

Rafferty, Janice

---

**From:** Nick.Seddon@ashurst.com  
**Sent:** Monday, 28 May 2012 1:47 PM  
**To:** Rafferty, Janice  
**Cc:** Marc.Mowbray-d'Arbela@finance.gov.au  
**Subject:** Review of self-government Act - list of ACT laws binding on the Commonwealth

Dear Ms Rafferty,

I am not sure if you are the right person to send a submission to. Please pass this on to the committee.

This submission may be outside the terms of reference. It is about s 27 of the *Australian Capital Territory (Self-Government) Act*. The section provides that no laws of the ACT bind the Commonwealth unless they are listed in the Schedule to the Regulations. Here is the Schedule list of ACT Acts which bind the Commonwealth:

*Adoption of Children Ordinance 1965*

*Air Pollution Ordinance 1984*

*Arbitration Act 1902, of New South Wales, in its application to the Territory*

*City Area Leases Ordinance 1936*

*Commercial Arbitration Ordinance 1986*

*Credit Ordinance 1985*

*Dangerous Goods Ordinance 1984*

*Dividing Fences Ordinance 1981*

*Dog Control Ordinance 1975*

*Electricity and Water Ordinance 1988*

*Law Reform (Miscellaneous Provisions) Ordinance 1955*

*Limitation Ordinance 1985*

*Machinery Ordinance 1949*

*Motor Traffic Ordinance 1936*

*Nature Conservation Ordinance 1980*

*Noise Control Ordinance 1988*

*Radiation Ordinance 1983*

*Sale of Goods (Vienna Convention) Ordinance 1987*

*Seaffolding and Lifts Ordinance 1957*

*Water Pollution Ordinance 1984*

*Weights and Measures Ordinance 1929.*

Those which are struck through are no longer in force. The list has never been amended.

Given that the Commonwealth routinely adopts the law of the ACT as being the governing law in Commonwealth contracts, the clause is adopting a near legal vacuum.

This is, or should be, of more concern to the Commonwealth than the ACT. Hence this submission may not be of interest to the committee.

There are some bizarre consequences of this legal vacuum. It is possible that all Commonwealth deeds, in which ACT law is chosen as the governing law, are void. The *Civil Liability (Property) Act* would not apply and hence such deeds are executed under ancient common law principles. It is quite possible that the execution of these deeds does not conform to these ancient principles.

Apart from deeds the legal vacuum has implications for the Commonwealth in connection with:

- *powers of attorney*
- *proportionate liability*
- *contribution between joint tortfeasors*
- *survival of actions*
- *limitation of damages for tort claims*
- *liability of public authorities in tort claims*
- *occupiers' liability*
- *various tort rules dealt with in Civil Law (Wrongs) Act*
- *defamation*
- *Statute of Frauds provisions*
- *land dealings generally*
- *registration of deeds*
- *assignment of choses in action*
- *dangerous substances*
- *road transport of dangerous goods*
- *radiation protection*
- *sale of goods*
- *standard time*

The solution is for the Commonwealth to update the list.

Best wishes,

**Dr Nick Seddon**

Special Counsel

[nick.seddon@ashurst.com](mailto:nick.seddon@ashurst.com)

Ashurst - Australia

D: +61 2 6234 4020 | M: +61 408 690 621

***Nick does not work on Fridays***

**Blake Dawson is Ashurst, Australia's new global law firm. [Read more here](#)**

Ashurst Australia 12 Moore Street Canberra ACT 2601 Australia

T: +61 2 6234 4000 | F: +61 2 6234 4111 | DX 388 Canberra

[www.ashurst.com](http://www.ashurst.com) | [Offices worldwide](#)

This email (including any attachments) is confidential and may be privileged. It may be read, copied and used only by the intended recipient. If you have received it in error, please contact the sender

immediately by return email. Please then delete both emails and do not disclose their contents to any person. We believe, but do not warrant, that this email and any attachments are virus free. You should take full responsibility for virus checking. Ashurst reserves the right to monitor all email communications through its networks. If the content of this email is personal or unconnected with our business, we accept no liability or responsibility for it.

Ashurst Australia (ABN 75 304 286 095) is a general partnership constituted under the laws of the Australian Capital Territory carrying on practice under the name "Ashurst" under licence from Ashurst LLP. Ashurst LLP is a limited liability partnership registered in England and Wales, and is a separate legal entity from Ashurst Australia. In Asia, Ashurst Australia, Ashurst LLP and their respective affiliates provide legal services under the name "Ashurst". Further details about the Ashurst group can be found at [www.ashurst.com](http://www.ashurst.com).