall be read as a reference to such other department, such other part of that department, or such other part of another department, as the case requires and as is specified in the order-in-council.

(2) Subject to subsection (3), where there is a reference in an Act to a Government department the name of which has been changed to another name or to a part of a Government department the name of which part has been changed to another name, the Governor may make an order-in-council providing that that reference shall be read as a reference to that department or that part of that department by that other name.

(3) An order-in-council under subsection (1) or (2) may refer in general or specific terms to any Act or Acts in which there is or are any reference or references of a kind mentioned in the relevant subsection.

(4) In this section—

(a) a reference to an Act, as well as including a reference to any regulation made under that Act, includes a reference to any other instrument made under that Act; and

(b) “Government department” means a department constituted by or under the *Public Service Act* 1973 or any other Act.

(2) Section 40A of the Principal Act (as inserted by subsection (1)) applies to a reference in an Act within the meaning of that section that—

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

(b) comes into operation after that commencement.

9—(1) Section 47 (3) (d) of the Principal Act is amended as follows:—

Amendment of
section 47 of
Principal Act
(Regulations).

(a) by omitting from subparagraph (ii) “the day after”, where twice occurring;

(b) by omitting “to take effect on, or” and substituting “to take effect”.

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

(3A) Where—

(a) regulations are not published in the *Gazette* as required by subsection (3) (a);

(b) the making of regulations is not notified in the *Gazette* as required by subsection (3) (b); or

(c) regulations in relation to a matter referred to in subsection (3) (d) (iii) or (iv) are expressed to take effect on or from a day or date preceding the date of publication of those regulations in the *Gazette* or, as the case may be, on or from a day or date preceding the date of the notification in the *Gazette* of the making of those regulations,

those regulations are void.

(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.

Amendment
consequential
upon the
enactment of
the *Tasmanian
State Service
Act 1984*.

10—(1) Schedule 1 has effect.

(2) Schedule 2 has effect.

(3) Section 40A of the Principal Act (as inserted by subsection (2) and Schedule 2) applies to a reference in an Act within the meaning of that section that—

(a) is in operation at the commencement of subsection (2) and this subsection; or

(b) comes into operation after that commencement.

SCHEDULE 1

Section 10 (1)

AMENDMENT CONSEQUENTIAL UPON THE ENACTMENT OF THE TASMANIAN STATE SERVICE ACT 1984

Schedule 1 to the *Tasmanian State Service (Miscellaneous Amendments) Act 1984* is amended by inserting the following item after item 2 relating to the *Acts Interpretation Act 1931*:—

2A—Section 40A is amended by omitting paragraph (b) of subsection (4) and substituting the following paragraph:—

(b) “Government department” means a department established under the *Tasmanian State Service Act 1984*.

SCHEDULE 2

Section 10 (2)

AMENDMENT CONSEQUENTIAL UPON THE ENACTMENT OF THE TASMANIAN STATE SERVICE ACT 1984

After section 40 of the Principal Act, the following section is inserted:—

Alteration of
references in
Acts, &c., to
Government
departments, &c.

40A—(1) Subject to subsection (3), where there is a reference in an Act to a Government department that has ceased to exist or to a part of a Government department that has ceased to exist as part of that department, the Governor may make an order-in-council providing that that reference shall be read as a reference to such other department, such other part of that department, or such other part of another department, as the case requires and as is specified in the order-in-council.

(2) Subject to subsection (3), where there is a reference in an Act to a Government department the name of which has been changed to another name or to a part of a Government department the name of which part has been changed to another name, the Governor may make an order-in-council providing that that reference shall be read as a reference to that department or that part of that department by that other name.

(3) An order-in-council under subsection (1) or (2) may refer in general or specific terms to any Act or Acts in which there is or are any reference or references of a kind mentioned in the relevant subsection.

(4) In this section—

- (a) a reference to an Act, as well as including a reference to any regulation made under that Act, includes a reference to any other instrument made under that Act; and
- (b) “Government department” means a department established under the *Tasmanian State Service Act 1984*.

