

Interpretation (Amendment) Bill 2012

EXPLANATORY MEMORANDUM

OBJECTIVES

The *Interpretation (Amendment) Bill 2012* is intended to improve the functioning of the Statute Book in 4 areas: the making of rules and by-laws, references to substituted laws, breach of statutory duty and the saving of rights of the Republic.

Clause 1 provides for the short title.

Clause 2 provides for commencement of the measure on certification.

Clause 3 is the substantive amending provision.

SCHEDULE – AMENDMENT OF INTERPRETATION ACT 2011

Item 1 amends section 18 which provides a mechanism for submission of rules and by-laws to the Minister administering the provision containing the power to make the rules or by-laws and for that Minister to recommend changes. The amendment provides that the mechanism does not apply to court rules and extends the exemption for rules or by-laws made by the President or a Minister, to rules or by-laws made by Cabinet.

Item 2 repeals section 31. It is proposed to shift the substance of this provision to new section 39 in Part 6 because it relates to references to law, the subject of that Part. New section 39A is also relevant to this matter.

Item 3 replaces section 39 with 2 new provisions. Section 39 provides that a reference in a written law to another written law is taken to be a reference to the other written law as in force from time to time or as substituted. New section 39A explains what substitution of a written law means.

Item 4 inserts 2 new sections. New section 49A deals with proceedings for breach of a statutory duty and new section 49B imposes a presumption that written laws do not bind the Republic unless expressly provided or necessarily implied.

Provisions of *Interpretation Act 2011* as proposed to be amended or inserted:

18 Procedure for making rules and by-laws

~~(1) This section applies if an Act contains a power for a person, other than the President or a Minister, to make rules or by-laws.~~

(1) This section applies if an Act contains a power for a person to make rules or by-laws except if:

(a) the rules are court rules; or

(b) the rules or by-laws are made by the Cabinet, the President or a Minister.

(2) All rules or by-laws made under the power must be:

(a) signed by the person making them, or, if that person is a body, by a person authorised by it to sign them; and

(b) given to the Minister administering the provision containing the power for notification in the Gazette.

(3) The Minister may return the rules or by-laws to the person who made them with recommended changes.

(4) If the Minister returns the rules or by-laws to the person with recommended changes, the person must:

(a) consider the recommended changes; and

(b) return the rules or by-laws to the Minister for notification in the Gazette, whether or not the recommended changes are made.

(5) To avoid doubt, sections 15, 16 and 17 apply to the rules or by-laws.

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31 References to repealed provisions

~~If a written law repeals and substitutes, with or without modification, a provision of another written law, a reference in any other written law to the provision is a reference to the substituted provision.~~

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39 Reference to law includes law as in force from time to time

A reference in a written law to another written law is a reference to the other law as in force from time to time.

39 Continuity of reference to law

- (1) A reference in a written law to another written law is a reference to the other law as in force from time to time.
- (2) If a written law is substituted for an earlier written law, a reference in any other written law to the earlier law is taken to be a reference to the substituted law.

39A When a written law substituted for another

A later written law is substituted for an earlier written law if:

- (a) the earlier law is repealed or superseded; and
- (b) the later law deals with the same subject matter as the law that has been repealed or superseded (whether it deals with the matter in the same way or differently, and whether it deals only with that matter or with other matters also).

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49A Action lies for breach of statutory duty unless otherwise provided

- (1) If an Act imposes or authorises the imposition of a duty then, unless express provision to the contrary is made, a person who sustains loss, damage or injury as a result of a breach of the duty may bring an action under the common law for breach of statutory duty.
- (2) Subsection (1) applies:
 - (a) whether the duty is positive or negative; and
 - (b) whether or not the Act provides a special remedy for its enforcement.

49B Saving of rights of the Republic

A written law does not affect the rights of the Republic unless it is expressly provided, or unless it appears by necessary implication, that the law binds the Republic.

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65 Definitions applicable to all written laws

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'public holiday' means a holiday in the public service under section 37 of the *Public Service Act 1998*;

'public office', ***'public officer'*** and ***'public service'***, see Article 81(1);

'public prosecutor' see section 2 of the *Criminal Procedure Act 1972*;