



New South Wales

Statute Law (Miscellaneous Provisions) Act (No 2) 1998 No 120

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New South Wales

Statute Law (Miscellaneous Provisions) Act (No 2) 1998 No 120

Act No 120, 1998

An Act to repeal certain Acts and to amend certain other Acts and a regulation in various respects, including for the purpose of effecting statute law revision; and to make certain savings. [Assented to 26 November 1998]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Statute Law (Miscellaneous Provisions) Act (No 2) 1998*.

2 Commencement

- (1) This Act commences on the date of assent, except as provided by subsection (2).
- (2) The amendments made by Schedule 1 commence on the day or days specified in that Schedule in relation to the amendments concerned. If a commencement day is not specified, the amendments commence on the date of assent.

3 Amendments

Each Act and regulation specified in Schedules 1 and 2 is amended as set out in those Schedules.

4 Repeals

Each Act, or provision of an Act, specified in Schedule 3 is repealed.

5 General savings, transitional and other provisions

Schedule 4 has effect.

6 Explanatory notes

The matter appearing under the heading "Explanatory note" in any of the Schedules does not form part of this Act.

Schedule 1 Minor amendments

(Section 3)

1.1 Anglican Church of Australia Trust Property Act 1917 No 21

[1] Whole Act

Omit "*Church of England Constitutions Act Amendment Act of 1902*" wherever occurring.

Insert instead "*Anglican Church of Australia Constitutions Act 1902*".

[2] Section 26 Synod may direct sales or other dealings

Omit "dioceses of Sydney and Goulburn".

Insert instead "Diocese of Canberra and Goulburn".

[3] Section 26 (2)

Insert at the end of section 26:

(2) Despite subsection (1), an ordinance in relation to property held for the sole benefit of some particular parish in the Diocese of Sydney may only be assented to under the *Anglican Church of Australia Constitutions Act 1902*:

(a) either:

- (i) with the written consent of a majority of the members of the parish council (if any) for the time being of the parish, or
- (ii) if the ordinance was passed by at least two-thirds of the members of the synod of the Diocese of Sydney present and voting, and

(b) with the written consent of any living private donor who gratuitously granted or assured the property to the parish within the period of 20 years before the date of assent to the ordinance.

Explanatory note

The *Anglican Church of Australia Trust Property Act 1917* deals with the vesting of church trust property and the management and investment of such property. Section 26 of the Act allows the synod of a Diocese to pass an ordinance authorising the sale, exchange, mortgage or lease of, or other dealings with, the church trust property in a manner provided by such an ordinance. The Act requires that, in the case of the Diocese of Sydney and the Diocese of Goulburn (now the Diocese of Canberra and Goulburn), ordinances authorising such dealings with certain church trust property must be consented to by a majority of the members of the parish council (if any) for the parish.

Item [3] of the proposed amendments provides for the Archbishop of the Diocese of Sydney to assent to such dealings in relation to land within the Diocese of Sydney without the need for the consent of the majority of parish members, but only in cases where the ordinance was passed by at least a two-thirds majority of the members of the synod of the Diocese of Sydney. The obligation to obtain the consent of the private donor of certain property remains unaffected.

Item [1] of the proposed amendments updates references to an Act.

Item [2] updates a reference to a Diocese.

1.2 Associations Incorporation Act 1984 No 143

Section 67 Production and inspection of records

Insert after section 67 (8):

- (9) An investigator appointed under section 18 of the *Fair Trading Act 1987* is taken to be a person authorised under subsection (4).

Explanatory note

Section 67 of the *Associations Incorporation Act 1984* provides for the authorisation of persons to enter and search premises or inspect records.

Section 18 of the *Fair Trading Act 1987* provides for the Director-General of the Department of Fair Trading to appoint investigators.

The proposed amendment provides that investigators appointed under the *Fair Trading Act 1987* automatically become authorised persons for the purposes of section 67 of the *Associations Incorporation Act 1984*. The option of separate authorisation of such persons under the *Associations Incorporation Act 1984* is retained.

1.3 Building and Construction Industry Long Service Payments Act 1986 No 19

[1] Section 3 Definitions

Omit “persons engaged in” from paragraph (c) (i) of the definition of *building and construction work* in section 3 (1).

[2] Section 32 Payments to employers

Omit the definition of “S” from section 32 (1). Insert instead:

S represents the number of days’ service with which the worker was credited in the register of workers in respect of a period during which the worker was employed under a contract of employment by the employer, and for which the alternative benefits were provided, increased by 275 where that period commenced on the appointed day within the meaning of the former Act.

[3] Section 42 Refunds of long service levies

Omit “in the case of a building referred to in section 34 (1) (a)” from section 42 (1) (a).

Insert instead “in the case of a building that may not be erected on the land concerned except with development consent under Part 4 of the *Environmental Planning and Assessment Act 1979*, or the erection of which is complying development within the meaning of that Act”.

Explanatory note

The *Building and Construction Industry Long Service Payments Act 1986* makes provision for long service payments to workers engaged in the building and construction industry.

Item [1] of the proposed amendments makes it clear that the definition of *building and construction work* applies to work that involves the supervision of other such work, rather than the supervision of persons engaged in that work.

Item [2] of the proposed amendments clarifies the operation of a formula for determining the value of a payment to an employer in circumstances where an alternative benefit has been paid by the employer to a person who is a registered worker of the employer.

Item [3] of the proposed amendments omits a reference to a repealed provision.

1.4 Business Names Act 1962 No 11

[1] Section 13 Power to require information and documents

Omit “An officer of the Public Service” from section 13 (1).
Insert instead “A public servant”.

[2] Section 13 (6)

Insert after section 13 (5):

- (6) An investigator appointed under section 18 of the *Fair Trading Act 1987* is taken to be a public servant authorised under subsection (1).

[3] Section 28A Penalty notices for certain offences

Omit section 28A (9). Insert instead:

- (9) In this section:

authorised officer means:

- (a) a public servant authorised by the Commissioner for the purposes of this section. or
(b) an investigator appointed under section 18 of the *Fair Trading Act 1987*.

Explanatory note

Section 13 of the *Business Names Act 1962* provides for the authorisation of a public servant to enter premises, inspect documents and require information to be furnished. Section 28A of the Act provides for penalty notices to be issued for certain offences by authorised officers.

Section 18 of the *Fair Trading Act 1987* provides for the Director-General of the Department of Fair Trading to appoint investigators.

Items [2] and [3] of the proposed amendments provide that investigators appointed under the *Fair Trading Act 1987* are automatically authorised for the purposes of sections 13 and 28A of the *Business Names Act 1962*. The option of separate authorisation of persons under the *Business Names Act 1962* is retained.

Item [1] of the proposed amendments makes a consequential amendment.

1.5 Casino Control Act 1992 No 15

[1] Section 134 Members of Authority

Insert after section 134 (2):

- (2A) One of the other members of the Authority (other than the Chief Executive) is to be appointed as Deputy Chairperson of the Authority, in and by the member's instrument of appointment or a subsequent instrument executed by the Governor.

[2] Schedule 1 Provisions relating to the members and procedure of the Authority

Insert after clause 6 (3):

- (3A) A person appointed as the deputy of an appointed member may perform such other functions as the Minister may determine.

[3] Schedule 1, clauses 6 (4) and 9

Insert "or Deputy Chairperson" after "Chairperson" wherever occurring.

[4] Schedule 1, clause 6 (5)

Insert “, or while performing any function under subclause (3A).” after "member".

[5] Schedule 1, clause 9 (1)

Omit "chairperson".

Insert instead "Chairperson or Deputy Chairperson"

[6] Schedule 1, clause 15 (1) and (IA)

Omit clause 15 (1). Insert instead:

- (1) The Chairperson or, in the absence of the Chairperson, the Deputy Chairperson, is to preside at a meeting of the Authority.
- (1A) In the absence of both the Chairperson and Deputy Chairperson, another member elected to chair the meeting by the members present is to preside at a meeting of the Authority.

[7] Schedule 1 , clause 17 (3)

Insert “ , Deputy Chairperson” after “Chairperson”.

Explanatory note

The *Casino Control Act 1992* constitutes the Casino Control Authority, which consists of the Chief Executive and 4 other members appointed by the Governor on the recommendation of the Minister. One of the members (other than the Chief Executive) is appointed as Chairperson of the Authority.

Item [1] of the proposed amendments provides for the appointment of a Deputy Chairperson to preside at meetings in the absence of the Chairperson.

Items [3], [5], [6] and [7] of the proposed amendments make consequential amendments.

Item [2] of the proposed amendments provides for a person appointed as the deputy of an appointed member to perform such functions as are determined by the Minister, in addition to the deputy's function of acting in the place of the appointed member when the member is absent.

Item [4] of the proposed amendments provides for a person performing such functions to be paid remuneration as determined by the Minister.

1.6 Community Land Management Act 1989 No 202

[1] Section 64 Registrar to be satisfied mediation has been attempted before accepting application

Insert "under this Part (other than an order under Division 6A)" after "order" in section 64 (1).

[2] Section 70B Notice of application to be given

Insert after section 70B (4):

- (5) Subsections (2)–(4) do not apply to an application for an order under Division 6A (Enforcement of orders of Adjudicators and Board and certain notices).

[3] Section 70C Procedure after time for making submissions has expired

Omit "Part" wherever occurring in section 70C (2) and (3).
Insert instead "Division".

[4] Section 70C (4)

Omit "or by an Adjudicator under Part 3".
Insert instead "under this Division or by an Adjudicator under Division 3".

[5] Section 70CA

Insert after section 70C:

70CA Procedure for orders under Division 6A

- (1) The Registrar must refer to the Board an application for an order under Division 6A (Enforcement of orders of Adjudicators and Board and certain notices).
- (2) If such an application is referred to the Board. the Registrar must complete a notice containing the time and place at which, and the date on which. the Board will determine the application.
- (3) The Registrar must send a copy of that notice to the following persons or bodies so that the copy would. in the ordinary course of post. be received by the addressee not less than 7 days before the date specified in the notice for the determination of the application:
 - (a) the applicant.

- (b) the association or strata corporation to which the application relates (if the association or strata corporation is not the applicant),
- (c) any person against whom the order is sought.

[6] Section 93 Appearance before Board

Insert at the end of section 93 (1) (b):

- , or
- (c) is, or whose conduct is, the subject of an application.

[7] Section 93 (2)

Omit the subsection. Insert instead:

- (2) A person who:
 - (a) appeals to the Board. or
 - (b) is entitled to be served with a notice of an appeal to the Board, or
 - (c) is, or whose conduct is, the subject of an appeal to the Board.

may appear, or be represented, before the Board dealing with the appeal.

[8] Section 97D Order as to costs

Insert after section 97D (2):

- (3) The making of an order as to costs operates as a judgment under the *Local Courts (Civil Claims) Act 1970* for the amount of the costs against the person required to pay it in favour of the applicant for the order.

[9] Section 97E Payment of civil penalties

Insert at the end of section 97E (2) (b):

,or

- (c) the Director-General of the Department of Fair Trading only, if the order so requires.

Transitional provisions

The amendments to sections 64 and 70B of the *Community Land Management Act 1989* extend to applications made before the commencement of the amendments.

Explanatory note

The proposed amendments to the *Community Land Management Act 1989* mirror the amendments made to the *Strata Schemes Management Act 1996* by the *Statute Law (Miscellaneous Provisions) Act 1998* and are explained in detail below.

Application for orders—mediation and notice

Section 64 (1) of the *Community Land Management Act 1989* prevents the Registrar of the Community Schemes Board from accepting an application for an order unless the Registrar is satisfied that either mediation has been attempted but was unsuccessful or that the subject matter of the application is not appropriate for mediation.

Item [1] of the proposed amendments makes it clear that the requirement to attempt mediation relates only to an order under the provisions of Part 4, which enables Adjudicators and the Community Schemes Board to make certain orders regarding the operations and management of a community scheme. The obligations regarding mediation do not apply to an application for an order under Division 6A of Part 4, which deals with the enforcement of such orders.

Item [2] of the proposed amendments provides that the obligation to notify persons who, in the Registrar's opinion, would be affected by the order being sought, of the right to make submissions to the Registrar in relation to the order does not apply to an application for an order under Division 6A of Part 4. The procedure for making such orders, including the right to be represented before the Board is set out in Divisions 2A and 6, as amended by the proposed amendments.

Item [5] of the proposed amendments makes a consequential amendment.

Representation before the Community Schemes Board

Section 93 of the Act lists the people who may appear or be represented before the Community Schemes Board if the Board is dealing with an application. This includes the applicant, any person who made written submissions, any appellant and any person entitled to receive a notice of an appeal.

Items [6] and [7] of the proposed amendments amend section 93 by allowing a person who is, or whose conduct is, the subject of an application or appeal to appear or be represented before the Board.

Payment of penalties and costs

Section 97E of the Act provides that the imposition of a pecuniary penalty by an order of the Community Schemes Board operates as a judgment under the *Local Courts (Civil Claims) Act 1970* in favour of the applicant or in favour of the applicant and the Director-General of the Department of Fair Trading.

Item [9] of the proposed amendments amends section 97E so as to enable such a judgment to require a penalty to be paid to the Director-General of the Department of Fair Trading alone.

Item [8] of the proposed amendments provides for an order as to costs (under section 97D) to also operate as a judgment under the *Local Courts (Civil Claims) Act 1970*.

Statute law revision

Items [3] and [4] of the proposed amendments correct cross-references.

1.7 Constitution Act 1902 No 32

Section 47 Appointment of officers

Omit "as hereinbefore mentioned".

Explanatory note

Section 47 of the *Constitution Act 1902* provides that the appointment of all public offices under the Government is vested in the Governor with the advice of the Executive Council. However, the section provides that the appointment of officers liable to retire from office on political grounds is vested in the Governor alone.

At present, section 47 refers to officers liable to retire from office on political grounds "as hereinbefore mentioned". The *Constitution Act 1902* has been amended since it was enacted. There is no longer any other provision in the Act that specifically deals with officers liable to retire from office on political grounds.

The proposed amendment omits the redundant reference to the previous mention of those officers. The effect of the section remains unaltered.

1.8 Consumer Credit Administration Act 1995 No 69

[1] Section 6 Requiring information.

Insert after section 6 (5):

- (6) An investigator appointed under section 18 of the *Fair Trading Act 1987* is taken to be an official authorised under subsection (1).

[2] Section 8 Entry and inspection

Insert after section 8 (2):

- (3) An investigator appointed under section 18 of the *Fair Trading Act 1987* is taken to be an official authorised under subsection (1).

[3] Section 9 Search warrants

Insert after section 9 (3):

- (3A) An investigator appointed under section 18 of the *Fair Trading Act 1987* may exercise the functions of an official under this section.

[4] Section 35 Power to obtain information

Insert after section 35 (7):

- (8) An investigator appointed under section 18 of the *Fair Trading Act 1987* is taken to be a person authorised by the Tribunal under subsection (1).

Explanatory note

Sections 6 and 8 of the *Consumer Credit Administration Act 1995* provide for the authorisation of an official to require information to be furnished and to inspect documents and to enter and inspect premises. Section 9 of the Act authorises an official to apply for a search warrant. Section 35 of the Act provides for the authorisation by the Commercial Tribunal of New South Wales of a person to require information to be furnished for the purposes of an inquiry under Part 4 (Inquiries) of the Act.

Section 18 of the *Fair Trading Act 1987* provides for the Director-General of the Department of Fair Trading to appoint investigators.

Items [1], [2] and [4] of the proposed amendments provide that investigators appointed under the *Fair Trading Act 1987* automatically become authorised officials or authorised persons for the purposes of sections 6, 8 and 35 of the *Consumer Credit Administration Act 1995*. The option of separate authorisation of officials or persons under the *Consumer Credit Administration Act 1995* is retained.

Item [3] of the proposed amendments empowers an investigator appointed under the *Fair Trading Act 1987* to exercise the functions of an official under section 9 of the *Consumer Credit Administration Act 1995*.

1.9 Contaminated hand Management Act 1997 No 140

[1] Section 4 Definitions

Omit the definition of *guidelines*.

[2] Section 50 Accreditation as site auditor

Insert "or approved" after "made" wherever occurring in section 50 (1) and (4) (b).

[3] Section 51 Matters taken into account in site audits and statements

Omit "made by the EPA" from section 51 (1) (c).
Insert instead "made or approved by the EPA".

[4] Section 56 Revocation or suspension of accreditation

Omit "in force" from section 56 (1) (a). Insert instead "applicable".

[5] Section 71 Certificate evidence of certain matters

Insert "made or approved by the EPA under this Act" after "guidelines" in section 71 (2) (1).

[6] Section 71 (2) (l)

Insert “or approved” after “published”.

[7] Schedule 2 Savings and transitional provisions

Omit clause 5 (c).

Explanatory note

The *Contaminated Land Management Act 1997* empowers the Environment Protection Authority (the EPA) to make guidelines for any purposes connected with the objects of the Act. Such guidelines can be for the EPA's own use or for the use of landowners, developers, site auditors, any section of the public or the general public. The EPA may also approve any guidelines made by another person or body.

Items [1]–[6] of the proposed amendments give effect to approved guidelines in the same way as guidelines made by the EPA. The main consequences of the amendments are to empower the EPA to approve guidelines relating to the accreditation of persons as site auditors and to clarify the types of guidelines to be taken into account in the carrying out of site audits and the furnishing of site audit statements. The regulations made under the Act presently provide that a failure to meet guidelines made or approved by the EPA is a ground for the revocation or suspension of a site auditor's accreditation under section 56 of the Act.

Item [7] of the proposed amendments omits certain draft guidelines from a list of guidelines, made before the commencement of the Act, that were taken to continue in force as if they had been made under the Act. (The relevant guidelines have since been finalised and made under the new Act).

1.10 Conveyancers Licensing Act 1995 No 57

Section 31 Appointment of trust account inspectors and investigators

Insert after section 31 (4):

- (5) An investigator appointed under section 18 of the *Fair Trading Act 1987* is taken to be a trust account inspector appointed generally under subsection (1).

Explanatory note

Section 31 of the *Conveyancers Licensing Act 1995* provides for the appointment of trust account inspectors to inspect accounts kept by licensees and investigators to investigate the affairs of particular licensees.

Section 18 of the *Fair Trading Act 1987* provides for the Director-General of the Department of Fair Trading to appoint investigators.

The proposed amendment provides that investigators appointed under the *Fair Trading Act 1987* automatically become trust account inspectors appointed generally for the purposes of section 31 of the *Conveyancers Licensing Act 1995*. The option of separate general or special appointment of trust account inspectors under the *Conveyancers Licensing Act 1995* is retained.

1.11 Co-operation Act 1923 (1924 No 1)

Section 118A Inspectors

Insert after section 118A (2):

- (3) An investigator appointed under section 18 of the *Fair Trading Act 1987* is taken to be an inspector appointed generally under subsection (1).

Explanatory note

Section 118A of the *Co-operation Act 1923* provides for the appointment of inspectors for the purposes of the Act.

Section 18 of the *Fair Trading Act 1987* provides for the Director-General of the Department of Fair Trading to appoint investigators.

The proposed amendment provides that investigators appointed under the *Fair Trading Act 1987* automatically become inspectors for the purposes of the *Co-operation Act 1923*. The option of separate or special appointment of inspectors under the *Co-operation Act 1923* is retained.

1.12 Co-operatives Act 1992 No 18

Section 372 Appointment of inspectors

Insert at the end of section 372:

- (2) An investigator appointed under section 18 of the *Fair Trading Act 1987* is taken to be an inspector appointed under subsection (1).

Explanatory note

Section 372 of the *Co-operatives Act 1992* provides for the appointment of inspectors for the purposes of the Act.

Section 18 of the *Fair Trading Act 1987* provides for the Director-General of the Department of Fair Trading to appoint investigators.

The proposed amendment provides that investigators appointed under the *Fair Trading Act 1987* automatically become inspectors for the purposes of the *Co-operatives Act 1992*. The option of separate appointment of inspectors under the *Co-operatives Act 1992* is retained.

1.13 Electricity Safety Act 1945 (1946 No 13)

[1] Section 21F Powers of authorised persons

Insert after section 21F (13):

- (14) An investigator appointed under section 18 of the *Fair Trading Act 1987* is taken to be a person authorised under subsection (2).

[2] Section 25 Power of entry

Insert after section 25 (8):

- (9) An investigator appointed under section 18 of the *Fair Trading Act 1987* is taken to be a person authorised under:
- (a) subsection (1), but only in relation to electrical installations, and
- (b) subsection (4).

[3] Section 27F Appointment of inspectors

Insert after section 27F (3):

- (4) An investigator appointed under section 18 of the *Fair Trading Act 1987* is taken to be a person authorised under subsection (1), but only to the extent to which the exercise of the person's power relates to, or arises because of, electrical articles or electrical installations.

Explanatory note

Section 21F of the *Electricity Safety Act 1945* provides for the authorisation of persons to enter any land or premises in relation to manufacture or sale of electrical articles and to issue notices in relation to unsafe electrical articles. Section 25 of the Act provides for the authorisation of persons to enter any land and to require information to be furnished in respect of electrical apparatus and appliances. Section 27F of the Act provides for the appointment of inspectors to carry out inspections for the purposes of Part 6B (Accident reporting and investigation) of the Act.

Section 18 of the *Fair Trading Act 1987* provides for the Director-General of the Department of Fair Trading to appoint investigators.

Item [1] of the proposed amendments provides that investigators appointed under the *Fair Trading Act 1987* automatically become persons authorised for the purposes of section 21F of the *Electricity Safety Act 1945*.

Items [2] and [3] of the proposed amendments provide that investigators appointed under the *Fair Trading Act 1987* automatically become authorised persons, or inspectors, for the purposes of sections 25 and 27F of the *Electricity Safety Act 1945* (but only in relation to electrical articles and electrical installations). The option of separate authorisation of persons and appointment of inspectors under the *Electricity Safety Act 1945* is retained.

1.14 Employment Agents Act 1996 No 18

[1] Section 3 Definitions generally

Omit "Industrial Relations" from the definition of *Director-General*.
Insert instead "Fair Trading".

[2] Section 3, definition of "inspector"

Omit the definition. Insert instead:

inspector means:

- (a) an officer of the Department of Fair Trading appointed by the Director-General to be an inspector for the purposes of this Act. or
- (b) an investigator appointed under section 18 of the *Fair Trading Act 1987*.

Explanatory note

The *Employment Agents Act 1996* provides for the appointment of inspectors for the purposes of the Act.

Section 18 of the *Fair Trading Act 1987* provides for the Director-General of the Department of Fair Trading to appoint investigators.

Item [2] of the proposed amendments provides that investigators appointed under the *Fair Trading Act 1987* automatically become inspectors for the purposes of the *Employment Agents Act 1996*. The option of separate appointment of inspectors under the *Employment Agents Act 1996* is retained.

Item [1] of the proposed amendments updates a reference to the Department through which the Act is administered.

**1.15 Environmental Planning and Assessment Act 1979
No 203**

[1] Section 84A Carrying out of complying development

Omit "apply to the complying development on that land" from section 84A (1) (b) (ii).

Insert instead "applied to the carrying out of the complying development on that land at the time the complying development certificate was issued".

[2] Section 91 What is "integrated development"?

Omit the matter relating to the *Soil Conservation Act 1938* from the Table to section 91 (1).

[3] Section 115M Building, demolition and incidental work

Insert after section 115M (5):

- (6) Section 81A (2) does not apply to Crown building work that is certified in accordance with this section.

[4] Section 118A Power of entry

Insert after section 118A (2):

- (2A) For the purpose of enabling the Director to exercise the Director's functions, the Director may authorise a person, in writing, to enter any premises.

[5] Section 119 Public inquiry

Omit "101 (6)" from section 119 (2). Insert instead "89 (3)".

[6] Section 121B What orders may be given by a consent authority?

Insert after paragraph (c) of the matter relating to order No 2 in Column 2 of the Table to section 121B (1):

- (d) Building is erected without prior approval of council, in a case where prior approval was required under the *Local Government Act 1919* or the *Local Government Act 1993* when the erection of the building commenced

Explanatory note

Carrying out complying development

Section 76A (5) of the *Environmental Planning and Assessment Act 1979* provides that an environmental planning instrument may provide that local development that can be addressed by specified predetermined development standards is complying development. The Act sets out a special procedure for obtaining a complying development certificate, rather than development consent, for such development.

Section 84A of the Act provides that a person may carry out complying development on land if the person has been issued with a complying development certificate for the development and the development is carried out in accordance with that certificate and any provisions of an environmental planning instrument, development control plan or the regulations that apply to the complying development on that land.

Item [1] of the proposed amendments ensures that development need only comply with the relevant provisions of environmental planning instruments, development control plans and regulations that were in force at the time that the complying development certificate was issued.

Certification of Crown building work

Section 81A (2) (a) of the Act provides that the erection of a building in accordance with a development consent must not be commenced until a construction certificate for the building work has been issued by the consent authority or an accredited certifier. Section 115M of the Act makes special provision regarding the certification of Crown building work.

Item [3] of the proposed amendments makes it clear that, if Crown building work is certified in accordance with those special provisions in section 115M, section 81A (2) of the Act does not impose additional obligations with regard to certification.

Power of entry

Section 118A of the Act empowers a council and the Minister for Urban Affairs and Planning to authorise persons to enter premises for the purpose of enabling the council, or the Minister, to exercise the council's, or the Minister's, powers under the Act. The section is analogous to former section 117A of the Act, which gave the Director-General of the Department of Urban Affairs and Planning and councils the power to authorise entry onto premises.

Item [4] restores the power of the Director-General (called the "Director" in the Act) to authorise entry.

Orders to demolish or remove a building

Section 121B of the Act empowers councils, and certain other persons who exercise functions as consent authorities, to give orders to do or refrain from doing certain things. That section empowers the giving of an order to the owner of a building to demolish or remove the building in certain circumstances, including where the building was erected without proper development consent, or development consent and a prior construction certificate, where such consent, or such consent and such certificate, were required under the Act.

Item [6] of the proposed amendments empowers the giving of an order to demolish or remove a building that was erected without first obtaining any necessary approval under the *Local Government Act 1919* or the *Local Government Act 1993* when either of those Acts imposed an obligation to obtain approval.

Statute law revision

Item [2] omits a reference to an obligation under a provision that has been repealed.

Item [5] corrects a cross-reference.

1.16 Fair Trading Act 1987 No 68

[1] Section 18 Office and identification of investigator

Insert after section 18 (3):

- (4) A requirement under any other legislation administered by the Minister that a person who is authorised to exercise a function under the legislation is to produce his or her certificate of identification (however described) before exercising the function is taken to have been complied with if:
 - (a) the person authorised is an investigator, and
 - (b) the person produces his or her certificate of identification as an investigator.

[2] Section 79 Variation or discharge of orders

Omit "Commissioner" from section 79 (2).

Insert instead "Director-General".

Explanatory note

Section 18 of the Fair Trading Act 1987 provides for the appointment of investigators and the issuing to those investigators of certificates of identification, which must be produced on request when an investigator exercises certain functions.

Item [1] of the proposed amendments provides that if an investigator appointed under the *Fair Trading Act 1987* exercises functions under any other legislation administered by the Minister for Fair Trading, the investigator is taken to have complied with any requirement under the other legislation to produce a certificate of identification before exercising any such functions if the investigator produces his or her certificate of identification as an investigator issued under the *Fair Trading Act 1987*.

Item [2] of the proposed amendments corrects a reference to an office-holder.

1.17 Fire Brigades Act 1989 No 192

[1] Section 4 Application of Act

Insert after section 4 (3):

- (4) This section has effect subject to sections 20 and 20A.

[2] Section 20A

Insert after section 20:

20A Hazardous material incidents outside area to which Act applies

- (1) The Commissioner may, at the request of a port authority, permit any members of a fire brigade to attend the site of a hazardous material incident (whether land-based or otherwise) on that part of State waters in relation to which the port authority exercises functions.
- (2) At the site of such a hazardous material incident the members of the fire brigade may take such measures as the officer in charge of the members thinks proper for the protection and saving of life and property, for confining and ending such an incident and for rendering the site of such an incident safe.
- (3) In such a case the provisions of this Act apply to the hazardous material incident and to anything done at the site of the incident as if the incident were not on State waters.
- (4) In this section:

port authority means:

- (a) the Minister administering the *Ports Corporatisation and Waterways Management Act 1995*, or
- (b) a Port Corporation (within the meaning of the *Ports Corporatisation and Waterways Management Act 1995*) exercising port safety functions (within the meaning of that Act).

site includes any area in the vicinity of the incident as is for the time being determined by the officer in charge.

State waters has the same meaning as in the *Marine Pollution Act 1987*.

Explanatory note

The *Fire Brigades Act 1989* confers duties on New South Wales Fire Brigades to fight and prevent fires and to deal with hazardous material incidents.

Section 4 (2) of the Act provides that the Act applies to land-based hazardous material incidents (and to any fires that may result from them) that occur anywhere in the State except on State waters, as defined in the *Marine Pollution Act 1987*.

The *Ports Corporatisation and Waterways Management Act 1995* imposes port safety functions on the Minister administering that Act, including the function of providing or arranging for the provision of emergency environment protection services for dealing with pollution incidents in relevant waters. Section 12 of the Act provides for certain of those port safety functions to be exercisable by a Port Corporation, as determined by the Minister.

Item [2] of the proposed amendments provides for the Commissioner of New South Wales Fire Brigades, acting on a request from the Minister or a Port Corporation exercising port safety functions, to permit members of a fire brigade to deal with a hazardous material incident on State waters. Under the proposed amendment, the provisions of the *Fire Brigades Act 1989* apply to the hazardous material incident and to anything done at the incident as if the incident were not on State waters.

Item [1] makes a consequential amendment.

1.18 Freedom of Information Act 1989 No 5

[1] Section 24 Determination of applications

Insert "of section 34 and other provisions" after "purposes" in section 24 (2).

[2] Section 24 (2A)

Insert after section 24 (2):

(2A) Nothing in subsection (2) prevents an agency from determining that access should be given to the document even though more than 21 days have elapsed after the application was received by the agency. Sections 64 and 65 apply to access given pursuant to such a determination in the same way as they apply to access given pursuant to any other determination under this Act.

[3] Section 34 Internal review

Omit section 34 (2) (e). Insert instead:

- (e) shall be lodged at an office of the agency:
 - (i) if notice of the determination was given to the applicant—within 28 days after that notice was given, or
 - (ii) if no notice of the determination was given to the applicant—within 49 days after the application was received by the agency. or
 - (iii) in any case, within such further time as the principal officer of the agency may allow.

[4] Section 34 (7) (c)

Insert after section 34 (7) (b):

,or

- (c) if the determination relates to an application made by the person under section 17 and is a determination that was taken to have been made by virtue of section 24 (2) (which provides that an agency that fails to determine an application within 21 days after the application was received by the agency is taken to have determined the application by refusing access to the document to which it relates).

[5] Section 34 (8)

Insert after section 34 (7):

- (8) Subsections (3) (b) and (5) do not apply to the internal review of a determination that was taken to have been made by virtue of section 24 (2).

[6] Section 43 Determination of applications

Insert "of section 47 and other provisions" after "purposes" in section 43 (2).

[7] Section 47 Internal review

Omit section 47 (2) (d). Insert instead:

- (d) shall be lodged at an office of the agency:
 - (i) if notice of the determination was given to the applicant—within 28 days after that notice was given, or
 - (ii) if no notice of the determination was given to the applicant—within 49 days after the application was received by the agency, or
 - (iii) in any case, within such further time as the principal officer of the agency may allow.

[8] Section 47 (7)

Omit section 47 (7). Insert instead:

- (7) For the purposes of this section, a person is aggrieved by a determination if the determination relates to an application made by the person under section 40, and:
 - (a) is to the effect that an agency refuses to amend its records in accordance with the application, or
 - (b) is a determination that was taken to have been made by virtue of section 43 (2) (which provides that an agency that fails to determine an application within 21 days after the application was received by the agency is taken to have determined the application by refusing to amend the records in accordance with the application).

[9] Section 47 (8)

Insert after section 47 (7):

- (8) Subsections (3) (b) and (5) do not apply to the internal review of a determination that was taken to have been made by virtue of section 43 (2).

[10] Section 52A Redetermination of applications following action by Ombudsman

Omit section 52A (1) (a). Insert instead:

- (a) in accordance with a written suggestion made by the Ombudsman in the course of a formal investigation made under section 13 of the *Ombudsman Act 1974*, or in the course of a preliminary inquiry referred to in section 13AA of that Act, being an investigation or inquiry that is undertaken as the result of a complaint, or

[11] Section 52A (2)

Insert at the end of the subsection:

However, section 34 (3) and (5) and section 47 (3) and (5) do not apply to the review.

[12] Schedule 1 Exempt documents

Omit clause 4 (3) (a). Insert instead:

- (a) the Information and Intelligence Centre of the Police Service or the former State Intelligence Group, or

Explanatory note

The *Freedom of Information Act 1989* enables a member of the public to make an application to an agency (within the meaning of that Act) for access to the agency's documents, or for the amendment of the agency's records. The Act provides for the review of any determination made by an agency in respect of an application. Such a review may be internal (that is, conducted by an officer of the same agency that made the determination) or external (in which case it is conducted by the Ombudsman, the Administrative Decisions Tribunal or the Supreme Court).

Internal review of deemed refusals of applications

Section 24 (2) of the Act provides that an agency that fails to determine an application for access to documents within 21 days after the application was received by the agency is taken, for the purposes of the Act, to have determined the application by refusing access to the document. Section 43 (2) of the Act makes similar provision in respect of applications to amend the records of an agency.

Items [4] and [8] of the proposed amendments make it clear that a person may make an application to an agency that has failed to determine an application, for that "determination" to be reviewed.

Items [3], [5], [7] and [9] of the proposed amendment set out the procedural requirements for the internal review of such “determinations”.

Items [1] and [6] of the proposed amendments make consequential amendments.

Item [2] of the proposed amendments makes it clear that an agency may determine to give access to a document even though the 21 day period has ended and that the same protections apply to such a determination as apply to other determinations to give access.

Redetermination of applications following suggestion of Ombudsman

Section 52 of the Act provides that the conduct of any person or body in relation to a determination made by an agency under the Act may be the subject of a complaint to the Ombudsman, and may be investigated by the Ombudsman, under the *Ombudsman Act 1974*. This can only occur if any available internal review has already been completed under the Act (see section 52 (2)).

There may be circumstances in which the Ombudsman considers that it is more appropriate for further internal review to be undertaken by an agency, rather than for formal action to be taken under the *Ombudsman Act 1974*. Section 52A allows an agency to review its determination of an application for a second time, if the review is carried out in accordance with a suggestion made by the Ombudsman in the course of a preliminary inquiry carried out as the result of a complaint, as a result of an undertaking given by an agency during the course of the conciliation of a complaint made to the Ombudsman, or in accordance with a recommendation of the Ombudsman under the *ombudsman Act 1974*.

Item [10] of the proposed amendments permits an agency to conduct a further internal review of its determination of an application if it does so in accordance with a written suggestion made by the Ombudsman in the course of a formal investigation under section 13 of the *Ombudsman Act 1974* that is carried out as the result of a complaint.

Procedure for redetermination

Section 52A provides for any internal review following action by the Ombudsman to be conducted under section 34 (which deals with the internal review of applications for access to documents) or section 47 (which deals with the internal review of applications for the amendment of an agency’s records). Those sections do not permit the internal review of a previous internal review (see sections 34 (3) (a) and 47 (3) (a)) or the internal review of a determination of the principal officer of the agency (see sections 34 (3) (b) and 47 (3) (b)). The sections also prevent the person who made the original determination from reviewing it and require that the person who carries out the internal review of a determination be of the same rank or higher than the person who made the determination (see sections 34 (5) and 47 (5)).

Item [11] of the proposed amendments provides that those restrictions do not apply to the second internal review of a determination that is undertaken following action by the Ombudsman. (The restrictions would have applied to the first internal review.) Any determination made as a result of the second internal review may be reviewed externally by the Administrative Decisions Tribunal.

Exempt documents

Schedule 1 to the Act sets out categories of exempt documents, including documents affecting law enforcement and public safety (dealt with in clause 4 of the Schedule). At present, the clause provides that a document created by the State Intelligence Group of the Police Service is an exempt document. The Police Service proposes to change the name of that Group to the "Information and Intelligence Centre".

Item [2] amends the Act accordingly.

1.19 Gas Supply Act 1996 No 38

[1] Section 12 Variation of conditions of authorisations

Insert after section 12 (2):

- (3) An application to vary the conditions of an authorisation so as to extend a distribution district must be accompanied by such fee as may be determined by the Minister.

[2] Section 41 Variation of conditions of licences

Insert after section 41 (2):

- (3) An application to vary the conditions of a licence so as to extend a distribution district must be accompanied by such fee as may be determined by the Minister.

Explanatory note

Section 5 of the *Gas Supply Act 1996* prohibits a person from operating a distribution pipeline for the purpose of conveying natural gas to any other person, and the supply of natural gas to any other person by means of a distribution pipeline, otherwise than under the authority of an authorisation. An authorisation may be issued subject to conditions of the kind referred to in section 11 of the Act. Section 12 of the Act provides for the variation of such conditions. If an application for variation so as to extend a distribution district is made on the application of the holder of the authorisation, section 8 of the Act applies so as to require public consultation in relation to the application for variation (see section 12 (2)).

Item [1] of the proposed amendments provides for the Minister to determine the fee payable in relation to an application to vary the conditions of an authorisation so as to extend a distribution district. (Fees are already payable in relation to applications for authorisations, or for the transfer of authorisations, which are both subject to the public consultation process.)

Section 34 of the Act prohibits a person from operating a distribution system for the purpose of conveying liquefied petroleum gas or any other prescribed gas (other than natural gas) to other persons otherwise than under the authority of a distributor's licence. Section 37 provides for public consultation in relation to applications for licences or for the transfer of licences. A licence may be issued subject to conditions of the kind referred to in section 40 of the Act. Section 41 provides for the variation of those conditions, including on the application of the licence holder, and for the public consultation process to apply to such applications if they relate to the extension of a distribution district.

Item [2] of the proposed amendments provides for the payment of a fee in relation to an application to vary the conditions of a licence so as to extend a distribution district.

1.20 Health Administration Act 1982 No 135

[1] Section 23 Specially privileged information

Omit "section 14 (3)" from section 23 (5).

Insert instead "section 14F (1)".

[2] Section 23 (5)

Omit "section 13 (3) (f)". Insert instead "section 13 (1) (f)".

Explanatory note

Section 14F of the *Coroners Act 1980* provides for a coroner to issue a notice directing a person to produce a document or other thing to the coroner or another specified person. This power can be used for the purposes of determining whether or not to dispense with the holding of an inquest, including in a case where the relevant person died, or might have died, as a result of the administration of an anaesthetic of the kind referred to in section 13 (1) (f) of the Act.

Section 23 of the *Health Administration Act 1982* enables the Minister for Health to authorise specified persons or bodies to conduct research or investigations into morbidity or mortality occurring within New South Wales. An authorised person is not permitted to disclose or release any information obtained for those purposes unless the person has the consent of the person to whom the information relates or has the Minister's approval. Section 23 (5) of the Act provides that a person cannot be required to disclose or release any such information in relation to a person who died or may have died as a result of the administration of a relevant anaesthetic, even if the person has been ordered to do so under the *Coroners Act 1980*.

The proposed amendments update cross-references to the relevant provisions of the *Coroners Act 1980*, which have changed since section 23 commenced.

1.21 Health Services Act 1997 No 154

[1] Section 117 Duty to report certain criminal conduct and disciplinary matters

Insert “or dental prosthetist” after “dental technician” in paragraph (b) of the definition of *relevant health professional registration Act* in section 117 (3).

[2] Section 117 (3), definition of “relevant health professional registration Act”

Insert at the end of paragraph (i) of the definition:

, or

- (i) in relation to an employee who is employed as a pharmacist—the *Pharmacy Act 1964*.

Explanatory note

Section 117 of the *Health Services Act 1997* imposes duties on employees of public health organisations to report certain criminal conduct and disciplinary matters to the organisation. Section 117 (2) provides that an employee appointed by a public health organisation who has a misconduct finding made against him or her under any relevant health professional registration Act must report that fact to the chief executive officer of the organisation and must provide the chief executive officer with a copy of the relevant finding.

Item [1] of the proposed amendments makes it clear that section 117 (2) applies to a person employed as a dental prosthetist (a dental technician who holds a practising certificate as a dental prosthetist).

Item [2] of the proposed amendments provides for the subsection to apply to a person employed as a pharmacist.

1.22 Home Building Act 1989 No 147

[1] Section 3 Definitions

Omit “*Dangerous Goods (Gas Installations Regulation 1982*” from the definition of *gasfitting work* in section 3 (1).

Insert instead *Dangerous Goods (Gas Installations) Regulation 1998*“.

[2] Section 22 Automatic cancellation of licences

Insert after section 22 (1) (b):

, or

- (c) the licensee is a corporation and it has been deregistered under Chapter 5A of the *Corporations Law*.

[3] Section 29 Definitions

Omit the definition of *owner-builder work* from section 29 (1).

Insert instead:

owner-builder work means residential building work:

- (a) the reasonable market cost of the labour and materials involved in which exceeds the prescribed amount. and
- (b) that relates to a single dwelling-house or a dual occupancy:
 - (i) that may not be carried out on the land concerned except with development consent under Part 4 of the *Environmental Planning and Assessment Act 1979*. or
 - (ii) that is complying development within the meaning of that Act.

[4] Section 47 Production of authority

Insert after section 47 (d):

, or

- (e) any investigator appointed under section 18 of the *Fair Trading Act 1987*.

[5] Section 123 Service of notices or other documents

Omit "certified mail" wherever occurring in section 123 (1) (a) (iii) and (b) (iii).

Insert instead "registered post".

[6] Section 126 Power of entry

Insert after section 126 (6):

- (6A) An investigator appointed under section 18 of the *Fair Trading Act 1987* is taken to be a person authorised under subsection (1).

[7] Section 127 Power to obtain information

Omit the definition of *authorised person* from section 127 (1).
Insert instead:

authorised person means:

- (a) a person authorised in writing by the Director-General for the purposes of this section and holding a certificate issued by the Director-General as to that authority, or
- (b) an investigator appointed under section 18 of the *Fair Trading Act 1987*.

Explanatory note

Automatic cancellation of licences

Section 22 of the *Home Building Act 1989* provides for the automatic cancellation of a contractor licence in force under the Act in certain circumstances, including if there is a change in the membership of a licensee that is a partnership that the Director-General of the Department of Fair Trading has not approved.

Item [2] of the proposed amendments amends that section to provide for the automatic cancellation of the licence of a licensee that is a corporation that has ceased to exist, by virtue of having been deregistered under Chapter 5A of the *Corporations Law*.

Powers of entry, inspection and examination

Section 47 of the *Home Building Act 1989* provides for the inspection of authorities (for example, an owner-builder permit) by certain persons. Section 126 of the Act provides for the authorisation of persons to enter any land, building, vehicle or vessel and carry out examinations or inspections and apply for search warrants. Section 127 of the Act authorises certain persons to receive information or documents and to inspect certain documents.

Section 18 of the *Fair Trading Act 1987* provides for the Director-General of the Department of Fair Trading to appoint investigators.

Item [4] of the proposed amendments amends section 47 to include investigators appointed under the *Fair Trading Act 1987* as persons who may inspect authorities.

Items [6] and [7] of the proposed amendments provide that investigators appointed under the *Fair Trading Act 1987* automatically become persons authorised for the purposes of sections 126 and 127 of the *Home Building Act 1989*. The option of separate authorisation of persons under section 126 or 127 of the *Home Building Act 1989* is retained.

Statute law revision

Item [1] of the proposed amendments updates a reference to a repealed regulation.

Item [3] of the proposed amendments omits a redundant reference to the *Local Government Act 1993*, which is no longer the Act under which building work is approved.

Item [5] of the proposed amendments updates references to certified mail, a service that is no longer provided by Australia Post.

1.23 Industrial Relations Act 1996 No 17

Section 357 Civil penalty for breach of industrial instruments

Omit "Sections 398–403" from section 357 (7) (a).
Insert instead "Sections 400–403".

Explanatory note

Section 357 of the *Industrial Relations Act 1996* creates a civil penalty for contravening a provision of an industrial instrument. The section contains provisions as to who may institute proceedings for such a penalty (see section 357 (2)) and when those proceedings may be instituted (see section 357 (3)).

Section 357 (7) applies the general provisions dealing with criminal offence proceedings to civil penalty proceedings under section 357 but in doing so refers to two sections (namely sections 398 and 399) that would apply inconsistent provisions in relation to the matters covered by section 357 (2) and (3). The proposed amendment omits references to those sections.

1.24 Institute of Sport Act 1995 No 52

[1] Section 6 Establishment of Board

Omit "6" from section 6 (2) (a). Insert instead "8".

[2] Schedule 1 Provisions relating to members and procedure of Board

Omit “4” from clause 10. insert instead “5”.

Explanatory note

Section 6 of the *Institute of Sport Act 1995* establishes the Board of the Institute of Sport, consisting of 7 members (6 appointed members and the Director-General of the Department of Sport and Recreation).

Item [1] of the proposed amendments increases the number of members of the Board from 7 to 9.

Item [2] makes a consequential amendment relating to the quorum for a meeting of the Board.

1.25 Landlord and Tenant (Amendment) Act 1948 No 25

[1] Section 8 Definitions

Omit the definition of *authorized officer* from section 8 (1).

Insert instead:

authorised officer means:

- (a) a person appointed by the Controller in writing to be an authorised officer for the purposes of this Act, or
- (b) an investigator appointed under section 18 of the *Fair Trading Act 1987*.

[2] Sections 18 (1), 29 (4) and (5) (a) and 44 (1)

Omit “authorized” wherever occurring. Insert instead ”authorised“.

Explanatory note

The *Landlord and Tenant (Amendment) Act 1948* provides for the appointment by the Rent Controller of a person to be an authorised officer under the Act.

Section 18 of the *Fair Trading Act 1987* provides for the Director-General of the Department of Fair Trading to appoint investigators.

Item [1] of the proposed amendments provides that investigators appointed under the *Fair Trading Act 1987* automatically become authorised officers for the purposes of the *Landlord and Tenant (Amendment) Act 1948*. The option of separate appointment of such persons under the *Landlord and Tenant (Amendment) Act 1948* is retained.

Item [2] of the proposed amendments makes consequential amendments.

1.26 Landlord and Tenant (Rental Bonds) Act 1977 No 44

[1] Section 4 Definitions

Omit the definition of *authorised officer* from section 4 (1).
Insert instead:

authorised officer means:

- (a) an inspector appointed under the *Financial Institutions (New South Wales) Act 1992*, or
- (b) an authorised officer within the meaning of the *Landlord and Tenant (Amendment) Act 1948*, or
- (c) a person appointed by the Board to be an authorised officer for the purposes of this Act, or
- (d) an investigator appointed under section 18 of the *Fair Trading Act 1987*.

[2] Section 15A Penalty notices

Omit section 15A (9). Insert instead:

(9) In this section:

authorised officer means:

- (a) the Director-General of the Department of Fair Trading, or
- (b) a person authorised in writing by the Director-General as an authorised officer for the purposes of this section, or
- (c) an investigator appointed under section 18 of the *Fair Trading Act 1987*.

Explanatory note

The *Landlord and Tenant (Rental Bonds) Act 1977* provides for certain persons to be appointed as authorised officers for the purposes of the Act. Section 15A of the Act provides for the issue of penalty notices for certain offences by officers authorised for the purposes of that section.

Section 18 of the *Fair Trading Act 1987* provides for the Director-General of the Department of Fair Trading to appoint investigators.

The proposed amendments provide that investigators appointed under the *Fair Trading Act 1987* automatically become authorised officers for the purposes of the *Landlord and Tenant (Rental Bonds) Act 1977*. The option of separate authorisation of such persons under the *Landlord and Tenant (Rental Bonds) Act 1977* is retained.

1.27 Motor Dealers Act 1974 No 52

Sections 5 (1) and (2), 40 (2) and 16 (a)

Omit "Minister" wherever occurring.
Insert instead "Director-General".

Explanatory note

The proposed amendments authorise the Director-General of the Department of Fair Trading to approve the following:

- (a) the form of applications generally (section 5 (1) and (2)),
- (b) the form of applications for a licence (section 10),
- (c) the form of a licence (section 16 (a)).

At present, the Minister for Fair Trading approves such forms.

1.28 Parliamentary Electorates and Elections Act 1912 No 41

[1] Section 114A Application for a postal vote certificate and postal ballot-paper

Insert "and" at the end of section 114A (2) (b).

[2] Section 114A (2) (c)

Omit " , and".

[3] Section 114A (2) (d)

Omit the paragraph.

[4] Section 114H Directions for postal voting

Insert after section 114H (1) (b):

- (b1) The elector is to insert the date on the postal vote certificate, in the place provided for the date.

[5] Section 114L Preliminary scrutiny of postal ballot-papers

Omit section 114L (b) (iii) and (iv). Insert instead:

- (iii) in the case of a certificate that was delivered, the certificate was delivered before the close of the poll,
- (iv) in the case of a certificate that was posted. the certificate was completed before the close of the poll, and
- (v) the elector is enrolled for the district for which he or she claimed to be enrolled,

[6] Section 114ZD Directions for postal voting

Insert "and insert the date in the place provided for the date" after "the voter" in section 114ZD (b).

[7] Section 114ZG Scrutiny of postal ballot-papers

Omit section 114ZG (1) (b) (iii) and (iv). Insert instead:

- (iii) in the case of a certificate that was delivered, the certificate was delivered before the close of the poll.
- (iv) in the case of a certificate that was posted. the certificate was completed before the close of the poll, and
- (v) the elector is enrolled for the district for which he or she claimed to be enrolled.

[8] Section 120B

Omit sections 120A and 120B. Insert instead:

120B Returning officer to prepare list of electors failing to vote

- (1) After the close of the poll at every election, the returning officer is to prepare a list of the names of the electors enrolled for that district who, although entitled to vote at the election, appear to have failed to vote and do not appear to have a sufficient reason for the failure.
- (2) The returning officer is to certify that list by statutory declaration and send it to the Electoral Commissioner.

[9] Section 120C Penalty notices for certain offences

Omit "marked roll" from section 120C (1).
Insert instead "list prepared under section 120B".

[10] Section 120C (1)

Insert "used at the election" after "the roll".

[11] Section 120C (5)

Omit "courtesy letter served under section 100J of the *Justices Act 1902*".
Insert instead "penalty reminder notice served under the *Fines Act 1996*".

[12] Section 120C (6)

Omit "other than the marked roll indicating the failure".
Insert instead "for a district other than the one in relation to which the elector's name appears on a list prepared under section 120B".

[13] Section 120D Notation on list of non-voters of response to penalty notice

Omit "marked roll".

Insert instead "list prepared under section 120B".

[14] Section 120E Evidence in list of non-voters

Omit "A notation on the marked roll" from section 120E (1).

Insert instead "An entry on the list prepared under section 120B".

[15] Section 120E (2)

Omit "marked roll" where firstly occurring.

Insert instead "list prepared under section 120B".

[16] Section 120E (2)

Omit "marked roll" where secondly occurring.

Insert instead "list prepared and certified under section 120B".

[17] Section 120G Opening sealed parcels containing rolls and list used at election

Omit "marked roll aforesaid" from section 120G (a).

Insert instead "list being prepared under section 120B".

[18] Section 120G (b)

Omit "and marking".

Explanatory note

Application for a postal vote certificate and postal ballot-paper

Section 114A of the *Parliamentary Electorates and Elections Act 1912* provides that an elector cannot make an application for a postal vote certificate and a postal ballot-paper earlier than 9 days before the issue of the writ for the election to which the application relates.

Item [3] of the proposed amendments omits that restriction, so as to allow an elector to make an application at any time before an election, including an election for which the date is fixed by the Constitution Act 1902. Items [1] and [2] make consequential amendments.

Procedure for postal voting

Divisions 9 and 11 of Part 5 of the *Parliamentary Electorates and Elections Act 1912* regulate voting by post at State elections. In the preliminary scrutiny of postal ballot-papers, the returning officer, or the officer assisting the returning officer, is required to look at all unopened envelopes bearing postal vote certificates received up to 6 pm on the fourth day after the close of the poll.

At present, the Act requires the officer to determine when a postal ballot-paper was posted by looking at the postmark on the envelope containing the ballot-paper. However, Australia Post no longer postmarks all reply-paid mail. Under the present law, an envelope that was posted and has not been postmarked must be rejected even if it was received before the close of the poll.

Items [5] and [7] of the proposed amendments omit references to postmarks. Under the amended provisions the returning officer or other officer must not accept a postal ballot-paper that was posted unless he or she is satisfied that the postal vote certificate was completed before the close of the poll. Therefore, the relevant officer may accept a postal ballot-paper that was received in the post before the close of the poll, or that he or she is otherwise satisfied was completed before that time.

Items [4] and [6] of the proposed amendments provide for an elector to insert the date on a postal vote certificate. (The person who witnesses the elector's signature is already required to sign and date the certificate.) Section 176D of the Act makes it an offence to knowingly make an untrue statement in any electoral paper or form prescribed under the Act.

The date inserted on a certificate could be one factor that the returning officer or other officer takes into account in determining when the postal vote certificate was completed.

List of electors failing to vote

Section 120B of the Act requires the returning officer at the close of the poll at every election to prepare a copy of the roll for the electoral district that is marked in such a way as to show which electors did not vote in the election and did not appear to have had sufficient reason for not voting.

Optical scanning is now used to determine which electors have failed to vote. That scanning results in the creation of a separate list of electors who failed to vote, rather than an annotated copy of the whole roll.

Item [8] of the proposed amendments facilitates the use of optical scanning devices, by obliging the returning officer to generate a list of electors who failed to vote, and who appear not to have had sufficient reason for the failure, rather than marking those names on the roll.

Items [9], [10] and [12]–[18] of the proposed amendments update references to a marked roll.

Statute law revision

Item [11] of the proposed amendments updates a reference to the Act under which penalty notices are processed.

1.29 Pesticides Act 1978 No 57

[1] Section 29 Sale of pesticides

Omit section 29 (2) (b) and (c). Insert instead:

- (b) that does not bear a label.
- (c) that does not bear a label that is identical (or identical except for particulars relating to net contents) to a registered label for the pesticide, or
- (d) that does not bear a label that is identical (or identical except for particulars relating to net contents) to a registered label for an approved container for the pesticide.

[2] Section 32 Preparation, use, keeping or disposal of certain pesticides

Omit "to a registered label for an approved container for the pesticide and was, at the time the person acquired the pesticide, affixed to its container".

Insert instead:

to:

- (c) a registered label. or
- (d) a registered label for an approved container.

for the pesticide and was. at the time the person acquired the pesticide, affixed to its container.

[3] Section 33 Disregard of instructions

Omit "if there is a registered label for an approved container for the pesticide that contains that instruction" from section 33 (1).

[4] Section 33 (1A)

Insert after section 33 (1):

- (1A) A person is guilty of an offence under subsection (1) only if there is:
- (a) a registered label. or
 - (b) a registered label for an approved container, for the pesticide that contains the instruction concerned.

[5] Section 39 Certain statements prohibited

Omit section 39 (1) (b). Insert instead:

- (b) by reference to this Act or the regulations, or in any other manner. comment upon or explain any matter in:
- (i) a registered label, or
 - (ii) a registered label for an approved container, for a pesticide if that matter is, by that comment. expressly or impliedly contradicted or qualified, or

[6] Section 40 Guarantee to be a defence in certain circumstances

Omit "an information for a contravention of" from section 40 (1). Insert instead "proceedings in relation to".

[7] Section 40 (1)

Omit "information relates". Insert instead "proceedings relate".

[8] Section 40 (3)

Omit "summons issued in response to the information". Insert instead "relevant court order".

[9] Section 40 (3)

Omit “informant” wherever occurring. Insert instead “prosecutor”.

[10] Section 40 (4)

Omit “information”. Insert instead “proceedings”.

[11] Section 40 (5)

Omit “information is”. Insert instead “proceedings are”.

[12] Section 40 (5)

Omit “information relates”. Insert instead “proceedings relate”.

[13] Section 40 (8)

Insert after section 40 (7):

(8) In this section:

prosecutor means:

- (a) the informant, in relation to proceedings in a Local Court, or
- (b) the person who made the application for an order under section 41 of the *Land and Environment Court Act 1979*, in relation to proceedings in the Land and Environment Court.

relevant court order means:

- (a) a summons, in relation to proceedings in a Local Court, or
- (b) an order under section 41 of the *Land and Environment Court Act 1979*, in relation to proceedings in the Land and Environment Court.

[14] Section 59 Proceedings for offences

Omit section 59 (3). Insert instead:

- (3) Except as provided by subsection (4), proceedings for an offence against this Act or the regulations may be commenced within but not later than 12 months after the date when the offence is alleged to have been committed.

[15] Section 59 (4)

Omit "by information laid within 2 years after the time".

Insert instead "within but not later than 2 years after the date".

[16] Section 60 Evidence

Omit section 60 (a) (iii). Insert instead:

- (iii) that a label described in the certificate was, or was not, a registered label described in the certificate on any date, or during any period, specified in the certificate,
- (iiia) that a label described in the certificate was, or was not a registered label for an approved container described in the certificate on any date, or during any period, specified in the certificate.

Explanatory note

Registered labels for approved containers

The *Pesticides Act 1978* provides for the registration of pesticides and the approval of a specification for a class of containers for the pesticide (see sections 13, 136 and 13C) and provides for the registration of labels for a class of containers (see section 13A). The operation of those provisions has been suspended by the *Agricultural and Veterinary Chemicals (New South Wales) Regulation 1995*. However, various provisions of the Act creating offences contain references to a registered label for an approved container for the pesticide.

Items [1]–[5] and [6] of the proposed amendments separate the various elements of those offences, so that prosecutions may be brought under them despite the suspension of the provisions relating to the registration of labels and approval of containers.

Proceedings for offences

Section 59 of the *Pesticides Act 1978* provides that proceedings for an offence against the Act or the regulations may be disposed of summarily before a Local Court constituted by a Magistrate sitting alone or before the Land and Environment Court in its summary jurisdiction.

Items [6]–[15] update references to the laying of an information so as to encompass the commencement of proceedings by other means. The *Local Courts Act 1982* and the *Land and Environment Court Act 1979* set out the relevant procedural rules for proceedings commenced under those Acts.

1.30 Police Service Act 1990 No 47

Section 218A

Insert after section 218:

218A Police Band

- (1) There is to be a Police Band, which may consist of members of the Police Service or other persons approved by the Minister, or both.
- (2) The ceremonial and other roles of the Police Band are to be as determined by the Commissioner from time to time.

Explanatory note

The proposed amendment recognises the existence and role of the Police Band.

1.31 Police Integrity Commission Act 1996 No 28

[1] Section 91 Inquiries (cf Omb Act S 19)

Insert after section 91 (2):

- (3) A witness summoned by or appearing before the Inspector is to be paid such amount as the Inspector determines, but not exceeding the amount that would be payable to such a witness if he or she were a Crown witness subpoenaed by the Crown to give evidence.

[2] Section 124 Firearms and other police equipment (cf RC (PS) Act s 37L)

Omit “*Firearms Act 1989*” from section 124 (1).

Insert instead “*Firearms Act 1996*”.

Explanatory note

Section 91 of the *Police Integrity Commission Act 1996* empowers the inspector of the Police Integrity Commission to make or hold inquiries for the purposes of the Inspector's functions. That section provides for the *Royal Commissions Act 1923* to apply to any witness summoned by or appearing before the Inspector in the same way as it applies to a witness summoned by or appearing before a commissioner. However, section 13 of that Act, which deals with the payment of witness expenses, does not apply to such a witness.

Item [1] of the proposed amendments empowers the Inspector of the Police Integrity Commission to determine the amount payable to witnesses to cover their expenses. However, the amount that is paid to a witness is limited to that which would be paid if the witness were a Crown witness subpoenaed by the Crown to give evidence. (The Ombudsman has a similar power to determine and pay such amounts, under the *Ombudsman Act 1974*.)

Item [2] of the proposed amendments updates a reference to a repealed Act.

1.32 Prices Regulation Act 1948 No 26

Section 3 Definitions

Omit the definition of *authorised officer* from section 3 (1).

Insert instead:

authorised officer means:

- (a) a person appointed by the Commission to be an authorised officer for the purposes of this Act. or
- (b) an investigator appointed under section 18 of the *Fair Trading Act 1987*.

Explanatory note

The *Prices Regulation Act 1948* provides for certain persons to be appointed as authorised officers within the meaning of the Act.

Section 18 of the *Fair Trading Act 1987* provides for the Director-General of the Department of Fair Trading to appoint investigators.

The proposed amendment provides that investigators appointed under the *fair Trading Act 1987* automatically become authorised officers for the purposes of the *Prices Regulation Act 1948*. The option of separate appointment of such persons under the *Prices Regulation Act 1948* is retained.

1.33 Professional Standards Act 1994 No 81

Section 47

Omit the section. Insert instead:

47 Annual report

- (1) As soon as practicable after 30 June, but before 1 October, in each year, the Council must prepare and forward to the Minister a report on the Council's work and activities for the period of 12 months ending on 30 June in that year.
- (2) The Minister is required to lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

Transitional

The report of the Professional Standards Council that is required to be prepared as soon as practicable after 30 June 1999 but before 1 October 1999 must relate to the period from 1 January 1998 to 30 June 1999.

Explanatory note

The *Professional Standards Act 1994* constitutes the Professional Standards Council. At present, the Council is required to prepare its annual report for the previous year as soon as practicable after 1 January, but before 31 March. The proposed amendment provides for the reporting year of the Council to be from 1 July to 30 June.

1.34 Property, Stock and Business Agents Act 1941 No 28

[1] Sections 22 (3) (a), 23 (1), 23A (1), 36A (1), 36B (a) and (b), 38A (1), 38B (2A), 38D (2B), 39AA (1) and 57 (1)

Omit "Minister" wherever occurring.
Insert instead "Director-General".

[2] Section 22A Phasing in of 3-year licences

Omit "1999" from section 22A (4). Insert instead "2001".

[3] Section 38B Inspection of records

Insert after section 38B (8):

- (9) An investigator appointed under section 18 of the *Fair Trading Act 1987* is taken to be an officer authorised under subsections (1), (2) and (2AA).

[4] Section 38D Audit of licensees' books and other records

Omit "shall be deemed to have complied with this section if" from section 38D (6).

Insert instead "must".

[5] Section 38D (6)

Omit "the licensee makes and lodges".

Insert instead "make and lodge".

[6] Section 38D (8)

Insert after section 38D (7):

- (8) An order made for the purposes of the definition of *prescribed day* in subsection (1) may be made with such limitations as to time or circumstances, and subject to such conditions, as the Director-General may determine.

[7] Section 50B Records to be kept by business agent

Insert after section 50B (3):

- (4) An investigator appointed under section 18 of the *Fair Trading Act 1987* is taken to be an officer authorised under subsection (2).

[8] Section 50L Production of certain instruments

Insert " , an investigator appointed under section 18 of the *Fair Trading Act 1987*" after "police force".

[9] Section 86A Officers of Department not to disclose information

Insert after section 86A (1) (c):

, or

- (d) to any law enforcement officer for the purposes of ascertaining whether any criminal proceedings should be instituted under any law of the Commonwealth or of the State, another State or a Territory or for the purposes of such proceedings, or
- (e) to any court before which criminal proceedings are being taken for the breach of any law of the Commonwealth or of the State, another State or a Territory.

[10] Section 86A (4)

Insert after section 86A (3):

- (4) In this section, *law enforcement officer* means:
 - (a) a member of the Police Service, the Australian Federal Police or of the police force of another State or a Territory, or
 - (b) the Director of Public Prosecutions or the Crown Prosecutor of the State or the Director of Public Prosecutions or the Crown Prosecutor of the Commonwealth or of another State or Territory, or
 - (c) any other person, or officer of an authority, responsible for the prosecution of offences under laws of the Commonwealth or of the State, another State or a Territory.

[11] Section 86C Penalty notices

Omit section 86C (9). Insert instead:

- (9) In this section:
authorised officer means:
 - (a) the Director-General, or

-
- (b) a person authorised in writing by the Director-General as an authorised officer for the purposes of this section, or
 - (c) an investigator appointed under section 18 of the *Fair Trading Act 1987*.

Explanatory note

Approval of documents

Item [1] of the proposed amendments amends the *Property Stock and Business Agents Act 1941* so as to authorise the Director-General of the Department of Fair Trading, instead of the Minister for Fair Trading, to approve the form in which the following documents must be made:

- (a) licences (section 22),
- (b) applications for licences, for renewal or restoration of licences, for certain approvals and for registration or renewal of registration (sections 23 (1), 23A (1), 39AA (1) and 57 (1)),
- (c) statements in relation to trust accounts and unclaimed trust moneys (sections 36A (1), 38A (1) and 36B (a) and (b)),
- (d) instruments in relation to the inspection of records (section 38B (2A)),
- (e) auditor's reports (section 38D (26)).

Phasing in of 3-year licences

Section 22A of the Act enables an applicant for a licence or for renewal of a licence to elect to be issued with a licence for a term of 1 year only instead of automatically receiving a licence with a term of 3 years. At present, the section provides that it ceases to have effect on 1 March 1999.

Item [2] of the proposed amendments amends section 22A so that the section ceases to have effect on 1 March 2001.

Powers to inspect records and issue penalty notices

Sections 38B and 50B of the *Property, Stock and Business Agents Act 1941* provide for the authorisation of officers to inspect certain records. Section 50L of the Act authorises the production of documents to certain persons. Section 86C of the Act provides for the issue of penalty notices for certain offences by authorised officers.

Section 18 of the *Fair Trading Act 1987* provides for the Director-General of the Department of Fair Trading to appoint investigators.

Items [3], [7] and [11] of the proposed amendments provide that investigators appointed under the *Fair Trading Act 1987* automatically become authorised officers for the purposes of sections 38B, 50B and 86C of the *Property, Stock and Business Agents Act 1941*. The option of separate authorisation of officers under those sections is retained.

Item [8] of the proposed amendments amends section 50L of the *Property, Stock and Business Agents Act 1941* to include investigators appointed under the *Fair Trading Act 1987* as persons to whom documents are to be produced.

Audit of licensee's books and other records

Section 38D of the Act requires licensees and former licensees who have held any money in a trust account during a relevant period to cause their books and other records to be audited and to lodge an auditor's report with the Director-General. Section 38D (6) provides that a person who neither received nor held any money for or on behalf of any person during the relevant period is taken to have complied with section 38D if the person makes a statutory declaration to that effect and lodges it with the Director-General.

Items [4] and [5] of the proposed amendments amend section 38D (6) with the result that every licensee will be required to lodge either audited reports or a statutory declaration.

Item [6] of the proposed amendments allows the Director-General to make orders fixing different **prescribed days** (which effectively fixes the financial year for reporting purposes) for different licensees.

Disclosure of certain information

Section 86A of the Act prevents officers of the Department of Fair Trading from disclosing certain information obtained in the administration of the Act, except where it is disclosed to the court in certain proceedings.

Items [9] and [10] of the proposed amendments remove the prohibition on the disclosure of information to any court hearing criminal proceedings or to any law enforcement officer for the purposes of criminal proceeding or of ascertaining whether criminal proceedings should be instituted.

1.35 Protection of the Environment Operations Act 1997 No 156

[1] Section 45 Matters to be taken into consideration in licensing functions

Omit section 45 (1). Insert instead:

- (1) in connection with a licence application:
 - (i) any public submission in relation to the licence application received by the appropriate regulatory authority under this Act, and

- (ii) any public submission that has been made under the *Environmental Planning and Assessment Act 1979*, in connection with the activity to which the licence application relates, and that has been received by the appropriate regulatory authority,

[2] Section 205 Definitions

Omit "section 208" from paragraph (a) of the definition of *authorised officer*.

Insert instead "sections 206 and 208".

[3] Section 205, definition of "authorised officer"

Omit paragraph (b) of the definition. Insert instead:

- (b) extends, in sections 206 and 208, to a police officer, and
- (c) extends, in sections 206 and 208, in relation to vessels only, to an officer or employee of the marine authority authorised by the authority for the purposes of those sections.

[4] Section 206 Power to inspect and test

Omit "Part" from section 206 (1). Insert instead "Chapter".

[5] Section 319 Disclosure of information

Omit "in respect of" from section 319 (4). Insert instead "from"

[6] Section 320 Disclosure of monitoring data

Omit "licence of" from section 320 (1).

Insert instead "licence in relation to".

[7] Dictionary

Omit paragraph (c) of the definition of *local authority* in the Dictionary.

Insert instead:

- (c) the Western Lands Commissioner in relation to the Western Division, except any part of the Western Division within the area of a local council, or

Explanatory note

Public submissions relating to licence applications

Section 45 of the *Protection of the Environment Operations Act 1997* provides that, in exercising its functions under Chapter 3 (Environment protection licences) in connection with a licence application, the appropriate regulatory authority is required to take into consideration certain public submissions under the *Environmental Planning and Assessment Act 1979*.

Item [1] of the proposed amendments makes it clear that the relevant submissions are those submissions made in connection with the activity to which the licence application relates that the appropriate regulatory authority has actually received.

Powers of officers with respect to vehicles, vessels and other articles

Part 7.6 of the Act confers powers on authorised officers concerning the investigation of vehicles, vessels and other articles. At present, police officers and authorised officers or employees of the marine authority (the Minister administering the *Ports Corporatisation and Waterways Management Act 1995* or the Waterways Authority) are empowered to exercise the powers in section 208 to stop vehicles and vessels for inspection and testing.

Items [2] and [3] of the proposed amendments also empower police officers and authorised officers and employees of the marine authority to exercise functions under section 206 to inspect and test any article. (The powers of officers or employees of the marine authority are limited to the stopping, inspection and testing of vessels.)

At present, section 206 of the Act provides that an authorised officer may inspect and test any article for the purposes of Part 7.6.

Item [4] of the proposed amendments provides for those powers instead to be exercised for the purposes of the whole of Chapter 7 (Investigation).

Disclosure of information

Section 319 of the Act prohibits the disclosure of certain information obtained in connection with the administration or execution of the Act or the regulations. Section 319 (3) provides for the disclosure of certain information in certain circumstances, including in relation to the keeping of registers and the

prosecution of offences. However, section 319 (4) prohibits the Environment Protection Authority and other regulatory authorities from disclosing any information about industrial, agricultural or commercial secrets or working processes obtained “in respect of” premises (except with the consent of the occupier of the premises).

Item [5] of the proposed amendments provides for the protection of such information from disclosure to apply only when the information was obtained “from” the premises. This is the current position under section 26 of the *Pollution Control Act 1970*.

Item [6] of the proposed amendments corrects a typographical error.

Western hands Commissioner

Item [7] of the proposed amendments amends the definition of **local authority** so as to ensure that the Western Lands Commissioner is not the appropriate regulatory authority in respect of activities in the area of a local government authority.

1.36 Public Notaries Act 1997 No 98

[1] Section 3 Definitions

Omit the definition of *admission rules*.

[2] Section 9A

Insert after section 9:

9A Provisions applying to admission rules

Part 6 of the *Interpretation Act 1987* applies to a rule made under section 9 in the same way as it applies to a statutory rule within the meaning of that Act.

Note. Part 6 of the *Interpretation Act 1987* contains provisions relating to the publication and Parliamentary disallowance of statutory rules and other standard provisions relating to the making, amendment and repeal of statutory rules.

Savings

Section 9A of the *Public Notaries Act 1997* does not apply to any rule made by the Legal Practitioners Admission Board under section 9 of the Act before the commencement of section 9A.

Explanatory note

The *Public Notaries Act* 1997 provides for the appointment of public notaries and regulates their practice.

Section 9 of the Act provides for the Legal Practitioners Admission Board constituted under Part 2 of the *Legal Profession Act* 1987 to make rules for or with respect to the qualifications for appointment as a public notary, other aspects of the appointment of public notaries and any other matters relating to the exercise of the Board's functions under the *Public Notaries Act* 1997.

Item [2] of the proposed amendments provides for Part 6 of the *Interpretation Act* 1987 to apply to such rules in the same way as it applies to statutory rules. Part 6 of the *Interpretation Act* 1987 contains provisions relating to the publication of statutory rules in the Gazette, the Parliamentary disallowance of statutory rules and other aspects of the making, amendment and repeal of statutory rules.

Item [1] of the proposed amendments omits a redundant definition.

1.37 Public Sector Management Act 1988 No 33

[1] Section 3 Definitions

Insert in alphabetical order of definitions in section 3 (1):

notional salary, in relation to a chief executive officer or a senior executive officer, means:

- (a) for the purposes of calculating the amount of an entitlement paid on or before 31 August 1996—72.5 per cent of the amount of the remuneration package for the officer as last determined before the time of payment, or
- (b) for the purposes of calculating the amount of an entitlement paid between 1 September 1996 and 30 June 1998 (inclusive)—94.3 per cent of the amount of the remuneration package for the officer as last determined before the time of payment, or
- (c) for the purposes of calculating the amount of an entitlement paid on or after 1 July 1998—the total amount of the remuneration package for the officer as last determined before the time of payment, less the superannuation guarantee amount payable in respect of the officer.

superannuation guarantee amount means the minimum amount payable to a superannuation fund or scheme in respect of an officer that is sufficient to avoid an individual superannuation guarantee shortfall, within the meaning of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth, in respect of the officer.

[2] Section 26A Eligibility lists

Omit "current for 6 months after the position was advertised." from section 26A (2).

Insert instead:

current:

- (a) in the case of a list prepared in relation to a base grade or entry level position, for 12 months after the list was created. or
- (b) in the case of a list prepared in relation to a position that is not a base grade or entry level position, for 6 months after the list was created.

[3] Section 26A (6)

Insert after section 26A (5):

- (6) In this section:

base grade or entry level position, in relation to a Department, means a position to which no officer in the Department, employed in the same classification of work as that to which the position relates could be promoted.

[4] Section 42L Monetary remuneration and employment benefits for executive officers

Insert after section 42L (9)

- (10) The cost of an executive officer's entitlement to take annual or extended leave with pay is to be determined on the basis of the officer's notional salary.

[5] Schedule 5 Extended leave for officers etc of Public Service

Insert after clause 4:

5 Calculation of money value of extended leave

For the purpose of calculating the amount of an entitlement under clause 2 or 3, the money value of extended leave accrued or payable to a chief executive officer or senior executive officer is to be determined on the basis of the officer's notional salary.

[6] Schedule 5A Provisions relating to mobility of public sector employees

Insert after clause 4 (3):

(3A) For the purpose of calculating an entitlement under this clause, the money value of accrued annual leave owing to a chief executive officer or senior executive officer is to be determined on the basis of the officer's notional salary.

Validation

A payment made to an officer under a provision of the *Public Sector Management Act 1988* amended by this Act (being a payment made before the amendment took effect) is, to the extent that it was calculated in accordance with that provision as amended by this Act, taken to have been validly calculated for the purposes of that provision as in force at the time the payment was made.

Explanatory note

Eligibility lists

Section 26A of the *Public Sector Management Act 1988* provides that when a vacant position in the public service is advertised, the appropriate Department Head may create an eligibility list for the position, listing the applicants in order of merit. An eligibility list is applicable not only to the position in relation to which it was created but also to any other position to which the appropriate Department Head determines that it should be applicable. At present, an eligibility list remains current for 6 months after the position was advertised.

Items [2] and [3] of the proposed amendments provide for an eligibility list to remain current for 12 months after the list was created (in the case of base grade or entry level positions) or for 6 months after the list was created (in the case of other positions).

Notional salary

Several provisions of the *Public Sector Management Act 1988* and the *Public Sector Management (General) Regulation 1996* provide for the cashing in of the “money value” of accrued recreation leave and accrued extended leave in certain circumstances.

Items [4]–[6] of the proposed amendments provide for determining the money value of benefits payable to an executive officer by reference to an officer’s notional salary. On and from 1 July 1998, “notional salary” will mean the total remuneration applicable, less any minimum employer contribution under the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth. The proposed amendments also ratify the means by which notional salary has been determined in the past.

An officer’s notional salary will be used to determine the money value of:

- (a) annual or extended leave payable to an executive officer who has forgone the right to take all or part of that leave (payable under section 42L (6)), and
- (b) extended leave to which an executive officer was entitled immediately before the termination of the officer’s services (payable as a gratuity to an officer under clause 2 of Schedule 5), and
- (c) extended leave to which an executive officer was entitled immediately before the officer’s death (payable under clause 3 of Schedule 5), and
- (d) annual leave to which an executive officer was entitled immediately before commencing employment in another public sector service (payable under clause 4 of Schedule 5A).

Item [1] of the proposed amendments inserts relevant definitions.

1.38 Public Sector Management (General) Regulation 1996

[1] Clause 38 Provisions relating to executive positions

Omit “reduced by the standard percentage determined by the Public Employment Office for the purpose of avoiding double payment for any particular employment benefit“ from clause 38 (3).

Insert instead “reduced by the superannuation guarantee amount payable in respect of the officer”.

[2] Clause 83 Payment for untaken leave where public servant ceases to be employed or dies

Insert after clause 83 (3):

- (4) For the purpose of calculating an entitlement under this clause, the money value of recreation leave accrued to a chief executive officer or senior executive officer is to be determined on the basis of the officer’s notional salary.

Validation

A payment made to an officer under a provision of the *Public Sector Management (General) Regulation 1996* amended by this Act (being a payment made before the amendment took effect) is, to the extent that it was calculated in accordance with that provision as amended by this Act, taken to have been validly calculated for the purposes of that provision as in force at the time the payment was made.

Explanatory note

Clause 38 (3) of the *Public Sector Management (General) Regulation 1996* provides that if an officer who is not an executive officer relieves or acts in an executive position the officer is entitled to be paid some percentage of the salary or wage applicable to the relevant executive position.

Item [1] of the proposed amendments provides for the officer to receive the notional salary applicable to the executive position. On and from 1 July 1998, "notional salary" will mean the total remuneration applicable, less any minimum employer contribution under the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth.

Clause 83 of the Regulation provides for the cashing in of the "money value" of untaken leave when a public servant ceases to be employed or dies.

Item [2] of the proposed amendments provides for the use of an executive officer's notional salary in determining the money value of such an officer's untaken leave.

The proposed amendments also ratify the means by which notional salary has been determined in the past.

The amendments are consistent with similar amendments made to the *Public Sector Management Act 1988* elsewhere in this Schedule.

1.39 Residential Tenancies Act 1987 No 26

[1] Section 3 Definitions

Omit the definition of *investigator* from section 3 (1). Insert instead:

investigator means:

- (a) an officer appointed, or taken to have been appointed, as an investigator by the Minister under section 119A. or
- (b) an investigator appointed under section 18 of the *Fair Trading Act 1987*.

[2] Section 67 Notice of termination not required in certain cases

Insert “ , 69A” after “69”.

Explanatory note

Appointment of inspectors

Section 119A of the *Residential Tenancies Act 1987* provides for the appointment of investigators for the purposes of the Act.

Section 18 of the *Fair Trading Act 1987* provides for the Director-General of the Department of Fair Trading to appoint investigators.

Item [1] of the proposed amendments provides that investigators appointed under the *Fair Trading Act 1987* automatically become investigators for the purposes of the *Residential Tenancies Act 1987*. The option of separate appointment of investigators under the *Residential Tenancies Act 1987* is retained.

Termination of residential tenancy agreements

Sections 68, 69 and 70 of the *Residential Tenancies Act 1987* empower the Residential Tenancies Tribunal to make orders terminating residential tenancy agreements where the tenant causes serious damage or injury, where the landlord would otherwise suffer undue hardship or where the landlord has breached the agreement. Section 67 of the Act provides that such applications can be made to the Tribunal whether or not notice of termination has been given to the other party.

Item [2] of the proposed amendments includes applications under section 69A (Tribunal may terminate residential tenancy agreement where tenant would otherwise suffer undue hardship) in the class of applications that may be made whether or not notice of termination has been given.

1.40 Road Transport (Vehicle Registration) Amendment Act 1998 No 26

Schedule 2 Amendment of other Acts

Omit Schedule 2.6 [5].

Explanatory note

The proposed amendment repeals an uncommenced amendment to the *Traffic Act 1909*. The purport of the relevant amendment was to omit a power to make regulations providing for the minimisation of the noise, and the issue of smoke or fumes, from the working of vehicles.

1.41 Stock (Chemical Residues) Amendment Act 1996 No 21

[1] Schedule 1 Amendments

Omit “the Minister” from section 12C (a) of the *Stock (Chemical Residues) Act 1975* (as proposed to be inserted by Schedule 1 [16]).
Insert instead “the holder of any office, or the holders of any offices, prescribed by the regulations.”.

[2] Schedule 1 [16]

Omit “the Minister” where firstly occurring in section 12C (b) of the *Stock (Chemical Residues) Act 1975* (as proposed to be inserted by Schedule 1 [16]).
Insert instead “the holder of any office, or the holders of any offices, prescribed by the regulations.”.

Explanatory note

Proposed section 12C of the *Stock (Chemical Residues) Act 1975* deals with the notification of particulars of test results that indicate whether stock are or are not chemically affected. At present, the section (which is uncommenced) requires the particulars to be furnished to the Minister.

The proposed amendments will allow the particulars to be furnished to the holder of any office, or the holders of any offices, prescribed by the regulations, who may more appropriately and conveniently deal with them.

1.42 Strata Schemes Management Act 1996 No 138

[1] Section 46 How does a lessee get information about the by-laws?

Insert after section 46 (3):

- (3A) If a lot or common property in a freehold scheme is leased and the by-laws are amended, the lessor must provide the lessee with a further copy of the by-laws, within the time and in the manner required by this section.

Maximum penalty: 1 penalty unit.

- (3B) If a lot or common property in a leasehold strata scheme is sublet and the by-laws are amended, the sublessor must provide the sublessee with a further copy of the by-laws, within the time and in the manner required by this section.

Maximum penalty: 1 penalty unit.

- (3C) Any further copy of by-laws required to be provided under subsection (3A) or (3B) must be provided to the lessee or sublessee within 7 days after the amendment of the by-laws is recorded by the Registrar-General under section 48 (1) (b).

[2] Section 46 (4)

Insert "(including any further copy of by-laws that have been amended)" after "statement".

[3] Section 46 (5)

Omit "Subsections (1) and (2)".

Insert instead "Subsections (1), (2), (3A) and (3B)".

[4] Section 98 What must be recorded in the strata roll?

Insert after section 98 (1) (b):

,and

- (c) information provided under section 119.

[5] Section 119

Omit the section. Insert instead:

119 Notice to be given to owners corporation of leases or subleases

- (1) If a lot is leased, the lessor must give notice of the lease, in accordance with this section, to the owners corporation within 14 days after the commencement of the lease.

Maximum penalty: 5 penalty units.

- (2) If a lot is subleased, the sublessor must give notice of the sublease, in accordance with this section, to the owners corporation within 14 days after the commencement of the sublease.

Maximum penalty: 5 penalty units.

- (3) If a lease or sublease of a lot is assigned, the assignor must give notice of the assignment, in accordance with this section, to the owners corporation within 14 days after the execution of the assignment.

Maximum penalty: 5 penalty units.

- (4) The notice must specify:

- (a) the name of the lessee, sublessee or assignee, and
- (b) the date of commencement or assignment of the lease or sublease, as the case requires, and
- (c) the name of any agent acting for the owner in respect of the lease or sublease.

[6] Section 131 Agreements and arrangements arising from mediation sessions

Omit "Division" wherever occurring in section 131 (2).
Insert instead "Part".

[7] Section 141 Order consequent on alteration of building

Insert “, a lessee of a lot in such a scheme, an owners corporation” after "scheme" in section 141 (3).

[8] Section 150 Order relating to keeping of animals

Insert after section 150 (4)

- (4A) An application for an order under subsection (4) may be made only by:
- (a) an owner of a lot in the strata scheme, or
 - (b) an occupant of a lot in the strata scheme, with the consent of the owner of the lot.

[9] Section 162A

Insert before section 163:

162A Applications for orders generally

If a provision of this Act, other than a provision of this Chapter, enables a person to make an application for an order of an Adjudicator, the application for the order must:

- (a) be made to the Registrar, and
- (b) be in writing, stating the grounds on which it is based. and
- (c) specify the order sought, and
- (d) be accompanied by the prescribed fee.

[10] Section 195 Copy of order to be served

Omit "any person against whom" from section 195 (2) (e).
Insert instead "in the case of".

[11] Section 195 (2) (e)

Insert ", any person against whom the order has been made" after "notices)".

[12] Schedule 2 Meetings and procedure of owners corporation

Omit "Each member of an owners corporation" from clause 10 (1).
Insert instead "Each owner".

[13] Schedule 2, clause 10 (1)

Omit "the member". Insert instead "the owner".

[14] Schedule 3 Constitution of executive committee of the owners corporation and meetings of executive committee

Omit “by-law” from clause 7 (2). Insert instead “clause”.

Explanatory note

Information to be given to lessees

Section 46 of the *Strata Schemes Management Act 1996* requires the lessor of a lot or common property to provide to any lessee a copy of the by-laws and any strata management statement affecting the lot or common property. Section 46 (2) of the Act similarly requires a sublessor of a lot or common property in a leasehold strata scheme to provide such copies to a sublessee. Under section 46 (3) of the Act, these copies are to be provided within 7 days after the lessee or sublessee becomes entitled to the possession of the leased premises.

Item [1] of the proposed amendments requires a lessor or sublessor to provide a lessee or sublessee with a further copy of the by-laws if the by-laws are amended.

Items [2] and [3] of the proposed amendments make consequential amendments.

Information regarding leases to be recorded on strata roll

Section 119 of the Act requires notice to be given to an owners corporation of any lease, sublease or assignment of lease within 14 days after the lease or sublease commences or the assignment is executed.

Item [5] of the proposed amendments makes it clear that it is the lessor, sublessor or assignor who must give this notice.

Section 98 of the Act lists what information is to be recorded on the strata roll, including the name and address for service of notices of the owner of a lot.

Item [4] of the proposed amendments requires the owners corporation to record in the strata roll information provided by a lessee or sublessee under section 119 (as substituted by item [5]).

Application for orders consequent on alteration of building

Section 14 (1) of the *Strata Schemes (Freehold Development) Act 1973* and section 17 (1) of the *Strata Schemes (Leasehold Development) Act 1986* require the proprietor or lessee of a lot to lodge certain plans and certificates in the office of the Registrar-General after any alteration of a building that affects a lot boundary. Section 141 of the *Strata Schemes Management Act 1996* enables a lessor of a leasehold strata scheme or an owner to apply to an Adjudicator for an order directing an owner to lodge such plans and certificates with the Registrar-General.

Item [7] of the proposed amendments also enables an owners corporation or a lessee to apply for such an order.

Orders relating to keeping of animals

Section 150 (4) of the Act empowers an Adjudicator to make an order declaring that the applicant for the order may keep an animal on a lot or on common property in certain circumstances.

Item [8] of the proposed amendments makes it clear that only an owner of a lot, or an occupier of a lot acting with the owner's consent, may apply for such an order.

Requirements regarding applications for orders

Various provisions of the Act enable a person to apply for an order under the Act, including sections 84 (6) and 86 (2). These provisions do not specify the formal requirements for making such an application.

Item [9] of the proposed amendments provides that an application for an order (other than an order under Chapter 5 of the Act) of an Adjudicator is to be made to the Registrar, is to be in writing stating the grounds on which it is based and is to specify the order sought. The new provision also requires such applications to be accompanied by the prescribed fee. (Section 216 (2) (b) of the Act empowers the Governor to make regulations prescribing such fees.)

Annual general meetings of owners corporation

Item [12] and [13] of the proposed amendments correct incorrect references to the persons who are entitled to vote at a general meeting of an owners corporation.

Statute law revision

Items [10] and [11] of the proposed amendments insert omitted words.

Items [6] and [14] of the proposed amendments correct cross-references.

1.43 Trade Measurement Administration Act 1989 No 234

[1] Section 3 Definitions

Insert "or" at the end of paragraph (a) of the definition of *inspector* in section 3 (1).

[2] Section 3 (1), definition of "inspector"

Insert at the end of paragraph (c) of the definition:

, or

- (d) an investigator appointed under section 18 of the *Fair Trading Act 1987*.

Explanatory note

Section 5 of the *Trade Measurement Administration Act 1989* provides for the employment of inspectors and section 6 of the Act provides for the authorisation of persons to exercise the functions of an inspector.

Section 18 of the *Fair Trading Act 1987* provides for the Director-General of the Department of Fair Trading to appoint investigators.

The proposed amendments provide that investigators appointed under the *Fair Trading Act 1987* automatically become inspectors for the purposes of the *Trade Measurement Administration Act 1989*. The option of separate employment or authorisation of such persons under the *Trade Measurement Administration Act 1989* is retained.

1.44 Traffic Act 1909 No 5

[1] Section 2 Definitions

Insert the following definition in alphabetical order in section 2 (1):

Heavy truck means:

- (a) a motor vehicle (except a bus or a tram) with a GVM over 12 tonnes.
- (b) a motor vehicle (except a bus or tram) forming part of a combination if the total of the GVMs of the vehicles in the combination is over 12 tonnes.

with the GVM of a vehicle being the maximum loaded mass of the vehicle:

- (c) specified by the manufacturer on an identification plate on the vehicle. or
- (d) if there is no specification by the manufacturer on an identification plate on the vehicle or if the specification is not appropriate because the vehicle has been modified—certified by the Authority or a corresponding authority.

[2] Section 3 Regulations

Omit section 3 (1) (t1). Insert instead:

- (t1) make provision for or with respect to the management and prevention of driver fatigue in connection with the driving of heavy trucks and coaches. including (without limitation) provision for or with respect to the following:

- (i) restrictions on the hours for which the driver of a heavy truck or coach may (continuously or otherwise) drive a heavy truck or coach or engage in other activities in connection with the driving or operation of a heavy truck or coach,
- (ii) requirements for minimum periods of rest for drivers of heavy trucks or coaches.
- (iii) the inclusion of time spent in a specified manner as time spent driving a heavy truck or coach,
- (iv) the making, keeping, possession and inspection of records in respect of heavy trucks and coaches and their drivers.
- (v) the medical examination of drivers of heavy trucks and coaches,
- (vi) fatigue management training.
- (vii) the duties of employers of drivers of heavy trucks and coaches and other persons (such as consignors of goods) who make use of or engage in activities involving the use or operation of heavy trucks or coaches.
- (viii) the conferral of jurisdiction on the Administrative Decisions Tribunal to review a decision made by the Authority in the exercise of any functions conferred or imposed on the Authority by a regulation under this paragraph.
- (ix) powers of entry and inspection for monitoring and enforcing compliance with the requirements of the regulations under this paragraph.

Explanatory note

The proposed amendments expand the existing regulation-making power in the *Traffic Act 1909* with respect to the regulation of maximum driving hours and minimum rest periods for drivers of heavy motor vehicles and coaches.

The existing power is in general limited to providing for maximum driving hours (with power to include or exclude activities from what constitutes "driving"), minimum rest periods and record keeping. It relates to coaches and heavy motor vehicles (vehicles or combinations with a Gross Vehicle Mass or Gross Combination Mass exceeding 13.9 tonnes).

Item [1] of the proposed amendments inserts a new definition of *Heavy truck* which is a motor vehicle (or combination of motor vehicles) having a Gross Vehicle Mass (or combined Gross Vehicle Mass) of 12 tonnes. The new definition is used in item [2].

Item [2] of the proposed amendments expands the matters that the regulations can make provision for in connection with fatigue management and prevention for drivers of heavy trucks and coaches to include the additional matters listed in the substituted paragraph (t1) above. The expanded regulation-making power will apply to coaches (as at present) and heavy trucks (not just heavy motor vehicles, as at present).

The object of the amendments is to enable the regulations under the *Traffic Act 1909*, to make provision for all the matters to be provided for in model national regulations, as proposed by the National Road Transport Commission.

1.45 Travel Agents Act 1986 No 5

[1] Sections 8 (2) and 13 (1) (a)

Omit "Minister" wherever occurring.
Insert instead "Commissioner".

[2] Section 16 Term of, and authority conferred by, licence

Omit "sections 17 and 18" from section 16 (4).
Insert instead "sections 17, 18 and 20".

[3] Section 44 Powers of entry and inspection

Omit "inspector" wherever occurring in section 44 (3) and (4)
Insert instead "investigator".

[4] Section 45 Production of records

Omit section 45 (1). Insert instead:

(1) In this section:

authorised person means:

- (a) the Commissioner, or
- (b) a person authorised in writing by the Commissioner to exercise the powers conferred by this section. or
- (c) an investigator appointed under section 18 of the *Fair Trading Act 1987*.

Explanatory note

Approval of documents

Item [1] of the proposed amendments provides for the Director-General of the Department of Fair Trading (called "the Commissioner" in the Act) to approve the form of an application for a licence (under section 8 (2)) and the form of a licence (under section 13 (1) (a)). At present, the Minister for Fair Trading approves such forms.

Service of notice to show cause

Section 20 of the Act enables the Director-General of the Department of Fair Trading to serve a notice on a licensee, requiring the licensee to show cause as to why he or she should not be dealt with in accordance with section 21 (Determination of disciplinary measures by Commissioner). The Director-General may serve such a notice if he or she is of the opinion that certain circumstances exist, such as failure by the licensee to comply with the Act. Under section 16 (2) of the Act, a licence is suspended if the licensee ceases to participate in a compensation scheme prescribed under the Act and provides that, once suspended, a person is no longer a licensee. This has the effect that a notice to show cause cannot be issued to such a person.

Item [2] of the proposed amendments provides that a person whose licence has been suspended under section 16 is taken to be a licensee for the purposes of the disciplinary provisions of the Act.

Authorisation of persons to require production of records

Section 45 of the *Travel Agents Act 1986* provides for the Director-General of the Department of Fair Trading to authorise certain persons to require the production of records.

Section 18 of the *Fair Trading Act 1987* provides for the Director-General of the Department of Fair Trading to appoint investigators.

Item [4] of the proposed amendments provides that investigators appointed under the *Fair Trading Act 1987* automatically become authorised persons for the purposes of section 45 of the *Travel Agents Act 1986*. The option of separate authorisation of such persons under the *Travel Agents Act 1986* is retained.

Item [3] of the proposed amendments corrects references to the title of a person.

1.46 Valuers Registration Act 1975 No 92

Section 13 Applications for registration—generally

Omit “Minister” from section 13 (2) (a).

Insert instead “Director-General”.

Explanatory note

The proposed amendment enables the Director-General of Fair Trading, instead of the Minister for Fair Trading, to approve the form for an application for registration as a valuer.

1.47 Workers Compensation Legislation Amendment Act 1998 No 85

Section 2

Omit the section. Insert instead:

2 Commencement

- (1) Except as provided by this section, this Act commences on 1 August 1998.
- (2) Schedule 1 [19], [66] and [67] commence on 1 September 1998.
- (3) Schedule 1 [63], to the extent to which it repeals Division 6 of Part 4 of the *Workers Compensation Act 1987* commences on 1 October 1999.

Commencement

The amendment to the *Workers Compensation Legislation Amendment Act 1998* is taken to have commenced on 1 August 1998.

Explanatory note

Division 6 of Part 4 of the *Workers Compensation Act 1987* (the **1987 Act**) constitutes the Uninsured Liability and Indemnity Scheme, which provides for the payment of claims for workers compensation when the employer concerned was uninsured at the relevant time, cannot be found or was a self-insurer at the relevant time.

That Scheme is proposed to be continued under Part 9 of Chapter 5 of the *Workplace Injury Management and Workers Compensation Act 1998* (the **1998 Act**). Clause 2 of Part 18A of Schedule 6 (Savings, transitional and other provisions) to the 1987 Act and section 219 of the 1998 Act make it clear that the Scheme constituted by the 1998 Act is a continuation of and the same Scheme as the Scheme of the same name under the 1987 Act.

Part 4 of the 1987 Act was purportedly repealed on 1 August 1998, the date of commencement of Schedule 1 [63] to the *Workers Compensation Legislation Amendment Act 1998*. However, the relevant provisions of the 1998 Act will not commence until 1 October 1999 (see section 143 of the 1998 Act).

The proposed amendment nullifies the 1 August 1998 repeal and provides for the continuation of the relevant provisions of the 1987 Act until the commencement of the analogous provisions of the 1998 Act.

1.48 Workplace Injury Management and Workers Compensation Act 1998 No 86

[1] Section 42 Definitions

Omit the definition of *insurer* from section 42 (1). Insert instead:

insurer means a licensed insurer, specialised insurer or self-insurer, under this Act or the 1987 Act.

[2] Section 42 (1), definition of "significant injury"

Insert "for work" after "incapacitated".

[3] Section 58 Liability not affected

Omit "workplace rehabilitation program" from section 58 (b).
Insert instead "return-to-work program".

[4] Schedule 4 Provisions relating to Rating Bureau

Insert after clause 16:

17 Transitional—funding of Rating Bureau before insurer licences issue

For the purpose of enabling the Rating Bureau to exercise functions before 1 October 1999, the reference in section 24 (5) to licensed insurers with whom the Minister may enter into arrangements for the payment of the costs of operation of the Rating Bureau includes, until that date:

- (a) applicants for licences under Part 5 (Licensing of insurers) of Chapter 5, except an applicant for a licence as a specialised insurer that issues policies only in respect of domestic or similar workers, and
- (b) the holders of licences under Division 3 of Part 7 of the 1987 Act. except any holder:
 - (i) that is a specialised insurer that issues policies only in respect of domestic or similar workers, or
 - (ii) that is a related body corporate of any applicant for a licence referred to in paragraph (a) that is a body corporate.

Explanatory note

Item [1] of the proposed amendments amends the definition of *insurer* in Chapter 3 (Workplace injury management) of the *Workplace Injury Management and Workers Compensation Act 1998*. The amended definition includes licensed insurers, specialised insurers and self-insurers under either that Act or the *Workers Compensation Act 1987*.

Item [2] makes it clear that a reference to a worker's incapacity is a reference to the worker's incapacity for work.

Item [3] updates the terminology used in a provision that presently refers to a "workplace rehabilitation program". Such programs are now referred to as "return-to-work programs" (see section 52).

Item [4] provides for certain existing and prospective licensees to make contributions to the cost of operation of the Workers Compensation Premiums Rating Bureau of New South Wales.

Schedule 2 Amendments by way of statute law revision

(Section 3)

2.1 Administrative Decisions Legislation Amendment Act 1997 No 77

[1] Schedule 1 Amendments concerning abolished Community Services Appeals Tribunal

Omit section 112 (a) (vi) of the *Children (Care and Protection) Act 1987* (as proposed to be inserted by Schedule 1.3 [2]).

Insert instead:

(vi) to suspend or revoke a licence or authority.
as referred to in Schedule 1.

[2] Schedule 4 Amendments concerning other abolished Tribunals

Insert "an" after "on" in Schedule 4.2 [6].

[3] Schedule 4.2 [17]

Insert "the" after "against".

[4] Schedule 4.2 [20]

Omit "section 74 (4) (a)". Insert instead "section 74 (3) (a)".

[5] Schedule 4.3 [5]

Omit the item. Insert instead:

[5] Sections 28 (1), 29 (6) and 58 (2)

Omit "Disciplinary" wherever occurring.

[6] Schedule 4.3 [9]

Omit "or" where secondly occurring. Insert instead "and".

[7] Schedule 4.3 [10]

Omit "the Tribunal". Insert instead "that Tribunal".

[8] Schedule 4.3 [15]

Insert "of" after "or" where firstly occurring.

Explanatory note

The proposed amendments correct incorporating directions.

2.2 Agricultural Industry Services Act 1998 No 45

Schedule 3 Amendment of Acts and instruments

Omit "and Fisheries" from Schedule 3.4 [6].

Explanatory note

The proposed amendment corrects an incorporating direction by omitting redundant words.

2.3 Children (Criminal Proceedings) Act 1987 No 55

Section 36 Compensation

Omit "section 61 of the *Victims Compensation Act 1987*" from section 36 (1).

Insert instead "section 71 of the *Victims Compensation Act 1996*".

Explanatory note

The proposed amendment updates a reference to a section of a repealed Act.

2.4 Community Service Orders Act 1979 No 192

Section 4 Community service orders in respect of convicted persons

Omit "Part 6 of the *Victims Compensation Act 1987*" from section 4 (3) (a) (ii).

Insert instead "Part 4 of the *Victims Compensation Act 1996*".

Explanatory note

The proposed amendment updates a reference to a Part of a repealed Act.

2.5 Companion Animals Act 1998 No 87

[1] Section 7 Meaning of "owner"

Omit "dog" wherever occurring in section 7 (1) (a).

Insert instead "animal".

[2] Section 7 (4)

Omit the subsection.

Explanatory note

Item [1] of the proposed amendments omits references to the owner of a dog from a definition that relates to owners of all companion animals.

Item [2] of the proposed amendments omits a redundant provision. (The provision was consequential on another provision of the *Companion Animals Bill 1998*, under which a person for the time being in charge of an animal was taken by the Act to be the owner of the animal. That provision was omitted during the committee stage of Parliament's consideration of the *Companion Animals Bill 1998*.)

2.6 Contractors Debts Act 1997 No 110

Section 7 Certification of debt by court

Insert "or entered up" after "given" in section 7 (1).

Explanatory note

The proposed amendment inserts omitted words.

2.7 Correctional Centres Act 1952 No 9

Section 37A Introduction or supply of syringes

Omit "correctional centre" from section 37A (2).
Insert instead "place of detention".

Explanatory note

The proposed amendment updates the terminology used in a section.

2.8 Crimes Act 1900 No 40

Section 556A Power to permit release of offenders

Omit "Part 6 of the *Victims Compensation Act 1987*" from section 556A (2).
Insert instead "Part 4 of the *Victims Compensation Act 1996*".

Explanatory note

The proposed amendment updates a reference to a Part of a repealed Act.

2.9 Criminal Assets Recovery Act 1990 No 23

Section 32 Establishment and use of Proceeds Account

Omit "*Victim Compensation Act 1987*" from section 32 (3) (c).
Insert instead "*Victims Compensation Act 1996*".

Explanatory note

The proposed amendment updates a reference to a repealed Act.

2.10 Damages (Infants and Persons of Unsound Mind) Act 1929 No 25

Section 2 Application of Act

Omit "Part 3 of the *Victims Compensation Act 1987*" from section 2 (5).
Insert instead "Part 2 of the *Victims Compensation Act 1996*".

Explanatory note

The proposed amendment updates a reference to a Part of a repealed Act.

2.11 Dangerous Goods Act 1975 No 68

Section 27A Commissioner of Police to report on explosives licences and permits

Omit “*Firearms and Dangerous Weapons Act 1973*” from section 27A (2) (c).

Insert instead “*Firearms Act 1996*”.

Explanatory note

The proposed amendment updates a reference to a repealed Act.

2.12 Defamation Act 1974 No 18

[1] Section 17T Matters arising under the Administrative Decisions Tribunal Act 1997

Renumber section 17T (as inserted by Schedule 6.1 [1] to the *Administrative Decisions Legislation Amendment Act 1997*) as section 17TA.

[2] Schedule 2 Proceedings of public concern and official and public documents and records

Renumber clause 2 (22) (as inserted by Schedule 6.1 [2] to the *Administrative Decisions Legislation Amendment Act 1997*) as clause 2 (23).

[3] Schedule 2

Renumber clause 3 (7) (as inserted by Schedule 6.1 [3] to the *Administrative Decision Legislation Amendment Act 1997*) as clause 3 (8).

Explanatory note

The proposed amendments renumber certain provisions.

2.13 District Court Act No 9

Section 171 Criminal procedure rules

Omit "Part 6 of the *Victims Compensation Act 1987*" from section 171 (2) (j).

Insert instead "Part 4 of the *Victims Compensation Act 1996*".

Explanatory note

The proposed amendment updates a reference to a Part of a repealed Act.

2.14 Education Act 1990 No 8

[1] Section 3 Definitions

Omit "Appeals" from the definition of *Tribunal* in section 3 (1).
Insert instead "Decisions".

[2] Section 91 Cancellation of accreditation

Omit "appeal has been decided" from section 91 (3).
Insert instead "application has been determined".

Explanatory note

Item [1] of the proposed amendments corrects a reference to the Administrative Decisions Tribunal.

Item [2] of the proposed amendments updates the language of a provision that provides for the review of decisions by the Administrative Decisions Tribunal.

2.15 Environmental Planning and Assessment Amendment Act 1997 No 152

[1] Schedule 3 Amendment of Local Government Act 1993

Omit Schedule 3 [45]. Insert instead:

[45] Chapter 16, Part 7, Offences relating to buildings (secs 653–658)

Omit the Part.

[2] Schedule 4 Amendment of other Acts

Omit "section 18 (g)" from Schedule 4.18 [5].

Insert instead "section 19 (g)".

Explanatory note

The proposed amendments correct incorporating directions.

2.16 Fines Act 1996 No 99

Section 4 Meaning of "fine"

Omit "Part 6A of the *Victims Compensation Act 1987* or under" from section 4 (d).

Explanatory note

The proposed amendment omits a reference to a repealed Act.

2.17 Fisheries Management Act 1994 No 38

[1] Section 220 Provisions relating to permits under this Part

Renumber section 220 (IA) (as inserted by Schedule 5 [39] to the *Fisheries Management Amendment Act 1997*) as section 220 (1B).

[2] Section 271 Conviction to operate as forfeiture of things (other than boats)

Omit "section 100L of the *Justices Act 1902*" from section 271 (1) (d).

Insert instead "Division 4 of Part 3 of the *Fines Act 1996*".

Explanatory note

Item [1] of the proposed amendments renumbers a subsection.

Item [2] of the proposed amendments corrects a reference to a superseded provision.

2.18 Land and Environment Court Act 1979 No 204

Section 17 Class 1—environmental planning and protection appeals

Renumber paragraph (g) (as inserted by Schedule 1.3 [1] to the *Contaminated Land Management Act 1997*) as paragraph (h).

Explanatory note

The proposed amendment renumbers a paragraph.

2.19 Legal Profession Act 1987 No 109

Section 92 Supreme Court may appoint receiver

Omit section 92 (7). Insert instead:

- (7) In this section, *failure to accoun* has the same meaning as in section 79A. except that:
- (a) section 79A (2) (a) is to be read as if there occurred after the words "has been convicted" the words ", or is likely to be convicted.". and
 - (b) section 79A (2) (b) is to be read as if there occurred after the words "has found to be" the words ". or is likely to find to be."

Explanatory note

The proposed amendment restates a definition that presently refers to a repealed section.

2.20 Liquor Act 1982 No 147

Section 117G Minors not to be detained

Omit "section 100L (Orders to enforce penalty notices) of the *Justices Act 1902*".

Insert instead "Division 4 of Part 3 of the *Fines Act 1996*".

Explanatory note

The proposed amendment corrects a reference to a superseded provision.

2.21 Liquor Amendment (Restaurants and Nightclubs) Act 1998 No 91

Schedule 1 Amendments

Omit “later” from clause 63 of Schedule 1 to the *Liquor Act 1982* (as proposed to be inserted by Schedule 1 [25]).

Insert instead “earlier”.

Explanatory note

The *Liquor Amendment (Restaurants and Nightclubs) Act 1998* amends the *Liquor Act 1982* in connection with the consumption of liquor in restaurants and the trading hours of certain nightclubs. The object of the amendments made to Schedule 1 to the Act is to enable existing nightclubs to be granted an extension of trading hours beyond 3 am to 6 am, so long as this is consistent with their trading hours when they previously held restaurant “cabaret” licences (see the explanatory note to the Bill for the amending Act).

The proposed amendment corrects that provision, in a manner that is consistent with the object of the Bill that inserted that provision.

2.22 Local Courts Act 1982 No 164

Section 14 The Chief Magistrate

Omit “*Victims Compensation Act 1987*” from section 14 (6).

Insert instead “*Victims Compensation Act 1996*”.

Explanatory note

The proposed amendment updates a reference to a repealed Act.

2.23 Local Government Act 1993 No 30

[1] Section 89 Matters for consideration

Omit “of” from section 89 (2) (b). Insert instead “to”.

[2] Section 547 Method of rating dwellings under company title

Omit "*Strata Titles Act 1973*" from the note to the section.
Insert instead "*Strata Schemes (Freehold Development) Act 1973*".

[3] Section 547, note

Omit "*Strata Titles (Leasehold) Act 1986*".
Insert instead "*Strata Schemes (Leasehold Development) Act 1986*".

[4] Chapter 16 Offences

Omit "\$100" from the Introduction to the Chapter.
Insert instead "\$1 10".

[5] Schedule 8 Savings, transitional and other provisions consequent on the enactment of other Acts

Re-number clause 27 in Part 8 and clause 28 in Part 9 as clauses 35 and 36, respectively.

Explanatory note

Item [1] of the proposed amendments corrects a typographical error.

Items [2] and [3] of the proposed amendments update references to Acts.

Item [4] of the proposed amendments updates a note that refers to the value represented by a penalty unit.

Item [5] of the proposed amendments renumbers clauses of a Schedule.

2.24 Motor Accidents Act 1988 No 102

[1] Section 78 Determination of economic loss

Omit "*Victims Compensation Act 1987*" from section 78 (b).
Insert instead "*Victims Compensation Act 1996*".

[2] Schedule 4 Savings, transitional and other provisions

Renumber Part 9 (Provisions arising from the enactment of the Traffic Legislation Amendment Act 1997), clauses 23–28 as Part 10, clauses 24–29.

Explanatory note

Item [1] of the proposed amendments updates a reference to a repealed Act. Item [2] of the proposed amendments rennumbers a Part and several clauses of a Schedule.

2.25 Pawnbrokers and Second-hand Dealers Act 1996 No 13

[1] Section 4 Restrictions on operation of this Act

Omit "*Firearms Act 1989*" from section 4 (1).
Insert instead "*Firearms Act 1996*".

[2] Section 27 Demerit points scheme

Omit "section 100L of the *Justices Act 1902*" from section 27 (1) (c).
Insert instead "Division 4 of Part 3 of the *Fines Act 1996*".

Explanatory note

Item [1] of the proposed amendments updates a reference to a repealed Act. Item [2] of the proposed amendments corrects a reference to a superseded provision.

2.26 Petroleum (Onshore) Amendment Act 1998 No 5

Schedule 1 Amendment of Petroleum (Onshore) Act 1991

Omit "re-enactment" from clause 14 of Part 2 to Schedule 1 to the *Petroleum (Onshore) Act 1991* (as proposed to be inserted by Schedule 1 [26]).

Insert instead "re-enactment".

Explanatory note

The proposed amendment corrects a typographical error.

2.27 Police Regulation (Superannuation) Act 1906 No 28

Section 12E Repayment to STC in certain cases

Omit “*Victims Compensation Act 1987*” from section 12E (2).
Insert instead “*Victims Compensation Act 1996*”.

Explanatory note

The proposed amendment updates a reference to a repealed Act.

2.28 Registered Clubs Act 1976 No 31

Section 57B Minors not to be detained

Omit “section 100L (Orders to enforce penalty notices) of the *Justices Act 1902*”.
Insert instead “Division 4 of Part 3 of the *Fines Act 1996*”.

Explanatory note

The proposed amendment corrects a reference to a superseded provision.

2.29 Road Transport (Heavy Vehicles Registration Charges) Act 1995 No 72

[1] Section 20 Changes in owners or to vehicles must be notified to Authority

Omit “public street” from section 20 (2A).
Insert instead “road or road related area”.

[2] Schedule 2 Savings and transitional provisions

Insert at the end of clause 1 (1):

Road Transport (Heavy Vehicles Registration Charges) Amendment Act 1997

Explanatory note

Item [1] of the proposed amendments updates the terminology used in a section.
item [2] of the proposed amendments reinstates an amendment made to the Act by the *Road Transport (Heavy Vehicles Registration Charges) Amendment Act 1997* and inadvertently omitted when further matter was added **to** the same subclause by the *Traffic Legislation Amendment Act 1997*.

2.30 Royal Commission (Police Service) Act 1994 No 60

Section 37L Firearms and other police equipment

Omit "*Firearms Act 1989*" from section 37L (1).
Insert instead "*Firearms Act 1996*".

Explanatory note

The proposed amendment updates a reference to a repealed Act.

2.31 Search Warrants Act 1985 No 37

Section 5 Application for warrant in respect of certain offences or stolen or unlawfully obtained property

Omit "*Firearms Act 1989*" from the definition of *firearms offence* in section 5 (2).
Insert instead "*Firearms Act 1996*".

Explanatory note

The proposed amendment updates a reference to a repealed Act.

2.32 State Owned Corporations Act 1989 No 134

[1] Section 10 Directors

Omit "objective" from section 10 (1).
Insert instead "objectives".

[2] Section 20J Directors

Omit “objective” from section 20J (3) (b).
Insert instead “objectives”.

[3] Section 26 Information to be laid before Parliament

Omit “objective” from section 26 (5) (a).
Insert instead “objectives”.

Explanatory note

The proposed amendments correct references to the principal objectives of a State owned corporation.

2.33 Statute Law (Miscellaneous Provisions) Act 1998 No 54

Schedule 2 Amendments by way of statute law revision

Omit "section 5 (1)" from Schedule 2.32 [1].
Insert instead "section 5 (1). Insert instead".

Explanatory note

The proposed amendment corrects an incorporation direction.

2.34 Strata Schemes (Freehold Development) Act 1973 No 68

[1] Section 5 Definitions

Omit “section 68 (1) (1)” from the definition of *administrative fund* in section 5 (1).
Insert instead ”section 66 of the *Strata Schemes Management Act 1996*“.

[2] Section 5 (1), definition of “proprietor”

Omit "section 96“ from paragraph (b) of the definition.
Insert instead “section 98”.

[3] Section 5 (1), definition of “sinking fund”

Omit “section 68 (1) (m)”.

Insert instead “section 69 of the *Strata Schemes Management Act 1996*”.

Explanatory note

The proposed amendments correct cross-references.

**2.35 Strata Schemes (Leasehold Development) Act 1986
No 219**

Section 4 Definitions

Omit “section 96” from paragraph (b) of the definition of *lessee* in section 4 (1).

Insert instead “section 98”.

Explanatory note

The proposed amendment corrects a cross-reference.

2.36 Superannuation Act 1916 No 28

Section 52IA Effect of contributor becoming a contributor to another scheme while employed by the same employer

Renumber section 52IA (3) as section 52IA (2).

Explanatory note

The proposed amendment renumbers a subsection.

2.37 Supreme Court Act 1970 No 52

Fourth Schedule Savings and transitional provisions

Renumber clause 5 (as inserted by Schedule 1.11 [5] to the *Courts Legislation Further Amendment Act 1997*) as clause 6.

Explanatory note

The proposed amendment renumbers a clause of a Schedule.

2.38 Traffic Act 1909 No 5

Section 11AB Suspension or cancellation of drivers' licences by Authority

Omit "section 100L of the *Justices Act 1902*" from section 11AB (3)(b).

Insert instead "Division 4 of Part 3 of the *Fines Act 1996*".

Explanatory note

The proposed amendment corrects a reference to a superseded provision.

2.39 Traffic Legislation Amendment Act 1997 No 115

[1] Schedule 2 Amendments to Traffic Act 1909 concerning motor vehicles and trailers

Omit "Radio" from Schedule 2 [S]. Insert instead "Radar".

[2] Schedule 2 [6]

Omit "18A (1). (3) and (6)". Insert instead "18A(1). (3) and (5)".

Explanatory note

Item [1] of the proposed amendments corrects a typographical error.

Item [2] of the proposed amendments corrects an incorporating direction.

2.40 Workers Compensation Act 1987 No 70

[1] Section 9A No compensation payable unless employment substantial contributing factor to injury

Omit "has" from section 9A (2) (d). Insert instead "had".

[2] Section 40 Weekly payments during partial incapacity—general

Omit "person" where firstly and thirdly occurring in section 40 (2B).

Insert instead "worker".

[3] Section 51 Exit payments by commutation of weekly payments

Insert "and" at the end of section 51 (3) (a).

[4] Section 51 (3) (b)

Omit "injury, and". Insert instead "injury."

[5] Section 149 Definitions

Omit "Part 3 or Part 6 of the *Victims Compensation Act 1987*" from paragraph (e) of the definition of *damages* in section 149 (1).

Insert instead "Part 2 or Part 4 of the *Victims Compensation Act 1996*".

Explanatory note

Item [1] of the proposed amendments corrects a typographical error.

Item [2] of the proposed amendments corrects references to a person in a section that deals with workers.

Items [3] and [4] of the proposed amendments move a word.

Item [5] of the proposed amendments updates a reference to Parts of a repealed Act.

Schedule 3 Repeals

(Section 4)

Companies (Crimes) Amendment Act 1979 No 99*

Companies (Corporate Affairs Commission) Amendment Act 1979 No 109*

Securities Industry (Fidelity Funds) Amendment Act 1979 No 181*

States Grants (Rural Adjustment) Agreement Ratification (Amendment) Act 1980 No 121*

Local Government Associations Incorporation (Amendment) Act 1980 No 136*

Miscellaneous Acts (Retirement of Statutory Officers) Amendment Act 1980 No 187*

Miscellaneous Acts (Crown Land Titles) Amendment Act 1980 No 196*

Miscellaneous Acts (Rating and Valuation) Amendment Act 1981 No 119*

Miscellaneous Acts (Companies) Amendment Act 1981 No 123*

Sancta Sophia College Incorporation (Amendment) Act 1982 No 17*

Saint Vincent's Hospital (Amendment) Act 1982 No 18*

Miscellaneous Acts (Health Administration) Amendment Act 1982 No 138*

Bishopsgate Insurance Australia Limited (Amendment) Act 1984 No 18*

Workers' Compensation (Brucellosis) Amendment Act 1984 No 91*

Anzac Memorial (Building) Amendment Act 1984 No 113*

Administration of Justice (Commercial Arbitration) Amendment Act 1984 No 161*

Miscellaneous Acts (Commercial Arbitration) Amendment Act 1984 No 167*

Miscellaneous Acts (Search Warrants) Amendment Act 1985 No 38*

Miscellaneous Acts (Death Penalty Abolition) Amendment Act 1985 No 59*

Saint Vincent's Hospital (Amendment) Act 1985 No 74*

Sydney Farm Produce Market Authority (Amendment) Act 1985 No 135***

Miscellaneous Acts (Annual Reports—Departments) Amendment Act 1985 No 157*

Sydney Opera House (Amendment) Act 1985 No 190*

Miscellaneous Acts (Area Health Services) Amendment Act 1986 No 53*

Railway Construction (East Hills to Campbelltown) Amendment Act 1986 No 118*

Miscellaneous Acts (Superannuation Appeals) Amendment Act 1986 No 129*

Miscellaneous Acts (Residential Flat Buildings) Repeal and Amendment Act 1986 No 132*

Boy Scouts Association (Amendment) Act 1986 No 148*

Workers' Compensation (Brucellosis) Revival and Amendment Act 1986 No 177*

Roman Catholic Church Trust Property (Amendment) Act 1986 No 190*

Miscellaneous Acts (Public Prosecutions) Amendment Act 1986 No 212*

Corporate Affairs Commission (Amendment) Act 1987 No 16*

Miscellaneous Acts (Workers Compensation) Amendment Act 1987 No 79*

Energy Legislation (Repeals and Savings) Act 1987 No 108*

Water Legislation (Repeal, Amendment and Savings) Act 1987 No 143*

Transport Legislation (Financial Administration) Amendment Act 1987 No 154*

Miscellaneous Acts (Sex Discrimination) Amendment Act 1987 No 157*

Adoption of Children (Amendment) Act 1987 No 174*

Racing Taxation (Betting Tax) Amendment Act 1987 No 181*

Miscellaneous Acts (Prickly Pear) Repeal and Amendment Act 1987 No 203*

Credit (Rural Contracts) Act 1987 No 205****

New South Wales Retirement Benefits (Amendment) Act 1987 No 217*

Saint Vincent's Hospital (Amendment) Act 1987 No 239*

Sydney Harbour Tunnel (Private Joint Venture) Amendment Act 1987 No 245*

Presbyterian Church (New South Wales) Property Trust (Amendment) Act 1987 No 256*

Jury (Amendment) Act 1987 No 286*

Miscellaneous Acts (Higher Education) Amendment Act 1988 No 13*

Library (Amendment) Act 1992 No 40**

Business Franchise Licences (Petroleum Products) Amendment Act 1993
No 61***

Coroners (Amendment) Act 1993 No 79**

Local Government Legislation (Miscellaneous Amendments) Act 1994 No
44 (Schedule 18 (7) only)****

State Revenue Legislation (Amendment) Act 1994 No 48**

Business Franchise Licences (Petroleum Products) Amendment Act 1994
No 68***

Aboriginal Land Rights Amendment Act 1995 No 39**

Business Franchise Licences (Petroleum Products) Amendment Act 1995
No 85***

Jury Amendment Act 1996 No 4**

Criminal Legislation Amendment Act 1996 No 6**

Business Franchise Licences (Petroleum Products) Amendment Act 1996
No 53***

Valuation of Land Amendment Act 1996 No 67**

Strata Titles Amendment Act 1996 No 81**

Liquor and Registered Clubs Legislation Further Amendment Act 1996 No
103**

Industrial Relations Amendment Act 1996 No 109**

Heritage Amendment Act 1996 No 129**

Firearms Amendment Act 1996 No 135**

Valuation of Land Further Amendment Act 1996 No 140**

Fisheries Management Amendment (Advisory Bodies) Act 1996 No 141**

National Parks and Wildlife Amendment (Aboriginal Ownership) Act 1996
No 142**

Motor Accidents Amendment Act 1997 No 3**

Workers Compensation Amendment Act 1997 No 4**
Crimes Amendment (Apprehended Violence Orders) Act 1997 No 14**
Jury Amendment Act 1997 No 15**
Totalizator (Off-course Betting) Amendment Act 1997 No 29***
Courts Legislation Amendment Act 1997 No 47**
City of Sydney Amendment Act 1997 No 79**
Crimes Amendment (Assault of Police Officers) Act 1997 No 80**
Environmental Planning and Assessment Legislation Amendment Act 1997
No 81**
Crimes Legislation Amendment (Procedure) Act 1997 No 86**
Crimes Amendment (Contamination of Goods) Act 1997 No 89**
Crimes Amendment (Diminished Responsibility) Act 1997 No 106**
Coroners Amendment Act 1997 No 130**

Notes

- * indicates repeal of an amending Act enacted at least 10 years ago that contains no provision of substantive effect that needs to be retained
- ** indicates repeal of an amending Act the provisions of which have been included in a reprint and that contains no provision of substantive effect that needs to be retained
- *** indicates repeal of an amending Act that amends a repealed Act and contains no provision of substantive effect that needs to be retained
- **** indicates repeal of an Act or part of an Act that is uncommenced

Explanatory note

The repeals are explained in detail in the explanatory note relating to this Act. In relation to the repeal of amending Acts, it should be noted that the Acts are repealed simply to rationalise the legislation in force and that the repeals have no substantive effect on the amendments made by the Acts or any associated provisions. The Acts that were amended by the Acts being repealed are up-to-date on the Legislation Database maintained by the Parliamentary Counsel's Office and are available electronically.

Section 30 (2) of the *Interpretation Act 1987* ensures that, when an amending Act is repealed, no amendment made by the Act is affected. Section 30 (2) also ensures that the following matters are not affected:

- (a) the proof of any past act or thing,
- (b) any right, privilege, obligation or liability saved by the operation of the Act,
- (c) any validation made by the Act,
- (d) the operation of any savings or transitional provision contained in the Act.

Schedule 4 General savings, transitional and other provisions

(Section 5)

1 Effect of amendment of amending provisions

- (1) An amendment made by Schedule 1 or 2 to an amending provision contained in an Act is, if the amending provision has commenced before the date of assent to this Act, taken to have effect as from the commencement of the amending provision.

- (2) In this clause:

amending provision means a provision of an Act, or of any other instrument, being a provision that has commenced and that makes a direct amendment to an Act by:

- (a) the repeal or omission of matter contained in the amended Act without the insertion of any matter instead of the repealed or omitted matter, or
- (b) the omission of matter contained in the amended Act and the insertion of matter instead of the omitted matter, or
- (c) the insertion into the amended Act of matter, not being matter inserted instead of matter omitted from the Act,

whether the provision was enacted before or after the commencement of the *Reprints Act 1972*.

Explanatory note

This clause ensures that amendments correcting errors in the technical provisions (for example, headings indicating the section to be amended or directions as to where a new section is to be inserted) and rectifying minor drafting errors (for example, corrections in numbering of provisions, correction or insertion of cross-references, omission of unnecessary matter or insertion of omitted matter) will commence on the date the amendments to which they relate commenced.

2 Effect of amendment or repeal on acts done or decisions made

Except where it is expressly provided to the contrary, if this Act:

- (a) amends a provision of an Act or regulation, or
- (b) repeals and re-enacts (with or without modification) a provision of an Act or regulation,

any act done or decision made under the provision amended or repealed has effect after the amendment or repeal as if it had

been done or made under the provision as so amended or repealed.

Explanatory note

This clause ensures that the amendment or repeal of a provision will not, unless expressly otherwise provided, vitiate any act done or decision made under the provision as in force before the amendment or repeal.

3 Effect of amendment on regulations

Except where expressly provided to the contrary, any regulation made under an Act amended by this Act, and in force immediately before the commencement of the amendment, is taken to have been made under the Act as amended.

Explanatory note

This clause ensures that, unless expressly provided, any regulation made under an Act amended by the proposed Act, and in force immediately before the commencement of the amendment, will be taken to have been made under the amended Act.

4 Regulations

- (1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication. or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Explanatory note

This clause enables the making of regulations of a savings or transitional nature having a short-term effect and relating to incidental matters arising out of the proposed Act with regard to which no specific, or sufficient, provision has been made in the Act.

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- Agricultural Industry Services Act 1998 No 45—Schedule 2
- Anglican Church of Australia Trust Property Act 1917 No 21—Schedule 1
- Associations Incorporation Act 1984 No 143—Schedule 1
- Building and Construction Industry Long Service Payments Act 1986
No 19—Schedule 1
- Business Names Act 1962 No 11—Schedule 1
- Casino Control Act 1992 No 15—Schedule 1
- Children (Criminal Proceedings) Act 1987 No 55—Schedule 2
- Community Land Management Act 1989 No 202—Schedule 1
- Community Service Orders Act 1979 No 192—Schedule 2
- Companion Animals Act 1998 No 87—Schedule 2
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- Consumer Credit Administration Act 1995 No 69—Schedule 1
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- Defamation Act 1974 No 18—Schedule 2
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City of Sydney Amendment Act 1997 No 79

Companies (Corporate Affairs Commission) Amendment Act 1979 No 109

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Coroners (Amendment) Act 1993 No 79

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[Minister's second reading speech made in—
Legislative Assembly on 12 November 1998
Legislative Council on 25 November 1998]