

PARLIAMENT OF AUSTRALIA

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Acts Interpretation Amendment Bill 1976

Date introduced: 3 November 1976

House: House of Representatives.

Presented by: Mr. Ellicott (The Honourable Robert James Ellicott Q.C.)

Short Digest of Bill

The purpose of the Bill: To amend the Acts Interpretation Act 1901:

To facilitate future changes in the Administrative Arrangements Order, to clarify certain matters as a result of the High Court decision in the Seas and Submerged Lands Act case, to repeal sections 4, 19A and 19B of the Principal Act and substitute new sections 19B and section 19BA in lieu thereof, to provide for revocation of orders under the proposed new sections 19B and 19BA respectively and related matters, to provide for formal amendments to the Principal Act.

Summary: Clause 3 would provide for repeal of section 4 of the Principal Act and the substitution in lieu thereof of section 4 (1) – (6) inclusive concerning the exercise of power to make an appointment or to make an instrument of a legislative or administrative character between the passing and commencing of an Act so that the Act concerned can have effective operation on the date it comes into force. Clause 3 would make it clear that in the exercise of the power conferred under section 4 of the Act that in addition to instruments no other thing that may be done under the power shall take effect before the date on which the Act concerned comes into operation, unless the contrary intention appears in the Act concerned itself.

Clause 4 would provide that a new section 15B be inserted into the Principal Act to make it clear that, except so far as the contrary intention appears, every Commonwealth Act and all future Commonwealth Acts have effect in and in relation to the coastal sea of Australia as if the coastal sea of Australia were part of Australia. The “coastal sea” in relation to Australia is defined to mean (i) the territorial sea of Australia; and (ii) the sea on the landward side of the territorial sea of Australia and not within the limits of a State or internal Territory and includes the airspace over, and the sea bed and subsoil beneath, any such sea. The “coastal sea” in relation to an external Territory is defined to mean (i) the territorial sea adjacent to the Territory; and (ii) the sea on the landward side of the territorial sea adjacent to the Territory and not within the limits of the Territory, and includes the airspace over, and the sea bed and subsoil beneath, any such sea.

Clause 5 would amend section 17 of the Principal Act by (1) extending the definition of the word “Minister”, (2) omitting paragraphs (p) and (pa) and substituting in lieu paragraph (p) which combines the definitions concerning “Territory” et al. in the former paragraphs (p) and (pa). (3) omitting paragraph (m) and substituting a new paragraph (m) so as to redefine the word “Gazette” by reverting to the meaning “Commonwealth of Australia Gazette”.

Acts Interpretation Amendment Bill 1976 (Bills Digest, no. 29. 1976-77)

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Clause 6 would amend section 17A of the Principal Act by extending the terms which, appearing on a paper or document, will be deemed to refer to the Government Printer.

Clause 7 would insert section 18A into the Principal Act to provide that other parts of speech and grammatical forms of a word or phrase defined in an Act are to have corresponding meanings.

Clause 8 would repeal sections 19A and 19B of the Principal Act and substitute in lieu thereof sections 19B (1) – (3) inclusive, 19BA (1) – (5) inclusive, 19BB (1) – (2) inclusive, 19BC.

The proposed new sections 19B and 19BA would empower the Governor-General to make orders to adapt statutory references to specified Ministers, departments, or permanent heads to altered administrative arrangements. The proposed new section 19BA would require that when a function is transferred from one Minister to another without the designation of the former Minister being altered then it would be mandatory for any order of the Governor-General that requires that relevant references in Acts to the former Minister be applied to the latter to be laid before each House of the Parliament within fifteen sitting days of that House after the making of such an order. Either House may disallow the order, in the same way that regulations may now be disallowed but under sub-section (5) of the proposed section 19BA where an order is disallowed or is to be deemed to be disallowed each provision of the order has effect from and including the date of the disallowance as if the disallowed order had not been made.

The proposed new section 19BB would empower the Governor-General to revoke any order made under the proposed sections 19B and 19BA.

The proposed new section 19BC would provide that all orders made under the proposed new sections 19B, 19BA and 19BB be published in the Gazette.

Clause 9 provides for formal amendments to the Principal Act as set out in the Schedule.

Implications: The High Court decision in the Seas and Submerged Lands Act case (17 December 1975) is one of the most important in Australian constitutional law with respect to Commonwealth–State relations. The case raised extremely complex and controversial questions of international and constitutional law. The Bill would make clear the constitutional position of the Commonwealth vis à vis the States in the light of the High Court decision, inter alia, that (1) the Seas and Submerged Lands Act 1973 was a valid exercise of Constitution Section 51 (xxix) the external affairs power; (2) that the seaward boundary of State territory for the exercise of sovereignty and legislative power was constituted by the low water mark; (3) the provisions of the Act dealing with sovereignty over the territorial sea, its sea-bed, sub-soil and superjacent air space were valid.

In future if it is necessary for appointments to be in force before the commencement of a relevant Act, then that Act concerned must provide specifically for this to be done, and it will not be possible to make any such appointments under provisions of the Acts Interpretation Act.

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The provisions of Clause 8 would provide the means of overcoming difficulties experienced in applying legislation due to changes in ministerial offices, in the names of departments and in the Administrative Arrangements Order.

The procedure under the proposed new section 19BA recognises that such an order by the Governor-General would have the effect of changing the operation of an Act which conferred functions on a specified Minister by transferring those functions to another Minister, and Parliament is given the opportunity of insisting that the Minister specified in the Act continue to carry out those functions and that they be not transferred by order to another Minister.

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