



# **Heard Island and McDonald Islands Act 1953**

## **Act No. 7 of 1953 as amended**

This compilation was prepared on 22 October 2001  
taking into account amendments up to Act No. 143 of 2001

The text of any of those amendments not in force  
on that date is appended in the Notes section

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## Contents

1	Short title [ <i>see</i> Note 1] .....	1
2	Interpretation.....	1
3	Territory of Heard Island and McDonald Islands.....	2
4	Existing laws to cease to be in force .....	2
5	Laws of Australian Capital Territory to be in force .....	2
6	Powers and functions under applied laws.....	3
7	Application of Commonwealth Acts .....	3
8	Ordinance may amend or repeal adopted laws .....	3
9	A.C.T. courts to have jurisdiction in the Territory .....	4
10	Ordinances .....	4
11	Laying of Ordinances before the Parliament .....	4
11A	Ordinance not to be re-made while required to be tabled.....	6
11B	Ordinance not to be re-made while subject to disallowance.....	7
11C	Disallowed Ordinance not to be re-made unless resolution rescinded or House approves.....	8
11D	Regulations, rules and by-laws.....	8
12	Grant of pardon, remission etc. ....	8
<b>The Schedule—Heard Island and McDonald Islands</b>		<b>10</b>
<b>Notes</b>		<b>11</b>



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# An Act to provide for the Government of Heard Island and McDonald Islands

## Preamble

WHEREAS Heard Island and McDonald Islands (being the islands described in the Schedule to this Act) are territories acquired by the Commonwealth:

AND WHEREAS it is desirable to make provision for the government of those territories as one Territory of the Commonwealth:

BE it therefore enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:

## 1 Short title [see Note 1]

This Act may be cited as the *Heard Island and McDonald Islands Act 1953*.

## 2 Interpretation

In this Act, unless the contrary intention appears:

*Act* does not include an enactment.

***criminal laws*** means any laws (whether written, unwritten, substantive or procedural) relating to offences, whether indictable or not, including laws about:

- (a) the investigation of offences; and
  - (b) the punishment of offenders, including the penalties or loss of benefits to which offenders are liable; and
  - (c) the forfeiture and confiscation of the proceeds of crime;
- and any laws providing for the interpretation of such laws.

***Enactment*** has the same meaning as in the *Australian Capital Territory (Self-Government) Act 1988*.

***Ordinance*** means an Ordinance made under this Act.

*the Territory* means the Territory of Heard Island and McDonald Islands.

### **3 Territory of Heard Island and McDonald Islands**

Heard Island and McDonald Islands (being the islands described in the Schedule to this Act) are declared to be a Territory of the Commonwealth by the name of the Territory of Heard Island and McDonald Islands.

### **4 Existing laws to cease to be in force**

The laws in force in the Territory immediately before the commencement of this Act (not being laws of the Commonwealth in force in the Territory) shall, upon the commencement of this Act, cease to be in force.

### **5 Laws of Australian Capital Territory to be in force**

- (1) Subject to this Act, the laws (other than the criminal laws) in force from time to time in the Australian Capital Territory (including the principles and rules of common law and equity so in force) are, by virtue of this section, so far as applicable to the Territory and not inconsistent with an Ordinance, in force in the Territory as if the Territory formed part of the Australian Capital Territory.
- (2) Subject to this Act, the criminal laws in force from time to time in the Jervis Bay Territory are, by virtue of this section (so far as they are applicable to the Territory and are not inconsistent with an Ordinance) in force in the Territory as if the Territory formed part of the Jervis Bay Territory.
- (2A) Chapter 2 of the *Criminal Code* does not apply in relation to, or in relation to matters arising under, a law in force in the Territory under subsection (1) or (2).
- (3) Subsection (1) does not extend to a law in force in the Australian Capital Territory, if that law is an Act or a provision of an Act other than:
  - (a) section 6 of the *Seat of Government Acceptance Act 1909*;
  - and

- (b) sections 3, 4 and 12C of the *Seat of Government (Administration) Act 1910* and the Schedule to that Act.
- (4) Subsection (2) does not extend to a criminal law in force in the Jervis Bay Territory if that law is an Act or a provision of an Act.

## **6 Powers and functions under applied laws**

- (1) Subject to subsection (2), where a power or function is vested in a person or authority (other than a court) by a law in force in the Territory under section 5, the power or function is, in relation to the Territory, vested in, and may be exercised or performed by, that person or authority.
- (2) The Governor-General may direct that a power or function of the kind mentioned in subsection (1) be vested in a different specified person or authority and, where such a direction is in force:
  - (a) subsection (1) does not apply to the relevant power or function; and
  - (b) the power or function is vested in, and may be exercised or performed by, the specified person or authority.

## **7 Application of Commonwealth Acts**

- (1) An Act or a provision of an Act (whether passed before or after the commencement of this Act) is not, except as otherwise provided by that Act or by another Act, in force as such in the Territory, unless expressed to extend to the Territory.
- (2) An Ordinance shall not be made so as to affect the application of its own force in, or in relation to, the Territory of an Act or a provision of an Act.

## **8 Ordinance may amend or repeal adopted laws**

A law in force in the Territory by virtue of section five of this Act may be amended or repealed by an Ordinance or by a law made under an Ordinance.

## **9 A.C.T. courts to have jurisdiction in the Territory**

- (1) The courts of the Australian Capital Territory have jurisdiction in and in relation to the Territory.
- (2) The *Australian Capital Territory Supreme Court Act 1933* and the practice and procedure of each court of the Australian Capital Territory in force from time to time apply in the Territory as if:
  - (a) where the relevant court is exercising its jurisdiction in relation to criminal laws in force in the Territory under section 5—the Territory formed part of the Jervis Bay Territory; and
  - (b) in any other case—the Territory formed part of the Australian Capital Territory.
- (3) For the purposes of subsection (2), a reference in the *Australian Capital Territory Supreme Court Act 1933* to an Ordinance or enactment is a reference to an Ordinance or enactment, as the case may be, in force under this Act.

## **10 Ordinances**

- (1) The Governor-General may make Ordinances for the peace, order and good government of the Territory.
- (2) Notice of the making of an Ordinance shall be published in the *Gazette*, and an Ordinance shall, unless the contrary intention appears in the Ordinance, come into operation on the date of publication of the notice.

## **11 Laying of Ordinances before the Parliament**

- (1) An Ordinance shall be laid before each House of the Parliament within fifteen sitting days of that House after the making of the Ordinance, and, if it is not so laid before each House of the Parliament, ceases to have effect.
- (2) If either House of the Parliament, in pursuance of a motion of which notice has been given within fifteen sitting days after an Ordinance has been laid before that House, passes a resolution disallowing the Ordinance or a part of the Ordinance, the Ordinance or part so disallowed thereupon ceases to have effect.



- (3) If, at the expiration of fifteen sitting days after notice of a motion to disallow an Ordinance or part of an Ordinance has been given in a House of the Parliament, being notice given within fifteen sitting days after the Ordinance has been laid before that House:
- (a) the notice has not been withdrawn and the motion has not been called on; or
  - (b) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of;
- the Ordinance or part, as the case may be, specified in the motion shall thereupon be deemed to have been disallowed.
- (3A) If, before the expiration of fifteen sitting days after notice of a motion to disallow an Ordinance or part of an Ordinance has been given in a House of the Parliament:
- (a) the House of Representatives is dissolved or expires, or the Parliament is prorogued; and
  - (b) at the time of the dissolution, expiry or prorogation, as the case may be:
    - (i) the notice has not been withdrawn and the motion has not been called on; or
    - (ii) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of;
- the Ordinance shall, for the purposes of the last two preceding subsections, be deemed to have been laid before that first-mentioned House on the first sitting day of that first-mentioned House after the dissolution, expiry or prorogation, as the case may be.
- (4) Where an Ordinance is disallowed, or is deemed to have been disallowed, under this section or ceases to have effect by virtue of the operation of subsection (1), the disallowance of the Ordinance or the operation of subsection (1) in relation to the Ordinance, as the case may be, has the same effect as a repeal of the Ordinance.
- (4A) Where:
- (a) an Ordinance (in this subsection referred to as the ***relevant Ordinance***) is disallowed, or is deemed to have been disallowed, under this section or ceases to have effect by virtue of the operation of subsection (1); and

- (b) the relevant Ordinance repealed, in whole or in part, another Ordinance or any other law that was in force immediately before the relevant Ordinance came into operation;  
the disallowance of the relevant Ordinance or the operation of subsection (1) in relation to the relevant Ordinance, as the case may be, has the effect of reviving that other Ordinance or law as the case may be, from and including the date of the disallowance or the date on which the relevant Ordinance ceased to have effect by virtue of that operation of subsection (1), as the case may be, as if the relevant Ordinance had not been made.
- (4B) A reference in subsection (4) or (4A) to an Ordinance shall be read as including a reference to a part of an Ordinance, and a reference in subsection (4A) to a law has a corresponding meaning.

#### **11A Ordinance not to be re-made while required to be tabled**

- (1) Where an Ordinance (in this section called the *original Ordinance*) has been made, no Ordinance containing a provision being the same in substance as a provision of the original Ordinance shall be made during the period defined by subsection (2) unless both Houses of the Parliament by resolution approve the making of an Ordinance containing a provision the same in substance as that provision of the original Ordinance.
- (2) The period referred to in subsection (1) is the period starting on the day on which the original Ordinance was made and ending at the end of 7 days after:
  - (a) if the original Ordinance has been laid, in accordance with subsection 11(1), before both Houses of the Parliament on the same day—that day;
  - (b) if the original Ordinance has been so laid before both Houses on different days—the later of those days; or
  - (c) if the original Ordinance has not been so laid before both Houses—the last day on which subsection 11(1) could have been complied with.
- (3) If a provision of an Ordinance is made in contravention of this section, the provision has no effect.

**11B Ordinance not to be re-made while subject to disallowance**

- (1) Where notice of a motion to disallow an Ordinance has been given in a House of the Parliament within 15 sitting days after the Ordinance has been laid before that House, no Ordinance containing a provision being the same in substance as a provision of the first-mentioned Ordinance shall be made unless:
  - (a) the notice has been withdrawn;
  - (b) the Ordinance is deemed to have been disallowed under subsection 11(3);
  - (c) the motion has been withdrawn or otherwise disposed of; or
  - (d) subsection 11(3A) has applied in relation to the Ordinance.
- (2) Where:
  - (a) because of subsection 11(3A), an Ordinance is deemed to have been laid before a House of the Parliament on a particular day; and
  - (b) notice of a motion to disallow the Ordinance has been given in that House within 15 sitting days after that day;no Ordinance containing a provision being the same in substance as a provision of the first-mentioned Ordinance shall be made unless:
  - (c) the notice has been withdrawn;
  - (d) the Ordinance is deemed to have been disallowed under subsection 11(3);
  - (e) the motion has been withdrawn or otherwise disposed of; or
  - (f) subsection 11(3A) has applied again in relation to the Ordinance.
- (3) If a provision of an Ordinance is made in contravention of this section, the provision has no effect.
- (4) This section does not limit the operation of section 11A or 11C.
- (5) In this section:

***Ordinance*** includes a part of an Ordinance.

**11C Disallowed Ordinance not to be re-made unless resolution rescinded or House approves**

If an Ordinance or a part of an Ordinance is disallowed, or is deemed to have been disallowed, under section 11, and an Ordinance containing a provision being the same in substance as a provision so disallowed, or deemed to have been disallowed, is made within 6 months after the date of the disallowance, that provision has no effect, unless:

- (a) in the case of an Ordinance, or a part of an Ordinance, disallowed by resolution—the resolution has been rescinded by the House of the Parliament by which it was passed; or
- (b) in the case of an Ordinance, or a part of an Ordinance, deemed to have been disallowed—the House of the Parliament in which notice of the motion to disallow the Ordinance or part was given has approved, by resolution, the making of a provision the same in substance as the provision deemed to have been disallowed.

**11D Regulations, rules and by-laws**

- (1) All regulations made under an Ordinance shall be laid before each House of the Parliament within 15 sitting days of that House after the day on which the regulations are made and, if they are not so laid before each House of the Parliament, have no effect.
- (2) Subsections 11(2) to (4B), inclusive, and sections 11A, 11B and 11C apply in relation to regulations laid before a House of the Parliament as if, in those provisions, references to an Ordinance were references to regulations and references to a provision of an Ordinance were references to a regulation.
- (3) In this section, *regulations* includes rules and by-laws.

**12 Grant of pardon, remission etc.**

- (1) The Governor-General, acting with the advice of the Minister, by warrant under his hand, may grant to a person convicted by a court exercising criminal jurisdiction in the Territory a pardon, either free or conditional, or a remission or commutation of sentence, or a respite, for such period as he thinks fit, of the execution of

sentence, and may remit any fine, penalty or forfeiture imposed or incurred under a law in force in the Territory.

- (2) Where an offence has been committed in the Territory, or where an offence has been committed outside the Territory for which the offender may be tried in the Territory, the Governor-General, acting with the advice of the Minister, by warrant under his hand, may grant a pardon to any accomplice who gives evidence that leads to the conviction of the principal offender or any of the principal offenders.

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## **The Schedule—Heard Island and McDonald Islands**

### Section 3

The islands known as Heard Island and McDonald Islands, comprising all the islands and rocks lying within the area bounded by the parallels 52 degrees 30 minutes and 53 degrees 30 minutes south latitude and the meridians 72 degrees and 74 degrees 30 minutes east longitude.

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**Table of Acts**


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**Notes to the *Heard Island and McDonald Islands Act 1953***
**Note 1**

The *Heard Island and McDonald Islands Act 1953* as shown in this compilation comprises Act No. 7, 1953 amended as indicated in the Tables below.

All relevant information pertaining to application, saving or transitional provisions prior to 1 October 2001 is not included in this compilation. For subsequent information *see* Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Heard Island and McDonald Islands Act 1953</i>	7, 1953	27 Mar 1953	24 Apr 1953	
<i>Heard Island and McDonald Islands Act 1957</i>	36, 1957	7 June 1957	5 July 1957	—
<i>Heard Island and McDonald Islands Act 1963</i>	23, 1963	28 May 1963	25 June 1963	S. 3
<i>Statute Law Revision Act 1973</i>	216, 1973	19 Dec 1973	31 Dec 1973	Ss. 9(1) and 10
<i>Statute Law (Miscellaneous Amendments) Act (No. 1) 1982</i>	26, 1982	7 May 1982	Part XXIV (ss. 156, 157): 4 June 1982 (a)	—
<b>as amended by</b> <i>Statute Law (Miscellaneous Amendments Act (No. 2) 1982</i>	80, 1982	22 Sept 1982	Part LXXI (ss. 262, 263): 4 June 1982 (b)	—
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1983</i>	39, 1983	20 June 1983	S. 3: 18 July 1983 (c)	S. 7(1)
<i>Statute Law (Miscellaneous Provisions) Act (No. 2) 1986</i>	168, 1986	18 Dec 1986	S. 3: Royal Assent (d)	S. 5

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**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Statutory Instruments (Tabling and Disallowance) Legislation Amendment Act 1988</i>	99, 1988	2 Dec 1988	2 Dec 1988	—
<i>A.C.T. Self-Government (Consequential Provisions) Act 1988</i>	109, 1988	6 Dec 1988	S. 32 (in part): 11 May 1989 (see <i>Gazette</i> 1989 No. S164) (e)	S. 26
<i>Crimes Legislation Amendment Act 1991</i>	28, 1991	4 Mar 1991	74(1): Royal Assent (f)	—
<i>Transport and Regional Services Legislation Amendment (Application of Criminal Code) Act 2001</i>	143, 2001	1 Oct 2001	2 Oct 2001	S. 4 [see Table A]



## Act Notes

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- (a) The *Heard Island and McDonald Islands Act 1953* was amended by Part XXIV (sections 156 and 157) only of the *Statute Law (Miscellaneous Amendments) Act (No. 1) 1982*, subsection 2(12) of which provides as follows:
  - (12) The remaining provisions of this Act shall come into operation on the twenty-eighth day after the day on which this Act receives the Royal Assent.
- (b) The *Statute Law (Miscellaneous Amendments) Act (No. 1) 1982* was amended by Part LXXI (sections 262 and 263) only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1982*, subsection 2(11) of which provides as follows:
  - (11) Part XLIX and LXXI shall be deemed to have come into operation on 4 June 1982.
- (c) The *Heard Island and McDonald Islands Act 1953* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1983*, subsection 2(1) of which provides as follows:
  - (1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.
- (d) The *Heard Island and McDonald Islands Act 1953* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1986*, subsection 2(1) of which provides as follows:
  - (1) Subject to this section, this Act shall come into operation on the day on which it receives Royal Assent.
- (e) The *Heard Island and McDonald Islands Act 1953* was amended by section 32 only of the *A.C.T. Self-Government (Consequential Provisions) Act 1988*, subsection 2(3) of which provides as follows:
  - (3) The remaining provisions of this Act (including the amendments made by Schedule 5) commence on a day or days to be fixed by Proclamation.
- (f) The *Heard Island and McDonald Islands Act 1953* was amended by subsection 74(1) only of the *Crimes Legislation Amendment Act 1991*, subsection 2(1) of which provides as follows:
  - (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.



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**Table of Amendments**


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**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted	
Provision affected	How affected
S. 2.....	am. No. 109, 1988; No. 28, 1991
S. 5.....	am. No. 28, 1991; No. 143, 2001
S. 6.....	rs. No. 28, 1991
S. 9.....	am. No. 36, 1957; No. 109, 1988 rs. No. 28, 1991
S. 11.....	am. No. 23, 1963; No. 26, 1982 (as am. by No. 80, 1982); No. 39, 1983; No. 168, 1986; No. 99, 1988
Ss. 11A-11D.....	ad. No. 99, 1988
S. 12.....	ad. No. 36, 1957 am. No. 216, 1973

## **Table A**

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### **Table A**

#### **Application, saving or transitional provisions**

*Transport and Regional Services Legislation Amendment (Application of Criminal Code) Act 2001* (No. 143, 2001)

#### **4 Application of Amendments**

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.