



INTERPRETATION ORDINANCE 1979

Ordinance No. 10 of 1979

TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Repeal
4. Crown to be bound
5. Application of this Ordinance
6. Construction of enactments to be subject to Act
7. Construction of Rules, Regulations and Bylaws
8. Enactments to have effect subject to a contrary intention
9. Application of common law as to interpretation
10. Construction of amending enactment
11. Expressions defined by Norfolk Island Act
12. General definitions
13. References to courts
14. References to Governor-General
15. Headings, etc
16. Parts of speech and grammatical forms
17. References to offices
18. Gender and number
19. Mention of persons in general terms
20. References to writing
21. Service by post
22. Reckoning of time

23. Measures of distance
24. Exercise of powers and functions by delegates
25. Approval or disallowance by Minister or Administrator
26. Publication in the Gazette
27. Meaning of “commencement”
28. References to enactments
29. References to Acts
30. Exercise of certain powers between making and commencing of enactments
31. Effect of repeal
32. Expiration of enactments
33. Regulations
34. Effect of repeal of Regulations
35. Prescribing matters by reference to other instruments

Schedule

NORFOLK



ISLAND

Interpretation Ordinance 1979

Ordinance No. 10 of 1979

An Ordinance for the interpretation of Ordinances and for the shortening of their language

WHEREAS it is provided by subsection (1) of section 16 of the *Norfolk Island Act 1957* that, subject to subsection (4) of that section, a copy of every proposed Ordinance shall be furnished by the Minister, through the Administrator, to the Norfolk Island Council for its consideration:

AND WHEREAS it is provided by subsection 16(4) of that Act, amongst other things, that, where it appears to the Governor-General that an Ordinance should, on account of urgency, be made without the proposed Ordinance being first submitted to the Norfolk Island Council, the Ordinance may be made accordingly:

AND WHEREAS it appears to me, Sir Zelman Cowen, the Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, that the following Ordinance should, on account of urgency, be made without the proposed Ordinance being first submitted to the Norfolk Island Council:

NOW THEREFORE I, the Governor-General, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Norfolk Island Act 1957* accordingly.

Dated this second day of August 1979.

ZELMAN COWEN
GOVERNOR-GENERAL

By His Excellency's Command,
R. Ellicott
Minister of State for Home Affairs

Short title

1. This Ordinance may be cited as the *Interpretation Ordinance 1979*.

Commencement

2. This Ordinance shall come into operation on the date fixed under subsection 2(2) of the *Norfolk Island Act 1979*.

Repeal

3. The Ordinances set out in the Schedule to this Ordinance are repealed.

Crown to be bound

4. This Ordinance binds the Crown and the Administration.

Application of this Ordinance

5. This Ordinance, and, if this Ordinance is amended, this Ordinance as in force for the time being as amended, applies to all enactments, including this Ordinance, whether made before or after the commencement of this Ordinance.

Construction of enactments to be subject to Act

6. An enactment shall be read and construed subject to the Act under which it was made and so as not to exceed the legislative power conferred by that Act, to the intent that where a provision of the enactment would, but for this section, have been construed as being in excess of that power, the provision shall nevertheless be a valid provision to the extent to which it is not in excess of that power.

Construction of Rules, Regulations and Bylaws

7. (1) Where an enactment confers power to make, grant or issue an instrument (including Rules, Regulations or Bylaws), this Ordinance, and, if this Ordinance is amended, this Ordinance as in force for the time being as amended, applies, so far as it is applicable, to the instrument as if —

- (a) it were an enactment and each such Rule, Regulation or Bylaw were a section of an enactment; and
- (b) each subrule of such a Rule, subregulation of such a Regulation or paragraph or other division of such a Bylaw were a subsection of an enactment.

- (2) An instrument so made, granted or issued shall be read and construed subject to the enactment and so as not to exceed the power conferred by the enactment to the extent that where the instrument would, but for this section, have been construed as being in excess of the power, it is nevertheless a valid instrument to the extent to which it is not in excess of the power.

Enactments to have effect subject to a contrary intention

8. Section 5, in its application to an enactment, and subsection 7(1), in its application to an instrument (including Rules, Regulations or Bylaws) under an enactment, has effect subject to a contrary intention appearing in that or another enactment or in the instrument.

Application of common law as to interpretation

9. (1) Except as provided by this Ordinance or by an enactment, the principles and rules of the common law as to the interpretation of statutes apply to the interpretation of an enactment.

- (2) In the application of subsection (1), a rule or principle of the common law that has been affected by an Imperial Act that came into operation on or after 25 July 1828 shall be taken not to have been so affected.

Construction of amending enactment

10. An enactment that amends another enactment shall be read with that other enactment and as part of it.

Expressions defined by Norfolk Island Act

11. Subject to section 12, an expression defined by subsection 4(1) of the *Norfolk Island Act 1979* has the same meaning in an enactment as in that Act.

General definitions

12. (1) In this Ordinance, “enactment” means an enactment as defined by subsection 4(1) of the *Norfolk Island Act 1979*, and includes a law continued in force by subsection 16(1) of that Act, but does not include a Rule, Regulation, Bylaw or other instrument made under an enactment as so defined or a law so continued in force.

(2) In an enactment —

“Act” means an Act of the Parliament of the Commonwealth;

“Administration printer” means any person printing for the Administration;

“calendar year” means the period of 12 months commencing on 1 January;

“committed for trial” means committed to prison with the view of being tried by or before the Supreme Court or admitted to bail upon a recognisance to appear and be so tried;

“Commonwealth” means the Commonwealth of Australia;

“Court of Petty Sessions” means the Court of Petty Sessions of Norfolk Island established by the *Court of Petty Sessions Ordinance 1960*;

“estate” includes any estate or interest, charge, right, title, claim, demand, lien or encumbrance at law or in equity;

“Gazette” means the Norfolk Island Government Gazette;

“High Court” means the High Court of Australia;

“Imperial Act” means an Act of the Parliament of the United Kingdom;

“indictment” includes information;

“Justice of the Peace” means a Justice of the Peace for the Territory;

“land” includes messuages, tenements and hereditaments, corporeal and incorporeal, of any tenure or description in land;

“Minister” means the Minister for the time being administering the *Norfolk Island Act 1979* and includes a Minister or member of the Federal Executive Council for the time being acting for or on behalf of the first-mentioned Minister;

“month” means calendar month;

“oath” or “affidavit”, in the case of a person allowed by Ordinance to affirm, declare or promise instead of swearing, includes affirmation, declaration or promise, respectively, and “swear” includes, in the like case, affirm, declare or promise, respectively;

“person” or “party” includes a body politic or a body corporate as well as a natural person;

“prescribed” means prescribed by the enactment or by Regulations under the enactment;

“proclamation” means proclamation by the Governor-General published in the Commonwealth of Australia Gazette;

“Regulations” means Regulations under the enactment;

“rules of court”, in relation to a court, means rules made by the authority having for the time being power to make rules or orders regulating the practice and procedure of the court;

“State” means State of the Commonwealth;

“State Act” means an Act of the Parliament of a State;

“statutory declaration” means a statutory declaration under the *Statutory Declarations Act 1959*;

“Territory authority” means a body corporate established for a public purpose by or under an enactment;

“United Kingdom”, in relation to a time before 6 December 1922, means the United Kingdom of Great Britain and Ireland and, in relation to a time on or after that date, means the United Kingdom of Great Britain and Northern Ireland.

(3) In an enactment, a reference to Norfolk Island is a reference to the Territory as defined by subsection 4(1) of the *Norfolk Island Act 1979*.

(4) In an enactment, a reference to a Territory (not being a reference to the Territory of Norfolk Island) is a reference to a Territory under the authority of the Commonwealth other than the Territory of Norfolk Island.

References to courts

13. (1) A reference to the Court of Norfolk Island sitting in its full jurisdiction or a reference to the Magistrate’s Court shall be read as a reference to the Supreme Court.

(2) A reference to the Court of Norfolk Island or to that Court sitting in its limited jurisdiction shall be read as a reference to the Court of Petty Sessions.

References to Governor-General

14. (1) A reference to the Governor-General includes a reference to the person for the time being administering the Government of the Commonwealth.

(2) Where the reference occurs in or in relation to a provision conferring on the Governor-General a power or function that the Governor-General or the person administering the Government of the Commonwealth has for the time being assigned to a person as his deputy, the reference includes a reference to that last-mentioned person in his capacity as deputy.

(3) A reference to the Governor-General is a reference to the Governor-General, or to a person included in the reference by reason of the operation of subsection (1) or (2), acting with the advice of the Federal Executive Council.

Headings, etc

15. (1) The headings of the Parts, Divisions and Sub-divisions into which an enactment is divided form part of the enactment.

(2) A Schedule to an enactment forms part of the enactment.

(3) Neither the marginal notes nor the footnotes to an enactment form part of the enactment.

Parts of speech and grammatical forms

16. Where a word or phrase has a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

References to offices

17. (1) A reference to an officer or office is a reference to that officer or office in and for Norfolk Island.

(2) A reference to a locality, jurisdiction or other matter or thing is a reference to the locality, jurisdiction or other matter or thing in and of Norfolk Island.

Gender and number

18. (1) A word importing the masculine gender includes females.

(2) A word in the singular includes the plural and a word in the plural includes the singular.

Mention of persons in general terms

19. Where a person holding or occupying a particular office or position is mentioned or referred to in general terms, the mention or reference includes a mention or reference to a person occupying the office or position for the time being.

References to writing

20. An expression referring to writing includes a reference to any mode of representing or reproducing words in a visible form.

Service by post

21. (1) Where a document is authorised or required to be served by post, whether the expression “serve”, “give” or “send”, or some other expression, is used, the service shall be deemed to be effected by properly addressing, prepaying and posting the document as a letter.

(2) Unless the contrary is proved, the service shall be deemed to have been effected at the time at which the letter would be available for delivery to the addressee in the ordinary course of post.

(3) A document that may be served by post under subsection 21(1) and is to be so served in Norfolk Island may be served if it complies with that subsection and is addressed to the post office box number of the addressee.

Reckoning of time

22. (1) Where a period of time dating from a particular day, act or event is prescribed or allowed for any purpose, the time shall be reckoned exclusive of that day or of the day of the act or event.

(2) Where the last day of a period prescribed or allowed for the doing of anything falls on Saturday, on a Sunday or on a day which is a public holiday or bank holiday in the Territory, the thing may be done on the first day following which is not a Saturday, Sunday or a public holiday or bank holiday in the Territory.

Measures of distance

23. In the measurement of any distance for the purposes of an enactment, that distance shall be measured in a straight line on a horizontal plane.

Exercise of powers and functions by delegates

24. Where, under an enactment, the exercise of a power or function by a person is dependent upon the opinion, belief or state of mind of that person in relation to a matter and that power or function has been delegated in pursuance of that enactment, that power or function may be exercised by the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter.

Approval or disallowance by Minister or Administrator

25. Where it is provided that the making of any Rules, Regulations or Bylaws under an enactment is subject to the approval of the Minister or the Administrator, or that the doing of an act or thing is subject to the approval of, or may be disallowed by, the Minister or the Administrator, notice of the approval or disallowance shall be published in the Gazette.

Publication in the Gazette

26. (1) Where a document, instrument, notice or notification is required to be published in the Commonwealth of Australia Gazette or in the Government Gazette of the State of New South Wales, it is sufficient if the document, instrument or notification is published in the Norfolk Island Government Gazette.

(2) A document, instrument, notice or notification that was required by any law in force in Norfolk Island to be published in the Commonwealth of Australia Gazette shall be deemed to have been so published if it was published in the Australian Government Gazette during the period that commenced on 1 July 1973 and ended on 30 June 1977.

Meaning of “commencement”

27. (1) The word “commencement”, when used with reference to an enactment, means the time at which the enactment came into operation.

(2) Where it is provided that an enactment is to come into operation on a particular day, the enactment comes into operation immediately on the expiration of the last preceding day.

References to enactments

28. (1) Where an enactment contains a reference —

- (a)** to the short title or method of citation of another enactment as originally made and that other enactment has been amended; or
- (b)** to a method of citation that is, or at any time has been, provided by law for the citation of another enactment as amended and that other enactment has been further amended,

the reference shall be read as a reference to that other enactment as in force for the time being as amended.

(2) If that other enactment has been repealed and remade, with or without modification, the reference shall be read as being a reference —

- (a)** to the remade enactment; or
- (b)** if that remade enactment has been amended - to that enactment as in force for the time being as amended.

(3) Where, in connection with such a reference as is mentioned in subsection (2), a particular provision of the repealed enactment is referred to, being a provision to which —

- (a) a provision of the remade enactment corresponds; or
- (b) if that remade enactment has been amended - a provision of the remade enactment as in force for the time being as amended corresponds,

the reference to that particular provision shall be read as being a reference to that corresponding provision.

(4) Where an enactment in force on 1 July 1914 and continued in force by subsection 16(1) of the *Norfolk Island Act 1979* contains a method of citation that includes the word “Law”, that enactment may be cited or referred to as though the word “Ordinance” were substituted for the word “Law”.

References to Acts

29. (1) Where an enactment contains a reference —

- (a) to the short title of an Act as originally enacted and that Act has been amended; or
- (b) to a method of citation that is, or at any time has been, provided by law for the citation of an Act as amended and that Act has been further amended,

the reference shall be read as a reference to that Act as in force for the time being as amended.

(2) If that Act has been repealed and re-enacted, with or without modification, the reference shall be read as being a reference —

- (a) to the re-enacted Act; or
- (b) if that re-enacted Act has been amended - to that Act as in force for the time being as amended.

(3) Where, in connection with such a reference as is mentioned in subsection (2), a particular provision of the repealed Act is referred to, being a provision to which —

- (a) a provision of the re-enacted Act corresponds; or
- (b) if that re-enacted Act has been amended - a provision of the re-enacted Act as in force for the time being as amended corresponds,

the reference to that particular provision shall be read as being a reference to that corresponding provision.

Exercise of certain powers between making and commencing of enactments

30. (1) Where an enactment (in this section referred to as the enactment concerned), being —

- (a) an enactment made on or after the date of commencement of this section that is not to come into operation immediately upon its making; or

- (b) an enactment made before the date of commencement of this section that did not come into operation on or before that date,

confers power, or amends another enactment in such a manner that the other enactment, as amended, will confer power, to make an instrument, including an instrument making or determining an appointment or an instrument of a legislative or administrative character (including Rules, Regulations or Bylaws), the power may be exercised, and anything may be done for the purpose of enabling the exercise of the power or of bringing the instrument into effect, before the enactment concerned comes into operation as if it had come into operation.

(2) An instrument made by virtue of subsection (1) or, in the case of such an instrument containing a number of provisions, each of those provisions, takes effect —

- (a) on the day on which the enactment concerned comes into operation; or
- (b) on the day on which the instrument or provision, as the case may be, would have taken effect if the enactment concerned had been in operation when the instrument was made,

whichever is the later.

(3) Where an enactment is to come into operation on a date to be fixed by an instrument, then at any time after the making of the enactment —

- (a) the instrument may be made; and
- (b) the instrument may be notified or published or notice of the making of the instrument may be made, as the case requires.

(4) Where this section applies to an enactment by reason of the fact that that enactment amends another enactment in the manner referred to in subsection (1) and that other enactment has not come into operation, this section has effect as if the references in subsections (1) and (2) to the coming into operation of the enactment concerned were references to the coming into operation of the other enactment as amended by the enactment concerned.

(5) In subsections (1), (2), (3) and (4), a reference to an enactment shall be read as including a reference to any provision or provisions of an enactment.

(6) In the application of this section, in accordance with section 7, to Rules, Regulations or Bylaws (including Rules, Regulations or Bylaws made by virtue of this section), references in this section to the making of an enactment shall be read as references to the making of Rules, Regulations or Bylaws and references in this section to an enactment other than the enactment concerned shall be read as references to Rules, Regulations or Bylaws.

(7) The repeal of the Ordinances referred to in section 3 does not affect the validity of anything done in accordance with those Ordinances before the date of commencement of this section or the coming into operation, on or after that date, of an instrument made, granted or issued by virtue of any of those Ordinances before that date.

Effect of repeal

31. (1) The repeal of an enactment or a part of an enactment by which a previous enactment or part of an enactment was repealed does not have the effect of reviving the previous enactment or part of the previous enactment.

(2) Where an enactment repeals in whole or in part a former enactment, the repeal does not —

- (a) revive anything not in force or existing at the time at which the repeal takes effect;
- (b) affect the previous operation of the enactment so repealed or anything duly done or suffered under that enactment;
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the enactment so repealed;
- (d) affect any penalty, forfeiture or punishment incurred in respect of an offence committed against the enactment so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment.

(3) 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 repealing enactment had not been made.

Expiration of enactments

32. The expiration of an enactment does not affect any civil proceeding previously commenced under it and the proceeding may be continued and everything in relation to it be done in all respects as if the enactment continued in force.

Regulations

33. (1) Notice of the making of Regulations under an enactment shall be published in the Gazette and, unless the contrary intention appears in the Regulations, the Regulations take effect on the date of publication of the notice.

(2) Regulations made under an enactment shall not be expressed to take effect on a date before the date of publication of notice of the making of the Regulations where, if the Regulations so took effect —

- (a) the rights of a person (other than the Commonwealth, an authority of the Commonwealth, the Administration, the Administrator or a Territory authority) existing at the date of publication would be affected in a manner prejudicial to that person; or
- (b) liabilities would be imposed on a person (other than the Commonwealth, an authority of the Commonwealth, the Administration, the Administrator or a Territory authority) in respect of anything done or omitted to be done before the date of notification.

(3) Where, in any Regulations, a provision is made in contravention of subsection (2), that provision is void and of no effect.

Effect of repeal of Regulations

34. (1) Section 31 applies with respect to the repeal of Regulations as though each reference in that section to an enactment were a reference to those Regulations.

(2) In this section, “Regulations” means Regulations, Rules or Bylaws under an enactment.

Prescribing matters by reference to other instruments

35. (1) Where an enactment authorises or requires provision to be made for or in relation to a matter by Regulations, the Regulations may make provision for or in relation to that matter by applying, adopting or incorporating, with or without modification —

- (a)** the provisions of an Act or enactment, or of any Regulations under an Act or enactment, as in force at a particular time or as in force from time to time; or
- (b)** matter contained in some other instrument or writing as in force or existing at the time when the first-mentioned Regulations take effect.

(2) Regulations shall not, except as provided by subsection (1), make provision for or in relation to a matter by applying, adopting or incorporating the matter contained in an instrument or other writing as in force or existing from time to time.

(3) In this section, “Regulations” means Regulations, Rules or Bylaws under an enactment.

SCHEDULE

Section 3

Ordinances repealed*Interpretation Ordinance 1915**Interpretation Ordinance 1921**Interpretation Ordinance 1929**Interpretation Ordinance 1933**Interpretation Ordinance 1940**Interpretation Ordinance 1958**Interpretation Ordinance 1960**Interpretation Ordinance 1971**Interpretation (Amendment) Ordinance 1977*

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Commenced 7 August 1979.

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