

Acts Interpretation Amendment Act 2011

On 27 June 2011 the Commonwealth Acts Interpretation Amendment Act 2011¹, received Royal Assent and slipped quietly into the federal body of law.

The Acts Interpretation Amendment Act 2011 is the result of Recommendation 22 in the Clearer Commonwealth Law report 1993 (House of Representatives Standing Committee on Legal and Constitutional Affairs) and a joint discussion paper issued by the Federal Attorney-General's Department and the Office of Parliamentary Counsel in 1998².

The Acts Interpretation Act Amendment Bill received bipartisan support after its introduction into the House of Representatives on 12 May 2011 by Attorney-General Robert McClelland. The bill was passed in the House of Representatives on 24 May 2011, introduced into the Senate on 14 June 2011 and passed in the Senate on 15 June 2011.

The attorney-general's media liaison advises that the amendments will have effect from six months after the date of royal assent, or 27 December 2011.

The provisions of the AIAA will substantially amend the Commonwealth Acts Interpretation Act 1901³.

The Acts Interpretation Amendment Act 2011 (AIAA)

The AIAA contains 3 sections and 3 schedules. Section 1 gives the short title of the Act. Section 2 (1) contains a table of commencement dates for amendments to a range of Acts including the AIAA itself.

Item 2 of the table in section 2 (1) provides that the amendments to the Acts Interpretation Act 1901 will commence on either a single day to be fixed by Proclamation, or, if any of the provision(s) do not commence within the period of six months beginning on the day this Act receives the royal assent, they commence on the day after the end of that period.

It should be noted that certain amendments enumerated in the table in section 2 (1) are consequent upon either amendments to other legislation or the introduction of specific legislation. Some amendments will not take effect despite the terms of the AIAA if the legislation named in the table is not introduced⁴.

Section 2 (2) provides that the information included in column 3 of the table in section 2 (1) does not form part of the Act.

Section 3 provides that the amendment or repeal of each Act specified in a Schedule to this Act is to take effect as set out in the applicable items in the Schedule concerned.

Amendments to the Acts Interpretation Act 1901

Schedule 1 of the AIAA contains extensive revisions, repeals and re-enactments of sections throughout the Acts Interpretation Act 1901, as well as modifying section 13 *Legislative Instruments Act 2003* which refers to construction of legislative instruments and the application of the Acts Interpretation Act 1901.

The new Overview to the Acts Interpretation Act 1901 describes the Act as:

a dictionary and manual to use when reading and interpreting Commonwealth Acts and instruments made under Commonwealth Acts.

The changes to the Acts Interpretation Act 1901 ('the Act') include a revised Part 2 which co-locates and enhances definitions of words and phrases. Some definitions have been relocated within the Act without being substantively amended. In some instances the word 'the' has been removed from the start of the definition. The most significant amendments to definitions are:

- document will become consistent with definition in the *Evidence Act 1995*;
- calendar month has been simplified and reiterated for month;
- court of summary jurisdiction 'means any justice of the peace, or magistrate of a state or territory, sitting as a court of summary jurisdiction';
- Gazette will refer to the post-1976 *Commonwealth of Australia Gazette*;
- Minister or Minister of State will become 'Ministers of State for the Commonwealth'.

The AIAA adds new definitions for the following:

- Australian citizen is given the same meaning as in the *Australian Citizenship Act 2007*;
- Business day is defined as 'a day that is not a Saturday, a Sunday or a public holiday in the place concerned';

- Contiguous zone, Continental shelf, Exclusive economic zone and Territorial sea have the same meaning as in the *Seas and Submerged Lands Act 1973* and the United Nations Convention on the Law of the Sea done at Montego Bay on 10 December 1982;
- Insolvent under administration has the same meaning as in the *Corporations Act 2001*;
- Modifications is defined as ‘in relation to a law, includes additions, omissions and substitutions’; and
- Penalty unit has the same meaning as in section 4AA of the *Crimes Act 1914*;
- Standards Australia will replace, where appropriate, existing references to ‘Standards Association of Australia’ and ‘Standards Australia International Limited’ with references to ‘Standards Australia’.

Many definitions are relocated within the Act but remain unchanged. The definition of British possession will be moved to the *Crimes Act 1914*.

Roman numerals will be replaced with Arabic numerals and the majority of amendments remove the phrase ‘unless the contrary intention appears’ from numerous sections of the Act.

References to the ‘king’ will become references to the sovereign.

References to Ministers and ministerial functions have been revised and section 19B and 19BA Orders will apply retrospectively. Action taken by or in relation to a person purporting to act under an appointment or temporary appointment is not invalidated in certain circumstances.

A new section 13 states that all material in an Act is part of the Act and should be given appropriate weight in interpreting the terms of the Act⁵. This applies to all Acts from the commencement of the amendment.

Section 15AA is amended to provide that a court is to prefer the construction of an Act that will ‘best achieve’ the purpose or object of the Act.

Subsections 33(3A) and (3AB) and subsection 13(3) Legislative Instruments Act 2003 will include a definition of matter that includes things, persons and animals.

Subsection 33B(3) is amended to explicitly provide that

meetings can be conducted by telephone and other methods of communication. New subsections 33B(4) and (5) allow for a meeting to be held in two or more places at the same time.

Section 34AB (2) provides that a delegation of powers, functions or duties under a given Act or part of an Act extends to a power, function or duty included in that Act or part that has come into existence after the delegation is made⁶.

Section 46 (1)(b) and (c) and subsection 13(1) *Legislative Instruments Act 2003* are amended to refer to the enabling legislation ‘as in force from time to time’⁷.

Schedule 2 lists the consequential amendments to statutes ranging from the *Aboriginal and Torres Strait Islanders Act 2005* to the *Wine Australia Corporation Act 1980*.

The majority of the consequential amendments are minor. For example, the amendment to the *Evidence Act 1995*, which gives effect to the new section 13 *Acts Interpretation Act 1901*, reads:

After subsection 3(1)

Insert:

(1A) The Dictionary at the end of this Act is part of this Act⁸.

Schedule 3 contains items relevant to application and saving provisions, transitional provisions, and the making of regulations.

All practitioners are encouraged to review the AIAA to gauge the impact it will have on their areas of practice.

By Margaret MacLean Pringle

Endnotes

1. Act No. 46 of 2011.
2. *Review of the Commonwealth Acts Interpretation Act 1901*, 1998.
3. Act No. 2 of 1901
4. e.g. Section 2(1) AIAA, table item 4: Schedule 2, items 653 and 654; *Governance of Australian Government Superannuation Schemes Act 2011*.
5. *Wacando v The Commonwealth* (1981) 148 CLR 1 at 16, Gibbs CJ.
6. *Australian Chemical Refinery Pty Ltd v Bradwell*, New South Wales Court of Criminal Appeal, Street CJ, (unreported, 28 February 1986).
7. *Birch v Allen* (1942) 65 CLR 621.
8. Schedule 2, 566.