

Explanatory Statement

INTERPRETATION AMENDMENT BILL 2021

SERIAL NO. 32 LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

CHIEF MINISTER

GENERAL OUTLINE

This Bill amends the *Interpretation Act 1978*.

The purpose of the Bill is to modernise outdated provisions within the *Interpretation Act 1978*. The Bill will modernise the commencement arrangements for legislation, subordinate legislation and statutory instruments; implement a substantive framework for the making of Administrative Arrangements Orders; insert a provision to resolve interpretive conflicts regarding notes to provisions; and update references to the amalgamated Federal Circuit and Family Court of Australia.

This Bill improves the Northern Territory legal system by ensuring that the legislative process is transparent, efficient and open to scrutiny. It ensures that legislation is clear and accessible.

NOTES ON CLAUSES

Clause 1. Short Title.

This is a formal clause, which provides for the citation of the Bill. The Bill, when passed, will be cited as the *Interpretation Amendment Act 2021*.

Clause 2. Commencement.

This is a formal clause that provides that the amendment Act will commence on 1 January 2022.

Clause 3. Act amended

This is a formal clause that provides that Part 2 amends the *Interpretation Act 1978*.

Clause 4. Section 5 to 6A replaced

The measure replaces sections 5 to 6A, which provide for commencement of Acts. Current sections 5 and 6 establish that an Act will commence at the beginning of the day it is granted assent, unless otherwise specified by the Act. The effect is that Acts without an express commencement provision relying on this default provision have retrospective operation up to one day before the exact time of assent. The default arrangement does not accord with modern drafting standards and undermines the common law presumption and rights principle against retrospective operation of legislation.

The revised section 5 specifies that Acts can be expressed to commence on a range of grounds. An Act may be expressed to commence in its entirety at once or at different times for different provisions. An Act without a commencement provision will commence the day after assent, so that an Act will not have retrospective operation unless expressly specified.

Section 6 ensures validity of Acts subject to section 8 of the *Northern Territory (Self-Government) Act 1978* of the Commonwealth. Under the Commonwealth provision, the Administrator may declare that proposed legislation of the Territory requires assent of the Governor-General. Proposed section 6 specifies that declared legislation does not have effect before the day on which notification of the Governor-General's assent is published in the *Gazette*.

New section 6A rephrases the existing section 6 principle that the time of the commencement of an Act is the beginning of the relevant day, unless otherwise provided.

Clause 5. Section 11 amended (Repeal does not revive previous Act)

This is a technical amendment to update a reference to section 63(10) to new section 63C(5).

Clause 6. Section 17 amended (Definitions)

Proposed section 17 will replace and insert these definitions:

- ‘Administrative Arrangements Order’. The cross reference is updated to Orders both made under section 35 and notified under section 36, which are sections proposed by clause 9.
- ‘Family Court’. The definition is updated to reflect the amalgamation of the Federal Circuit and Family Court of Australia under the *Federal Circuit and Family Court of Australia Act 2021* of the Commonwealth.
- ‘Federal Circuit Court’. The definition is updated to reflect the amalgamation of the Federal Circuit and Family Court of Australia under the *Federal Circuit and Family Court of Australia Act 2021* of the Commonwealth.
- ‘Federal Circuit Court and Family Court of Australia’. The definition is inserted to provide for the amalgamated Federal Circuit and Family Court of Australia under the *Federal Circuit and Family Court of Australia Act 2021* of the Commonwealth.
- ‘legislation website’. The term is defined as the website with the address ‘legislation.nt.gov.au’ or otherwise authorised in writing by the Chief Executive Officer of the Agency.
- ‘Ministerial office’. The defined term is updated with capitalisation of ‘ministerial’. The term is defined according to the definition given by section 4(1) of the *Northern Territory (Self-Government) Act 1978* of the Commonwealth.
- ‘notified in the *Gazette*’. This is defined for an instrument as notification of the publication of the instrument in the *Gazette*, with specified information. This is to reflect new practices proposed by clause 18 to allow commencement of instruments by publication of a notification of the proposed instrument, rather than publication of the instrument in full.

Clause 6(3) updates a cross reference of the definition of ‘subordinate legislation’ to include regulations, rules and by-laws to which both section 63 and the proposed section 63A apply.

Clause 7. Section 18A amended (References relating to an Agency)

This is a technical amendment to update ‘allotted’ to the preferred word ‘allocated’.

Clause 8. Schedule 19 amended (Ministerial references)

This is a technical amendment. Clause 8(1) capitalises ‘ministerial’. Clause 8(2) updates multiple references to ‘allotted’ to the preferred word ‘allocated’.

Clause 9. Section 35 replaced

The clause proposes replacement of section 35 with a more comprehensive section on the enactment of Administrative Arrangements Orders and insertion of a new section 36 on the publication and commencement of these Orders.

Administrative Arrangements Orders are significant and establish responsibilities of Government Departments and Ministers for legislation. Whilst Administrative Arrangements Orders are presently made under section 35, the section is deficient because it is only a reference provision. It only specifies that Administrative Arrangements Order is a reference to an order made by the Administrator containing certain information.

New section 35(1) is a substantive provision that grants the Administrator the power to make an Administrative Arrangements Order. Subsection (2) lists the actions an Administrative Arrangements Order may perform including nominating an Agency; allocating legislative powers and responsibilities to a Minister; and allocating Agencies the administration of legislation and responsibilities. Subsections (3) and (4) confirm how an Act may be administered by multiple Ministers. Subsection (5) provides that in the event the administration of an Act is not allocated to a minister or agency under the section, the Agency that has responsibility for the area or activity of government under the Administrative Arrangements Order to which the subject matter of the Act most closely relates will have responsibility for the administration of the Act. This ensures that the operation of every Act has oversight.

New section 36 sets out publication and commencement requirements of Administrative Arrangements Orders. Under the proposed subsection (1), notice of the making of an Administrative Arrangements Order must be published in the *Gazette*. It does not require that the entire Order be published in the *Gazette*, but subsection (2) requires that the publication notice in the *Gazette* must specify where copies of the Order may be obtained. Subsection (3) provides that an Order will commence and take effect on publication in accordance with subsection (1); or at a later time specified by the Order. The provision does not provide for Orders to be made retrospectively.

Clause 10. Section 37 amended (References in agreements)

This is a technical amendment to update ‘allotted’ to the preferred word ‘allocated’.

Clause 11. Section 40 replaced

This clause replaces section 40 to provide that a person acting in an office during the absence or inability of the office-holder holding office, continues to act during the vacancy of the office until the earlier of the revocation of the person’s authority to Act or one year after the office-holder ceased to hold office.

The clause modernises the language of the provision and removes an unnecessary reference to death of an office-holder being a reason for a vacancy without changing the effect of the provision.

Clause 12. Section 43 replaced

The proposed clause will replace section 43 with updated language to provide that the power to act or make a statutory instrument under an Act includes a corresponding power to repeal, rescind, revoke, amend or vary the action or instrument.

Clause 13. Section 45 repealed (Simultaneous actions)

This clause repeals section 45. The section will be redundant because simultaneous actions will be provided for in the proposed section 65F.

Clause 14. Section 62E inserted

This clause inserts section 62E to provide for the use of notes in Acts for interpretation. Notes are taken to be part of an Act under section 55(4) and therefore can be used in interpretation of an Act. The clause further provides that notes are not exhaustive, notes do not limit or extend the meaning of a provision and a provision inconsistent with a note will prevail to the extent of any inconsistency. The section is deliberately equivalent with existing section 62D on the use of examples.

Clause 15. Section 63 replaced

The measure replaces section 63 with detailed new sections 63, 63A, 63B and 63C for the making of subordinate legislation.

New section 63 sets out the procedure for making regulations under the power of an Act. A regulation must as soon as practicable after it is made, be published on the legislation website and notified in the *Gazette*. Within 6 sittings days, it must be laid before the Legislative Assembly. The tabling time is increased from 3 days, which still allows for appropriate scrutiny consistent with other jurisdictions.

New section 63A sets out the procedure for making rules or by-laws under the power of an Act. A rule or by-law must be signed by a person making it or authorised under the section. Once signed it must be given to the Minister administering the Act containing the provision. There are modified arrangements for a by-law made under the *Unit Title Schemes Act 2009* and the *Unit Titles Act 1975*. On receiving a signed rule or by-law subject to this new section, the Minister would be required, as soon as practicable after it is made, to cause the by-law to be published and notified in the *Gazette*. Within 6 sitting days after it is notified in the *Gazette*, it must be laid before the Legislative Assembly. Under the proposed section 63A(3), the Minister is able to return a rule or by-law to the person who signed it with a request for amendments prior to it being notified in the *Gazette*. Under proposed section 63A(4), if a person making a rule or by-law receives it returned from the Minister, the person must consider the amendment and resign it with or without the amendment included.

New section 63B provides for the commencement of subordinate legislation. Subordinate legislation may express commencement on a range of grounds listed in subsection (2). Subsection (3) and (4) cumulatively provide that subordinate legislation cannot be retrospective unless provided for in the principal Act. This is an improvement on present section 63(7), which sets out a complex test for the validity of retrospective subordinate legislation dependent on the effect of the legislation on a person's rights or imposition of liabilities. If a commencement is not specified or provided for, it will commence on the day after the subordinate legislation is made in accordance with subsection (5). The new section 63B(6) provides for a default commencement by *Gazette* notification for rules and by-laws not published on the legislation website. This may be required in some circumstances where an entity makes their own by-laws that do not contain a commencement provision and there is inadvertent non-compliance with these new processes. In these circumstances 63(B) will provide that the rule or by-law commences on the day on which it is notified in the *Gazette*.

New section 63C establishes revised tabling and disallowance requirements for subordinate legislation. Under proposed section 63C(1), a failure to table subordinate legislation will not affect the validity of the subordinate legislation. However, under proposed subsection (2), non-compliant legislation may be referred by the Legislative Assembly to a responsible committee. The Legislative Assembly may pass a resolution disallowing subordinate legislation, regardless of compliance with the tabling requirements. Under new subsection (3), notice of a disallowance resolution, in the case of subordinate legislation that is tabled in accordance with section 63(b) or 63A(2)(b), must be given within 12 sitting days after the subordinate legislation is tabled. Alternatively if the subordinate legislation has not been tabled, notice of the resolution must be given within 12 sitting days after the last sitting day that the subordinate legislation was required to be tabled. Disallowance is equivalent to repeal of subordinate legislation under subsection (4). Subsection (4) provides that if a disallowed provision amended or repealed a provision of other subordinate legislation, the disallowance would revive the other provision from the date of the disallowance as if the disallowed provision had not been made.

Clause 16. Section 64 amended (Subordinate legislation not to be made in terms of disallowed subordinate legislation)

This is a technical amendment to update a reference to section 63 to new section 63C.

Clause 17. Section 65F inserted

Clause 17 inserts section 65F to provide for simultaneous actions by statutory instruments. The substance of the provision is currently in section 45, which is proposed to be repealed, because Part VII Division 2 is a more appropriate location for this provision.

Clause 18. Section 66A inserted

This clause inserts section 66A to set out *Gazette* publication requirements for statutory instruments. The section will confirm that where an Act requires an instrument to be published in the *Gazette*, it will be sufficient for the instrument to be notified in the *Gazette* with a statement of where copies of the instrument may be electronically purchased or obtained. The change reflects the development of online publication of instruments.

Clause 19. Part VIII, Division 3 inserted

This is a transitional clause that provides that an Administrative Arrangements Order in force before the commencement of this Bill is taken to have been validly made and in force after the commencement.

The clause allows for subordinate legislation made prior to the commencement of section 15 of the Act to comply with tabling requirements.

Clause 20. Other laws amended

This clause provides that various consequential amendments to other Acts are to be made as specified in the Schedule.

Clause 21. Repeal of Act

This is a standard clause for legislation which consists entirely of amendments to other legislation. It provides that the Bill ceases to have effect once it has performed its function of amending the other legislation.