

House of Assembly—No 154A

As reported with amendments, report agreed to and passed remaining stages,
21 September 2021

South Australia

Legislation Interpretation Bill 2021

A BILL FOR

An Act to provide general rules for the interpretation of Acts and legislative instruments of the State, to define certain terms used in the Acts and legislative instruments of the State, to make related amendments to various Acts, to repeal the *Acts Interpretation Act 1915* and for other purposes.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Legislation Interpretation Act 2021*.

5 2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

3—Application of Act

- (1) Subject to subsection (3), the provisions of this Act apply—
- (a) to this Act; and
 - (b) to every other Act; and
 - (c) to every legislative instrument.
- (2) This Act applies to an Act or a legislative instrument whether made before or after the commencement of this Act.
- (3) The application of this Act, or a provision of this Act, to an Act or a legislative instrument, or to a provision of an Act or a legislative instrument, is subject to a contrary intention.

Part 2—Definitions and rules about the meaning of words

4—Standard definitions

In every Act and legislative instrument—

Act means—

- (a) an Act of the Parliament of South Australia or an Act or ordinance of some earlier legislative authority in South Australia; or
- (b) an Act of the Imperial Parliament that has been received into the law of South Australia or applies to South Australia by paramount force;

ADI means an authorised deposit-taking institution within the meaning of the *Banking Act* of the Commonwealth;

administrative unit has the same meaning as in the *Public Sector Act 2009*;

affidavit, in all cases where persons are allowed by law to affirm or to declare instead of swearing, includes affirmation or declaration;

amend includes the following, whether effected expressly or by implication:

- (a) omit;
- (b) insert;
- (c) substitute;
- (d) alter;
- (e) vary;

appoint includes reappoint;

AS or *Australian Standard* or *AS/NZS* or *Australian/New Zealand Standard* followed (in any of those cases) by a number, or a number accompanied by a reference to a calendar year, means the standard so designated that is published by or under the authority of Standards Australia (alone or jointly with others);

Australia means the Commonwealth of Australia and, when used in a geographical sense, includes Norfolk Island, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands, but does not include any other external Territory;

Australia Acts means—

- (a) the *Australia Act 1986* of the Commonwealth; and
- (b) the *Australia Act 1986* of the United Kingdom;

Australian citizen means a person who is an Australian citizen under the provisions of the *Australian Citizenship Act 2007* of the Commonwealth;

bank means an ADI that is permitted under the *Banking Act* of the Commonwealth to assume or use—

- (a) the word "bank", "banker" or "banking"; or
- (b) any other word (whether or not in English) that is of like import to a word referred to in paragraph (a);

bank cheque or ***banker's cheque*** means a cheque that an ADI draws on itself;

bank holiday means a day that is, under the *Holidays Act 1910*, a bank holiday;

Banking Act of the Commonwealth or ***Banking Act (Cwth)*** means the *Banking Act 1959* of the Commonwealth, as amended from time to time and includes an Act enacted in substitution for that Act;

building society means an ADI that is permitted under the *Banking Act* of the Commonwealth to assume or use—

- (a) the expression "building society"; or
- (b) any other expression (whether or not in English) that is of like import to the expression referred to in paragraph (a);

business day means a day that is not—

- (a) a Saturday or Sunday; or
- (b) a public holiday (other than a part-day public holiday—see section 46);

calendar month means one of the 12 months of the calendar year;

calendar year means a period of 12 months beginning on 1 January;

certified mail includes registered post;

commencement, in relation to an Act or a legislative instrument, or a provision of an Act or a legislative instrument, means the day or time on which the Act, legislative instrument or provision comes into operation;

Commonwealth means the Commonwealth of Australia and, when used in a geographical sense, includes Norfolk Island, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands, but does not include any other external Territory;

confer, in relation to a function, includes give and impose;

contravene includes fail to comply with;

council or ***local council*** means a council within the meaning of the *Local Government Act 1999*;

Court of Appeal means the Court of Appeal established as a division of the Supreme Court;

credit union means an ADI that is permitted under the *Banking Act* of the Commonwealth to assume or use—

- (a) the expression "credit union"; or
- (b) any expression (whether or not in English) that is of like import to the expression referred to in paragraph (a);

Crown means the Crown in right of South Australia;

data storage device means an article or thing that is used for storing and retrieving data (whether internal or external to a computer);

day means a period of 24 hours ending at the stroke of midnight;

Department or **department** of a Minister or of the Public Service, **government department** or **public department** means an administrative unit within the meaning of the *Public Sector Act 2009*;

District Court means the District Court of South Australia;

document includes—

- (a) anything on which there is writing; and
- (b) any record; and
- (c) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (d) anything from which sounds, images or writing can be reproduced with or without the aid of anything else; and
- (e) a map, plan, drawing or photograph;

DPP means the Director within the meaning of the *Director of Public Prosecutions Act 1991*;

entity includes a person, a partnership and an unincorporated body;

estate, in relation to land, includes any estate or interest, easement, right, title, claim, demand, charge, lien or encumbrance in, over, to, or in respect of, the land;

external Territory means a Territory, other than an internal Territory, where an Act makes provision for the government of the Territory as a Territory;

financial year means a period of 12 months starting on 1 July;

friendly society means a body that is a friendly society for the purposes of the *Life Insurance Act 1995* of the Commonwealth;

foreign country means any country (whether or not an independent sovereign state) outside Australia and the external Territories;

function includes power and duty and, accordingly, references to the performance of a function include the exercise of a power and the performance of a duty;

Gazette, **Government Gazette** or **South Australian Government Gazette** means the South Australian Government Gazette (including any supplement to that gazette) printed or published, or purporting to be printed or published, by the Government Printer of the State;

gender identity means the gender-related identity, appearance or mannerisms or other gender-related characteristics of a person (whether by way of medical intervention or not), with or without regard to the person's designated sex at birth;

Governor-in-Chief, Governor or Lieutenant-Governor means the Governor of the State or other officer for the time being administering the Government of the State;

Health Practitioner Regulation National Law means—

(a) the *Health Practitioner Regulation National Law*—

(i) as in force from time to time, set out in the schedule to the *Health Practitioner Regulation National Law Act 2009* of Queensland; and

(ii) as it applies as a law of South Australia, another State or a Territory (with or without modification); or

(b) the law that substantially corresponds to the law referred to in paragraph (a);

His Majesty or Her Majesty, the King or the Queen means His Majesty the King, or Her Majesty the Queen, Sovereign for the time being of Australia, and includes the predecessors and the heirs and successors of the King or Queen;

individual means a natural person;

internal Territory means the Australian Capital Territory, the Northern Territory or the Jervis Bay Territory;

intersex status means the status of having physical, hormonal or genetic features that are—

(a) neither wholly female nor wholly male; or

(b) a combination of female and male; or

(c) neither female nor male;

Jervis Bay Territory means the Territory referred to in the *Jervis Bay Territory Acceptance Act 1915* of the Commonwealth;

justice means a justice of the peace for South Australia (however appointed), and includes a special justice;

land includes—

(a) a building or structure affixed to land; and

(b) waters and airspace over land; and

(c) the bed of any body of waters; and

(d) subsoil and subterranean waters;

legislative instrument means—

(a) a regulation, rule, by-law or statute made under an Act; or

(b) a proclamation, notice, order or other instrument made by the Governor or a Minister under an Act and published in the *Gazette* or under the *Legislation Revision and Publication Act 2002*; or

(c) a code or standard made, approved or adopted under an Act; or

(d) any other instrument of a legislative character made or in force under an Act;
or

(e) any other instrument of a kind prescribed by the regulations;

Magistrates Court means the Magistrates Court of South Australia;

5 **major indictable offence** means any indictable offence classified by statute as a major indictable offence;

make, in relation to an instrument, includes issue and grant;

Minister means—

10 (a) when used in an Act—the Minister of the Crown to whom the administration of the Act has been committed by the Governor, or in whom the administration of the Act is otherwise vested; and

(b) when used in a legislative instrument—the Minister of the Crown to whom the administration of the Act under which the legislative instrument was made has been committed by the Governor, or in whom the administration of that
15 Act is otherwise vested,

and includes a Minister of the Crown for the time being discharging the duties of that Minister or acting in the exercise of powers or functions delegated by that Minister;

minor indictable offence means any indictable offence classified by statute as a minor indictable offence;

20 **month** means a period starting at the beginning of any day of one of the calendar months and ending—

(a) immediately before the beginning of the numerically corresponding day of the next calendar month; or

(b) if there is no such corresponding day occurring in the next calendar month, at
25 the end of that next calendar month;

motor vehicle has the same meaning as in the *Motor Vehicles Act 1959*;

Northern Territory means the Northern Territory of Australia;

oath, in all cases where persons are allowed by law to affirm or to declare instead of swearing, includes affirmation or declaration;

30 **office** includes position and role;

Parliament means the Parliament of the State;

part-day public holiday means a part of a day that is, under section 3B of the *Holidays Act 1910*, a part-day public holiday;

person includes a body corporate as well as an individual;

35 **police force** means South Australia Police under the *Police Act 1998*;

police officer means any member of South Australia Police under the *Police Act 1998*;

prescribed means—

(a) when used in an Act—prescribed by the Act or by a legislative instrument made, or to be made, under the Act; and

- (b) when used in a legislative instrument—prescribed by the Act under which the legislative instrument was made, by the legislative instrument itself or by some further legislative instrument made, or to be made, under the Act under which the legislative instrument was made;

5 **proclamation** means a proclamation made by the Governor and published in the Gazette or under the *Legislation Revision and Publication Act 2002*;

public holiday means—

- (a) a day that is, under the *Holidays Act 1910*, a public holiday; or
- (b) subject to section 46—a part-day public holiday;

10 **Public Service** or **public service** means the Public Service under the *Public Sector Act 2009*;

regulation, rule or **by-law** means—

- (a) when used in an Act—a regulation, rule or by-law made under the Act in which the expression is used; or
- 15 (b) when used in a legislative instrument—a regulation, rule or by-law made under the Act under which the legislative instrument was made;

repeal includes revoke;

SAPOL means South Australia Police;

20 **sitting day**, in relation to a House of Parliament, means a day on which the House actually sits (provided that, in a case where the sittings of a House on a particular day continue after midnight on that day and into the following day before the House stands adjourned, that portion of the following day prior to the adjournment of the House will be counted as a continuation of the preceding sitting day and not as a new sitting day);

25 **South Australian Civil and Administrative Tribunal** or **SACAT** means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*;

South Australian Employment Tribunal or **SAET** means the South Australian Employment Tribunal established under the *South Australian Employment Tribunal Act 2014*;

30 **special justice** means a justice who has been appointed as a special justice;

Standards Association of Australia includes Standards Australia;

Standards Australia means Standards Australia Limited ACN 087 326 690, or any body to which Standards Australia Limited is a successor in law or that is a successor in law to Standards Australia Limited;

35 **statutory declaration** means—

- (a) a declaration made under the *Oaths Act 1936*; or
- (b) a declaration made outside the State—
 - 40 (i) under a law in force in the place where the declaration is made, being a law that renders the declarant liable to a criminal penalty for a false declaration; and

- (ii) before a person who has authority under that law to take declarations;

statutory instrument has the same meaning as *legislative instrument*;

summary offence means any offence classified by statute as a summary offence;

5 *Supreme Court* means the Supreme Court of South Australia;

swear, in all cases where persons are allowed by law to affirm or to declare instead of swearing, includes affirm or declare;

the State or *this State* means the State of South Australia;

10 *this Act*, when used in an Act, includes legislative instruments made under the Act in which the expression is used;

United Kingdom means the United Kingdom of Great Britain and Northern Ireland;

writing includes any visible form in which words, figures, drawings or symbols may be reproduced or represented;

15 *year* means a period starting at the beginning of any day of a calendar year and ending—

(a) immediately before the beginning of the corresponding day of the next calendar year; or

(b) in the case of a period starting at the beginning of 29 February in a leap year—at the end of 28 February occurring in the next calendar year;

20 *Youth Court* means the Youth Court of South Australia.

5—References to professions registered under Health Practitioner Regulation National Law

- 25 (1) A reference in an Act or a legislative instrument within the ambit of column 1 of the following table will have effect as if it were the corresponding reference in column 2 of the table.

Table

Column 1	Column 2
chiropractor	a person registered under the <i>Health Practitioner Regulation National Law</i> to practise in the chiropractic profession (other than as a student)
dental practitioner	a person registered under the <i>Health Practitioner Regulation National Law</i> to practise in the dental profession (including, if appropriate, a dental therapist, dental hygienist, dental prosthetist or oral health therapist but not including a student)

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Column 1	Column 2
dentist	a person registered under the <i>Health Practitioner Regulation National Law</i> — (a) to practise in the dental profession as a dentist (other than as a student); and (b) in the dentists division of that profession
enrolled nurse	a person registered under the <i>Health Practitioner Regulation National Law</i> — (a) to practise in the nursing profession as a nurse (other than as a student); and (b) in the enrolled nurses division of that profession
legally qualified medical practitioner	a person registered under the <i>Health Practitioner Regulation National Law</i> to practise in the medical profession (other than as a student)
medical practitioner	a person registered under the <i>Health Practitioner Regulation National Law</i> to practise in the medical profession (other than as a student)
midwife	a person registered under the <i>Health Practitioner Regulation National Law</i> to practise in the midwifery profession as a midwife (other than as a student)
nurse	a person registered under the <i>Health Practitioner Regulation National Law</i> to practise in the nursing profession as a nurse (other than as a student)
occupational therapist	a person registered under the <i>Health Practitioner Regulation National Law</i> to practise in the occupational therapy profession (other than as a student)
optometrist	a person registered under the <i>Health Practitioner Regulation National Law</i> to practise in the optometry profession (other than as a student)
osteopath	a person registered under the <i>Health Practitioner Regulation National Law</i> to practise in the osteopathy profession (other than as a student)
pharmacist	a person registered under the <i>Health Practitioner Regulation National Law</i> to practise in the pharmacy profession (other than as a student)
physiotherapist	a person registered under the <i>Health Practitioner Regulation National Law</i> to practise in the physiotherapy profession (other than as a student)

Column 1

Column 2

podiatrist

a person registered under the *Health Practitioner Regulation National Law* to practise in the podiatry profession (other than as a student)

psychologist

a person registered under the *Health Practitioner Regulation National Law* to practise in the psychology profession (other than as a student)

registered nurse

a person registered under the *Health Practitioner Regulation National Law*—
(a) to practise in the nursing profession as a nurse (other than as a student); and
(b) in the registered nurses division of that profession

(2) A reference in an Act or a legislative instrument to a **registered health practitioner** will have effect as if it were a reference to a health practitioner registered in the relevant health profession under the *Health Practitioner Regulation National Law*.

(3) If a regulation is made under section 4(4) of the *Health Practitioner Regulation National Law (South Australia) Act 2010* that modifies the *Health Practitioner Regulation National Law (South Australia)* text, the Governor may, by regulation under this Act, make any amendments to the table in subsection (1) that are considered by the Governor to be necessary to ensure that the modification has proper effect under the law of South Australia.

6—Definitions to be read in context

Definitions in an Act or a legislative instrument apply to the construction of the Act or instrument except in so far as a contrary intention appears.

7—Parts of speech and grammatical forms

If a word or phrase is defined, other parts of speech and grammatical forms of the word or phrase have, unless the contrary intention appears, corresponding meanings.

8—Inclusion of digital material

(1) If any type of information or material is capable of being produced in digital form, a word that describes the information or material in its physical form includes a reference to the information or material in its digital form.

(2) Without limiting subsection (1), a reference to—

(a) **audiotape, photograph, videotape** or other word in the form of a verb describing the capture or recording of images or sounds by an audio recording, cinematographic, photographic or videorecording device includes a reference to the capture or recording of images or sounds by a digital device;

(b) an **audiotape, photograph, videotape** or other word in the form of a noun describing the item on which images or sounds captured or recorded by an audio recording, cinematographic, photographic or videorecording device are stored or reproduced includes a reference to a digital data storage device;

- (c) a *book, paper, plan* or other word in the form of a noun describing an item on which there is writing includes a reference to a digital data storage device;
- (d) a *record* includes information stored in a digital form by means of a digital data storage device.

- 5 (3) If a person who keeps information in a digital form is required under an Act or a legislative instrument—
- (a) to produce the information or a document containing the information to a body or person; or
 - (b) to make the information or a document containing the information available
10 for inspection by a body or person,
- then, unless the body or person otherwise authorises—
- (c) the requirement obliges the person to produce or make available for
inspection, as the case may be, a document that reproduces the information in
a form capable of being understood by the body or person; and
 - (d) the production to the body or person of the document in that form complies
15 with the requirement.

9—Words relating to gender

- (1) Every word implying a particular gender will be construed as including every other
20 gender and will also be applicable to an individual who does not identify as having any particular gender.
- (2) Every word implying a particular gender will be construed as including a body corporate as well as an individual.
- (3) Every phrase consisting of a masculine pronoun and a feminine pronoun joined by the
25 conjunction "or" will be construed as applicable to a body corporate as well as an individual.

10—Use of singular and plural

- (1) Every word in the singular will be construed as including the plural.
- (2) Every word in the plural will be construed as including the singular.
- (3) Every word in the plural or singular will be construed as including a body corporate as
30 well as an individual.

11—Meaning of may, must and shall

- (1) If, in an Act or a legislative instrument, the word "may" or a similar expression is used
in conferring a function, the entity on which the function is conferred has a discretion
as to whether or not to perform it.
- (2) However, if an Act or a legislative instrument specifies that an entity "may not"
35 perform a function, the entity is prohibited from performing it.
- (3) If, in an Act or a legislative instrument, the word "must" or "shall" (or a similar expression) is used in conferring a function, the entity on which the function is conferred is required to perform it.

- (4) This section only applies to an Act or a legislative instrument passed after 1 January 1873.

12—Meaning of expressions used in legislative instruments

5 Expressions used in a legislative instrument or other instrument made under an Act have the same meaning as they have in the Act (as in force from time to time).

13—References to signing or execution of documents

If an Act or a legislative instrument requires or authorises a document to be signed or executed by a person and the person is a body corporate, the Act or legislative instrument will be taken to authorise—

- 10 (a) the affixing of the common seal of the body to the document, or the signing of the document on behalf of the body, in accordance with the Act (whether or not of this State) under which the body is incorporated; or
- (b) the signing or execution of the document in any other manner permitted by law.

15 **Note—**

In relation to signing of electronic documents, see the *Electronic Communications Act 2000*.

Part 3—General interpretative provisions

14—Interpretation best achieving purpose or object

- 20 (1) In interpreting a provision of an Act or a legislative instrument, the interpretation that best achieves the purpose or object of the Act or the instrument (whether or not that purpose or object is expressly stated in the Act or instrument) is to be preferred to any other interpretation.
- (2) This section does not operate to create or extend any criminal liability.

15—Interpretation so as not to exceed legislative power

- 25 (1) An Act or a legislative instrument is to be interpreted as operating to the full extent of, but so as not to exceed, the legislative power of the State.
- (2) A legislative instrument made under an Act is to be interpreted as operating to the full extent of, but so as not to exceed, the power to make the instrument conferred by the Act.
- 30 (3) If a provision of an Act or a legislative instrument would, but for this section, be interpreted as being in excess of power, the provision is valid to the extent to which it is not in excess of power.

16—Use of extrinsic material in interpretation

(1) In the interpretation of a provision of an Act or a legislative instrument, if any material not forming part of the Act or instrument is capable of assisting in the ascertainment of the meaning of the provision, consideration may be given to that material—

- 5 (a) to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision (taking into account its context in the Act or instrument and the purpose or object underlying the Act or instrument and, in the case of a legislative instrument, the purpose or object underlying the Act under which the instrument was made); or
- 10 (b) to determine the meaning of the provision—
- (i) if the provision is ambiguous or obscure; or
- (ii) if the ordinary meaning conveyed by the text of the provision (taking into account its context in the Act or instrument and the purpose or object underlying the Act or instrument and, in the case of a legislative instrument, the purpose or object underlying the Act under which the instrument was made) leads to a result that is manifestly absurd or is unreasonable.

(2) Without limiting the effect of subsection (1), the material that may be considered in accordance with that subsection in the interpretation of a provision includes the following:

- 20 (a) all matters not forming part of the Act or instrument that are set out in the document containing the text of the Act or instrument as printed or published by the Government Printer or as published under the *Legislation Revision and Publication Act 2002*;
- 25 (b) any relevant report of a Royal Commission, Law Reform Commission, committee of inquiry or other similar body that was laid before either House of the Parliament before the provision was enacted or made;
- (c) any relevant report of a committee of the Parliament or of either House of the Parliament before the provision was enacted or made;
- 30 (d) any treaty or other international agreement that is referred to in the Act;
- (e) any explanatory memorandum relating to the Bill for the Act, or any other relevant document, that was laid before, or furnished to the members of, either House of the Parliament by a Minister or other member of Parliament introducing the Bill before the provision was enacted or made;
- 35 (f) the speech made to a House of Parliament by a Minister or other member of Parliament on the occasion of the moving by that Minister or member of a motion that the Bill for the Act be read a second time in that House;
- (g) any document (whether or not a document to which a preceding paragraph applies) that is declared by the Act to be a relevant document for the purposes of this section;
- 40 (h) any relevant material in the Minutes of Proceedings or the Votes and Proceedings of either House of Parliament or in any official record of debates in Parliament or either House of Parliament.

(3) In determining whether consideration should be given to any material, or in considering the weight to be given to any material, regard must be had, in addition to any other relevant matters, to—

(a) the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision (taking into account its context in the Act or instrument and the purpose or object underlying the Act or instrument and, in the case of a legislative instrument, the purpose or object underlying the Act under which the instrument was made); and

(b) the need to avoid prolonging legal or other proceedings without compensating advantage.

17—Act or instrument deemed always speaking

An Act or a legislative instrument will be considered as speaking at all times, and every provision of an Act or a legislative instrument, whether expressed in the present or the future tense, will be applied to the circumstances as they arise, so that effect may be given to each provision according to its spirit, true intent and meaning.

18—Abrogation of presumption that re-enactment etc constitutes Parliamentary approval of prior interpretation

The enactment or re-enactment of a provision of an Act that has been construed in a particular manner (judicially or otherwise) in this State or elsewhere creates no presumption that Parliament has sanctioned or approved that construction.

19—Material that is part of Act or instrument

(1) Except as provided in subsection (2), everything appearing in an Act or a legislative instrument is part of the Act or instrument.

(2) Subsection (1) does not apply to—

(a) anything described as an editorial note; or

(b) material appearing under the heading "Legislative History"; or

(c) an appendix setting out a table of divisional penalty and expiation fee amounts that specifies that it is for convenience of reference only.

20—Use of examples

An example included in an Act or a legislative instrument—

(a) is not exhaustive; and

(b) may extend, but does not limit, the meaning of the provision of the Act or legislative instrument to which it relates.

21—Things to be done by Governor to mean by Governor with advice of Executive Council

If, in an Act passed, or a legislative instrument made, after 1 January 1873, the Governor is authorised or required to do any act, matter or thing, it will be taken to mean that the act, matter or thing may or must be done by the Governor with the advice and consent of the Executive Council.

22—Determining whether Act or instrument binds Crown

- 5
- (1) Subject to subsection (2), an Act passed, or a legislative instrument made, after 20 June 1990 will, unless the contrary intention appears (either expressly or by implication), be taken to bind the Crown, but not so as to impose any criminal liability on the Crown.
- (2) If an Act passed, or a legislative instrument made, after 20 June 1990 amends an Act passed, or a legislative instrument made, before that date, the question whether the amendment binds the Crown will be determined in accordance with subsection (3).
- 10 (3) An Act passed, or a legislative instrument made, on or before 20 June 1990 will only be taken to bind the Crown if the Act or instrument expressly, or by necessary implication, binds the Crown.
- (4) If an Act or a legislative instrument, or a provision of an Act or a legislative instrument, (whether passed or made before or after 20 June 1990) binds the Crown but not so as to impose any criminal liability on the Crown, the Crown's immunity from criminal liability extends (unless the contrary intention is expressed) to an agent of the Crown in respect of an act within the scope of the agent's obligations.
- 15 (5) If an Act or a legislative instrument, or a provision of an Act or a legislative instrument, (whether passed or made before or after 20 June 1990) does not bind the Crown, the Crown's immunity extends (unless the contrary intention is expressed) to an agent of the Crown in respect of an act within the scope of the agent's obligations.
- 20 (6) For the purposes of this section—
- (a) a reference to the Crown extends not only to the Crown in right of this State but also (so far as the legislative power of the State permits) to the Crown in any other capacity; and
- 25 (b) a reference to an agent of the Crown extends to an instrumentality, officer or employee of the Crown or a contractor or other person who carries out functions on behalf of the Crown; and
- (c) an agent acts within the scope of the agent's obligations if the act is reasonably required for carrying out of obligations or functions imposed on, or assigned to, the agent.
- 30

23—Date of establishment of State

The State is taken to have been established on 28 December 1836.

24—Declaration of validity of laws made before Australia Acts

35 Each provision of an Act or a legislative instrument enacted or made, or purporting to have been enacted or made, before the commencement of the Australia Acts is as valid as it would have been, and has the same effect as it would have had, if the Australia Acts had been in operation at the time of its enactment or making or purported enactment or making.

25—Acts taken to be public Acts

40 An Act passed after 1 January 1873 is taken to be a public Act.

26—No requirement for separate enacting words

There is no requirement for a provision or portion of an Act to have separate enacting words in order to have effect as a substantive enactment.

Part 4—Commencement, amendment, replacement, repeal and expiry

27—Commencement of Acts

- (1) An Act that contains no provision fixing the date of its commencement, or providing for the fixing of that date, comes into operation on the day on which it is assented to by, or on behalf of, the Crown.
- 10 (2) If a Bill is reserved for the signification of Her Majesty's assent, the Bill will be taken, for the purposes of subsection (1), to have been assented to on the day on which the assent is notified by proclamation in the State.
- (3) If an Act provides that the Act comes into operation on a day to be fixed by proclamation, or that any provisions of the Act come into operation on a day to be
15 fixed by proclamation, then, unless the contrary intention appears, the Governor may by proclamation—
 - (a) fix a day or time for the Act or provisions to come into operation; or
 - (b) fix different days or times for different provisions of the Act to come into operation; or
 - 20 (c) suspend the operation of specified provisions of the Act until a day or time or days or times to be fixed by subsequent proclamation or proclamations.
- (4) For the purposes of subsection (3), a reference to a provision of an Act extends to—
 - (a) a part of a provision; and
 - (b) a provision to be inserted into another Act by the Act.
- 25 (5) The Governor may, by subsequent proclamation made before the day or time fixed by proclamation under subsection (3) for an Act or provision to come into operation, amend the proclamation to fix a different day or time for the Act or provision to come into operation.
- (6) Subject to subsection (7), an Act or a provision of an Act passed—
 - 30 (a) after the commencement of this subsection; or
 - (b) within the period of 2 years before the commencement of this subsection, that is to be brought into operation by proclamation will be taken to come into operation on the second anniversary of the date on which the Act was assented to by, or on behalf of, the Crown unless brought into operation before that second
35 anniversary.
- (7) Subsection (6) does not apply to an Act or a provision of an Act if the Act or provision provides that that subsection does not apply (or, if the Act or provision was enacted before the commencement of that subsection, that section 7(5) of the *Acts Interpretation Act 1915* does not apply).

Note—

In relation to commencement of legislative instruments see the *Legislative Instruments Act 1978*.

28—Time of commencement

5 If an Act or a legislative instrument, or a provision of an Act or a legislative instrument, comes into operation on a particular day, the Act or instrument, or the provision, comes into operation at the beginning of that day.

29—Expiry

An Act or a legislative instrument may include a provision specifying a day on which the Act or instrument (or any provision of the Act or instrument) expires.

10 **30—Time of expiry**

15 If an Act or a legislative instrument, or a provision of an Act or a legislative instrument, is expressed to expire, lapse or otherwise cease to have effect on a particular day, or to remain or continue in force or otherwise have effect until a particular day, the Act or instrument, or the provision, continues to have effect until the end of the specified day.

31—Use of headings to indicate amending provisions

- 20
- (1) In an Act, a provision under a heading referring to the amendment of a specified Act or a legislative instrument amends the Act or instrument so specified.
 - (2) In a legislative instrument made by an authority, a provision under a heading referring to the amendment of a specified legislative instrument made by the same authority amends the instrument so specified.

32—Effect of repeal, amendment or expiry

- 25
- (1) This section applies if an Act or a legislative instrument, or a provision of an Act or a legislative instrument—
 - 25 (a) is repealed or amended; or
 - (b) expires.
 - (2) The repeal, amendment or expiry of the Act, legislative instrument or provision does not—
 - 30 (a) revive anything not in force or existing at that time; or
 - (b) affect the previous operation of the Act, instrument or provision or anything duly done or suffered under it; or
 - (c) affect any direct amendments made by the Act, instrument or provision; or
 - (d) affect any right, interest, title, power or privilege created, acquired, accrued, established or exercisable, or any status or capacity existing, under the Act, instrument or provision; or
 - 35 (e) affect any duty, obligation, liability or burden of proof imposed, created or incurred, or any penalty, forfeiture or punishment incurred or imposed or liable to be incurred or imposed, under the Act, instrument or provision; or
 - 40 (f) affect any investigation, legal proceeding or remedy in respect of anything mentioned in paragraph (d) or (e).

- (3) An investigation, legal proceeding or remedy mentioned in subsection (2)(f) may be commenced, continued or enforced, and a penalty, forfeiture or punishment mentioned in subsection (2)(e) may be imposed, as if the Act, legislative instrument or provision had not been repealed or amended or had not expired.
- 5 (4) If an office, court, tribunal or body would, apart from this section, cease to exist by reason of the repeal, amendment or expiry, then, for the purpose of instituting, continuing or enforcing any such investigation, legal proceeding or remedy, the office, court, tribunal or body continues in existence (and, if necessary, new appointments may be made to it) as if the repeal or amendment had not been effected, or as if the
10 expired Act, legislative instrument or provision had not expired (as the case may be).
- (5) An Act or a legislative instrument, or a provision of an Act or a legislative instrument, will, despite its repeal, amendment or expiry, continue in force for the purposes of continuing and completing any act, matter or thing commenced or in progress under that Act, instrument or provision if there is no substituted Act, instrument or provision
15 adapted to its continuance and completion.
- (6) The repeal, amendment or expiry of the Act, legislative instrument or provision does not—
- (a) affect the continued operation of a provision enacted or made by that Act, instrument or provision that is of a savings or transitional nature; or
- 20 (b) end the validating effect of a provision enacted or made by that Act, instrument or provision that validates anything that is or may otherwise be invalid.
- (7) In this section—
- legal proceeding* includes any proceeding pursuant to an Act or law whether of a
25 judicial or administrative nature.

33—Saving of administrative acts and instruments when provisions replaced

- (1) If an Act or a legislative instrument, or a provision of an Act or a legislative instrument, is replaced, an administrative act done in accordance with it (as in force before it was replaced and not being an administrative act the effect of which was
30 exhausted) will be regarded as an administrative act done for the purposes of the replacement Act, instrument or provision if it is not inconsistent with the Act, instrument or provision as in force after it is replaced.
- (2) If—
- (a) a legislative instrument or other instrument is in force under a provision of an
35 Act; and
- (b) the Act, or the provision of the Act, is replaced by a subsequent Act or provision that contains or provides a power to make instruments to the same or similar effect,
- 40 the instrument will, subject to the subsequent Act or provision, remain in force as if the subsequent Act or provision had been in force when the instrument was made and the instrument had been made under that Act or provision.

- 5 (3) An Act or a legislative instrument, or provision of an Act or a legislative instrument, will be taken to have been *replaced* if it has been repealed or superseded by a later Act, instrument or provision that deals with the same matter (whether it deals with the matter in the same manner or not and whether it deals only with the matter or with other matters also).

34—Amendment or repeal of Act in session in which it was passed

An Act may be amended or repealed in the session of Parliament in which it was passed.

Part 5—Citation and references

35—Citation and references to other enactments

- 10 (1) An Act or a legislative instrument of this jurisdiction may be cited by—
- (a) its short title; or
 - (b) its short title abbreviated by omitting reference to any year except the year in which it was passed.
- 15 (2) An Act or a legislative instrument of any other jurisdiction may be cited by its short title or by any method authorised by, or commonly used in, the legislation of that other jurisdiction, together with a reference to the jurisdiction.
- 20 (3) A reference in an Act or a legislative instrument to an Act of this or any other jurisdiction includes a reference to legislative instruments made or in force under that Act.
- (4) A reference in an Act or a legislative instrument to a portion or provision of an Act of this or any other jurisdiction includes a reference to—
- (a) legislative instruments made or in force under that portion or provision of that Act; and
 - (b) legislative instruments made or in force under some other portion or provision of that Act that are connected to the portion or provision mentioned in paragraph (a).
- 25 (5) Nothing in this section renders unlawful or ineffective any citation or reference that is not made in a manner authorised by this section.

36—References to amended or replaced Acts, legislative instruments and provisions

- 30 (1) This section applies to a reference in an Act or a legislative instrument to—
- (a) an Act, or a provision of an Act, of this or any other jurisdiction; or
 - (b) a legislative instrument, or a provision of a legislative instrument, of this or any other jurisdiction.
- 35 (2) The reference is a reference to that Act, legislative instrument or provision as amended from time to time and, if it is replaced (within the meaning of section 33(3)), as replaced and amended from time to time.

Part 6—Functions and powers

37—Performance of functions

- (1) If an Act or a legislative instrument confers a function on a person or body, the function may be performed from time to time as occasion requires.
- 5 (2) If an Act or a legislative instrument confers a function on the holder of a particular office, the function may be performed by the person for the time being holding or performing the duties of the office.
- (3) If an Act or a legislative instrument confers a function on a body, the performance of the function is not affected merely because of a vacancy in the membership of the
10 body or a defect in the appointment of a member.

38—Performance of functions under provision before commencement

- (1) If—
 - (a) a provision of an Act that has passed, or a legislative instrument that has been made, is not yet in operation; and
 - 15 (b) it is expedient that a function conferred on a person or body by the provision be performed before it comes into operation,the function may be so performed before the provision comes into operation.
- (2) Subject to subsection (3), anything created, granted, issued, done or made under or pursuant to a provision by virtue of subsection (1) will take effect when the provision
20 comes into operation and not before.
- (3) If the function that is performed is the appointment of a person to a specified office or the establishment of a specified body—
 - (a) the appointed person may act in the office or the established body may meet and perform its functions with the same entitlement to remuneration or
25 allowances as if the provision were in operation; but
 - (b) any function performed by that person or body pursuant to subsection (1) does not take effect until the relevant provision comes into operation.

39—Certain meetings etc may occur remotely

- (1) If an Act or a legislative instrument requires that a meeting occur or that some other transaction take place that requires 2 or more persons to be physically present, the requirement will be taken to be satisfied if the persons meet, or the transaction takes place, remotely using 1 or both (including a combination) of the following means of communication:
 - (a) audio visual;
 - 35 (b) audio.
- (2) However, subsection (1) does not apply to a requirement that a person be physically present to witness the signing, execution, certification or stamping of a document or to take any oath, affirmation or declaration in relation to a document.

(2a) Subsection (1) does not apply to a meeting or transaction, or meeting or transaction of a class, prescribed by the regulations.

(3) A person who participates in a meeting in accordance with this section is taken to be present at the meeting, and to form part of any quorum for the meeting, even if the person is not physically present at the same place as another person participating in the meeting.

40—Power to make instrument includes power to amend or repeal

A power under an Act or a legislative instrument to make an instrument (including a legislative instrument) includes a power to amend or repeal the instrument in the same way, and subject to the same conditions if appropriate for that purpose, as it was made.

41—Powers of appointment

(1) This section applies if an Act or a legislative instrument authorises or requires a person (the *appointer*)—

(a) to appoint a person to an office or to act in an office; or

(b) to appoint a person to perform a function or do any other thing,

and any form of authorisation to perform a function or do a thing is taken to be an *appointment* for the purposes of this section.

(2) The appointer may (in the appointer's discretion) do any of the following:

(a) appoint a person by name or by reference to the title of an office held by a person;

(b) determine the terms and conditions of the appointment, including remuneration and allowances (if any);

(c) terminate or suspend an appointment;

(d) reinstate or reappoint a person whose appointment has been terminated or suspended;

(e) appoint another person, temporarily or permanently—

(i) if the person previously appointed is, for any reason, unable to carry out the duties of the office or position; or

(ii) if the office or position is vacant (including where the previous appointment has been terminated or suspended).

(3) An authorisation or requirement in an Act or a legislative instrument to appoint a person to an office will be taken to include an authorisation to appoint a person to act in the office.

(4) A person may be appointed to act in an office (whether pursuant to a specific authorisation or requirement in an Act or a legislative instrument or pursuant to subsection (3)) even if no appointment has ever been made to the office.

(5) If the holder of a particular office is appointed to do a thing, the person for the time being holding or performing the duties of that office is taken to be appointed to do that thing.

(6) A person appointed to act in an office has all the functions of the holder of the office.

- (7) An appointment made by the holder of a particular office does not cease to have effect merely because the appointer ceases to hold that office.
- (8) Anything done by, or in relation to, a person purporting to act in an office pursuant to an appointment is not invalid merely because—
- (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion for the person to act had not arisen or had ceased.

42—Gender balance in nomination of persons for appointment to statutory bodies

- (1) This section applies if an Act or a legislative instrument provides for a member of a body to be appointed by the Governor or a Minister on the nomination of a non-government entity.
- (2) If the Act provides for the non-government entity to nominate a panel of persons from which the Governor or Minister is to select a person for appointment, the Act will be taken to provide that the panel—
- (a) must include at least 1 woman and 1 man; and
 - (b) must, as far as practicable, be comprised of equal numbers of women and men.
- (3) If the Act does not provide for the non-government entity to nominate a panel of persons from which the Governor or Minister is to select a person for appointment, the Act will be taken to provide that—
- (a) the non-government entity must nominate a panel of persons comprised of not less than twice the number of members of the body to be appointed on the nomination of the entity plus 1; and
 - (b) the panel—
 - (i) must include at least 1 woman and 1 man; and
 - (ii) must, as far as practicable, be comprised of equal numbers of women and men; and
 - (c) the Governor or Minister must select the person for appointment from the panel.
- (4) This section does not derogate from the need to properly assess merit in selecting persons for appointment.

- (5) In this section—

man includes a person who identifies himself as a man regardless of the person's designated sex at birth;

non-government entity means a person or body other than an officer, agency or instrumentality (including a Minister) of the Crown in right of the State or the Commonwealth or another State or a Territory of the Commonwealth;

woman includes a person who identifies herself as a woman regardless of the person's designated sex at birth.

43—Powers of delegation

- 5 (1) This section applies if an Act or a legislative instrument authorises a person or body to delegate a function.
- (2) A delegation may be made subject to conditions or limitations specified by the delegator and may be revoked at any time by the delegator.
- 10 (3) Unless the Act or the legislative instrument expressly provides to the contrary, a delegation of the power of delegation cannot be made (and any purported delegation of all of the functions of the delegator will be read as if the delegation referred to all of the functions of the delegator other than the power of delegation).
- 15 (4) If a function, when exercised by a delegator, is dependent on the delegator's opinion, belief or state of mind in relation to a matter, the function, when exercised by a delegate, is dependent on the delegate's opinion, belief or state of mind in relation to that matter.
- (5) A function that has been delegated, when exercised by a delegate, will be taken to have been exercised by the delegator.
- (6) A function that has been delegated may, despite the delegation, be exercised by the delegator.
- 20 (7) The delegator may delegate the function to a person or body by name or by reference to the title of an office held by a person or body.
- (8) A delegation made to the holder of a particular office will be taken to be made to the person for the time being holding or performing the duties of the office.
- 25 (9) A delegation of all the functions of a person or body under an Act or a legislative instrument, or a provision of an Act or a legislative instrument, includes any additional function given to the delegator under the Act, instrument or provision by an amendment made to it after the delegation has taken effect.
- 30 (10) If a function of a person or body under an Act or a legislative instrument is delegated and, after the delegation has taken effect, the scope of that function is altered by an amendment made to the Act or the instrument, the delegation is of the function as so altered.
- (11) A delegation made by, or to, the holder of a particular office does not cease to have effect merely because the person who held the office when the function was delegated ceases to do so.
- 35 (12) The validity of a delegation is not affected by a grammatical error, spelling error, error of punctuation, formatting error or other minor error if the scope and meaning of the delegation is readily apparent despite the error.
- (13) In this section—
delegate includes sub-delegate.

Part 7—Time, distance, age and amounts

44—Calculating time

- (1) A period of time referred to in an Act or a legislative instrument that is of a kind mentioned in column 2 of an item in the table below is to be calculated as set out in column 3 of that item.

5

Column 1 Item	Column 2 If the period of time—	Column 3 then the period—
1	is expressed to occur between 2 days	includes both days
2	is expressed to begin at, on or with a specified day	includes that specified day
3	is expressed to begin on, from or after the happening of an act or event	does not include the day on which the act or event occurs
4	is expressed to continue until a specified day	includes that specified day
5	is expressed to end at, on or with a specified day	includes that specified day
6	is expressed to begin after a specified day	does not include that specified day
7	is expressed to end before a specified day	does not include that specified day
8	is a period of 2 or more months expressed to begin at, on or with a specified day in a calendar month (the starting month)	ends immediately before the corresponding day of the calendar month (the ending month) that is the relevant number of calendar months after the starting month or, if there is no corresponding day, at the end of the ending month

- (2) If an Act or a legislative instrument requires or allows a thing to be done but the last day for doing it is a day that is not a business day, then the thing may be done on the next day that is a business day.
- (3) If no period of time is provided or allowed for doing a thing that is required to be done, the thing must be done as soon as is reasonably practicable.

10

45—References to time

A reference in an Act or a legislative instrument to time in relation to doing anything in this or any other jurisdiction is a reference to the legal time in the jurisdiction.

15

46—Part-day public holidays and periods of time

If, for the purposes of an Act or a legislative instrument, a business day, working day or other period is expressed as excluding a public holiday, the exclusion does not extend to a part-day public holiday unless the Act or legislative instrument expressly provides to the contrary.

47—References to number of sitting days

A reference in an Act or a legislative instrument to a number of sitting days of a House of Parliament is, unless the contrary intention appears, a reference to the number of those days regardless of whether the days or some of the days occur in different sessions of Parliament or in different Parliaments.

48—Measuring distance

In measuring a distance for the purposes of an Act or a legislative instrument, the distance is to be measured in a straight line on a horizontal plane.

49—Attaining particular age

- (1) A person attains a particular age expressed in years at the beginning of the relevant anniversary of the date of the person's birth.
- (2) If a person was born on 29 February, subsection (1) will apply in relation to the person in each leap year and, in any year that is not a leap year, the person will attain a particular age expressed in years at the beginning of 1 March.

50—Rounding down of monetary amounts

An Act or a legislative instrument providing for the calculation and payment of a tax, fee, charge or other amount must be construed as if it provided that the calculated amount, if not an exact multiple of 5 cents, is to be rounded down to the highest multiple of 5 cents that is less than that amount.

Part 8—Documents provided under an Act

51—Service of documents

- (1) This section applies if an Act or a legislative instrument requires or permits a document to be served on a person (whether the expression "serve", "give", "provide", "deliver" or "send" or any other expression is used).
- (2) The document may be served on an individual by—
 - (a) delivering it to the individual personally; or
 - (b) leaving it at, or posting it to—
 - (i) the physical address designated by the individual for the service of documents of that kind; or
 - (ii) if such an address is not so designated, the place of residence or a place of business of the individual last known to the server; or
 - (c) sending it electronically to the individual in a manner designated, or agreed to, by the individual for the service of documents of that kind.
- (3) The document may be served on a body corporate by—
 - (a) leaving it at, or posting it to—
 - (i) the registered office of the body corporate; or
 - (ii) another physical address designated by the body corporate for the service of documents of that kind; or

(iii) if such an address is not so designated, a place of business of the body corporate last known to the server; or

(b) sending it electronically to the body corporate in a manner designated, or agreed to, by the body corporate for the service of documents of that kind.

5 (4) A document is posted to an address by properly addressing, prepaying and posting the document as a letter.

(5) Unless the contrary is proved, service of a document by posting it to an individual or a body corporate is taken to be effected at the time at which the document would be delivered in the ordinary course of post for the postal service used.

10 **Note—**

The time and place of service of a document sent electronically is to be determined in accordance with the *Electronic Communications Act 2000*.

52—Compliance with forms

15 If a form is prescribed or approved by or for the purposes of an Act or a legislative instrument, a form to the same effect is sufficient provided that deviations from the prescribed or approved form are not calculated to mislead.

Part 9—Penalties and proceedings for offences

53—Penalties

20 (1) A penalty set out at the end of a provision of an Act or a legislative instrument indicates that—

(a) an offence mentioned in the provision is punishable on finding of guilt by a penalty not exceeding the penalty so set out; or

25 (b) if an offence is not mentioned in the provision, a contravention of the provision is an offence punishable on finding of guilt by a penalty not exceeding the penalty so set out.

(2) If the penalty for an offence—

(a) is increased, the increased penalty applies only to offences committed after the increase takes effect; or

30 (b) is reduced, the reduced penalty extends to offences committed before the reduction takes effect (if the penalty is being imposed after the reduction takes effect).

(3) In this section—

penalty includes punishment.

Note—

35 See also *Expiation of Offences Act 1996* in relation to expiation fees fixed by an Act or a legislative instrument.

54—Standard scales for penalties and expiation fees

If an expression in the left hand column below appears in an Act or a legislative instrument, that expression has the meaning appearing opposite it in the right hand column:

5

Division 1 imprisonment	a term of imprisonment not exceeding 15 years
Division 1 fine	a fine not exceeding \$75 000
Division 2 imprisonment	a term of imprisonment not exceeding 10 years
Division 2 fine	a fine not exceeding \$50 000
Division 3 imprisonment	a term of imprisonment not exceeding 7 years
Division 3 fine	a fine not exceeding \$35 000
Division 4 imprisonment	a term of imprisonment not exceeding 4 years
Division 4 fine	a fine not exceeding \$20 000
Division 5 imprisonment	a term of imprisonment not exceeding 2 years
Division 5 fine	a fine not exceeding \$10 000
Division 6 imprisonment	a term of imprisonment not exceeding 1 year
Division 6 fine	a fine not exceeding \$5 000
Division 6 fee	an expiation fee of \$315
Division 7 imprisonment	a term of imprisonment not exceeding 6 months
Division 7 fine	a fine not exceeding \$2 500
Division 7 fee	an expiation fee of \$210
Division 8 imprisonment	a term of imprisonment not exceeding 3 months
Division 8 fine	a fine not exceeding \$1 250
Division 8 fee	an expiation fee of \$160
Division 9 fine	a fine not exceeding \$750
Division 9 fee	an expiation fee of \$105
Division 10 fine	a fine not exceeding \$250
Division 10 fee	an expiation fee of \$80
Division 11 fine	a fine not exceeding \$125
Division 11 fee	an expiation fee of \$55
Division 12 fine	a fine not exceeding \$75
Division 12 fee	an expiation fee of \$30

55—Fines etc to be paid into Treasury

If a fine, penalty or forfeiture is imposed or made by, or authorised to be imposed or made under, any Act, the Act will be taken to provide that the fine, penalty or forfeiture, when recovered, must be paid to the Treasurer of the State and form part of the Consolidated Account.

10

56—References to offences

A reference in an Act or a legislative instrument to an offence that is punishable by imprisonment for a specified term or more includes a reference to an offence punishable by imprisonment for life or by an indefinite term.

57—Who may proceed for recovery of penalties

Any person may take proceedings to recover a fine, penalty or forfeiture imposed by, or authorised to be imposed or awarded under, an Act or a legislative instrument, unless the right to take proceedings is vested by the Act or the legislative instrument in a particular officer or person.

58—Interpretation of references to summary proceedings, complaints etc

- (1) If an Act or a legislative instrument provides that proceedings for offences are to be dealt with, or disposed of, summarily or before a special magistrate or 1 or more justices, those offences will be dealt with under the *Criminal Procedure Act 1921* as summary offences.
- (2) If an Act or a legislative instrument provides that a pecuniary sum may be recovered summarily or before or on the award of a special magistrate or 1 or more justices, that sum may be recovered on information in proceedings under the *Criminal Procedure Act 1921* and an order for payment made in any such proceedings is enforceable as if it were a fine.
- (3) A reference in an Act or a legislative instrument to a complaint (being an instrument charging a person with a summary offence) will be taken to be a reference to an information under the *Criminal Procedure Act 1921* (and a reference to a complainant will be taken to be a reference to an informant under that Act).
- (4) A reference in an Act or a legislative instrument to making a complaint in respect of an offence will be taken to be a reference to laying an information under the *Criminal Procedure Act 1921* in respect of an offence of the relevant class.
- (5) A reference in an Act or a legislative instrument to a complaint (being an instrument charging a person with a summary offence) other than of a kind contemplated by subsection (3) or (4) is to be construed so as to recognise that, following the commencement of the *Summary Procedure (Abolition of Complaints) Amendment Act 2016*, all offences are to be charged on information.

59—Offences punishable under more than 1 law

If an act or omission constitutes an offence under 2 or more Acts, or both under an Act or Acts and at common law, the offender will, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of those Acts or at common law, but is not liable to be punished twice for the same offence.

Part 10—Miscellaneous

60—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

- (2) The regulations may—
- (a) be of general or limited application; and
 - (b) make different provision according to the matters or circumstances to which they are expressed to apply; and
 - (c) make provisions of a saving or transitional nature consequent on the enactment of this Act or on the commencement of specified provisions of this Act or on the making of regulations under this Act; and
 - (d) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or any other specified person or body.

Schedule 1—Related amendments, repeals and transitional provisions

Part 1—Preliminary

1—Amendment provisions

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Related amendments to *Evidence Act 1929*

2—Insertion of section 35A

After section 35 insert:

35A—Evidence of date of assent to Act

The date appearing—

- (a) on a copy of an Act printed or published, or purporting to be printed or published, by the Government Printer; or
- (b) on a copy of an Act published under the *Legislation Revision and Publication Act 2002* or in material published in relation to such an Act on a website prescribed by regulations made for the purposes of section 9(3) of the *Legislation Revision and Publication Act 2002*,

as the date on which the Governor assented to the Act, or made known Her Majesty's assent to the Act, is evidence that the date is the date on which the Governor so assented, or made known Her Majesty's assent, and will be judicially noticed accordingly.

3—Amendment of section 36—Proof of votes and proceedings of Parliament

Section 36—after "printed" insert:

or published

4—Amendment of section 37A—Proof of Gazette

Section 37A—delete "paper" wherever occurring and substitute in each case:
document

5—Amendment of section 37B—Proof of printing or publishing by Government Printer

Section 37B—delete "paper purporting to be printed by the Government Printer or by the authority of the Government of the State shall in all courts be evidence that the paper was printed" and substitute:

document purporting to be printed or published by the Government Printer or by the authority of the Government of the State will in all courts be evidence that the document was printed or published

Part 3—Related amendments to *Legislation (Fees) Act 2019*

6—Amendment of section 3—Interpretation

- (1) Section 3(3)—delete "*Acts Interpretation Act 1915*, a fee notice (whether made by a Minister or another person or body) will be taken to be a statutory instrument" and substitute:

Legislation Interpretation Act 2021, a fee notice (whether made by a Minister or another person or body) will be taken to be a legislative instrument

- (2) Section 3(4)—delete "section 14C of the *Acts Interpretation Act 1915*, a reference in that section to a power expressed to be" and substitute:

section 38 of the *Legislation Interpretation Act 2021*, a reference in that section to a function

7—Amendment of section 5—Fee notices

Section 5(4)—delete "*Subordinate Legislation Act 1978*" and substitute:

Legislative Instruments Act 1978

Part 4—Related amendments to *Legislation Revision and Publication Act 2002*

8—Amendment of section 3—Interpretation

Section 3, definition of *legislation*, (c)—delete "an instrument" and substitute:
a legislative instrument

9—Insertion of section 4A

After section 4 insert:

4A—Effect of publication under this Act

A provision of an Act or law that authorises or requires—

- (a) the publishing of legislation in the Gazette; or
(b) the making of legislation by the publishing of the legislation in the Gazette,

will be taken to have been complied with if the legislation is published under this Act instead of, or in addition to, being published in the Gazette.

5 **10—Amendment of section 5—Program for revision and publication of legislation**

(1) Section 5(3)(d)—delete ", revocations, amendments or variations" and substitute:
or amendments

(2) Section 5(3)—after paragraph (d) insert:

(e) legislation of a class prescribed by the regulations.

10 **11—Amendment of section 7—Alterations that may be made in revising legislation**

(1) Section 7(1)(a)(ii)—delete ", revocations, amendments or variations" and substitute:
or amendments

(2) Section 7(1)(h)(viii)—delete "*Acts Interpretation Act 1915*" and substitute:

Legislation Interpretation Act 2021

(3) Section 7(3)—delete subsection (3) and substitute:

(3) Material that, immediately before the commencement of section 19 of the *Legislation Interpretation Act 2021*, appeared in legislation, or in a Bill before the Parliament, but did not form part of the legislation or Bill may be omitted or varied when the legislation is revised after the commencement of that section (but may not be so omitted or varied more than once).

12—Amendment of section 8—Publication of legislation

(1) Section 8(1)—delete "Legislation" and substitute:

Subject to subsection (2), legislation

(2) Section 8—after subsection (1) insert:

(2) If legislation cannot, for technical or other reasons, be published in a manner contemplated by subsection (1), it may instead be published by—

(a) publishing it, and the date of publication, in another way determined by the Commissioner; and

(b) publishing it in a manner contemplated by subsection (1) as soon as practicable.

13—Insertion of section 8A

After section 8 insert:

8A—Special provisions relating to publication of legislation from website

- 5 (1) If any legislation is published under this Act only in the form of an electronic copy published from a website, the Commissioner must ensure that the legislation—
- (a) continues to be made available from that website; or
- 10 (b) is otherwise published under this Act and available to members of the public,
- while the legislation remains in force.
- (2) A failure by the Commissioner to comply with subsection (1) in relation to any legislation does not affect the validity or operation of the legislation.

14—Amendment of section 9—Evidence

Section 9—after subsection (2) insert:

- 15 (3) If a website prescribed by the regulations specifies a day as the day on which legislation was published under this Act, in any legal proceedings the day so specified is, in the absence of proof to the contrary, to be taken to be the day on which the legislation was so published.

Part 5—Related amendments to *Subordinate Legislation Act 1978*

15—Amendment of long title

25 Long title—delete ", printing and publishing of certain subordinate legislation" and substitute:

and publishing of certain legislative instruments

16—Amendment of section 1—Short title

Section 1—delete "Subordinate Legislation" and substitute:

30 Legislative Instruments

17—Substitution of section 9

Section 9—delete the section and substitute:

9—Application of Act

- 35 (1) The Governor may, by proclamation, declare that a provision of this Act that is expressed as applying only to regulations applies, in addition, to other legislative instruments of a kind specified in the proclamation.

- (2) A proclamation may be made under this section in relation to a legislative instrument made under an Act regardless of whether that Act was passed before or after the commencement of this section.

18—Amendment of section 11—Publishing of regulations

5 Section 11—after "the Gazette" insert:

or under the *Legislation Revision and Publication Act 2002*

19—Amendment of section 16A—Regulations to which this Part applies

- (1) Section 16A(e)(ii)—delete "varying or revoking" and substitute:

amending or repealing

- 10 (2) Section 16A—after paragraph (ec) insert:

(ed) regulations operating pursuant to savings provisions or transitional arrangements under an Act (where the Act under which the regulations were made has been repealed); and

20—Amendment of section 16B—Expiry of regulations to which this Part applies

- 15 (1) Section 16B(1)—delete "revoked" and substitute:

repealed

- (2) Section 16B(2)—after "the Gazette" insert:

20 or on the day on which it was first published under the *Legislation Revision and Publication Act 2002* (whichever occurs first)

21—Insertion of Part 3B

After Part 3A insert:

Part 3B—Commencement of other legislative instruments

16D—Commencement of legislative instruments other than regulations

- (1) A legislative instrument other than a regulation—
- (a) may come into operation at a date or time specified in the instrument; but
- 30 (b) may not come into operation earlier than the date on which it is made, approved or adopted unless that earlier operation is authorised by the Act under which the instrument is made, approved or adopted.
- (2) A legislative instrument other than a regulation that contains no
- 35 provision fixing the date or time of its commencement comes into operation on the day on which it is made, approved or adopted.

22—Insertion of sections 16E to 16G

Before section 17 insert:

16E—General provisions relating to all legislative instruments

- (1) All conditions and preliminary steps required for the making of a legislative instrument must be presumed to have been satisfied and performed, in the absence of evidence to the contrary.
- (2) If an Act authorises or requires a matter to be regulated by a legislative instrument, the power may be exercised by prohibiting the matter or any aspect of the matter.
- (3) If a legislative instrument may be made in relation to a matter, the legislative instrument may provide for the matter by applying, adopting or incorporating (with or without modification) a provision of any of the following:
 - (a) an Act or a legislative instrument of this or any other jurisdiction, as in force at a particular time or as in force from time to time;
 - (b) an instrument of a legislative character made under an Act of this or any other jurisdiction, as in force at a particular time or as in force from time to time;
 - (c) any other document, as in force at a particular time.

16F—Disallowance of repealing legislative instrument revives repealed instrument

If a legislative instrument that repeals another legislative instrument, or part of another legislative instrument, is disallowed under this or any other Act, the legislative instrument or part sought to be repealed revives.

16G—Time of disallowance

If a legislative instrument is disallowed under this or any other Act, the legislative instrument continues to have effect until the end of the day on which it is disallowed.

Part 6—Repeal of *Acts Interpretation Act 1915*

23—Repeal of Act

The *Acts Interpretation Act 1915* is repealed.

Part 7—Transitional provisions

24—Bills introduced before commencement of section 19

- (1) Despite section 19, section headings to amending provisions do not form part of an Act if the Bill for that Act was introduced in either House of Parliament before the commencement of section 19 (regardless of whether the Bill passes the Parliament, or comes into operation, after the commencement of section 19).

(2) In this clause—

amending provision of an Act means a provision of an Act that amends another Act.

25—References to time

5

Section 44 does not operate to alter the period of time provided or allowed for the doing of anything under an Act or a statutory instrument if the period commenced before the commencement of this Act.