

# Interpretation Act 1897 No 4

[1897-4]



New South Wales

## Status Information

### Currency of version

Repealed version for 1 May 1987 to 31 August 1987 (accessed 6 October 2024 at 17:48)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Previously named**  
Interpretation Act of 1897
- **Repeal**  
The Act was repealed by the [Interpretation Act 1987 No 15](#), Sch 2 with effect from 1.9.1987.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

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# Interpretation Act 1897 No 4



New South Wales

An Act for consolidating enactments relating to the interpretation of Acts of Parliament, and for further shortening their language.

## Short title and application

### 1 Name of Act

This Act may be cited as the *Interpretation Act 1897*.

### 2 Application of Acts

- (I) Notwithstanding anything in this Act the Acts mentioned in the Schedule shall continue in force until specifically repealed, but, except as hereinafter provided, shall apply only to Acts heretofore passed.
- (II) Sections 14, 15 and 16 of the Act sixteenth Victoria number one, and sections 7 and 9 of the Act twenty-second Victoria number twelve, and so much of section 10 of the last-mentioned Act as relates to the jurisdiction of the courts therein mentioned, shall also continue to apply to Acts hereafter passed until further provision shall be made with respect thereto.
- (III) This Act:
  - (a) applies to this Act,
  - (b) except where otherwise expressly provided in this Act, applies to all Acts passed after the commencement of this Act and to all instruments made after that commencement under any Acts whenever passed, and
  - (c) notwithstanding any other provision of this Act, except subsection (I) of this section and subsection (II) of section 14A, does not apply to Acts passed before that commencement or to instruments made before that commencement under any such Acts.

## **Date of commencement of Acts**

### **3 Commencement of Acts**

- (I) Every Act reserved for the signification of Her Majesty's pleasure thereon shall be deemed to commence, and shall take effect on the day on which the fact of Her Majesty's assent shall be proclaimed by the Governor in the Gazette, or on such day thereafter as the Act itself prescribes.
- (II) Every Act to which the Royal assent shall be given by the Governor, for and on behalf of Her Majesty, shall be deemed to commence and shall take effect on and from the day on which such Act shall receive the Royal assent, unless the contrary intention appears in such Act.

### **4 Date of proclamation and date of assent**

- (I) The date of the proclamation in the Gazette of the fact of Her Majesty's assent to an Act reserved for the signification of Her Majesty's pleasure thereon, and also
- (II) The date purporting to be that of the Royal assent by the Governor, for and on behalf of Her Majesty, which shall appear on the copy of an Act printed by the Government Printer, or which shall be printed on the copy of such Act in the Gazette,

Shall be respectively received for all purposes as evidence of the date of such proclamation, and of such assent, and shall be judicially noticed.

## **Repeal and expiration of Acts**

### **5 Continuing Act to operate upon passing from expiration of continued Act**

When a Bill for continuing a temporary Act has been introduced into Parliament, and is still pending at the date of the expiration of such Act, such Bill, upon receiving the Royal assent, shall, unless the contrary intention appears therein, be deemed to have taken effect in continuing such temporary Act on and from the date of its expiration:

Provided that no person shall be subjected to any punishment, penalty, or forfeiture, for or in respect of anything done or omitted by him, contrary to any provision of the continued Act, between the date of its expiration and the date of such assent.

### **6 Effect of repeal of enactment**

The repeal of an enactment by which a previous enactment was repealed shall not have the effect of reviving such last-mentioned enactment without express words.

### **7 Repealed enactment in force until substituted provisions operate**

Where an Act repeals in the whole or in part a former Act, and substitutes provisions in lieu thereof, the repealed provisions shall remain in force until the substituted provisions

come into operation.

## **8 Effect of repeal**

Where an Act repeals in the whole or in part a former Act, then, unless the contrary intention appears, the repeal shall not:

- (a) affect the previous operation of an enactment so repealed, or anything duly suffered, done, or commenced to be done under an enactment so repealed, or
- (b) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under an enactment so repealed, or
- (c) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against an enactment so repealed, or
- (d) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid,

and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture or punishment may be imposed and enforced, as if the repealing Act had not been passed.

## **9 Expiration of enactment**

The expiration of an enactment shall not affect any civil proceeding previously commenced under such enactment, but every such proceeding may be continued, and everything in relation thereto be done in all respects as if the enactment continued in force.

## **General provisions**

### **10 Acts may be altered etc in same session**

An Act may be altered, amended, or repealed in the same session of Parliament as that in which it was passed.

### **11 Every section a substantive enactment**

Every section of an Act shall have effect as a substantive enactment without introductory words.

### **11A Headings, marginal notes, footnotes etc**

- (1) Headings to provisions of an Act, being headings to:
  - (a) Parts, Divisions or Subdivisions into which the Act is divided, or
  - (b) Schedules to the Act,

shall be taken to be part of the Act.

(2) Except as provided by subsections (3) and (4):

(a) a heading to a provision of an Act (not being a provision referred to in subsection (1)), or

(b) a marginal note, footnote or endnote in an Act,

shall be taken not to be part of the Act.

(3) A heading to a provision of an Act (not being a provision referred to in subsection (1)) shall be taken to be part of the Act if, immediately before the commencement of this section, it was part of the Act.

(4) A heading to a provision of an Act (not being a provision referred to in subsection (1)) or a marginal note, footnote or endnote in an Act shall be taken to be part of the Act if:

(a) it is referred to expressly, or by means of a symbol, in another part of the Act, or

(b) not being so referred to, it is a heading, marginal note, footnote or endnote to a Table or form in an Act.

(5) This section applies in respect of an Act, whether passed before or after the commencement of this section.

## **12 Amending to be construed with amended Act**

Every Act amending an Act shall be construed with the amended Act and as part thereof, unless the contrary intention appears in the amending Act.

## **13 Every Act to be a Public Act**

Every Act shall, unless the contrary intention appears, be deemed to be a Public Act, and shall be judicially noticed as such.

## **14 No private Act to affect the Crown or individuals not named**

No Private Act which affects the property of individuals shall be deemed, by reason of anything herein or therein contained, to affect the rights of Her Majesty, or of any persons, excepting those at whose instance or for whose especial benefit such Act may have been passed, and those claiming by, through, or under them, but all such rights shall be deemed to be saved in such Act in the same manner as if a proviso for that purpose had been expressly inserted therein.

## **14A Plenary construction of Acts**

(1) An Act shall be read and construed as operating to the full extent of, but so as not to exceed, the legislative powers of the State, to the intent that where any provision of

the Act, or the application of any such provision to any person, subject-matter or circumstance, would, but for this section, have been construed as being in excess of those powers, it shall be a valid provision to the extent to which it is not in excess of those powers, and the remainder of the Act and the application of the provision to other persons, subject-matters or circumstances shall not be affected.

- (II) Subsection (I) applies to an Act passed before or after the commencement of the *Interpretation (Amendment) Act 1969*, and applies to any such Act in addition to, and not in derogation of, any provision of any such Act relating to the construction, or extent of the operation, of the Act.

## **Words and references in Acts**

### **15 References to the Sovereign, the Governor and “the Minister”**

- (I) In any Act references to the Sovereign reigning at the time of the passing of such Act or to the Crown shall, unless the contrary intention appears, be construed as references to the Sovereign for the time being.
- (II) Wherever in an Act the word “Governor” is used, the same shall unless the contrary intention appears, be construed to mean the Governor with the advice of the Executive Council, and the word Governor shall include the person for the time being lawfully administering the Government of New South Wales.
- (III) Wherever in an Act the expression “the Minister” is used, the same shall, unless the contrary intention appears, be construed to mean the Minister of the Crown for the time being administering the Act or part of the Act in which the expression is used.
- (IV) Wherever in an Act any Minister is referred to by the title of his Ministerial office, such reference shall, unless the contrary intention appears, be deemed to include any Minister for the time being acting for or on behalf of the Minister so referred to.

### **16 Mention of an officer in general terms**

Wherever in an Act any person holding or occupying a particular office or position is mentioned or referred to in general terms, such mention or reference shall, unless the contrary intention appears, be taken to include all persons who shall at any time thereafter occupy for the time being the said office or position.

### **17 Words “in and for New South Wales” to be implied**

Wherever in an Act any officer or office is referred to, the same shall be taken to refer to the officer or office of the description designated in and for New South Wales, and all references to localities, jurisdictions, and other matters and things shall, unless the contrary intention appears, be taken to relate to such localities, jurisdictions, and other matters and things in and of New South Wales.

## **18 Expressions in instrument under an Act to have the same meaning as in the Act**

Where an Act confers power to make, grant, or issue any instrument, that is to say any order, warrant, scheme, letters patent, rules, regulations, ordinances or by-laws, expressions used in any such instrument shall, unless the contrary intention appears, have the same meanings respectively as in the Act conferring the power.

## **19 References to “writing”**

In any Act expressions referring to writing shall unless the contrary intention appears, be construed as including references to any mode of representing or reproducing words in a visible form.

## **20 “Statutory declaration”**

The expression “statutory declaration” used in an Act shall, unless the contrary intention appears, mean a declaration made by virtue of any Act authorising a declaration to be made in lieu of an oath.

## **21 Meaning of words**

In all Acts the following words shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them:

- (a) Words importing the masculine gender shall include females, and
- (b) Words in the singular shall include the plural and words in the plural shall include the singular.
- (c) The words **person** and **party** shall include bodies politic or corporate as well as individuals.
- (d) The word **month** shall mean calendar month.
- (e) The word **land** shall include messuages, tenements, and hereditaments, corporeal and incorporeal, of any tenure or description, and whatever may be the estate or interest therein.
- (f) The word **estate** shall include any estate, or interest, charge, right, title, claim, demand, lien, or encumbrance at law or in equity.
- (g) The words **oath** and **affidavit** shall, in the case of persons for the time being allowed by law to affirm, declare, or promise instead of swearing, include affirmation, declaration, and promise, and the word **swear** shall in the like case include affirm, declare, and promise.
- (h) The word **Gazette** shall mean the New South Wales Government Gazette.
- (i) The word **Commonwealth** shall mean the Commonwealth of Australia.

- (j) The word **prescribed** shall mean prescribed by, or by regulations, rules or by-laws made under, the Act in which the word is used.
- (k) The words **date of assent**, in relation to an Act, shall mean the day on which the fact of Her Majesty's assent to the Act is proclaimed under subsection (I) of section 3 or the day on which the Act receives the Royal assent, as referred to in subsection (II) of section 3, as the case may be.
- (l) The word **Magistrate** shall mean person holding the office of Magistrate under the [Local Courts Act 1982](#).
- (m) The words **Local Court** shall mean a Local Court established under the [Local Courts Act 1982](#).
- (n) The words **District Court** shall mean the District Court of New South Wales.
- (o) The words **Supreme Court** shall mean the Supreme Court of New South Wales.

#### **21A References in New South Wales laws to British subjects**

- (1) In this section:

**law of New South Wales** means:

- (a) an Act,
- (b) an instrument (including a proclamation, regulation, rule, by-law or ordinance) having effect by virtue of an Act, and
- (c) an instrument having effect by virtue of any such instrument as is mentioned in paragraph (b) of this definition.

**relevant Commonwealth law** means the [Australian Citizenship Act 1948](#) of the Commonwealth as amended and in force immediately before the commencement of Schedule 11 to the [Statute Law \(Miscellaneous Provisions\) Act 1985](#) and the regulations in force immediately before that commencement under the [Australian Citizenship Act 1948](#) of the Commonwealth as so amended and in force.

- (2) A reference in any law of New South Wales:

- (a) to a British subject or to a natural born or naturalized subject of Her Majesty or to any other similar expression shall be read as a reference to an Australian citizen and to any other person who would, if the relevant Commonwealth law had continued in force, be a person who has the status of a British subject or has the status of a British subject without citizenship, and
- (b) to an alien shall be read as a reference to a person who would, if the relevant Commonwealth law had continued in force, be a person who is an alien within the meaning of the Commonwealth Act.

- (3) Where a rule of law applies to or in relation to or has effect with respect to:
- (a) a British subject that rule of law shall apply to or in relation to or shall have effect with respect to an Australian citizen and any other person who would, if the relevant Commonwealth law had continued in force, be a person who has the status of a British subject or has the status of a British subject without citizenship, as if that Australian citizen or other person were a British subject, or
  - (b) an alien that rule of law shall apply to or in relation to or shall have effect with respect to a person who would, if the relevant Commonwealth law had continued in force, be a person who is an alien within the meaning of the Commonwealth Act.

## **21B Age**

Except in so far as a contrary intention appears, for the purposes of any Act, whether passed before or after the commencement of the *Minors (Property and Contracts) Act 1970*, or of an instrument made, whether before or after that commencement, under any such Act, a person attains an age in years at the beginning of his birthday for that age.

## **22 Meaning of expression “court of summary jurisdiction”**

The expression ***court of summary jurisdiction*** occurring in an Act shall, unless the contrary intention appears, mean any justice or justices of the peace, or any magistrate by whatever name called, to whom jurisdiction is given under any Act or Imperial Act.

## **23 Meaning of “may” and “shall”**

Wherever in an Act a power is conferred on any officer or person by the word “may”, such word shall mean that the power may be exercised, or not, at discretion; but where, the word “shall” confers the power, such word shall mean that the power must be exercised.

## **24 References to Acts etc**

- (I) An Act passed in New South Wales may be referred to by the word “Act” alone.
- (II) An Act passed by the Imperial Parliament may be referred to by the term “Imperial Act”.
- (III) The Imperial Act eighteenth and nineteenth Victoria, chapter fifty-four, intituled “*An Act to enable Her Majesty to assent to a Bill as amended of the Legislature of New South Wales to confer a Constitution on New South Wales and to grant a Civil List to Her Majesty*”, may be cited in all Acts, instruments, documents, and proceedings as “The Constitution Statute”.
- (IV) The Bill contained in the Schedule to the Constitution Statute may be cited in all Acts, instruments, documents, and proceedings as “The Constitution Act”.

## 25 References to amended or substituted Acts or statutory instruments

- (I) Where an Act or an instrument made under an Act or any provision thereof is referred to in an Act or an instrument so made and the Act, instrument or provision so referred to has, at the time the reference is made, been amended or is subsequently amended, or is subsequently repealed and re-enacted, with or without modification, the reference extends to the Act, instrument or provision, as the case may be, as amended or re-enacted or, where the Act, instrument or provision as re-enacted has been subsequently amended, to the Act, instrument or provision as re-enacted and amended.
- (II) Subsection (I):
- (a) applies to a reference to an Act passed, and to a reference to an instrument made, before or after the commencement of the *Interpretation (Amendment) Act 1969*, and whether the reference is contained in an Act passed, or in an instrument under an Act made, before or after that commencement,
- (b) applies, in the case of a reference contained in an Act passed, or in an instrument under an Act made, before the commencement of the *Interpretation (Amendment) Act 1969*, whether or not the reference is followed by words indicating that the reference includes subsequent amendments of the Act or instrument referred to, and whether or not the reference is to a mode of citation of the Act or instrument that includes two secular years, and
- (c) so applies, except in so far as a contrary intention appears.
- (III) In the application of subsection (I) to an instrument made under an Act:
- (a) **amended** includes altered or varied,
- (b) **re-enacted** includes re-made,
- (c) **repealed** includes revoked or rescinded.

### 25A Citation of references

- (I) Where a provision of an Act refers:
- (a) to a Part, section or Schedule by a number but does not identify it as being part of any particular Act, the reference shall be read and construed as a reference to the Part, section or Schedule, designated by that number, of or to the Act in which the reference occurs,
- (b) to a Schedule but does not refer to it by a number or identify it as being a Schedule to any particular Act, the reference shall, if there is only one Schedule to the Act in which the reference occurs, be read and construed as a reference to the Schedule to the Act in which the reference occurs, or

- (c) to a Division, subsection, paragraph, subparagraph, clause, subclause, item or column by a number but does not identify it as being part of any particular Act, the reference shall be read and construed as a reference:
- (i) to the Division, designated by that number, of the Part in which the reference occurs,
  - (ii) to the subsection, designated by that number, of the section in which the reference occurs,
  - (iii) to the paragraph, designated by that number, of the section, subsection, Schedule or definition, or of the clause, subclause, item or column of or in the Schedule in which the reference occurs,
  - (iv) to the subparagraph, designated by that number, of the paragraph in which the reference occurs, or
  - (v) to the clause, subclause, item or column, designated by that number, of the Schedule in which the reference occurs,
- as the case may require.

(II) Subsection (I):

- (a) applies to a reference, referred to in subsection, (I), in an Act whenever passed, and
- (b) so applies, except in so far as a contrary intention appears.

(III) In this section, **number** means:

- (a) a number expressed in words or figures,
  - (b) a letter, or
  - (c) a combination of a number so expressed and a letter,
- with or without parentheses.

## **25B References to changed short titles and citations in Acts or statutory instruments**

Where the short title or citation of an Act or an instrument made under an Act is changed (whether before or after the commencement of this section) a reference to the short title or citation in any other Act, instrument made under an Act or in a document of any kind shall be read as a reference to the short title or citation as changed.

## **26 Rules of Court**

- (I) The expression **rules of Court** occurring in an Act, when used in relation to any Court, shall mean rules made by the authority having for the time being power to make rules

or orders regulating the practice and procedure of such Court.

- (II) The power of the said authority to make rules of Court as above defined, shall, unless the contrary intention appears, include a power to make rules of Court for the purpose of any Act directing or authorising anything to be done by rules of Court.

## **27 Meaning of service by post**

- (I) Where an Act authorises or requires any document to be served by post, whether the expression “serve”, or the expression “give” or “send” or any other expression is used, then, unless the contrary intention appears, the service shall prima facie be deemed to be effected by properly addressing, prepaying, and posting a letter containing the document, and to have been effected at the time at which the letter would be delivered in the ordinary course of post.
- (II) Any provision in an Act, regulation, rule or by-law (not being a provision, or a provision of an Act, regulation, rule or by-law, declared by an order in force under subsection (III) to be a provision to which or an Act, regulation, rule or by-law to the provisions of which this subsection does not apply) under which a document, other than a summons, may be or is required to be served on or sent to any person by registered mail, registered post, certified mail or certified post shall be construed as authorising the service or sending of the document by post, other than registered post, certified mail or certified post, but nothing in this subsection prevents the service or sending of the document in the manner prescribed by the provision.
- (III) The Governor may, by order published in the Gazette, declare that the provisions of subsection (II) do not apply to any specified provision of an Act, regulation, rule or by-law or to the provisions of any specified Act, regulation, rule or by-law.
- (IV) Subsection (II):
- (a) applies only to Acts passed, and to regulations, rules and by-laws made, before the commencement of the *Interpretation (Amendment) Act 1969*, and
  - (b) so applies notwithstanding any provision of any such Act, regulation, rule or by-law.
- (V) An order made under subsection (III) does not affect the operation of subsection (II) in relation to the service or sending of a document that had been posted before the order was made.

## **28 Meaning of the expression “committed for trial”**

The expression ***committed for trial***, used in an Act in relation to any person, shall, unless the contrary intention appears, mean committed to prison with the view of being tried by a jury, and shall include a person who is admitted to bail upon a recognizance to appear and take his trial.

## **29 “Felony”**

The expression ***felony***, used in an Act shall mean a crime in respect of which the punishment of penal servitude may be awarded.

### **29A Cognate words**

- (I) Where a word is defined in an Act, any cognate word in that Act or in an instrument made under that Act has a meaning corresponding to the meaning of the defined word.
- (II) Subsection (I):
  - (a) applies to an Act whenever passed and to an instrument whenever made, and
  - (b) so applies, except in so far as a contrary intention appears.

## **Powers conferred by Acts**

### **30 Grant of power to make appointments**

Wherever by any Act power is given to Her Majesty, or to the Governor or to any officer or person, to make appointments to any office or place, it shall, unless the contrary intention appears, be intended:

- (a) That such power shall be capable of being exercised from time to time, as occasion may require, and
- (b) That Her Majesty or the Governor, or such officer or person shall have power to remove or suspend the person appointed, and to appoint permanently or temporarily, as the case may require, another person in his stead, or in the place of any deceased, sick, or absent holder of such appointment.

### **31 Exercise of powers and duties**

Where an Act confers a power or imposes a duty on the holder of an office as such, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed by the holder for the time being of the office.

### **32 Powers conferred by Acts**

- (I) Where an Act confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised, and the duty shall be performed, from time to time, as occasion requires.
- (II) Where an Act gives power to any officers or persons to make any rules, by-laws, orders, or regulations, it shall be implied that such officers or persons may rescind, revoke, alter, or vary the same from time to time as occasion requires.

### **33 Powers to determine to include authority to administer oath**

Any Court, Judge, justice of the peace, officer, commissioner, arbitrator, or other person authorised by law, or by consent of parties, to hear and determine any matter or thing, shall have authority to receive evidence and examine witnesses, and to administer an oath to all witnesses legally called before them respectively.

## **Supplemental**

### **34 Proclamations judicially noticed**

(I) Judicial notice shall be taken of every Proclamation or Order by the Governor with the advice of the Executive Council made or purporting to be made in pursuance of any Act or Imperial Act and published in the Gazette.

(II) Judicial notice shall be taken:

(a) of every regulation, rule or by-law:

(i) made or purporting to have been made, whether before or after the commencement of the *Interpretation (Amendment) Act 1969*, by the Governor under an Act passed before or after that commencement, or

(ii) made or purporting to have been made, whether before or after that commencement, by any other person or body under an Act so passed and required by the Act under which it is made to be approved or confirmed by the Governor,

where the regulation, rule or by-law is required by this Act or by the Act under which it is made to be published in the Gazette and it is so published, and

(b) of the date of its publication.

### **35 Computation of distance and reckoning of time**

(I) Distance of space mentioned or indicated in an Act shall be computed according to the nearest route ordinarily used in travelling, unless measurement in a direct line be expressed, or that construction be rendered necessary by the context.

(II) The time prescribed or allowed in an Act for the doing of a particular thing shall, unless the contrary intention appears, be taken to exclude the day of the act or event from or after which the time is to be reckoned, but to include the day for the doing of that thing:

Provided that where that day falls on Saturday or Sunday, or on any day which is at the time a public or a bank holiday throughout New South Wales, the thing may be done on the first day following which is not a Saturday or Sunday or a public or a bank holiday as aforesaid.

### 36 Citation of Acts

In any Act, instrument, or document, any Act passed during the present Session or hereafter to be passed may be cited by its short title, or by reference to the secular year in which it was passed and its number, and an Imperial Act by its short title, or the year of the reign in which it was passed and its chapter; and an enactment may be cited by reference to the section or subsection of the Act in which the enactment is contained, and every such reference shall be made according to the copy of such Act printed by the Government Printer, or purporting so to be, or, in the case of an Imperial Act according to the copy of such Act printed by the Queen's Printer in London, or purporting so to be.

#### 36A References to "commencement"

Where an Act or instrument made under an Act provides for the commencement at the same time of all its provisions, with specified exceptions, a reference in any Act or instrument made under an Act to the commencement of the firstmentioned Act or instrument shall, except in so far as the context or subject-matter otherwise indicates or requires, be construed as a reference to the commencement of its provisions, with those specified exceptions.

### 37 Exercise of certain powers between passing and commencement of Act

(I) Where an Act (in this section referred to as ***the Act concerned***), being:

- (a) an Act enacted on or after the date of commencement of this section that is not to commence immediately upon its enactment, or
- (b) an Act enacted before the date of commencement of this section that did not commence on or before that date,

would, if it had commenced, confer a power or amend another Act in such a manner that the other Act, as amended, would confer a power, that in either case must or may be exercised by the making of an instrument of a legislative or administrative character, then, unless the contrary intention appears, such an instrument may be made, and anything may be done for the purpose of enabling such an instrument to be made or of bringing such an instrument into effect, before the Act concerned commences as if it had commenced.

(II) Each provision of an instrument made by virtue of subsection (I) shall take effect:

- (a) on the day on which the Act concerned commences, or
- (b) on the day on which the provision would have taken effect if, when the instrument was made, the Act concerned had commenced,

whichever is the later.

(III) Where this section applies to an Act by reason of the fact that that Act would, if it had

commenced, amend another Act in the manner referred to in subsection (I) and that other Act has not commenced, this section has effect as if the references in subsections (I) and (II) to the commencement of the Act concerned were references to the commencement of the other Act as amended by the Act concerned.

(IV) In subsections (I), (II) and (III), a reference to an Act shall be read as including a reference to any provision or provisions of an Act.

(V) Section 41 (I) (b) does not apply to an instrument made by virtue of subsection (I) if that instrument is a regulation as defined in section 41 (V).

## **Statutory bodies**

### **38 Statutory corporations**

(I) A corporation constituted by or under an Act:

(a) has perpetual succession,

(b) shall have a common seal,

(c) may take proceedings and be proceeded against in its corporate name,

(d) may, for the purposes for which it is constituted, purchase, exchange, take on lease, hold, dispose of and otherwise deal with property, and

(e) may do and suffer all other things that bodies corporate generally may, by law, do and suffer and that are necessary for or incidental to the purposes for which it is constituted.

(II) The common seal of a corporation so constituted shall be kept by the president, chairman or other principal officer of the corporation and shall only be affixed to an instrument or document in the presence of at least two members of the corporation with an attestation by the signatures of those members of the fact and date of the affixing of the seal.

(III) All courts and persons acting judicially:

(a) shall take judicial notice of the seal of a corporation so constituted that has been affixed to any instrument or document, and

(b) shall until the contrary is proved presume that the seal was properly affixed.

(IV) The foregoing provisions of this section:

(a) apply only in respect of a corporation constituted by or under an Act passed after the commencement of the *Interpretation (Amendment) Act 1969*,

(b) apply in addition to any other provisions relating to such a corporation that are

contained in the Act by or under which it is constituted, and

(c) so apply, except in so far as a contrary intention appears.

### **39 Acts and proceedings of statutory bodies**

(I) Any act or proceeding of any body, whether incorporated or not, constituted by or under an Act is notwithstanding that at the time when the act or proceeding was done, taken or commenced there was:

(a) a vacancy in the office of a member of the body, or

(b) any defect in the appointment, or any disqualification, of a member of a body, as valid as if the vacancy, defect or disqualification did not exist and the body were fully and properly constituted.

(II) Subsection (I):

(a) applies only in respect of a body constituted by or under an Act passed after the commencement of the *Interpretation (Amendment) Act 1969*,

(b) applies in addition to any other provisions relating to such a body that are contained in the Act by or under which it is constituted, and

(c) so applies, except in so far as a contrary intention appears.

## **Delegated powers etc**

### **40 Exercise or performance of delegated powers, authorities, duties or functions**

(I) Where the discharge, exercise or performance by a person of a responsibility, power, authority, duty or function under an Act or under an instrument made under an Act depends on his opinion, belief or state of mind and the responsibility, power, authority, duty or function is, in accordance with the Act or instrument, delegated, the delegate may, subject to any restriction imposed by the delegation, discharge, exercise or perform the responsibility, power, authority, duty or function on his own opinion, belief or state of mind, as the case may require.

(II) Subsection (I) applies to a delegate discharging, exercising or performing a responsibility, power, authority, duty or function under an Act passed, or under an instrument made, before or after the commencement of the *Interpretation (Amendment) Act 1969*, and whether the delegation was made before or after that commencement.

## Provisions relating to certain statutory instruments

### 41 Machinery for making regulations

- (I) A regulation under an Act passed after the commencement of the *Interpretation (Amendment) Act 1969* shall, except in so far as a contrary intention appears:
  - (a) be published in the Gazette,
  - (b) take effect on and from the date of publication or a later date specified in the regulation, and
  - (c) be laid before each House of Parliament within fourteen sitting days of that House after the date of publication.
- (II) If either House of Parliament passes a resolution, of which notice has been given within fifteen sitting days of that House after a regulation referred to in subsection (I) has been laid before it, disallowing the regulation or any part thereof, the regulation or part thereupon ceases to have effect.
- (III) For the purposes of subsections (I) and (II), sitting days shall be counted, whether or not they occur during the same session.
- (IV) The provisions of paragraph (c) of subsection (I) and the provisions of subsections (II) and (III) shall, in respect of a regulation made after the commencement of the *Interpretation (Amendment) Act 1969*, under an Act passed before that commencement and notwithstanding anything contained in any such Act, apply to and in respect of the laying before each House of Parliament, and the disallowance, of that regulation and any such Act so passed shall be deemed to be amended to the extent necessary to give effect to this subsection.
- (V) In this section, **regulation** means regulation, rule or by-law:
  - (a) that is made by the Governor, or
  - (b) that is made by any other person or body and is required by the Act under which it is made to be approved or confirmed by the Governor.

### 41A Application of certain provisions to instruments made under Acts

- (I) The provisions of sections 11A, 14A, 15, 16, 17, 19, 20, 21, 22, 23, 25A, 26, subsection (I) of section 27, and sections 28, 29, 29A, 30, 31, 32, 35 and 37 apply to an instrument made under an Act in the same way as those provisions apply to an Act and for the purposes of so applying those provisions:
  - (a) a reference in any of those provisions to the passing of an Act shall be construed as a reference to the making of the instrument,
  - (b) the reference in subsection (III) of section 15 to the Minister of the Crown for the

time being administering the Act or part of the Act shall be construed as a reference to the Minister of the Crown for the time being administering the Act or part of the Act under which the instrument is made,

- (c) the reference in section 25A to any portion of an Act shall be read and construed as a reference to the appropriate portion of the instrument, and
- (d) the reference in section 37 to the enactment of an Act or of a provision or provisions of an Act shall be construed as a reference to the making of the instrument or a provision or provisions thereof, as the case may require.

(II) Subsection (I):

- (a) applies to an instrument whenever made, and
- (b) so applies, except in so far as a contrary intention appears.

#### **42 Regulations etc—conditions precedent**

(I) It shall be presumed, in the absence of evidence to the contrary, that all conditions and preliminary steps precedent to the making, whether before or after the commencement of the *Interpretation (Amendment) Act 1969*, of an instrument made under an Act have been complied with and performed.

(II) In this section, **instrument** means instrument:

- (a) that is made by the Governor, or
- (b) that is made by any other person or body and is required by the Act under which it is made to be approved or confirmed by the Governor,

being an instrument that is required by this Act or the Act under which it is made to be published in the Gazette.

#### **43 Effect of repeal of regulations**

(I) The repeal, revocation, or rescission whether in whole or in part, of any regulation under an Act does not affect:

- (a) the previous operation of the regulation or anything duly suffered, done or commenced under the regulation,
- (b) any right, privilege, obligation or liability acquired, accrued or incurred under the regulation,
- (c) any penalty, forfeiture or punishment incurred in respect of any offence against the regulation, or
- (d) 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 or enforced as if the repeal, revocation or rescission had not occurred.

(II) Subsection (I):

(a) applies only to a repeal, revocation or rescission occurring after the commencement of the *Interpretation (Amendment) Act 1969*, and

(b) so applies, except in so far as the contrary appears.

(III) In this section, **regulation** means regulation, rule or by-law:

(a) that is made by the Governor, or

(b) that is made by any other person or body and is required by the Act under which it is made to be approved or confirmed by the Governor,

being a regulation, rule or by-law that is required by this Act or the Act under which it is made to be published in the Gazette.

#### **44 Method of imposing penalties**

The penalty, pecuniary or other:

(a) specified at the end of a section of an Act,

(b) specified at the end of a subsection of a section of an Act, but not at the end of the section, or

(c) specified at the end of a section of an Act or subsection of a section of an Act and expressed to apply to part only of the section or subsection,

indicates that a contravention of the section, subsection or part, respectively, whether by act or omission, is an offence against the Act, punishable upon conviction by a penalty not exceeding the penalty so specified.

#### **45 Effect of alterations in penalties**

(1) Where an Act or instrument made under an Act increases the penalty or maximum penalty for an offence, the penalty or maximum penalty as increased applies only to offences committed after the commencement of the provision of the Act or instrument increasing the penalty or maximum penalty.

(2) Where an Act or instrument made under an Act reduces the penalty or maximum penalty for an offence, the penalty or maximum penalty as reduced extends to offences committed before the commencement of the provision of the Act or

instrument reducing the penalty or maximum penalty, but the reduction does not affect any penalty imposed before that commencement.

## Schedule

<b>Regnal Year and number of Act</b>	<b>Title of Act</b>
16 Vic No 1	An Act for shortening Acts of the Legislative Council.
22 Vic No 12	An Act to amend and extend the Act passed for shortening Acts of the Legislature.
24 Vic No 17	An Act for continuance of temporary Acts.