



New South Wales

Statute Law (Miscellaneous Provisions) Act 1998 No 54

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New South Wales

Statute Law (Miscellaneous Provisions) Act 1998 No 54

Act No 54, 1998

An Act to repeal certain Acts and to amend certain other Acts and instruments in various respects and for the purpose of effecting statute law revision; and to make certain savings. [Assented to 30 June 1998]

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *Statute Law (Miscellaneous Provisions) Act 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 and 2 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 or instrument specified in Schedules 1–3 is amended as set out in those Schedules.

4 Repeals

Each Act specified in Schedule 4 is repealed.

5 General savings, transitional and other provisions

Schedule 5 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 Associations Incorporation Act 1984 No 143 Section 27 Lodgment of statement regarding accounts

Insert after section 27 (4):

- (5) Two or more different fees may be prescribed under subsection (2), depending on how long after the relevant annual general meeting the application for an extension or further extension under that subsection is made. The fee prescribed may not exceed an amount equal to 2 penalty units.
- (6) The Commissioner may waive or remit payment of the whole or any part of a fee required to accompany a statement or application under this section.

Transitional

The amendment to the *Associations Incorporation Act 1984* extends to any statement or fee due to be lodged or paid before the date of commencement of the amendment.

Explanatory note

Section 27 of the *Associations Incorporation Act 1984* requires the public officer of an incorporated association to lodge a statement relating to the accounts of the association with the Director-General of the Department of Fair Trading (called "the Commissioner" in the Act) within one month after the date of each annual general meeting of the association. The section also provides for the public officer to make an application, accompanied by a prescribed fee, for an extension or further extension of the period for lodging a statement. The proposed amendment provides for different fees to be prescribed for an application for an extension or further extension, depending on how long after the annual general meeting the application is made. The amendment also allows the Director-General of the Department of Fair Trading to waive or remit the whole or any part of the fee payable on lodgment of the statement or on lodgment of an application for an extension or further extension of the time in which to lodge the statement.

1.2 Broken Hill Trades Hall Site Act of 1898 No 31 Section 3 Trustees may make rules

Omit "Colonial Secretary or the".

Explanatory note

The *Broken Hill Trades Hall Site Act of 1898* provides for certain land at Broken Hill to be vested in trustees for the purposes of the erection of a trades hall. The trustees are empowered to make rules regulating the use of the trades hall. Such rules must be approved by the Colonial Secretary or the Minister administering Chapter 5 of the *Industrial Relations Act 1996*, which is presently the Minister for Industrial Relations.

The proposed amendment removes the role of the Minister for Gaming and Racing (to whom references to the Colonial Secretary are taken to refer, by operation of the *Administrative Changes Order (No 5) 1986*, published in Gazette No 81 of 16 May 1986, p 2167 and the *Administrative Changes (Ministers) Order 1995*, published in Gazette No 38 of 4 April 1995, p 1831). The amended section provides for the Minister for Industrial Relations to approve such rules.

1.3 Broken Hill Trades Hall Site Extension Act 1915 No 42

Section 3 Trustees may make rules

Omit “Colonial Secretary or the”.

Explanatory note

The *Broken Hill Trades Hall Site Extension Act 1915* provides for certain land at Broken Hill to be vested in trustees elected under the *Broken Hill Trades Hall Site Act of 1898* for the purposes of and in connection with a trades hall. The trustees are empowered to make rules regulating the use of the relevant land and any buildings on it. Such rules must be approved by the Colonial Secretary (presently taken to be the Minister for Gaming and Racing, by operation of the *Administrative Changes Order (No 5) 1986*, published in Gazette No 81 of 16 May 1986, p 2167 and the *Administrative Changes (Ministers) Order 1995*, published in Gazette No 38 of 4 April 1995, p 1831) or the Minister administering Chapter 5 of the *Industrial Relations Act 1996* (presently the Minister for Industrial Relations).

The proposed amendment removes the role of the Minister for Gaming and Racing. The amended section provides for the Minister for Industrial Relations to approve such rules.

1.4 Community Land Management Act 1989 No 202

[1] Section 3 Definitions

Omit “*Auctioneers and Agents Act 1941*” from the definition of *managing agent* in section 3 (1).

Insert instead “*Property, Stock and Business Agents Act 1941*”.

[2] Section 3 (1), definition of “strata corporation”

Omit “body corporate” from the definition. Insert instead “owners corporation”.

[3] Sections 5 (4), 6 (4) and 7 (4)

Omit “*Companies (New South Wales) Code*” wherever occurring.

Insert instead “*Corporations Law*”.

[4] Section 13A How can an association enforce the by-laws?

Omit “Strata Titles Board” from the note to the section.

Insert instead “Community Schemes Board”.

[5] Section 29 Candidates for election to community or precinct executive committee

Omit “or council” from section 29 (1) (d).

[6] Section 39 Insurance against damage or destruction

Insert “at least” before “the value” in section 39 (1A).

Explanatory note

Insurance

Section 39 of the *Community Land Management Act 1989* requires a community association, precinct association or neighbourhood association to insure any building or structure on association property against damage or destruction. At present, section 39 (1A) of the Act requires the building or structure to be insured for the value of the building or structure indicated by the last valuation obtained in accordance with the Act.

Item [6] of the proposed amendments amends that subsection so that an association must insure the building or structure for at least the amount of the last valuation, rather than for exactly that amount.

Statute law revision

Items [1] and [3] of the proposed amendments update references to certain legislation. Item [2] updates a reference to owners corporations established under the *Strata Schemes Management Act 1996*.

Item [4] updates a reference to the statutory body responsible for issuing fines.

Item [5] updates a reference to the council of a body corporate, which is now referred to as the executive committee of an owners corporation.

1.5 Contaminated Land Management Act 1997 No 140

Schedule 2 Savings and transitional provisions

Insert after clause 3 (2):

- (3) Despite subclause (1), land that is premises in respect of which a direction was given under section 35, or prescribed remedial action was commenced under section 36, of the *Environmentally Hazardous Chemicals Act 1985* before the repeal of Part 5 of that Act by this Act is, for the purposes only of sections 28 (Maintenance of remediation: notice to owner or occupier) and 29 (Maintenance of remediation: covenant) of this Act, taken to be land the subject of remediation under Part 3 of this Act.
- (4) Despite subclause (1), a direction given under section 35 of the *Environmentally Hazardous Chemicals Act 1985* before the repeal of Part 5 of that Act by this Act is, for the purposes only of sections 58 (EPA's record of current declarations and orders) and 59 (Local authorities to be informed) of this Act, taken to be:
 - (a) if the direction relates only to the investigation of the land (for instance, to determine the nature and extent of the contamination of the land, the nature and extent of the harm caused by the contamination or the risk that the contamination will cause such harm) and not to the remediation of the land—an investigation order, or
 - (b) in any other case—a remediation order.
- (5) Despite subclause (1), any agreement to take prescribed remedial action entered into under section 36 (2) (a) of the *Environmentally Hazardous Chemicals Act 1985*, or any direction to take such action given under section 36 (2) (b) of that Act, before the repeal of Part 5 of that Act by this Act is, for the purposes only of sections 58 (EPA's record of current declarations and orders) and 59 (Local authorities to be informed) of this Act, taken to be:
 - (a) if the prescribed remedial action in relation to which the agreement was entered into or the direction was given relates only to the investigation of the land (for instance, to determine the nature and extent of the contamination of the land, the nature and extent of the harm caused by the contamination or the risk that the contamination will cause such harm) and not to the remediation of the land—an investigation order, or
 - (b) in any other case—a remediation order.

Commencement

The amendment to the *Contaminated Land Management Act 1997* commences on the date of commencement of clause 3 of Schedule 2 to that Act.

Explanatory note

The *Contaminated Land Management Act 1997* provides for the investigation and remediation of contaminated land. The Act repeals Part 5 of the *Environmentally Hazardous Chemicals Act 1985*, which deals with the restoration of premises that are chemically contaminated. Clause 3 of Schedule 2 to the *Contaminated Land Management Act 1997* provides for the continued effect of Part 5 of that Act in respect of certain conditions, undertakings or directions in force before its repeal and in respect of certain remedial action under way before the repeal.

The proposed amendment will have the effect that certain directions or agreements under the repealed Part will be taken to be investigation orders or remediation orders under the new Act for limited purposes, namely, for the purpose of the making of orders requiring the maintenance of remediation and for the purpose of keeping records of matters affecting land.

1.6 Conveyancing Act 1919 No 6

[1] Section 7 Definitions

Omit “Registrar-General” where firstly occurring in the definition of *Crown plan* in section 7 (1).

Insert instead “Surveyor-General”.

[2] Section 7A Current plan

Omit section 7A (1). Insert instead:

- (1) In this Act, *current plan* means a Crown plan or a registered plan, but does not include so much of a Crown plan or registered plan as is taken not to form part of a current plan because of subsection (2), (3) or (4).

Commencement

The amendments to sections 7 and 7A of the *Conveyancing Act 1919* commence on the date of commencement of Schedule 2 [1] and [2] to the *Environmental Planning and Assessment Amendment Act 1997*, respectively.

Explanatory note

The proposed amendments amend provisions inserted in the *Conveyancing Act 1919* by the *Environmental Planning and Assessment Amendment Act 1997*.

Item [1] of the proposed amendments corrects a reference to the office-holder responsible for the keeping of Crown plans.

Item [2] removes the power of the Governor-in-Council to make regulations that exclude a Crown plan or registered plan from the meaning of the term current plan.

1.7 Credit (Finance Brokers) Act 1984 No 96

[1] Section 4 Definitions

Omit the definitions of *credit* and *credit contract* from section 4 (1).

Insert instead:

credit has the same meaning as it has in the *Credit Act 1984* or the *Consumer Credit (New South Wales) Code*.

credit contract means a contract that is a credit contract within the meaning of the *Credit Act 1984* or within the meaning of the *Consumer Credit (New South Wales) Code*.

[2] Section 4 (1), definition of “regulated contract”

Omit the definition.

[3] Section 4 (2) (a) and (a1)

Omit section 4 (2) (a). Insert instead:

(a) under a regulated contract, within the meaning of the *Credit Act 1984*, to which that Act continues to apply, or

(a1) under a credit contract within the meaning of the *Consumer Credit (New South Wales) Code*, or

Explanatory note

The *Credit (finance Brokers) Act 1984* regulates the business of finance brokers but only in so far as credit to which the business of the finance broker relates is, or includes, credit to be provided under a regulated contract (within the meaning of the *Credit Act 1984*) or by way of a housing loan.

Item [3] of the proposed amendments makes it clear that the *Credit (finance Brokers) Act 1984* applies where the credit to which the business of the finance broker relates is, or includes, credit to be provided under a regulated credit contract to which the *Credit Act 1984* continues to apply and to a credit contract within the meaning of the *Consumer Credit (New South Wales) Code* as well as to credit provided by way of a housing loan (regulated under either the Act or the Code).

Item [1] updates definitions accordingly.

Item [2] omits a redundant definition.

1.8 Education Act 1990 No 8

[1] Section 94 School Certificate

Renumber subsection (4) where secondly occurring as subsection (5).

[2] Section 100 Constitution of the Board

Omit “Catholic Education Commission of New South Wales” from section 100 (3)(f).

Insert instead “Council of Catholic School Parents”.

Saving

The amendment made to section 100 (3) (9) of the *Education Act 1990* does not affect the appointment of the person who held office as a member of the Board of Studies under that paragraph immediately before the commencement of the amendment.

Explanatory note

Section 100 of the *Education Act 1990* provides for the Board of Studies to consist of the President of the Board, 3 ex-officio members and 19 appointed members, including one parent of a child attending a non-government school, being a nominee of the Catholic Education Commission of New South Wales and the New South Wales Parents’ Council.

Item [2] of the proposed amendments provides for the Council of Catholic School Parents to have a role in the nomination process, rather than the Catholic Education Commission.

Item [1] renumbers a subsection.

1.9 Environmental Planning and Assessment Act 1979 No 203

[1] Section 4 Definitions

Omit the definition of *certifying authority* from section 4 (1).
Insert instead:

certifying authority means a person who:

- (a) is authorised by or under section 85A to issue complying development certificates, or
- (b) is authorised by or under section 109D to issue Part 4A certificates.

[2] Section 4 (2) (b) (i)

Omit “structural”.

[3] Section 80 Determination

Omit section 80 (12). Insert instead:

(12) Effect of issuing construction certificate

If a consent authority or an accredited certifier issues a construction certificate, the construction certificate and any approved plans and specifications issued with respect to that construction certificate are taken to form part of the relevant development consent (other than for the purposes of section 96).

[4] Section 81 Post-determination notification

Omit section 81 (1) (b). Insert instead:

- (b) in the case of a development application for consent to carry out designated development, each person who made a submission under section 79 (5), and

[5] Section 81 (3)

Insert after section 81 (2):

- (3) In the case of a development application for consent to carry out designated development, the consent authority must also notify each person who made a submission under section 79 (5) by way of objection of the person’s rights to appeal against the determination and of the applicant’s rights to appeal against the determination.

[6] Section 81A Effects of development consents and commencement of development

Omit section 81A (2) (a). Insert instead:

- (a) a construction certificate for the building work has been issued by:
 - (i) the consent authority, or
 - (ii) an accredited certifier, and

[7] Section 81A (4) (a)

Omit the paragraph. Insert instead:

- (a) a construction certificate for the subdivision work has been issued by:
 - (i) the consent authority, or
 - (ii) an accredited certifier, and

[8] Section 81A (5)

Omit “endorsement of plans and specifications” wherever occurring. Insert instead “issue of certificates”.

[9] Section 84A Carrying out of complying development

Omit section 84A (4).

[10] Section 84B Carrying out of complying development being subdivision of land

Omit the section.

[11] Section 85 What is a “complying development certificate”?

Insert “and with other requirements prescribed by the regulations concerning the issue of a complying development certificate” after “development” where last occurring in section 85 (1) (a).

[12] Section 85 (6)

Insert after section 85 (5):

- (6) For the purposes of this section, *development standard* includes a provision of a development control plan that would be a development standard, within the meaning of section 4, if the provision were in an environmental planning instrument.

[13] Section 85A Process for obtaining complying development certificate

Omit section 85A (6) (a). Insert instead:

- (a) by issuing a complying development certificate, unconditionally or (to the extent required by the regulations, an environmental planning instrument or a development control plan) subject to conditions, or

[14] Section 85A (7)

Insert “and complies with other requirements prescribed by the regulations relating to the issue of a complying development certificate” after “it”.

[15] Section 85A (12)

Insert after section 85A (11):

- (12) For the purposes of subsection (7), *development standard* includes a provision of a development control plan that would be a development standard, within the meaning of section 4, if the provision were in an environmental planning instrument.

- [16] **Section 91 What is “integrated development”?**
Insert after section 91 (2):
- (3) Development is not integrated development in respect of the consent required under section 138 of the *Roads Act 1993* if, in order for the development to be carried out, it requires the development consent of a council and the approval of the same council.
- [17] **Section 93A Effect of approval if the approval body is also a concurrence authority**
Insert “the general terms of its” after “granting of”.
- [18] **Section 93A**
Insert “the general terms of its” after “granting” where secondly occurring in the section.
- [19] **Section 96 Modification of consents**
Insert at the end of section 96 (1):
- Subsections (2), (3), (6) and (7) do not apply to such a modification.
- [20] **Section 105 Regulations—Part 4**
Insert “or the application for a complying development certificate” after “development application” in section 105 (2).
- [21] **Section 109C Part 4A certificates**
Insert after section 109C (2), before the notes to that section:
- (3) If the regulations so provide, a construction certificate may be issued subject to conditions.
 - (4) In this section:

new building includes an altered portion of, or an extension to, an existing building.
- [22] **Section 109D Certifying authorities**
Omit “(known collectively as *certifying authorities*)” from section 109D (1).
- [23] **Section 109D (4)**
Insert after section 109D (3):
- (4) In this section:

new building includes an altered portion of, or an extension to, an existing building.
- [24] **Section 109F Restriction on issue of construction certificates**
Insert at the end of the section:
- (2) A certifying authority must not refuse to issue a construction certificate on the ground that any component, process or design relating to the development is unsatisfactory if the component, process or design is accredited in accordance with the regulations.
 - (3) A certifying authority and (but only in the case of a certifying authority that is a consent authority) an employee of a certifying authority do not incur any liability as a consequence of acting in accordance with subsection (2).

[25] Section 109K Appeals against failure or refusal to issue Part 4A certificates

Insert “or to issue a construction certificate subject to conditions” after “such a certificate” in section 109K (1).

[26] Section 109K (3) (a)

Omit the paragraph. Insert instead:

- (a) in the case of an application for a construction certificate:
 - (i) if the application is made on or before the date on which its associated development application is determined, within the relevant period referred to in section 82 (1) in relation to the development the subject of the development application, or
 - (ii) if the application is made after the date on which its associated development application is determined, within 28 days after the application for the construction certificate was made, or

[27] Section 109K (4)–(6)

Insert after section 109K (3):

- (4) Nothing in subsection (3) prevents a consent authority or council from determining an application for a construction certificate, occupation certificate or subdivision certificate after the expiration of the relevant period prescribed by that subsection.
- (5) A determination pursuant to subsection (4) does not, subject to subsection (6), prejudice or affect the continuance or determination of an appeal made under this section in respect of a determination that is taken by subsection (3) to have been made.
- (6) If a determination pursuant to subsection (4) is made by granting the certificate concerned, the consent authority or council is entitled, with the consent of the applicant and without prejudice to costs, to have an appeal (being an appeal made under this section in respect of a determination that is taken by subsection (3) to have been made) withdrawn at any time prior to the determination of that appeal.

[28] Section 109T Accreditation of accredited certifiers

Insert after section 109T (4):

- (5) The regulations may make provision for or with respect to any or all of the following:
 - (a) the keeping by the Director-General of a register of accredited certifiers,
 - (b) the issue of certificates by the Director-General containing details of the accreditation of a person and the evidentiary value of such certificates.

[29] Section 109ZP Regulations under this Division

Insert after section 109ZP (e):

, and

- (f) the obligations on a person who is the insurer under such a policy, and
- (g) the issue of such a policy in respect of liability incurred by a person who was formerly an accredited certifier.

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

Insert “(other than exempt development)” after “development” in the definition of *Crown building work* in section 115M (1).

[31] Section 118E Notification of use of force or urgent entry

Insert “, if the person was authorised by the Minister under section 118C (3) or 118D (1),” after “council or” in section 118E (1).

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

Insert “or is erected without prior development consent of a consent authority and a prior construction certificate in a case where both prior development consent and a prior construction certificate are required” after “required” in paragraph (a) of the matter relating to order No 2 in Column 2 of the Table to the section.

[33] Section 121Q Compliance with order under sec 121P

Omit section 121Q (2).

[34] Section 121R Consent authority’s response to submission of particulars of work by owner

Insert after section 121R (5):

- (6) Except for the purposes of section 121ZK (3), an order under this section forms part of the order under section 121B to which it relates.

[35] Section 121ZG Revocation of orders

Omit section 121ZG (2). Insert instead:

- (2) An order given by a council may be revoked by the council at any time.

[36] Section 121ZP Certificate as to orders

Omit section 121ZP (2). Insert instead:

- (2) The application must be in the form determined by the council and must be accompanied by the fee determined by the council under the *Local Government Act 1993*.

[37] Section 127A Penalty notices for certain offences

Omit “a consent authority” wherever occurring in paragraph (a) of the definition of *authorised person* in section 127A (9).

Insert instead “a council”.

[38] Section 149A Building certificates

Omit section 149A (4). but not the note that follows that section.

[39] Section 149E

Omit the section. Insert instead:

149E Effect of building certificate

- (1) A building certificate operates to prevent the council:
 - (a) from making an order (or taking proceedings for the making of an order or injunction) under this Act or the *Local Government Act 1993* requiring the building to be repaired, demolished, altered, added to or rebuilt, and
 - (b) from taking proceedings in relation to any encroachment by the building onto land vested in or under the control of the council, in relation to matters existing or occurring before the date of issue of the certificate.
- (2) A building certificate operates to prevent the council, for a period of 7 years from the date of issue of the certificate:
 - (a) from making an order (or taking proceedings for the making of an order or injunction) under this Act or the *Local Government Act 1993* requiring the building to be repaired, demolished, altered, added to or rebuilt, and
 - (b) from taking proceedings in relation to any encroachment by the building onto land vested in or under the control of the council, in relation to matters arising only from the deterioration of the building as a result solely of fair wear and tear.
- (3) However, a building certificate does not operate to prevent a council:
 - (a) from making order No 6 in the Table to section 121B, or
 - (b) from taking proceedings against any person under section 125 with respect to that person's failure:
 - (i) to obtain a development consent with respect to the erection or use of the building, or
 - (ii) to comply with the conditions of a development consent.
- (4) An order or proceeding that is made or taken in contravention of this section is of no effect.

[40] Section 157 Regulations

Insert after section 157 (1) (c):

- , or
- (d) obligations on persons regarding fire safety.

Commencement

Each amendment to the *Environmental Planning and Assessment Act 1979* commences, or is taken to have commenced, on the date of commencement of the provision of Schedule 1 to the *Environmental Planning and Assessment Amendment Act 1997* that inserts the provision being amended, except item [40] of the amendments, which commences on the date of assent to this Act.

Explanatory note

The *Environmental Planning and Assessment Amendment Act 1997* amends the *Environmental Planning and Assessment Act 1979* ("the EP&A Act") in relation to environmental planning control, and in so doing repeals and replaces Part 4 (Development assessment) and inserts a new Part 4A (Certification of development). The proposed amendments make minor changes to facilitate the implementation of the integrated development scheme established by the amending Act.

Item [1] of the proposed amendments includes in the definition of **certifying authority** a reference to a person who issues a complying development certificate under section 85A of the EP&A Act. Item [22] makes a consequential amendment.

Item [2] ensures that both structural work and non-structural alterations are included in a reference in the EP&A Act to the erection of a building.

Item [3] provides that a construction certificate and related plans and specifications are taken to form part of the relevant development consent.

Items [4] and [5] redraft a requirement to notify objectors to a development application of their right to appeal against a determination of the application so as to also require notification of an objector's right to appeal.

Items [6] and [7] make it clear that the erection of a building, or subdivision work, in accordance with a development consent, may not commence until a construction certificate has been issued.

Item [8] provides for the regulations to make provision for the issue of certificates. The amendment is consequential on the amendment made by item [3].

Item [9] omits a provision that duplicates matter referred to in the definition of **development consent** in section 4 of the EP&A Act.

Item [10] omits a provision that is inconsistent with section 109J (1) (b) of the EP&A Act, which prohibits the issue of a subdivision certificate unless a complying development certificate has been issued.

Items [11] and [12] provide that a complying development certificate is a certificate that states that the proposed development (if carried out as specified in the certificate) complies with all of the requirements of the regulations made under section 85 (5) and with a development standard in an environmental planning instrument or a development control plan.

Items [13], [14] and [15] make it clear that a council or accredited certifier has no discretion as to the imposition of conditions on a complying development certificate. A complying development certificate must not be refused if the application complies with applicable development standards (including those in a development control plan) and with prescribed requirements relating to the issue of a complying development certificate.

Item [16] makes it clear that the integrated development procedures are not intended to apply, in relation to development for the purposes of the *Roads Act 1993*, in situations where the consent authority is the same entity as the relevant approval body.

Items [17] and [18] make it clear that section 93A of the EP&A Act (which deals with the effect of an approval if the approval body is also a concurrence authority) is concerned with the grant of general terms of approval, rather than an approval.

Item [19] makes it clear that minor modifications of consents (as permitted under section 96 (1) of the EP&A Act) may be made without satisfying the preconditions set out in section 96 (2), (3), (6) or (7) for other non-minor modifications.

Item [20] empowers the Governor-in-Council to make regulations providing that an applicant for a complying development certificate who is not entitled to copyright in a document forming part of or accompanying the application is taken to have indemnified all persons using the application and document in accordance with the EP&A Act against claims in respect of breach of copyright.

Item [21] provides for construction certificates to be issued subject to conditions.

Items [21] and [23] insert a definition of *new building* in sections dealing with the certification of development, so as to make them consistent with section 109H of the EP&A Act, which imposes restrictions on the issue of occupation certificates.

Item [24] inserts further matter in section 109F (which deals with restrictions on the issue of construction certificates) so as to make that section consistent with restrictions applying to the issue of development consents (under section 79C) and complying development certificates (under section 85A).

Item [25] provides for a right of appeal where a construction certificate is issued subject to conditions.

Item [26] amends a provision which sets out the time after which a council will be taken to have made a decision to refuse to issue a construction certificate in circumstances where the application for that certificate was lodged after the date on which an associated development application was made.

Item [27] inserts further matters in section 109K (which deals with appeals against failure or refusal to issue Part 4A certificates) so as to make it consistent with the existing appeals provisions in section 96 of the EP&A Act.

Item [28] empowers the Governor-in-Council to make regulations regarding the accreditation of accredited certifiers.

Item [29] empowers the Governor-in-Council to make regulations regarding the insurance of accredited certifiers and former accredited certifiers.

Item [30] amends section 115M, which provides that certain work cannot be commenced to be carried out unless the work is certified by or on behalf of the Crown to comply with the existing technical provisions of the State's building laws, so as to make it clear that the section does not apply to development that is exempt development under an environmental planning instrument by virtue of its minimal environmental impact.

Item [31] makes it clear that a person who has been authorised by the Minister to enter land without notice, or to use reasonable force for the purpose of gaining entry to any premises, must advise the Minister of any such entry or use of force.

Item [32] provides for the issue of orders to demolish or remove a building where the erection of the building commenced without any required construction certificate having been obtained.

Item [33] omits a redundant exemption (section 121O creates the same exemption).

Item [34] provides that if an order is made under section 121P (under which an order may specify standards and work that will satisfy those standards) and a further order is made in relation to the same work under section 121R (which deals with a consent authority's response to the submission of particulars of work by the owner), the order under section 121R forms part of the original order under section 121B.

Item [35] empowers a council to revoke any order that it has made under the EP&A Act and omits a similar redundant provision in relation to the Minister (who has no independent power to make an order under the EP&A Act).

Item [36] amends section 121ZP, which provides for the issue of certificates as to orders, to allow councils to approve the form of an application for such a certificate and to determine the fee to accompany it. (At present the section provides for such matters to be prescribed by the regulations.)

Item [37] provides for employees of councils to be authorised for the purposes of the section dealing with the issue of penalty notices. At present, employees may only be authorised where the council is a consent authority.

Items [38] and [39] provide that a building certificate prevents a council (but not another person) from ordering building work to be carried out in relation to anything existing before the issue of the certificate or for 7 years after the issue of the certificate in relation to deterioration resulting solely from fair wear and tear. The amended section also provides that the prohibition created by a building certificate applies only to orders under the EP&A Act

and the *Local Government Act 1993* and not under any other Act. This is consistent with section 168 of the *Local Government Act 1993*, the provision replaced by proposed section 149E.

Item [40] provides for the Governor-in-Council to make regulations imposing obligations relating to fire safety.

1.10 Health Services Act 1997 No 154

[1] Section 108 Constitution of Committee of Review

Omit “subsection (1)” wherever occurring in section 108 (3), (4) and (5).
Insert instead “subsection (2)”.

[2] Section 108 (6)

Omit “subsection (4) (b)”. Insert instead “subsection (4)”.

[3] Schedule 3 Affiliated health organisations

Omit “Sacred Heart Hospice.” from Column 2 of the matter relating to St Vincent’s Hospital Sydney Ltd.

Insert in alphabetical order (in Columns 1 and 2):

Sacred Heart Hospice Limited Sacred Heart Hospice.

[4] Schedule 5 Provisions relating to members and procedure of area health boards and health corporation boards

Omit “, of whom one must be the Chairperson or Acting Chairperson” from clause 14.

[5] Schedule 7 Savings and transitional provisions

Insert after clause 44:

44A Determination under repealed hospitals Act

(1) In this clause:

existing determination means the Public Hospitals (Visiting Medical Officers—Sessional Contracts) Determination 1994, made under Division 2 of Part 5C of the *Public Hospitals Act 1929* and which, immediately before the repeal of that Act, applied to sessional visiting medical officers by operation of section 29R of that Act.

(2) The existing determination is taken to be a determination made under Division 3 of Part 2 of Chapter 8 and applying, by virtue of section 98, in relation to any service contract between an organisation and a visiting medical officer providing his or her services as an individual.

(3) A reference in that determination:

(a) to any particular former area health service, incorporated hospital or separate institution is to be read as a reference to the successor of the service, hospital or institution, as the case may be, or

(b) to former area health services, incorporated hospitals or separate institutions generally is to be read as a reference to area health services, statutory health corporations and affiliated health organisations, respectively.

-
- (4) On and from a date appointed by proclamation for the purposes of this subclause, the existing determination is taken to also be a determination made under Division 3 of Part 2 of Chapter 8 and applying, by virtue of section 98, in relation to any service contract between an organisation and a practice company through which a visiting medical officer provides services (in accordance with section 85).
- (5) On and from that date, a reference in that determination:
- (a) to any particular former area health service, incorporated hospital or separate institution is to be read as a reference to the successor of the service, hospital or institution, as the case may be, or
 - (b) to former area health services, incorporated hospitals or separate institutions generally is to be read as a reference to area health services, statutory health corporations and affiliated health organisations, respectively, or
 - (c) to a contract with or payment to a visiting medical officer is to be read as including a reference to a contract with or payment to a visiting medical officer's practice company, or
 - (d) to the termination of a sessional contract is to be read as including a reference to the termination of a visiting medical officer's appointment as a visiting medical officer.
- (6) Nothing in this clause prevents the making of any future orders under section 87 approving standard conditions.

Explanatory note

Items [1] and [2] of the proposed amendments correct internal cross-references.

Item [3] includes the Sacred Heart Hospice Limited in the list of affiliated health organisations in Schedule 3 to the *Health Services Act 1997* and provides for the Sacred Heart Hospice to be a recognised establishment in relation to that organisation.

Item [4] dispenses with the requirement that the Chairperson or Acting Chairperson of an area health board or health corporation board be present in order to constitute a quorum for a meeting of the board. Clause 15 of Schedule 5 provides for the election of a presiding member in the absence of a Chairperson.

Item [5] saves a determination made in relation to visiting medical officers under the *Public Hospitals Act 1929*, which is proposed to be repealed by the *Health Services Act 1997* and provides for the determination to be applied to all visiting medical officers, including those who provide their services through a practice company.

1.11 Home Building Act 1989 No 147**[1] Section 102 General requirements for insurance**

Insert after section 102 (6):

- (7) The regulations may make provision for or with respect to requiring the retention, at a place prescribed by the regulations, of copies of contracts of insurance required to be entered into by or under this Part.

[2] Section 115 Education and Research Fund

Omit section 115 (4) (b).

[3] Section 133 Evidence of publication

Insert “or to indicate that a person is prepared to supply a kit home” after “specialist work” in section 133 (1) (a).

[4] Section 133 (1) (b) (i)

Insert “or kit home” after “services”.

[5] Section 133 (1) (b) (ii)

Insert “or kit homes” after “services”.

Explanatory note

Regulations may create obligation to make contracts of insurance available for inspection

Part 6 of the *Home Building Act 1989* imposes obligations on certain persons doing certain work, supplying kit homes, or carrying out other activities to ensure that a contract of insurance is in force in relation to the work, supply or activity.

Item [1] of the proposed amendments empowers the Governor-in-Council to make regulations that impose an obligation to retain a copy of any contract of insurance required to be entered into under that Part at a prescribed place.

Evidence of a publication relating to the supply of kit homes

Section 133 of the Act is an evidentiary provision concerning the publication of certain statements intended, or apparently intended, to promote services relating to doing residential building work or specialist work and indicating the name and contact details of a person who is the supplier of the service or has an interest in the supply of the service. Section 133 has the effect that the named person is presumed to have caused the statement to be published.

Items [3]–[5] of the proposed amendments establish a similar presumption in relation to published statements promoting preparedness to supply a kit home.

Statute law revision

Item [2] of the proposed amendments omits a redundant reference to a requirement to obtain the concurrence of the Treasurer to the application of certain funds. Such a requirement is no longer a part of the legislative scheme.

1.12 Motor Vehicles Taxation Act 1988 No 111

Schedule 1 Motor vehicle tax on registration or renewal of registration during the calendar year 1996

Insert “or \$393, whichever is the lesser” after “clause 2 or 3” in clause 6.

Validation

Any motor vehicle tax calculated, imposed or paid under section 4 of the *Motor Vehicles Taxation Act 1988* between 1 July 1996 (the date of commencement of the *Road Transport Legislation Amendment Act 1995*) and the date of commencement of the amendment to the *Motor Vehicles Taxation Act 1988* made by this Act, that would have been valid if the amendment had been in force when the tax was calculated, imposed or paid on or after that date is validated.

Explanatory note

The *Motor Vehicles Taxation Act 1988* provides for the imposition, assessment and collection of tax on the registration of motor vehicles. Schedule 1 to the Act specifies the motor vehicle tax payable on registration or renewal of registration, during the calendar year 1996, of motor vehicles of various classes. Registrations and renewals effected in subsequent years attract motor vehicle tax at indexed rates determined in accordance with section 5 of the Act.

At present, clause 6 of Schedule 1 makes special provision for a motor vehicle that is a primary producer's vehicle. The amount of tax payable is 55 per cent of the amount that would otherwise be applicable to the vehicle under clause 2 or 3 of the Schedule. However, clause 9 of Schedule 1 provides that, in respect of a motor lorry that weighs more than 2,500 kilograms and is not liable to, or is exempt from, charges under the *Road Transport (Heavy Vehicles Registration Charges) Act 1995*, the amount of tax is capped at \$393.

The proposed amendment makes it clear that motor lorries weighing between 2,500 and 2,790 kilograms that are used in primary production will not be subject to more tax than would otherwise have been payable in respect of such motor lorries before the amendment of the *Motor Vehicles Taxation Act 1988* by the *Road Transport Legislation Amendment Act 1995* (which commenced on the same day as the *Road Transport (Heavy Vehicles Registration Charges) Act 1995*).

1.13 Ombudsman Act 1974 No 68

[1] Section 5 Definitions

Insert in alphabetical order in section 5 (1):

Department and *Department Head* have the same meaning as in the *Public Sector Management Act 1988*.

[2] Section 5 (1), definition of "head"

Omit the definition. Insert instead:

head means:

- (a) in relation to a public authority that is a Department or who is a public servant or other person employed in or for the purposes of a Department—the Department Head of the Department, and
- (b) in relation to a public authority that is a local government authority, or a member or employee of a local government authority—the mayor (or other presiding officer) of the local government authority, and
- (c) in relation to a public authority that is a corporation sole, or who is a person employed by a corporation sole—the person constituting the corporation, and
- (d) in relation to a public authority that is any other body, whether incorporated or unincorporated, or who is a person employed by such a body—the chief executive officer of that body or, if the affairs of the body are directed by a governing body, the person who presides at meetings of that governing body, and
- (e) in any other case—the person prescribed by the regulations, or in the absence of any regulation prescribing a person, the person who, in the opinion of the Ombudsman, is the chief executive of the public authority.

[3] Section 5 (1), definition of "public authority"

Omit paragraph (c). Insert instead:

- (c) any Department or any public servant employed in a Department.

[4] Section 5 (1), definition of “responsible Minister”

Omit the definition. Insert instead:

responsible Minister means:

- (a) in relation to a public authority that is a Department or who is a public servant or other person employed in or for the purposes of a Department—the Minister responsible for that Department, and
- (b) in relation to a public authority that is a local government authority or a member or employee of a local government authority—the Minister administering the *Local Government Act 1993*, and
- (c) in relation to a public authority, not referred to in paragraph (a) or (b), involved in the administration of an Act or part of an Act—the Minister administering the Act or the relevant part of the Act, and
- (d) in relation to any other public authority—the Minister who, in the opinion of the Ombudsman, is the most nearly concerned with the conduct of the public authority.

[5] Section 5 (1), definition of “statutory employee”

Omit the definition.

[6] Sections 6 (6) and 32 (1)

Omit “*Public Service Act 1979*” wherever occurring.
Insert instead “*Public Sector Management Act 1988*”.

[7] Section 6 Office of Ombudsman

Insert after section 6 (7):

- (8) The Ombudsman has and may exercise the functions conferred or imposed on the Ombudsman by or under this or any other Act.

Saving

The amendments to the *Ombudsman Act 1974* do not affect any investigation into a complaint made before the commencement of the amendments.

Explanatory note

The *Ombudsman Act 1974* provides for the appointment of an Ombudsman and defines the functions of the Ombudsman, which include the power to investigate complaints about the conduct of a public authority. At present it is clear that the Ombudsman has the power to investigate the conduct of individual officers of a Government Department but it is not clear that the Ombudsman can investigate the conduct of the Department itself.

The object of the proposed amendments is to ensure that the Ombudsman has the power to investigate the conduct of a Department, as well as the conduct of any person employed in a Department.

Item [3] of the proposed amendments includes Departments within the definition of *public authority*.

Items [1], [2] and [4] make consequential amendments.

Item [5] omits a redundant definition.

Item [6] updates references to a repealed Act.

Item [7] inserts a common statutory provision so as to make it clear that the Ombudsman has and may exercise any function conferred on the Ombudsman by or under any Act.

1.14 Protection of the Environment Operations Act 1997 No 156

[1] Section 51 Integrated development

Omit “Division 6” from section 51 (1). Insert instead “Division 5”.

[2] Section 257 Occupier of premises responsible for pollution from premises

Omit “holder” wherever occurring in section 257 (1). Insert instead “occupier”.

[3] Schedule 4 Amendment of other Acts

Renumber clause 7 of Schedule 3 to the *Subordinate Legislation Act 1989* (as proposed to be inserted by Schedule 4.16) as clause 8.

[4] Schedule 5 Savings, transitional and other provisions

Insert after clause 11 (3):

- (4) In this clause, a reference to the repeal of an Act by this Act includes a reference to the repeal of a provision of the *Waste Minimisation and Management Act 1995* by this Act.

Commencement

An amendment to a provision of the *Protection of the Environment Operations Act 1997* commences on the date of commencement of that provision.

Explanatory note

Saving of existing regulations

The *Protection of the Environment Operations Act 1997* repeals some of the environment protection legislation. Clause 11 of Schedule 5 to the Act saves existing regulations made under an Act repealed by the Act. Such regulations are taken to have been made under the *Protection of the Environment Operations Act 1997* to the extent that they could have been made under that Act. Clause 11 inadvertently fails to save the regulations made under the *Waste Minimisation and Management Act 1995*, which was not repealed by the *Protection of the Environment Operations Act 1997* but which was significantly amended.

Item [4] of the proposed amendments provides for the saving of the *Waste Minimisation and Management Regulation 1996* made under the *Waste Minimisation and Management Act 1995* in the same way as the regulations under the repealed environment protection legislation.

Statute law revision

Item [1] of the proposed amendments corrects a cross-reference.

Item [2] of the proposed amendments corrects references to the person responsible for pollution from premises (which, by virtue of section 257 (1), is presumed to be the occupier of the premises).

Item [3] renumbers a clause.

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

Schedule 2 Savings and transitional provisions

Insert after clause 6:

7 Validation of certain charges

Any registration charge calculated, imposed or paid under section 7 between 1 January 1998 and 16 January 1998 (the date of commencement of the amendment made to this Act by Schedule 1 [1] to the *Road Transport (Heavy Vehicles Registration Charges) Amendment Act 1997*), that would have been valid if the amendment had commenced on 1 January 1998, is validated.

Explanatory note

The *Road Transport (Heavy Vehicles Registration Charges) Amendment Act 1997* made certain amendments to the *Road Transport (Heavy Vehicles Registration Charges) Act 1995* and the *Motor Vehicles Taxation Act 1988*. Those amendments commenced on 16 January 1998.

The object of the amendment made by Schedule 1 [1] to the 1997 Act was to ensure that the registration charges payable under that Act with respect to primary producers' vehicles do not exceed the motor vehicle tax that would be payable for those vehicles under the *Motor Vehicles Taxation Act 1988*, were that Act to apply to them.

The proposed amendment validates any registration charge calculated, imposed or paid during a 16 day period.

1.16 Security industry Act 1997 No 157

[1] Section 4 Carrying on "security activities"

Insert "employing or" before "providing" in section 4 (g).

[2] Section 10 Master licences

Omit section 10 (1) and (2). Insert instead:

- (1) A master licence authorises the licensee to employ or provide persons to carry on security activities.
- (2) The authority conferred by a master licence allows only the employment or provision of persons who are the holders of a licence.

[3] Section 10 (3)

Insert "employing or" before "providing".

[4] Section 36 Licence to be worn by licensee

Insert "on his or her person so as to be clearly visible" after "wear" in section 36 (1).

Explanatory note

Employment of licensed people to perform security activities

Under the *Security Industry Act 1997*, a person who carries on a security activity (for example, by performing duties as a paid security guard or crowd controller) is required to hold a licence authorising the person to carry on the activity. This requirement extends to persons who, in the course of conducting a business, provide security personnel to perform those duties. The class of licence that is available under the Act to persons who provide security personnel is a master licence.

[4] Section 135 Notice of application to be given

Insert after section 135 (4):

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

[5] Section 136 Owners corporation to display and give certain notices

Insert at the end of the section:

- (2) This section does not apply to an application for an order under Part 6 (Enforcement of orders of Adjudicators and Board and certain notices).

[6] Section 137 Procedure after time for making submissions has expired

Insert after section 137 (5):

- (6) This section does not apply to an application for an order under Part 6 (Enforcement of orders of Adjudicators and Board and certain notices).

[7] Section 137A

Insert after section 137:

137A Procedure for orders under Part 6

- (1) The Registrar must refer to the Board an application for an order under Part 6 (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 so that the copy would, in the ordinary course of post, be received by the addressee not less than 7 days before the day specified in the notice of the determination of the application:
 - (a) the applicant,
 - (b) the owners corporation for the strata scheme to which the application relates (if the owners corporation is not the applicant),
 - (c) any person against whom the order is sought.

[8] Section 193 Representation before the Board

Insert “and any person who was entitled to receive a copy of such a notice” after “application” where secondly occurring in section 193 (1) (b).

[9] Section 193 (1) (c)

Insert “and any person who was entitled to receive a copy of such a notice” after “Registrar”.

[10] Section 193 (1) (d)

Insert after section 193 (1) (c):

- (d) any other person who is, or whose conduct is, the subject of an application or appeal.

[11] Section 195 Copy of order to be served

Insert after section 195 (2) (d):

, and

- (e) any person against whom an order under Part 6 (Enforcement of orders of Adjudicators and Board and certain notices).

[12] Section 195 (4)

Insert after section 195 (3):

- (4) Subsections (2) (c) and (d) and (3) do not apply to an application for an order under Part 6 (Enforcement of orders of Adjudicators and Board and certain notices).

[13] Section 205 Payment of penalties or costs

Insert at the end of section 205 (2) (b):

, or

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

[14] Section 205 (4)

Insert after section 205 (3):

- (4) 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.

Transitional provisions

The amendments to sections 125 and 135 of the *Strata Schemes Management Act 1996* extend to applications made before the commencement of the amendments.

The amendments to section 205 of the *Strata Schemes Management Act 1996* do not apply to a penalty or order as to costs imposed or made before the commencement of the amendments.

Explanatory note

Obligation of certain lessees to comply with management statements

Sections 57–60 of the *Strata Schemes Management Act 1996* provide for the management statement for a community scheme of which a strata scheme is part to prevail over the by-laws for the strata scheme. Section 59 of the Act places an obligation on a lessee of a lot in a strata scheme to comply with such a management statement. Section 59 (2) incorrectly refers to a strata leasehold scheme.

Item [1] of the proposed amendments omits the incorrect reference. Item [2] makes a related amendment.

Applications for orders—mediation and notice

Section 125 of the Act prevents the Registrar of the Strata Schemes Board from accepting an application for an order unless the Registrar is satisfied that either mediation has been attempted but was unsuccessful or the matter the subject of the application is not appropriate for mediation.

Item [3] of the proposed amendments makes it clear that the requirement to attempt mediation relates only to an order under Chapter 5, which gives power to Adjudicators and the Strata Schemes Board to make orders to settle disputes about certain matters relating to the operations and management of a strata scheme. The mediation obligations do not relate to an application for an order under Part 6 of Chapter 5, which deals with the enforcement of those orders.

Item [4] provides that the obligation to notify those affected by a proposed order of the right to make submissions to the Registrar in relation to the proposed order does not apply to applications for orders under Part 6 of Chapter 5. (The procedure for the making of orders, including the right to be represented by the Board, is set out in Part 5 of Chapter 5, as amended by items [8]–[12] of the proposed amendments.)

Items [5], [6], [7], [11] and [12] make consequential amendments to procedures relating to orders.

Representation before the Strata Schemes Board

Section 193 of the Act lists the people who may appear or be represented before the Strata Schemes Board if the Board is dealing with an application. That list includes the applicant and any person who received a copy of a notice of application or notice of appeal.

Item [10] adds to that list any person who is, or whose conduct is, the subject of an application or appeal.

Items [8] and [9] make consequential amendments.

Payment of penalties

Section 205 (2) of the Act provides that the imposition of a pecuniary penalty by an order of the 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 [13] enables such a judgment to require a penalty to be paid to the Director-General of the Department of Fair Trading alone.

Item [14] provides for an order as to costs to also operate as a judgment under the *Local Courts (Civil Claims) Act 1970*.

1.19 Subordinate Legislation Act 1989 No 146

[1] Section 10 Staged repeal of statutory rules

Omit “1 September 1998” from section 10 (4). Insert instead “1 September 1999”.

[2] Section 10 (5)–(7)

Insert after section 10 (4):

- (5) Despite subsection (1), the *Dangerous Goods Regulation 1978* is repealed on 1 September 1999.
- (6) Despite subsection (1), the Clean Waters Regulations 1972 are repealed on 1 September 1999, unless, before that date, the regulations are taken to have been made under the *Protection of the Environment Operations Act 1997*, by operation of clause 11 of Schedule 5 to that Act.

(7) Despite subsection (1), the following regulations are repealed on 1 September 1999:

- (a) all regulations under the *Commercial Vessels Act 1979*, the *Marine Pilotage Licensing Act 1971*, the *Maritime Services Act 1935* and the *Navigation Act 1901* that are in force on the date of assent to the *Statute Law (Miscellaneous Provisions) Act 1998*, and
- (b) the *Maritime (Short Description of Offences) Regulation 1987*.

[3] Section 11 Postponement of repeal in specific cases

Omit “section 10 (3) or (4)” from section 11 (6).

Insert instead “section 10 (3)–(7)”.

Explanatory note

Part 3 of the *Subordinate Legislation Act 1989* provides for the staged repeal of statutory rules. Section 10 sets out the dates on which statutory rules are repealed and section 11 provides for the postponement of their repeal in specific cases.

The proposed amendments postpone until 1 September 1999 the repeal of regulations due for staged repeal on 1 September 1998 and for which the maximum number of postponements have already been granted.

**1.20 Technical and Further Education Commission Act 1990
No 118**

[1] Section 8 Delegation of functions

Insert “or a public servant employed in the Department of Education and Training” after “TAFE Commission” in section 8 (3).

[2] Section 8 (4)

Insert after paragraph (a) of the definition of *authorised person*:

- (a1) a public servant employed in the Department of Education and Training, or

[3] Section 11 TAFE Commission Board

Insert “, or a senior public servant employed in the Department of Education and Training,” after “TAFE Commission” in section 11 (2) (b).

[4] Section 11 (2) (c)

Omit the paragraph.

[5] Section 11 (2) (f)

Omit “8”. Insert instead “9”.

[6] Section 11 (3)

Insert “, or the senior public servant employed in the Department of Education and Training,” after “TAFE Commission”.

Explanatory note

The *Technical and Further Education Commission Act 1990* constitutes the Technical and Further Education Commission and provides for its functions and management. Section 8 of the Act provides that the TAFE Commission may delegate any of the functions of the TAFE Commission to any member of the staff of the TAFE Commission or to a person of a class prescribed by the regulations or approved by the Minister. However, specified functions relating to industrial matters, staffing and industrial awards may only be delegated to members of staff of the TAFE Commission.

Items [1] and [2] of the proposed amendments provide that those staffing and other functions of the TAFE Commission may also be delegated to any public servant employed in the Department of Education and Training.

Item [3] of the proposed amendments provides for the TAFE Commission Board to include a senior public servant employed in the Department of Education and Training nominated by the Minister, as an alternative to a senior member of the staff of the TAFE Commission. Item [6] makes a consequential amendment.

Item [4] of the proposed amendments removes the requirement that an ex-officio member from the Department of Education and Training be appointed to the Board. (At present, the section refers to the Director-General of the Department of Further Education, Training and Employment, but that reference is required to be construed as a reference to the General Manager, Executive and Legal Services, of the Department of Education and Training: see the *Public Sector Management (Department of Education and Training) Order (No 2) 1997* published in Gazette No 148 of 17 December 1997 at p 10076).

Item [5] provides for a further member of the TAFE Commission to be appointed by the Minister, in place of the ex-officio position removed by item [4].

1.21 Transport Administration Act 1988 No 109

[1] Section 19A Definitions

Insert in alphabetical order in section 19A (1):

access purchaser means a person who has contracted with a rail operator in respect of the operation or movement of rolling stock.

[2] Section 19B Meaning of “NSW Rail Access Regime”

Omit “persons as rail operators” wherever occurring in section 19B (1) and (4). Insert instead “the prescribed corporation or by persons as rail operators or access purchasers”.

[3] Section 19B (8)–(11)

Omit section 19B (8). Insert instead:

- (8) An access regime established under this section may provide for persons who intend to be access purchasers, and who, in the opinion of the Rail Access Corporation, have the capacity to secure and properly manage the services of a rail operator, to enter into negotiations in respect of third party access to the NSW rail network.
- (9) Such a person may be provided with access under an access regime even if the person is not an access purchaser, on the condition that the person becomes an access purchaser prior to the operation or movement of rolling stock pursuant to such access.

(10) Nothing in this section affects the operation of the *Rail Safety Act 1993*.

(11) In this section:

Competition Principles Agreement has the same meaning as in the *Independent Pricing and Regulatory Tribunal Act 1992*.

prescribed corporation means the corporation prescribed by the regulations, being a corporation established in pursuance of an agreement between the Commonwealth and the States for the purpose of providing interstate access to Australian rail networks.

[4] Section 19E Functions of RAC

Omit section 19E (2) (b). Insert instead:

- (b) to provide the prescribed corporation, or persons as rail operators or access purchasers, with access to the NSW rail network.

Explanatory note

Section 19B of the *Transport Administration Act 1988* provides for the establishment of a NSW Rail Access Regime in relation to third party access to the NSW rail network, including the use of rail infrastructure facilities. At present, the section provides that the Access Regime may only provide for access by persons as rail operators (that is, as persons responsible for the operation or moving, by any means, of any rolling stock on a railway track).

The proposed amendments will have the effect that the Access Regime may apply to rail operators, to persons who contract with such rail operators for the purpose of exercising rights of third party access to the NSW rail network and to a corporation prescribed by the regulations.

Schedule 2 Amendments by way of statute law revision

(Section 3)

2.1 Bail Act 1978 No 161

Schedule 1 Savings and transitional provisions

Renumber Part 4 (as inserted by the *Courts Legislation Further Amendment Act 1997*) as Part 5 and renumber clause 7 of that Part as clause 8.

Explanatory note

The proposed amendment renumbers a clause and Part in a Schedule.

2.2 Banana Industry Act 1987 No 66

Section 9 Power of Committee to issue directions

Omit “person” where secondly occurring in section 9 (1) (a).
Insert instead “persons”.

Explanatory note

The proposed amendment corrects a typographical error.

2.3 Building and Construction Industry Long Service Payments Amendment Act 1998 No 33

Schedule 1 Amendments

Omit “clause 16 (1)” from Schedule 1 [55]. Insert instead “clause 16 (2)”.

Explanatory note

The proposed amendment corrects a cross-reference.

2.4 Co-operative Housing and Starr-Bowkett Societies Act 1998 No 11

Schedule 6 Amendment of Acts

Omit Schedule 6.9 and 6.19.

Explanatory note

The proposed amendment omits uncommenced amendments to repealed Acts.

2.5 Correctional Centres Act 1952 No 9

[1] Section 5 Correctional complexes and correctional centres

Insert “the” before “purposes” in section 5 (4).

[2] Section 44 Attendance of inmates before courts and court officers

Omit “a prisoner” from section 44 (1). Insert instead “an inmate”.

- [3] **Section 44 (1), (2) and (4)**
Omit “the prisoner” wherever occurring. Insert instead “the inmate”.
- [4] **Section 44 (1) and (2)**
Omit “superintendent” wherever occurring. Insert instead “governor”.
- [5] **Section 44 (1), (3) and (4)**
Omit “prison” wherever occurring. Insert instead “correctional centre”.
- [6] **Section 44 (3)**
Omit “A prisoner”. Insert instead “An inmate”.
- [7] **Section 45 Sentences to be served in lock-up**
Insert “a” before “correctional centre” in section 45 (1) (b).
- [8] **Schedule 8 Savings and transitional provisions**
Omit clause 6.
- [9] **Schedule 8, clause 30 (2)**
Omit “is any”. Insert instead “in any”.

Explanatory note

Items [1] and [7] of the proposed amendments insert omitted words.
 Items [2]–[6] of the proposed amendments update the terminology used in a provision.
 item [8] of the proposed amendments omits an expired savings provision.
 item [9] of the proposed amendments corrects a typographical error.

2.6 Crimes Act 1900 No 40

- [1] **Heading before section 1**
Omit “*and division into Parts*”.
- [2] **Sections 4 (1) (definition of “Dangerous weapon”), 357 (1) (c), (4) (b) (i) and (5) 358B (3) (a), 545E (1) (a) and 562D (3)**
Omit “*Firearms Act 1989*” wherever occurring.
Insert instead “*Firearms Act 1996*”.
- [3] **Heading before section 56**
Omit “*clergymen*”. Insert instead “*members of the clergy*”.
- [4] **Section 93F Definition**
Omit the definition of *firearm* from section 93F. Insert instead:
firearm has the same meaning as in the *Firearms Act 1996*.
- [5] **Section 93IB Contaminating goods with intent to cause public alarm or economic loss**
Omit “though” from section 93IB (b). Insert instead “through”.
- [6] **Section 316 Concealing serious offence**
Omit section 316 (5). Insert instead:
(5) The regulations may prescribe a profession, calling or vocation as referred to in subsection (4).

- [7] **Section 356V Custody records to be maintained**
Insert “to” after “referred” in section 356V (4).
- [8] **Section 356X Regulations**
Omit section 356X (1).
- [9] **Section 356X (2)**
Omit “In particular, the”. Insert instead “The”.
- [10] **Section 405E Use of closed-circuit television or similar technology**
Omit “The Governor may make regulations” from section 405E (2).
Insert instead “The regulations may make provision”.
- [11] **Third Schedule**
Omit “he” from Form No 4. Insert instead “he/she”.
- Explanatory note**
Item [1] of the proposed amendments omits redundant words from a heading.
Items [2] and [4] update references to a repealed Act.
Item [3] amends the language used in a heading to make it consistent with the provisions to which it relates.
Item [5] corrects a typographical error.
Items [6] and [9] update the language of regulation-making powers.
Item [7] inserts an omitted word.
Items [8] and [9] omit a duplicated subsection and make a consequential amendment regarding regulation-making powers. (Section 582 of the *Crimes Act 1900* creates a general regulation-making power in respect of the Act.)
Item [11] omits gender-specific language from a Form, to achieve consistency with other Forms in the Third Schedule.

2.7 Criminal Appeal Act 1912 No 16

- [1] **Section 9 Revesting and restitution of property on conviction**
Omit “section 53 of the *Victims Compensation Act 1987*” wherever occurring in section 9 (4) and (5).
Insert instead “section 71 of the *Victims Compensation Act 1996*”.
- [2] **Section 9 (4) and (5)**
Omit “section 447B of the *Crimes Act 1900*” wherever occurring.
Insert instead “section 21 of the *Criminal Procedure Act 1986*”.
- Explanatory note**
The proposed amendments update references to repealed provisions.

2.8 Darling Harbour Authority Amendment and Repeal Act 1998 No 29

Schedule 3 Amendments consequent on repeal of Darling Harbour Authority Act 1984

Renumber Part 5 of Schedule 7 to the *Transport Administration Act 1988* (as proposed to be inserted by Schedule 3.13 [2]) as Part 6 and renumber clause 73 of that Part as clause 77.

Explanatory note

The proposed amendment renumbers a Part and clause in a Schedule.

2.9 District Court Act 1973 No 9

Division 1 of Part 6

Renumber section 183C (as inserted by Schedule 1 [13] to the *District Court Amendment Act 1997*) as section 183D.

Explanatory note

The proposed amendment renumbers a section.

2.10 Duties Act 1997 No 123

[1] Chapter 2 Transactions concerning dutiable property

Omit “United Kingdom Stock Exchange” from the introductory note to Part 4 of Chapter 2.

Insert instead “London Stock Exchange”.

[2] Section 56 Transfers back from a nominee

Omit “the trustee” from section 56 (2) (b). Insert instead “the original transferor”.

[3] Section 65 Exemptions from duty

Omit section 65 (1) (e). Insert instead:

(e) a dutiable transaction comprising:

(i) a transfer by way of discharge of mortgage, or

(ii) a transfer by way of mortgage (not being a transfer by way of mortgage of land, or an estate or interest in land, under the *Real Property Act 1900*), if duty as on a mortgage has been paid in respect of an instrument evidencing the mortgage or the instrument is exempt from, or is not liable to, duty,

[4] Section 108 Land holdings of private corporations

Omit “non-completion” from the note to the section. Insert instead “completion”.

[5] Section 119 Exempt acquisitions

Renumber section 119 (1) (b) (iv) as section 119 (1) (b1).

[6] Section 119 (1) (g) (i)

Omit “paragraph (d) or (e)”. Insert instead “paragraph (e) or (f)”.

[7] Section 142 Acquisition of shares by allotment

Omit “or units” from section 142 (2).

[8] Section 145 Imposition of duty

Omit “149 (b), (c) or (d)” from section 145 (1) (d).

Insert instead “149 (1) (b), (c) or (d)”.

[9] Section 166 What is the “cost” of a lease?

Omit “paid” from section 166 (1) (b). Insert instead “payable”.

[10] Section 174 CPI method

Omit “by” from section 174 (6). Insert instead “under”.

- [11] Section 193 Ascertainment and disclosure of place of use of goods**
Omit “subsection (4)” from the matter relating to penalties at the end of the section.
Insert instead “subsection (5)”.
- [12] Section 196 Registration of commercial hire businesses**
Omit “hirer’s” from section 196 (3).
- [13] Section 221 Eligible mortgages under first home purchase scheme**
Omit “section 74 (3) or (4)” from section 221 (1).
Insert instead “section 77 (3) or (4)”.
- [14] Section 233 Classes of general insurance**
Renumber the second paragraph (a) in section 233 (3) as paragraph (a1).
- [15] Section 254 Recovery of duty by registered insurer**
Omit “duty” from section 254 (3). Insert instead “amount”.
- [16] Schedule 1 Savings, transitional and other provisions**
Omit “section 24” from clause 4 (2). Insert instead “section 25”.

Explanatory note

Item [1] of the proposed amendments corrects a reference to a foreign stock exchange to which Division 3 of Part 4 of Chapter 2 of the Act applies.

Item [2] corrects a reference to a party to a transaction.

Item [3] rearranges incorrectly ranged text.

Items [4] and [9] correct typographical errors.

Item [5] renumbers a sub-paragraph as a paragraph.

Items [6], [8], [11], [13] and [16] correct cross-references.

Items [7] and [12] omit redundant words.

Item [10] corrects a grammatical error.

Item [14] corrects an error in the numbering of paragraphs.

item [15] corrects a reference to an amount payable.

2.11 Electricity Transmission Authority Act 1994 No 64

- [1] Schedule 2 Savings and transitional provisions**
Omit “An Pacific Power” wherever occurring in clauses 11 (1), 12 (1) and 13.
Insert instead “A Pacific Power”.
- [2] Schedule 2, clauses 10 (3), 12 (1) and (2) (a) and 13 (a)**
Omit “an Pacific Power” wherever occurring. Insert instead “a Pacific Power”.

Explanatorynote

The proposed amendments correct grammatical errors.

2.12 Environmental Planning and Assessment Act 1979 No 203

- [1] Section 79 Public participation—designated development**
Insert “first” before “published” in section 79 (1) (a).

-
- [2] **Section 79B Consultation and concurrence**
Omit “the regulations” from subsection (10). Insert instead “by subsection (3)”.
- [3] **Section 79C Evaluation**
Omit section 79C (1) (a) (iv). Insert instead:
- (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph).
- [4] **Section 80 Determination**
Omit “a complying development certificate*” from the note to the section.
Insert instead “a development consent”.
- [5] **Section 85A Process for obtaining complying development Certificates**
Omit “grant” from section 85A (4). Insert instead “issue”.
- [6] **Section 102 Non-compliance with certain provisions regarding State significant development**
Insert “, be publicly exhibited for the minimum period of time” after “force” where secondly occurring in section 102 (2) (b).
- [7] **Section 109H Restriction on issue of occupation certificates**
Insert “in the case of a building erected pursuant to a development consent but not a complying development certificate,” before “that” in section 109H (1) (b).
- [8] **Section 109N Change of building use of existing building requires occupation certificate**
Omit “the erection of the building” from section 109N (2) (a).
Insert instead “the change of building use”.
- [9] **Section 109Z Decision after investigation of complaint**
Omit “Tribunal” wherever occurring in section 109Z (4) (a) (iii) and (iv).
Insert instead “accreditation body”.
- [10] **Section 109ZJ Apportionment of liability**
Insert “to” after “relation” in section 109ZJ (4).
- [11] **Section 121D Circumstances in which compliance with secs 121F–121K is required**
Omit “sections 121H–121J”.
Insert instead “sections 121F–121K”.
- [12] **Section 121D (a)**
Omit “No 9”. Insert instead “No 8”.
- [13] **Section 121E Effect of compliance with secs 121F–121K**
Omit “sections 121H–121J”.
Insert instead “sections 121F–121K”.
- [14] **Section 121I Making of representations**
Omit “section 121H” from section 121I (1). Insert instead “section 121H,”.
- [15] **Section 121L Reasons for orders to be given**
Omit “a case of urgency” wherever occurring in section 121L (3).
Insert instead “an emergency”.
-

[16] Section 121ZI Limitation on Minister's orders

Omit "give an order". Insert instead "take any action".

[17] Section 125 Offences against this Act and the regulations

Renumber subsection (2), as inserted by Schedule 1 [39] to the *Environmental Planning and Assessment Amendment Act 1997*, as subsection (4).

Commencement

Each amendment to the Environmental Planning and Assessment Act 1979 commences on the date of commencement of the provision of Schedule 1 to the *Environmental Planning and Assessment Amendment Act 1997* that inserts the provision being amended.

Explanatory note

The proposed amendments amend provisions inserted in the *Environmental Planning and Assessment Act 1979* by the *Environmental Planning and Assessment Amendment Act 1997*.

Item [1] makes it clear that the submission period in relation to a development application made for consent to carry out designated development commences on the date that notice of the application is first published.

Item [2] omits an incorrect reference to requirements made by the regulations to the effect that development applications may not be determined by the granting of consent without the concurrence of a specified person. Such requirements are imposed either by an environmental planning instrument or by section 79B (3).

Items [3] and [5] clarify the language used in provisions.

Item [4] corrects a reference to a document in a note.

Items [6] and [10] insert omitted words.

Item [7] inserts omitted words (where an occupation certificate is issued for a building for which consent has been obtained by a complying development certificate there will be no separate construction certificate issued).

Item [8] removes an incorrect reference to the erection of a building from a provision that deals with a change of building use.

Item [9] corrects references to the body responsible for making an order.

Items [11] and [13] correct cross-references.

Item [12] corrects a typographical error.

Item [14] inserts a comma.

Item [15] corrects a typographical error so as to make the amended provision consistent with sections 121D (b) and 121M (2).

Item [16] omits a redundant reference to the making of an order from a provision that deals with the taking of certain action.

Item [17] corrects the numbering of a subsection.

2.13 Environmental Planning and Assessment Amendment Act 1997 No 152

[1] Schedule 4 Amendment of other Acts

Omit "Malden" from the heading to Schedule 4.31. Insert instead "Maldon".

[2] Schedules 4.38 and 4.39

Omit "Titles" wherever occurring in the headings to Schedules 4.38 and 4.39. Insert instead "Schemes".

Explanatory note

The proposed amendments correct references to Acts.

2.14 Environmental planning instruments and deemed environmental planning instruments

[1] Hornsby Shire Local Environmental Plan 1994 (Amendment No 8)

Omit “Part 2” wherever occurring in clause 6 (c) and (d).
Insert instead “Part 3”.

[2] Pittwater Local Environmental Plan 1993

Omit “Part 2” wherever occurring in clause 21F (3) (c) and (d).
Insert instead “Part 3”.

[3] Ryde Planning Scheme Ordinance

Omit “Part 2” wherever occurring in clause 56FA (4) (c) and (d).
Insert instead “Part 3”.

Explanatory note

The proposed amendments correct cross-references.

2.15 Evidence Act 1995 No 25

[1] Part 3.10

Insert after the headings to Divisions 1A and 1B of Part 3.10:

Note. The Commonwealth Act does not include this Division.

[2] Section 126K Ancillary orders

Omit “578B” from section 126K (2). Insert instead “578A”.

[3] Section 138

Omit the heading to the section. Insert instead:

Exclusion of improperly or illegally obtained evidence

Explanatory note

The *Evidence Act 1995* is in most respects uniform with the *Evidence Act 1995* of the Commonwealth but differences are identified by appropriate annotations to the text of the NSW Act. Item [1] of the proposed amendments includes such an annotation to the text of Divisions 1A (Professional confidential relationship privilege) and 1B (Sexual assault communications privilege) of Part 3.10.

Item [2] corrects a cross-reference.

Item [3] amends the heading of a section, to more accurately reflect its operation.

2.16 Family Provision Act 1982 No 160

Section 34 Certain documents exempt from stamp duty

Omit “stamp duty under the *Stamp Duties Act 1920*”.
Insert instead “duty under the *Duties Act 1997*”.

Commencement

The amendment to the *Family Provision Act 1982* commences, or is taken to have commenced, on 1 July 1998.

Explanatory note

The proposed amendment updates a reference to duty payable.

2.17 Fisheries Management Act 1994 No 38

[1] Section 146 Issue or refusal of permit

Omit “Division 6” from section 146 (1A).
Insert instead “Division 5”.

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

Omit “Division 6” from section 220 (1A).
Insert instead “Division 5”.

Commencement

The amendments to sections 146 and 220 of the *Fisheries Management Act 1994* commence on the date of commencement of Schedule 4.10 [1] and [2] to the *Environmental Planning and Assessment Amendment Act 1997*, respectively.

Explanatory note

The proposed amendments correct cross-references.

2.18 Fisheries Management Amendment Act 1997 No 153

[1] Schedule 1 Amendments relating to threatened species conservation

Omit “proclamation” from clause 17B (5) of Schedule 7 to the *Fisheries Management Act 1994* (as proposed to be inserted by Schedule 1 [18]).
Insert instead “order”.

[2] Schedule 3 Amendment relating to special fisheries trust funds

Omit “the” where secondly occurring in section 235 (2) (d) of the *Fisheries Management Act 1994* (as proposed to be inserted by Schedule 3).

[3] Schedule 3

Omit “, charter fishing boat licences” from section 236 (1) (a) of the *Fisheries Management Act 1994* (as proposed to be inserted by Schedule 3).

[4] Schedule 5 Miscellaneous amendments

Omit “**Schedule 6**” from the heading to Schedule 5 [43].
Insert instead “**Schedule 7**”.

Explanatory note

Item [1] of the proposed amendments corrects a reference to a statutory rule by which amendments can be made to Schedule 4, 5 or 6 to the *Fisheries Management Act 1994* (by virtue of proposed section 220D of that Act).

Item [2] omits a redundant word.

Item [3] omits a reference to the payment of fees for charter fishing boat licences into the Commercial Fishing Trust Fund. Such fees are to be paid into the Recreational Fishing (Estuarine and Marine) Trust Fund (by virtue of proposed section 235 (1) (c) of the *Fisheries Management Act 1994*).

Item [4] corrects a reference to a Schedule.

2.19 Heritage Act 1977 No 136

[1] Section 63 Determination of application

Omit “Division 6” from section 63 (1A).
Insert instead “Division 5”.

[2] Section 66 Application of Subdivision

Omit “Division 6”. Insert instead “Division 5”.

Commencement

The amendments to sections 63 and 66 of the *Heritage Act 1977* commence on the date of commencement of Schedule 4.13 [5] and [7] to the *Environmental Planning and Assessment Amendment Act 1997*.

Explanatory note

The proposed amendments correct cross-references.

2.20 Industrial Relations Act 1996 No 17

[1] Section 79 Application of industrial instruments

Omit “is is” from section 79 (4). Insert instead “it is”.

[2] Section 129 Records to be kept by employers concerning employees

Omit “industrial” from section 129 (1) (b). Insert instead “industrial”.

[3] Schedule 4 Savings, transitional and other provisions

Omit “uner” from clause 43 (2). Insert instead “under”.

Explanatory note

The proposed amendments correct typographical errors.

2.21 Land Tax Management Act 1956 No 26

Section 3 Definitions

Omit the definition of *New South Wales revenue law* from section 3 (1).

Explanatory note

The proposed amendment omits the definition of a term that is no longer used in the Act.

2.22 Liquor (Amendment) Act 1993 No 28

Schedule 7 Amendment of the Liquor Regulation 1983

Omit Schedule 7 (4).

Explanatory note

The proposed amendment omits an uncommenced amendment to a repealed regulation.

2.23 Local Government Amendment Act 1997 No 61

Schedule 2 Amendment of other Acts

Omit Schedule 2.1.

Explanatory note

The proposed amendment repeals uncommenced amendments to a repealed Act (the *Bush Fires Act 1949*).

2.24 National Electricity (New South Wales) Act 1997 No 20

[1] Section 8 Interpretation of expressions in National Electricity (NSW) Law and National Electricity (NSW) Regulations

Omit “*National Electricity Law*” from section 8 (2) (b).
Insert instead “*National Electricity (NSW) Law*”.

[2] Schedule 2 Savings, transitional and other provisions

Omit “, on the recommendation of the Minister made with the approval of the Ministerial Council,” from clause 3 (1).

Explanatory note

Item [1] of the proposed amendments corrects a citation.
Item [2] of the proposed amendments omits redundant matter (as there is no Ministerial Council exercising functions in relation to the Act).

2.25 National Parks and Wildlife Act 1974 No 80

Section 5 Definitions

Omit section 5 (5).

Explanatory note

The proposed amendment omits a duplicated subsection. (Section 5A of the *National Parks and Wildlife Act 1974* makes provision regarding notes in the text of the Act.)

2.26 Pay-roll Tax Act 1971 No 22

[1] Section 3 Definitions

Omit the definition of *New South Wales revenue law* from section 3 (1).

[2] Schedule 6 Savings, transitional and other provisions

Omit clause 4 (5).

Explanatory note

Item [1] of the proposed amendments omits the definition of a term that is no longer used in the Act.
Item [2] omits a reference to a repealed provision.

2.27 Pollution Control Act 1970 No 95

[1] Section 17BB Integrated development

Omit “Division 6”. Insert instead “Division 5”.

[2] Section 17K Pollution control approvals

Omit “Division 6” from section 17K (1A).
Insert instead “Division 5”.

Commencement

The amendments to the *Pollution Control Act 1970* commence on the date of commencement of Schedule 4.28 [1] and [2] to the *Environmental Planning and Assessment Amendment Act 1997*.

Explanatory note

The proposed amendments correct cross-references.

2.28 Public Authorities (Financial Arrangements) Act 1987 No 33

Schedule 1 Authorities

Omit “Metropolitan Waste Disposal Authority.”.

Insert instead in alphabetical order of authorities:

Waste Recycling and Processing Service of New South Wales.

Explanatory note

The proposed amendment updates a reference to a statutory authority.

2.29 Rivers and Foreshores Improvement Act 1948 No 20

Section 22C Grant etc of permit

Omit “Division 6” from section 22C (3A).

Insert instead “Division 5”.

Commencement

The amendment to the *Rivers and foreshores Improvement Act 1948* commences on the date of commencement of Schedule 4.33 to the *Environmental Planning and Assessment Amendment Act 1997*.

Explanatory note

The proposed amendment corrects a cross-reference.

2.30 Roads Act 1993 No 33

Section 139 Nature of consent

Omit “Division 6” from section 139 (1) (c1).

Insert instead “Division 5”.

Commencement

The amendment to the *Roads Act 1993* commences on the date of commencement of Schedule 4.34 [3] to the *Environmental Planning and Assessment Amendment Act 1997*.

Explanatory note

The proposed amendment corrects a cross-reference.

**2.31 Statute Law (Miscellaneous Provisions) Act (No 2) 1997
No 147**

[1] Schedule 3 Amendments replacing gender-specific language

Omit “23B (2),” from the heading to Schedule 3.53 [4].

[2] Schedule 3.53 [31]

Omit “and (3)” from the heading to the item.

Explanatory note

The proposed amendments omit redundant amendments replacing gender-specific language.

2.32 Strata Schemes (Freehold Development) Act 1973 No 68

[1] Section 5 Definitions

Omit the definition of *Board* from section 5 (1):

Board means the Strata Schemes Board constituted in accordance with section 220 of the *Strata Schemes Management Act 1996*.

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

Omit “a body corporate”. Insert instead “an owners corporation”.

Explanatory note

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

Item [2] updates a reference to a statutory body.

2.33 Strata Schemes (Leasehold Development) Act 1986 No 219

Section 4 Definitions

Omit the definition of *body corporate* from section 4 (1). Insert instead:

body corporate means an owners corporation constituted under section 11 of the *Strata Schemes Management Act 1996*.

Explanatory note

The proposed amendment updates a reference to a statutory body.

2.34 Superannuation Act 1916 No 28

Section 29 Breakdown pensions

Omit “contributor’s” from section 29 (4A) (b). Insert instead “person’s”.

Explanatory note

The proposed amendment corrects a reference to the person to whom a pension is paid.

2.35 Traffic Act 1909 No 5

[1] Section 7A Offences committed by disqualified drivers etc

Omit “his name” from section 7A (2). Insert instead “his or her name”.

[2] Section 18A Liability of motor vehicle owner for designated offences

Omit “the person” wherever occurring in section 18A (3) (except where thirdly and sixthly occurring).

Insert instead “the owner”.

Explanatory note

Item [1] of the proposed amendments replaces gender-specific language with gender-neutral language, so as to be consistent with other provisions of the *Traffic Act 1909*.

Item [2] amends references to the owner of certain vehicles, for consistency of expression.

2.36 Transport Administration Amendment (Railway Services Authority Corporatisation) Act 1998 No 8

[1] Schedule 1 Amendment of Transport Administration Act 1988

Omit “clause 66” and “clause 67” from Schedule 1 [19].
Insert instead “clause 70” and “clause 71” respectively.

[2] Schedule 1 [24], Schedule 7, Part 5

Omit “Insert after Part 3”. Insert instead “Insert after Part 4”.

[3] Schedule 1 [24]

Re-number Part 4 of Schedule 7 (as proposed to be inserted by Schedule 1 [24]) as Part 5 and clauses 63–72 under that Part as clauses 67–76.

[4] Schedule 1 [24]

Omit “clause 66 or 67”. Insert instead “clause 70 or 71”.

[5] Schedule 1 [24]

Omit “clause 67”. Insert instead “clause 71”.

[6] Schedule 1 [24]

Omit “clause 64, 66 or 67”. Insert instead “clause 68, 70 or 71”.

Explanatory note

The proposed amendments renumber provisions to be inserted by an uncommenced amendment and amend cross-references accordingly.

2.37 Trustee Companies Act 1964 No 6

[1] Section 19D General provisions in respect of fees

Omit “commital” from section 19D (13) (b). Insert instead “committal”.

[2] Section 19D (13) (b)

Omit “occurrence”. Insert instead “occurrence”.

Explanatory note

The proposed amendments correct typographical errors.

2.38 Waste Minimisation and Management Act 1995 No 102

Section 49 Determination of applications for licences

Omit “Division 6” from section 49 (1A).
Insert instead “Division 5”.

Commencement

The amendment to the *Waste Minimisation and Management Act 1995* commences on the date of commencement of Schedule 4.43 [1] to the *Environmental Planning and Assessment Amendment Act 1997*.

Explanatory note

The proposed amendment corrects a cross-reference.

Schedule 3 Amendments transferring provisions

(Section 3)

3.1 Liquor Act 1982 No 147

[1] Schedule 1 Savings and transitional provisions

Insert at the beginning of the list of Acts in clause 1 (1):

Liquor (Amusement Devices) Amendment Act 1986

[2] Schedule 1, Parts 1A–1D

Insert after clause 1:

Part 1A Provisions consequent on enactment of Liquor (Amusement Devices) Amendment Act 1986

1A Application of amended Act

- (1) This Act, as amended by the amending Act, applies:
 - (a) to financial and other arrangements entered into before 21 May 1986 (the date of assent to the amending Act) for the acquisition of an approved amusement device—as if the arrangements had been entered into on that day with the approval of the Board, and
 - (b) to a transaction of the kind referred to in section 20A (1B), as amended by the amending Act, entered into before 21 May 1986—as if the transaction had been entered into on that day with the approval of the Board, and
 - (c) to an application made before 21 May 1986—as if it had been made under this Act, as amended by the amending Act, on that day.
- (2) The Licensing Court may, on application by the holder of an amusement device dealer's licence in force immediately before 21 May 1986, impose a condition on the licence prohibiting the licensee from using specified parts in the manufacture of an approved amusement device unless the parts are manufactured by the licensee.
- (3) A condition imposed under subclause (2):
 - (a) may specify such parts of an approved amusement device as the Licensing Court thinks fit, whether or not they are, or include, the parts to which the application relates, and
 - (b) is taken to have been imposed under section 20 (as amended by the amending Act) as applied by section 19A (5) (as amended by the amending Act).
- (4) Where:
 - (a) immediately before 21 May 1986, an amusement device dealer's licence was not subject to a condition of the kind referred to in subclause (3), and
 - (b) the licensee did not, before 21 August 1986, make an application under subclause (2),the licence is suspended until such an application is made.

- (5) "This clause is taken to have commenced on 21 May 1986 (the date of assent to the amending Act).
- (6) Subclauses (1)–(4) re-enact (with minor modifications) clauses 2–4 of Schedule 2 to the amending Act. Subclauses (1)–(4) are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.
- (7) In this clause:
amending Act means the *Liquor (Amusement Devices) Amendment Act 1986*.

Part 1B Provisions consequent on enactment of Liquor (Further Amendment) Act 1987

1B Conditions imposed by the court become conditions imposed by the Board

- (1) Any condition imposed on a licence by the court, being a condition:
 - (a) that was in force immediately before 1 January 1988 (the date of commencement of the amending Act). and
 - (b) that would, were it to be imposed on the licence on or after 1 January 1988, be imposed by the Board,is taken, for the purposes of section 20 (5) (as amended by the amending Act), to have been imposed by the Board.
- (2) This clause is taken to have commenced on 1 January 1988 (the date of commencement of the amending Act).
- (3) Subclause (1) re-enacts (with minor modifications) clause 2 of Schedule 3 to the amending Act. Subclause (1) is a transferred provision to which section 30A of the *Interpretation Act 1987* applies.
- (4) In this clause:
amending Act means the *Liquor (Further Amendment) Act 1987*.

Part 1C Provisions consequent on enactment of Liquor (Amusement Devices) Amendment Act 1988

1C Transitional provision

- (1) A person who, but for this clause, would be required by this Act, as amended by the amending Act, to hold a licence in relation to subsidiary equipment is not required to hold such a licence until:
 - (a) a day notified by the Liquor Administration Board in the Gazette for the purposes of section 4 of the amending Act or this clause, or
 - (b) if an application for the licence was lodged before that day—until notified of the result of the application.
- (2) This clause is taken to have commenced on 19 December 1988 (the date of assent to the amending Act).

(3) Subclause (1) re-enacts (with minor modifications) section 4 of the amending Act. Subclause (1) is a transferred provision to which section 30A of the *Interpretation Act 1987* applies.

(4) In this clause:

amending Act means the *Liquor (Amusement Devices) Amendment Act 1988*.

Part 1D Provisions consequent on enactment of Liquor (Amendment) Act 1990

1D Transitional provisions

(1) If, immediately before 1 August 1990 (the date of commencement of Schedule 2 to the amending Act), a police officer:

- (a) held office under this Act as superintendent of licences, as Metropolitan Licensing Inspector or as a licensing inspector, and
- (b) had commenced to exercise a function conferred or imposed by this Act on a holder of the office.

the police officer may, after that day, complete the exercise of the function as if it had been delegated to the officer under section 6B, as amended by the amending Act.

(2) If anything done by the Principal Registrar of the Licensing Court:

- (a) still had effect immediately before the commencement of a provision of the amending Act, and
- (b) could be done by the Director of Liquor and Gaming after that commencement,

it has effect on and after that commencement as if it had been done by the Director of Liquor and Gaming.

(3) If a condition of a licence in force under this Act immediately before 1 August 1990 includes a reference to the superintendent of licences, to the Metropolitan Licensing Inspector or to a licensing inspector, the reference is to be read on and after that day as a reference to a police officer who is a delegate of the Commissioner of Police for the purposes of the reference.

(4) If, immediately before the substitution of section 58 by the amending Act (on 1 September 1990), a conditional grant of an application was in force as provided by that section, the conditional grant continues in force for the period prescribed by subclause (5) unless it earlier ceases to have effect by the operation of subclause (6).

(5) The period prescribed by this subclause is:

- (a) if the decision to grant the conditional application was recorded between 1 September 1989 and 31 August 1990—the period that expires 12 months after the recording of the decision, or
- (b) in any other case—the unexpired part of the period last allowed by the Licensing Court before that repeal.

together with any additional periods that the Licensing Court from time to time allows on application made before the expiration of the period sought to be extended.

- (6) Section 59 continues after its repeal by the amending Act (on 1 September 1990) to apply, in relation to an application conditionally granted before the repeal:
- (a) as if it had not been repealed, and
 - (b) as if the reference in section 59 (1) to the Commissioner of Police where secondly occurring was a reference to the registrar.
- (7) If, immediately before the repeal of section 95 by the amending Act (on 1 September 1990):
- (a) an application for an authority or order under that section in relation to licensed premises that had been made before that repeal had not been disposed of, or
 - (b) an order in force under that section had not been complied with.
- that section continues to have effect in relation to the licensed premises as if it had not been repealed.
- (8) In relation to the operation of section 95 as continued by subclause (7), section 99 is to be taken not to have been amended by the amending Act.
- (9) Section 6B, as amended by the amending Act, applies in relation to a function that may be exercised for the purposes of Schedule 5 to the amending Act or this clause in the same way as it applies in relation to a function conferred or imposed by this Act, as amended by the amending Act.
- (10) This clause is taken to have commenced on 14 June 1990 (the date of assent to the amending Act).
- (11) Subclauses (1)–(9) re-enact (with minor modifications) clauses 2–7 of Schedule 5 to the amending Act. Subclauses (1)–(9) are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.
- (12) In this clause:

amending Act means the *Liquor (Amendment) Act 1990*.

Explanatory note

The proposed amendments insert in Schedule 1 (Savings and transitional provisions) to the *Liquor Act 1982* the substance of transitional provisions (of possible on-going effect) contained in the following Acts:

- *Liquor (Amusement Devices) Amendment Act 1986*
- *Liquor (Further Amendment) Act 1987*
- *Liquor (Amusement Devices) Amendment Act 1988*
- *Liquor (Amendment) Act 1990*.

The enactment of the amendments enables the repeal, by Schedule 4 to this Act, of those Acts. In accordance with section 30A of the *Interpretation Act 1987*, the transfer of the provisions does not affect the operation (if any) or meaning of the provisions.

3.2 Lotteries and Art Unions Act 1901 No 34

Schedule 2 Savings and transitional provisions

Insert after clause 1:

Part 1A Provision consequent on enactment of Lotteries and Art Unions (Amendment) Act 1984

1A Transitional provision

- (1) Section 6, as amended by the amending Act, does not apply to or in respect of any voluntary association formed before 1 August 1984.
- (2) Sections 6, 6A, 7, 8 and 9 (as in force before the commencement of the amending Act) continue to apply to and in respect of such an association despite the repeal of those sections by the amending Act.
- (3) This clause is taken to have commenced on 13 June 1984 (the date of assent to the amending Act).
- (4) Subclauses (1) and (2) re-enact (with minor modifications) section 6 of the amending Act. Subclauses (1) and (2) are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.
- (5) In this clause:

amending Act means the *Lotteries and Art Unions (Amendment) Act 1984*.

Explanatory note

The proposed amendment inserts in Schedule 2 (Savings and transitional provisions) to the *Lotteries and Art Unions Act 1901* the substance of a transitional provision (of possible on-going effect) contained in the *Lotteries and Art Unions (Amendment) Act 1984*. The enactment of the amendment enables the repeal, by Schedule 4 to this Act, of that Act. In accordance with section 30A of the *Interpretation Act 1987*, the transfer of the provision does not affect the operation (if any) or meaning of the provision.

3.3 Registered Clubs Act 1976 No 31

[1] Schedule 2 Transitional provisions

Insert at the beginning of the list of Acts in clause 1A (1):

Registered Clubs (Liquor) Amendment Act 1982

Registered Clubs (Amendment) Act 1986

[2] Schedule 2, Parts 1B-1E

Insert after clause 17:

Part 1B Provisions relating to enactment of Registered Clubs (Liquor) Amendment Act 1982

17A Transitional provisions

- (1) A condition to which, pursuant to section 9A (as in force immediately before its amendment by the amending Act), the certificate of registration of a club was subject immediately before 1 July 1983 is taken to be a condition imposed on that day under section 9A, as amended by the amending Act.

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- (2) A fee paid by a registered club before 1 July 1983 for renewal of its certificate of registration on and from that day is taken to be the fee paid by the club under section 15, as amended by the amending Act, in respect of the licensing period that commenced on that day.
 - (3) The provisions of this Act, as amended by the amending Act, that relate to the reassessment of a registration fee apply to and in respect of a fee paid by a registered club before 1 July 1983 for renewal of its certificate of registration as if the fee so paid had been assessed as a registration fee under this Act, as amended by the amending Act.
 - (4) Section 16, as amended by the amending Act, applies to and in respect of a certificate of registration of a club in force immediately before 1 July 1983 in the same way as it applies to and in respect of such a certificate granted on or after that day unless renewal of the certificate of registration was refused before 1 July 1983 or is, pursuant to an application made before that day, refused on or after that day.
 - (5) Where a notice given before 1 July 1983 would, if the amending Act had not been enacted, have been duly given for the purposes of this Act, it is taken to have been duly given for the purposes of this Act, as amended by the amending Act.
 - (6) An objection to an application taken under this Act before 1 July 1983 and not finally heard and determined before that day is to be heard and determined as if the amending Act had not been enacted.
 - (7) This clause is taken to have commenced on 1 July 1983 (the date of commencement of the amending Act).
 - (8) Subclauses (1)–(6) re-enact (with minor modifications) clauses 2–7 of Schedule 10 to the amending Act. Subclauses (1)–(6) are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.
 - (9) In this clause:

amending Act means the *Registered Clubs (Liquor) Amendment Act 1982*.

Part 1C Provisions relating to enactment of Registered Clubs (Amendment) Act 1986

17B Transitional provisions

- (1) Where an application for a licence is made, but not determined, before the appointed day, the applicant is, between the commencement of that day and:
 - (a) where the application is refused—the time the applicant is notified of the refusal by posting advice of the refusal to the address of the applicant last known to the Board, or
 - (b) where the application is granted—the expiration of 14 days after the applicant is, in the same way, notified of the granting of the licence.

taken to be the holder of a licence of the kind applied for.

Schedule 3 Amendments transferring provisions

- (2) If the Licensing Court, upon cause shown, so directs, subclause (1) ceases to apply to a specified applicant to whom or to which, but for this clause and the direction, it would apply.
- (3) Subject to any directions given by the Board to a particular licensee, or to licensees of a particular class of licensees, a reference in this Act to an established poker machine includes a reference to a poker machine (not being an approved poker machine):
 - (a) that, immediately before the appointed day, was in the possession of a person who, on the appointed day is, or is taken to be, a licensee, or
 - (b) that is manufactured on or after the appointed day by a person who, at the time of the manufacture is, or is taken to be, the holder of a dealer's licence. or
 - (c) that, on or after the appointed day, is the subject of a contract:
 - (i) entered into by any person before the appointed day, or
 - (ii) entered into on or after the appointed day by a person who is, or is taken to be, a licensee.
- (4) The Board may, by notification in the Gazette, terminate the operation of subclause (3).
- (5) This clause is taken to have commenced on 21 May 1986 (the date of assent to the amending Act).
- (6) Subclauses (1)–(4) re-enact (with minor modifications) clauses 2–4 of Schedule 3 to the amending Act. Subclauses (1)–(4) are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.
- (7) In this clause:

amending Act means the *Registered Clubs (Amendment) Act 1986*.

appointed day means the day appointed under section 116, as inserted by the amending Act.

Part 1D Provisions relating to enactment of Registered Clubs (Amendment) Act 1988

17C Transitional provision

- (1) A person who, but for this clause, would be required by this Act, as amended by the amending Act, to hold a licence in relation to subsidiary equipment is not required to hold such a licence until:
 - (a) a day notified by the Liquor Administration Board in the Gazette for the purposes of section 4 of the amending Act or this clause, or
 - (b) if an application for the licence was lodged before that day, until notified of the result of the application.

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- (2) This clause is taken to have commenced on 19 December 1988 (the date of assent to the amending Act).
 - (3) Subclause (1) re-enacts (with minor modifications) section 4 of the amending Act. Subclause (1) is a transferred provision to which section 30A of the *Interpretation Act 1987* applies.
 - (4) In this clause:
amending Act means the *Registered Clubs (Amendment) Act 1988*.

Part 1E Provisions relating to enactment of Registered Clubs (Amendment) Act 1990

17D Transitional provisions

- (1) If, immediately before 1 August 1990 (the date of commencement of Schedule 2 to the amending Act), a police officer:
 - (a) held office under the *Liquor Act 1982* as superintendent of licences or as a licensing inspector, and
 - (b) had commenced to exercise a function conferred or imposed by this Act on a holder of the office.the police officer may, after that commencement, complete the exercise of the function as if it had been delegated to the officer under section 6A, as amended by the amending Act.
- (2) If anything done by the Principal Registrar of the Licensing Court:
 - (a) still has effect immediately before the commencement of a provision of the amending Act, and
 - (b) could be done by the Director of Liquor and Gaming after that commencement,it has effect on and after that commencement as if it had been done by the Director of Liquor and Gaming.
- (3) If a condition to which a certificate of registration under this Act is subject immediately before 1 August 1990 includes a reference to the superintendent of licences or to a licensing inspector, the reference is to be read on and after that day as a reference to a police officer who is a delegate of the Commissioner of Police for the purposes of the reference.
- (4) If, immediately before the repeal of section 20A by the amending Act on 1 September 1990:
 - (a) an application that had been made for an order under that section in relation to club premises had not been disposed of, or
 - (b) the Liquor Administration Board was considering whether or not to make such an order of its own motion, or
 - (c) an order in force under that section had not been complied with,that section continues to have effect in relation to the club premises as if it had not been repealed.

- (5) Section 6A, as amended by the amending Act, applies in relation to a function that may be exercised for the purposes of Schedule 6 to the amending Act or this clause in the same way as it applies in relation to a function conferred or imposed by this Act, as amended by the amending Act.
- (6) This clause is taken to have commenced on 14 June 1990 (the date of assent to the amending Act).
- (7) Subclauses (1)–(5) re-enact (with minor modifications) Schedule 6 to the amending Act. Subclauses (1)–(5) are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.
- (8) In this clause:

amending Act means the *Registered Clubs (Amendment) Act 1990*.

Explanatory note

The proposed amendments insert in Schedule 2 (Transitional provisions) to the *Registered Clubs Act 1976* the substance of transitional provisions (of possible on-going effect) contained in the following Acts:

- *Registered Clubs (Liquor) Amendment Act 1982*
- *Registered Clubs (Amendment) Act 1986*
- *Registered Clubs (Amendment) Act 1988*
- *Registered Clubs (Amendment) Act 1990*.

The enactment of the amendments enables the repeal, by Schedule 4 to this Act, of those Acts. In accordance with section 30A of the *Interpretation Act 1987*, the transfer of the provisions does not affect the operation (if any) or meaning of the provisions.

Schedule 4 Repeals

(Section 4)

Repeal of Acts

University and University Colleges (Amendment) Act 1902 No 92*
Public Loans (Amendment) Act 1927 No 11*
Sydney Mechanics School of Arts (Amendment) Act 1940 No 36*
Local Government (Amendment) Act 1945 No 19*
Justices (Amendment) Act 1947 No 3*
Local Government (Amendment) Act 1953 No 16*
Companies (Amendment) Act 1966 No 21*
Boy Scouts Association—New South Wales Branch Incorporation (Amendment) Act 1968 No 45*
Liquor (Referendum) Act 1969 No 47****
Companies (Amendment) Act 1974 No 36*
Companies (Further Amendment) Act 1974 No 45*
Mining (Amendment) Act 1974 No 79*
Sydney Opera House (Amendment) Act 1975 No 89*
Companies (Amendment) Act 1975 (1976 No 1)*
Theatres and Public Halls (Amendment) Act 1977 No 42*
The Standard Insurance Company Limited and Certain Other Insurance Companies (Amendment) Act 1977 No 67*
Securities Industry (Amendment) Act 1978 No 40**
Married Persons (Property and Torts) Amendment Act 1978 No 53**
Constitution (Amendment) Act 1979 No 38**
Securities Industry (Corporate Affairs Commission) Amendment Act 1979 No 108**
Road Obstructions (Special Provisions) Revival and Amendment Act 1979 No 144**
Road Maintenance (Contribution) Repeal Act 1979 No 145**
Local Government (Accounts) Amendment Act 1982 No 127**
Registered Clubs (Liquor) Amendment Act 1982 No 149***
Miscellaneous Acts (Local Courts) Amendment Act 1982 No 168**
Country Industries (Pay-roll Tax Rebates) Amendment Act 1983 No 110**
Local Government (Powers of Investment) Amendment Act 1983 No 124**
Mining (Amendment) Act 1983 No 182**
Lotteries and Art Unions (Amendment) Act 1984 No 40***
Liquor (Amusement Devices) Amendment Act 1984 No 57**
Strata Titles (Amendment) Act 1984 No 105**
Senators' Elections (Amendment) Act 1984 No 112**
Local Government (Amendment) Act 1984 No 125**
Liquor (Amendment) Act 1984 No 139**
Indecent Articles and Classified Publications (Amendment) Act 1984 No 156**
Hawkers (Amendment) Act 1985 No 11**
Royal Commissions (Amendment) Act 1985 No 73**
Valuation of Land (Amendment) Act 1985 No 145**
Local Government (Building and Rates) Amendment Act 1985 No 168**

Statute Law (Miscellaneous Provisions) Act 1998 No 5 4

Schedule 4 Repeals

Local Government (Movable Dwellings) Amendment Act 1986 No 21**
Constitution (Amendment) Act 1986 No 57**
National Companies and Securities Commission (State Provisions) Amendment Act 1986 No 67**
Registered Clubs (Amendment) Act 1986 No 78***
Liquor (Amusement Devices) Amendment Act 1986 No 81***
Building and Construction Industry Long Service Payments (Amendment) Act 1986 No 149**
Local Government (General Revision) Amendment Act 1986 No 159**
Industrial Arbitration (Employment Protection) Amendment Act 1986 No 185**
Water (Amendment) Act 1986 No 196**
Local Government (Registered Clubs) Amendment Act 1987 No 5**
Local Government (Elections) Amendment Act 1987 No 23**
Landlord and Tenant (Amendment) Act 1987 No 27**
Miscellaneous Acts (Legal Profession) Amendment Act 1987 No 111**
Local Government (Grants Commission) Amendment Act 1987 No 169**
Liquor (Further Amendment) Act 1987 No 176***
Registered Clubs (Amendment) Act 1988 No 93***
Liquor (Amusement Devices) Amendment Act 1988 No 94***
Miscellaneous Acts (Theatres and Public Halls) Amendment Act 1989 No 11**
Local Government (Borrowing) Amendment Act 1989 No 20**
Motor Accidents (Amendment) Act 1989 No 47**
Racing Appeals Tribunal (Amendment) Act 1989 No 59**
Residential Tenancies (Amendment) Act 1989 No 73**
Cultural Institutions (Miscellaneous Amendments) Act 1989 No 110**
Universities Legislation (Investment) Amendment Act 1989 No 179**
Strata Titles (Community Land) Amendment Act 1989 No 203**
Liquor (Amendment) Act 1990 No 28***
Registered Clubs (Amendment) Act 1990 No 29***
Oaths (Children) Amendment Act 1990 No 93**
Constitution and Parliamentary Electorates and Elections (Amendment) Act 1990 No 111**
Constitution (Referendum) Act 1991 No 1****
Constitution (Legislative Council) Amendment Act 1991 No 20**
Statutory Appointments Legislation (Parliamentary Veto) Amendment Act 1992 No 43**
Meat Industry (Game Meat) Amendment Act 1992 No 85**
Legal Profession (Practising Certificates) Amendment Act 1992 No 93**
Electricity Commission (Amendment) Act 1994 No 22**
Mental Health (Amendment) Act 1994 No 25**
Gaming and Betting (Telephone Betting) Amendment Act 1994 No 39**
Industrial Relations (Contracts of Carriage) Amendment Act 1994 No 40**
Building Services Corporation (Amendment) Act 1994 No 54**
Courts Legislation (Mediation and Evaluation) Amendment Act 1994 No 57**
Crimes (Female Genital Mutilation) Amendment Act 1994 No 58**
Public Finance and Audit (Amendment) Act 1994 No 59**
Parliamentary Appropriation Act 1994 No 67****
Motor Vehicles Taxation (Amendment) Act 1994 No 69**
Criminal Procedure (Sentence Indication Hearings) Amendment Act 1994 No 80**

Crimes (Threats and Stalking) Amendment Act 1994 No 83**
 Independent Commission Against Corruption (Amendment) Act 1994 No 86**
 Local Government (Boarding and Lodging Houses) Amendment Act 1994 No 87**
 Constitution (Fixed Term Parliaments) Amendment Act 1993 (1995 No 1)**
 Constitution (Entrenchment) Amendment Act 1992 (1995 No 2)**
 Criminal Legislation Amendment Act 1995 No 23**
 State Owned Corporations Amendment Act 1995 No 32**
 Casino Control Amendment Act 1995 No 56**
 Property Legislation Amendment (Easements) Act 1995 No 71**
 Children (Care and Protection) Amendment Act 1995 No 78**
 Environmental Planning and Assessment Amendment (Contaminated Land) Act 1996 No 15**
 Periodic Detention of Prisoners Amendment Act 1996 No 19**
 Environmental Planning and Assessment Amendment Act 1996 No 44**
 Environmental Planning and Assessment Amendment (Public Authorities) Act 1996 No 45**
 Appropriation Act 1996 No 48****
 Appropriation (Parliament) Act 1996 No 49****
 Appropriation (Special Offices) Act 1996 No 50****
 Appropriation (1995-96 Debt Retirement) Act 1996 No 51****
 Banana Industry Amendment Act 1996 No 59**
 Nurses Amendment Act 1996 No 61**
 Liquor Amendment (Nightclub Licences and Trading Hours) Act 1996 No 84**
 Real Property Amendment Act 1996 No 87**
 Ethnic Affairs Commission Amendment Act 1996 No 88**
 Crimes Amendment (Apprehended Violence Orders) Act 1996 No 93**
 Children (Care and Protection) Amendment (Disallowed Regulation) Act 1996 No 110**
 Children (Care and Protection) Amendment (Disclosure of Information) Act 1996 No 116**
 Criminal Procedure Amendment (Sentences Adjustment) Act 1996 No 117**
 Justices Amendment (Committals) Act 1996 No 123**
 Pollution Control Amendment Act 1996 No 132**
 Anti-Discrimination Amendment Act 1997 No 9**
 Unclaimed Money Amendment Act 1997 No 30**
 Retail Leases Amendment Act 1997 No 52**
 Drug Trafficking (Civil Proceedings) Amendment Act 1997 No 68**

Notes

- * indicates repeal of an amending Act enacted at least 20 years ago (the provisions of which have not all been included in a reprint) but which 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 which contains no provision of substantive effect that needs to be retained, or which amends a repealed Act
- *** indicates repeal of an Act whose savings, transitional or other provisions of on-going effect are transferred to or re-enacted in, the Principal Act (by Schedule 3 to this Act)
- **** indicates repeal of an Act that is no longer of practical utility

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 5 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 or instrument 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 of any other instrument, or
- (b) repeals and re-enacts (with or without modification) a provision of an Act or of any other instrument,

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 otherwise 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 Validation of certain matters

Anything that was done or was not done pursuant to a provision of an environmental planning instrument or deemed environmental planning instrument amended by this Act before the date of assent to this Act, being something that would have been lawfully done or not done only if a reference to Part 2 of *State Environmental Planning Policy No 25—Residential Allotment Sizes and Dual Occupancy Subdivision* in that provision had been a reference to Part 3 of that Policy, is validated.

Explanatory note

This clause validates action taken or not taken in reliance on a cross-reference being wrong.

5 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.

Notes

Index of Acts and instruments amended by Schedules 1, 2 and 3

Associations Incorporation Act 1984 No 143—Sch 1
Bail Act 1978 No 161—Sch 2
Banana Industry Act 1987 No 66—Sch 2
Broken Hill Trades Hall Site Act of 1898 No 31—Sch 1
Broken Hill Trades Hall Site Extension Act 1915 No 42—Sch 1
Building and Construction Industry Long Service Payments Amendment Act 1998 No 33—Sch 2
Community Land Management Act 1989 No 202—Sch 1
Contaminated Land Management Act 1997 No 140—Sch 1
Conveyancing Act 1919 No 6—Sch 1
Co-operative Housing and Starr-Bowkett Societies Act 1998 No 11—Sch 2
Correctional Centres Act 1952 No 9—Sch 2
Credit (Finance Brokers) Act 1984 No 96—Sch 1
Crimes Act 1900 No 40—Sch 2
Criminal Appeal Act 1912 No 16—Sch 2
Darling Harbour Authority Amendment and Repeal Act 1998 No 29—Sch 2
District Court Act 1973 No 9—Sch 2
Duties Act 1997 No 123—Sch 2
Education Act 1990 No 8—Sch 1
Electricity Transmission Authority Act 1994 No 64—Sch 2
Environmental Planning and Assessment Act 1979 No 203—Schs 1 and 2
Environmental Planning and Assessment Amendment Act 1997 No 152—Sch 2
Evidence Act 1995 No 25—Sch 2
Family Provision Act 1982 No 160—Sch 2
Fisheries Management Act 1994 No 38—Sch 2
Fisheries Management Amendment Act 1997 No 153—Sch 2
Health Services Act 1997 No 154—Sch 1
Heritage Act 1977 No 136—Sch 2
Hornsby Shire Local Environmental Plan 1994 (Amendment No 8)—Sch 2
Home Building Act 1989 No 147—Sch 1
Industrial Relations Act 1996 No 17—Sch 2
Land Tax Management Act 1956 No 26—Sch 2
Liquor Act 1982 No 147—Sch 3
Liquor (Amendment) Act 1993 No 28—Sch 2
Local Government Amendment Act 1997 No 61—Sch 2
Lotteries and An Unions Act 1901 No 34—Sch 3
Motor Vehicles Taxation Act 1988 No 111—Sch 1
National Electricity (New South Wales) Act 1997 No 20—Sch 2
National Parks and Wildlife Act 1974 No 80—Sch 2
Ombudsman Act 1974 No 68—Sch 1
Pay-roll Tax Act 1971 No 22—Sch 2
Pittwater Local Environmental Plan 1993—Sch 2
Pollution Control Act 1970 No 95—Sch 2
Protection of the Environment Operations Act 1997 No 156—Sch 1

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Public Authorities (Financial Arrangements) Act 1987 No 33—Sch 2
Registered Clubs Act 1976 No 31—Sch 3
Rivers and Foreshores Improvement Act 1948 No 20—Sch 2
Road Transport (Heavy Vehicles Registration Charges) Act 1995 No 72—Sch 1
Roads Act 1993 No 33—Sch 2
Ryde Planning Scheme Ordinance—Sch 2
Security Industry Act 1997 No 157—Sch 1
State Sports Centre Trust Act 1984 No 68—Sch 1
Statute Law (Miscellaneous Provisions) Act (No 2) 1997 No 147—Sch 2
Strata Schemes (Freehold Development) Act 1973 No 68—Sch 2
Strata Schemes (Leasehold Development) Act 1986 No 219—Sch 2
Strata Schemes Management Act 1996 No 138—Sch 1
Subordinate Legislation Act 1989 No 146—Sch 1
Superannuation Act 1916 No 28—Sch 2
Technical and Further Education Commission Act 1990 No 118—Sch 1
Traffic Act 1909 No 5—Sch 2
Transport Administration Act 1988 No 109—Sch 1
Transport Administration Amendment (Railway Services Authority
Corporatisation) Act 1998 No 8—Sch 2
Trustee Companies Act 1964 No 6—Sch 2
Waste Minimisation and Management Act 1995 No 102—Sch 2

Index of Acts repealed by Schedule 4

Anti-Discrimination Amendment Act 1997 No 9
Appropriation Act 1996 No 48
Appropriation (Parliament) Act 1996 No 49
Appropriation (Special Offices) Act 1996 No 50
Appropriation (1995–96 Debt Retirement) Act 1996 No 51
Banana Industry Amendment Act 1996 No 59
Boy Scouts Association—NewSouth Wales Branch Incorporation (Amendment)
Act 1968 No 45
Building and Construction Industry Long Service Payments (Amendment) Act
1986 No 149
Building Services Corporation (Amendment) Act 1994 No 54
Casino Control Amendment Act 1995 No 56
Children (Care and Protection) Amendment Act 1995 No 78
Children (Care and Protection) Amendment (Disallowed Regulation) Act 1996
No 110
Children (Care and Protection) Amendment (Disclosure of Information) Act 1996
No 116
Companies (Amendment) Act 1966 No 21
Companies (Amendment) Act 1974 No 36
Companies (Amendment) Act 1975 (1976 No 1)
Companies (Further Amendment) Act 1974 No 45
Constitution (Amendment) Act 1979 No 38
Constitution (Amendment) Act 1986 No 57
Constitution and Parliamentary Electorates and Elections (Amendment) Act 1990
No 111

Constitution (Entrenchment) Amendment Act 1992 (1995 No 2)
Constitution (Fixed Term Parliaments) Amendment Act 1993 (1995 No 1)
Constitution (Legislative Council) Amendment Act 1991 No 20
Constitution (Referendum) Act 1991 No 1
Country Industries (Pay-roll Tax Rebates) Amendment Act 1983 No 110
Courts Legislation (Mediation and Evaluation) Amendment Act 1994 No 57
Crimes Amendment (Apprehended Violence Orders) Act 1996 No 93
Crimes (Female Genital Mutilation) Amendment Act 1994 No 58
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