



Express law fast track information for clients

21 June 2011

Acts Interpretation Act 1901 amendments

On 15 June 2011 Parliament passed the [Acts Interpretation Amendment Bill 2011](#), implementing a significant review of the *Acts Interpretation Act 1901*. The Bill improves the structure of the Acts Interpretation Act and contains a number of other substantive amendments. Concepts are modernised so that the Acts Interpretation Act can continue to be relevant to the 21st century.

Acts Interpretation Amendment Bill 2011

The Bill progresses the implementation of the clearer laws elements of the *Strategic Framework for Access to Justice in the Federal Civil Justice System*. The Bill also implements recommendations made following past reviews of the Acts Interpretation Act including the 1998 *Review of the Commonwealth Acts Interpretation Act 1901* by the Office of Parliamentary Counsel and the Attorney-General's Department. The Bill effects 3 types of changes: improvement in structure, other substantive amendments and modernisation.

Improvement in structure

The Bill improves the structure of the Acts Interpretation Act by:

- co-locating the definitions that were previously scattered throughout the Act
- co-locating other provisions that were not in logical order.

Other substantive amendments

The Bill also contains a number of other substantive amendments including:

- allowing s 19B and 19BA orders (which update references in legislation to particular ministers, departments or secretaries so that they can be read consistently with responsibilities as allocated under the Administrative Arrangements Order) to apply retrospectively so that any past 'gaps' can be remedied
- providing that if a minister purports to exercise a power or perform a function that is conferred or imposed on another minister by an Act, the exercise of that power or the performance of that function is not invalid merely on that basis (new s 19BD)
- ensuring that provisions of the Acts Interpretation Act dealing with the making, granting and issuing of instruments (s 33(3), (3A) and (3B)) apply to instruments of a legislative or administrative character (not, as some judgments have suggested, just instruments of a legislative character)
- providing that anything done by or in relation to a person purporting to act under an appointment is not invalid merely because the occasion for the appointment had not arisen, there was a defect or irregularity in connection with the appointment, the

appointment had ceased to have effect or the occasion to act (in the case of acting appointments) had not arisen or had ceased

- specifying that all material from and including the first section of an Act to the end of the last section of the Act or the last Schedule to the Act is part of an Act, as well as the long title, any preamble, enacting words for the Act and headings appearing before the first section of the Act (new s 13). This means that items such as section headings, which are not currently treated as part of an Act under s 13, will be considered to be part of the Act from the commencement of the amendments. They will therefore be able to be used in interpreting the Act without the need for recourse to s 15AB (dealing with use of extrinsic material in interpreting an Act).
- a new general 'contrary intention' provision (new s 2(2)) which specifies that the application of the Acts Interpretation Act or a provision of the Act is subject to a contrary intention. Individual references to 'contrary intention' in other provisions in the Act have been removed.

Modernisation

The Bill updates the Acts Interpretation Act to allow for advances in technology. For example, it allows meeting participants to be in different locations and to participate using technology such as video conferencing. The definition of document is adjusted to include maps, plans, drawings and photographs.

Consequential changes to other Commonwealth legislation

The Bill makes consequential amendments to other Commonwealth legislation.

Implications of the Bill for Commonwealth agencies

The Acts Interpretation Act is an important Commonwealth Act that provides general rules for interpreting all Commonwealth Acts and legislative instruments (see s 13(1) of the *Legislative Instruments Act 2003* and s 46(1) of the Acts Interpretation Act). The intention of the changes effected by the Bill is to make it uniformly easier for agencies to read the legislation they administer. The Act, for example, will now have an easily accessible co-located set of definitions frequently used in legislation such as 'contravene', 'individual' and 'Australian Standard'. Other useful innovations include addressing possible invalidity of acts done under a defective appointment and allowing orders updating references in legislation to a particular minister, department or secretary of a department to apply retrospectively. The consequential amendments to legislation will also be of interest to agencies.

AGS can assist agencies with the application of the Bill to their legislation. AGS was closely involved with the Attorney-General's Department and the Office of Parliamentary Counsel in preparing the Bill.

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