



New South Wales

Statute Law (Miscellaneous Provisions) Act (No 2) 2000 No 93

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New South Wales

Statute Law (Miscellaneous Provisions) Act (No 2) 2000 No 93

Act No 93, 2000

An Act to amend certain Acts and instruments in various respects and for the purpose of effecting law revision, to repeal certain other Acts and a regulation and to make certain savings. [Assented to 8 December 2000]

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

This Act is the *Statute Law (Miscellaneous Provisions) Act (No 2) 2000*.

2 Commencement

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

3 Amendments

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

4 Repeals

- (1) Each Act specified in Schedule 3 is repealed.
- (2) The *Electricity Supply (Licence Compliance Advisory Board) Regulation 1996* is repealed.

5 General savings, transitional and other provisions

Schedule 4 has effect.

6 Explanatory notes

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

Schedule 1 Minor amendments

(Section 3)

1.1 Access to Neighbouring Land Act 2000 No 2

- [1] **Section 5 Act does not authorise work or activity regulated by or under other Act and does not authorise access prohibited by or under other Act**

Omit “may be obtained or granted under another Act or” from section 5 (2).

- [2] **Section 7 Persons who may apply for a neighbouring land access order**

Insert after section 7 (3):

- (4) A person may apply for a neighbouring land access order even if access to the land concerned, for the purposes for which access is required, may be obtained by way of an easement imposed by an order under section 88K of the *Conveyancing Act 1919*. However, a person may not apply for a neighbouring land access order if access to the land concerned, for the purposes for which access is required, may be obtained or granted under any other provision of an Act.

- [3] **Section 8 Persons who may apply for a utility service access order**

Omit section 8 (2). Insert instead:

- (2) A person may apply for a utility service access order even if:
- (a) there is an easement or other right of access to the land concerned to carry out the work, or
 - (b) access to the land concerned, for the purposes for which access is required, may be obtained by way of an easement imposed by an order under section 88K of the *Conveyancing Act 1919*.

However, a person may not apply for a utility access order if access to the land concerned, for the purposes for which access is required, may be obtained or granted under any other provision of an Act.

Explanatory note

The *Access to Neighbouring Land Act 2000* enables a Local Court to make orders permitting access to land by persons not otherwise entitled to that access for the purpose of carrying out work on land or carrying out work on utility services on land.

The proposed amendments make it clear that a person may apply for an access order despite the fact that access to the land may be granted by easement imposed under section 88K of the *Conveyancing Act 1919*.

1.2 Child Protection (Offenders Registration) Act 2000 No 42

Section 10 Registrable person to notify Commissioner of Police of relevant personal information

Omit “found guilty by a court of the registrable offence” from section 10 (1) (d).

Insert instead “sentenced in respect of the registrable offence”.

Explanatory note

The proposed amendment to the *Child Protection (Offenders Registration) Act 2000* clarifies the operation of an obligation on certain offenders (described as “registrable persons”) to notify the Commissioner of Police of certain personal information. At present, section 10 requires those offenders to notify the Commissioner within 28 days after being found guilty of certain offences. However, it is not until after sentencing that offenders know whether they are “registrable persons” and therefore subject to the obligation. (The amendment brings section 10 into line with section 14 of the Act, which makes it clear that a registrable person’s reporting obligations in respect of a registrable offence begin when the registrable person is sentenced for the offence or when the registrable person ceases to be in government custody in relation to the offence.)

1.3 Children (Detention Centres) Act 1987 No 57

Section 37D Disclosure of information obtained in administration or execution of Act

Insert “or with any request made by the Ombudsman” after “*Ombudsman Act 1974*” in section 37D (d).

Explanatory note

Section 37D of the *Children (Detention Centres) Act 1987* makes it an offence to disclose any information obtained in connection with the administration or execution of the Act unless the disclosure was made with lawful excuse, including any disclosure made in accordance with a requirement imposed under the *Ombudsman Act 1974*.

The proposed amendment also makes it a lawful excuse to disclose information in accordance with any request made by the Ombudsman.

1.4 Community Land Management Act 1989 No 202

[1] Section 3 Definitions

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

[2] Section 3 (1)

Insert in alphabetical order:

Deputy Registrar means a Deputy Registrar of the Tribunal.

Tribunal means the Residential Tribunal established by the *Residential Tribunal Act 1998*.

[3] Section 3 (1), definition of “Registrar”

Omit the definition. Insert instead:

Registrar means the Registrar of the Tribunal.

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

Omit “Community Schemes Board” from the note to the section.

Insert instead “Residential Tribunal”.

[5] Whole Act (except sections 3 (1), 13A, 72 (1) (a), 76 (1) and 102, Divisions 3 and 4 of Part 5A and Schedule 7)

Omit “Board” wherever occurring. Insert instead “Tribunal”.

[6] Sections 72 (1) (a) and 76 (1)

Omit “a Board” wherever occurring. Insert instead “the Tribunal”.

[7] Section 76 Applications referred to Tribunal by Adjudicator

Omit “the Board” from section 76 (1). Insert instead “the Tribunal”.

[8] Section 91A

Insert before section 92:

91A Proceedings before Tribunal

- (1) The provisions of the *Residential Tribunal Act 1998*, and of the regulations made under that Act, apply in relation to proceedings before the Tribunal under this Act, subject to any modifications prescribed by the regulations.
- (2) In this section, a reference to proceedings includes a reference to the whole of proceedings, from the time that an application is made to the Tribunal until the application has been finally determined.

[9] Section 97B Civil penalties for contravention of orders under this Part

Insert after section 97B (2) (b):

- , or
- (c) in the case of an order that gives effect to any agreement or arrangement arising out of a mediation session—either party to the mediation.

[10] Section 102 Protection of Commissioner and Adjudicators

Omit “, an Adjudicator and the member constituting the Board”.
Insert instead “and an Adjudicator”.

[11] Section 108 Appeal to Supreme Court on a question of law

Omit “on a question of law” from the heading to the section.

[12] Part 5A, Division 3 (sections 109K–109M)

Omit the Division.

[13] Part 5A, Division 4

Omit “and officers” from the heading to the Division.

[14] Section 109N

Omit the section.

[15] Section 109O Delegation

Omit “the Deputy Registrar or”.

[16] Section 109O

Omit “Board”. Insert instead “Tribunal”.

[17] Schedule 7 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Statute Law (Miscellaneous Provisions) Act (No 2) 2000, but only in relation to the amendments made to this Act

[18] Schedule 7, Part 2

Omit “enactment” from the heading to the Part. Insert instead “amendment”.

[19] Schedule 7, clause 5

Insert after clause 4:

5 Construction of references

In any other Act or instrument:

- (a) a reference to the Community Schemes Board is taken to be a reference to the Residential Tribunal, and
- (b) a reference to an order or declaration of the Residential Tribunal made in the exercise of jurisdiction conferred by this Act or the *Community Land Development Act 1989* includes a reference to an order or declaration made by the Community Schemes Board under either of those Acts and in force immediately before the commencement of the *Residential Tribunal Act 1998*, and
- (c) a reference to the Registrar of the Community Schemes Board is taken to be a reference to the Registrar of the Residential Tribunal.

Commencement

The amendments to the *Community Land Management Act 1989* commence on a day or days to be appointed by proclamation.

Explanatory note

Item [9] of the proposed amendments makes it clear that a party to mediation can apply for an order to require a person to pay a pecuniary penalty for a contravention of the order made as part of an agreement reached at the mediation.

Item [11] of the proposed amendments omits redundant words from the heading to a provision concerning appeals.

The remainder of the proposed amendments omit references to the Community Schemes Board, the functions of which have been exercised by the Residential Tribunal since March 1999 (see section 109K of the *Community Land Management Act 1989*) or make consequential amendments.

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

[1] Section 3 Definitions

Omit the definitions of *economic entity* and *entity* from section 3 (1).

Insert in alphabetical order:

economic entity has the meaning given by section 5A.

entity has the meaning given by section 5A.

[2] Section 5A

Insert after section 5:

5A Interpretation—meaning of “economic entity” and “entity”

If an accounting standard defines the term *economic entity* or *entity* the definition in the accounting standard has effect for the purposes of this Act. Otherwise, the term has the meaning prescribed by the regulations.

Note. *Accounting Standard AASB 1024:Consolidated Accounts* defines *economic entity* to mean “a group of entities comprising the parent entity and each of its subsidiaries” and defines *entity* to mean “any legal, administrative or fiduciary arrangements, organisational structure or other party (including a person) having the capacity to deploy scarce resources in order to achieve objectives”.

[3] Section 16 Corporations Law applying under its own force

Omit section 16 (2) (d). Insert instead:

- (d) Chapter 6D (Fundraising),
- (d1) Chapter 2L (Debentures),

[4] Section 27 Review by ADT of Registrar's decisions

Omit section 27 (2) (a) (viii).

[5] Sections 68 (1), 176 (5), 179 (c) and 200 (2) and (3)

Omit "FINCOM's" wherever occurring. Insert instead "the Registrar's".

[6] Section 88 Registration of charges

Omit "Part 3.5" wherever occurring. Insert instead "Chapter 2K".

[7] Section 132 Requirements applying to accounts and group accounts

Omit "the prescribed requirements" from section 132 (1) (a).
Insert instead "any prescribed requirements".

[8] Section 134 Directors' reports

Omit "the regulations in force" from section 134 (8) (a).
Insert instead "any regulations in force".

[9] Section 225 Regulations

Insert after section 225 (1):

(1A) In particular, regulations may be made for or with respect to the fees to be paid in connection with the administration of this Act, including fees for lodgment of any documents under this Act and additional fees for late lodgment of any documents under this Act.

(1B) Regulations relating to fees:

- (a) may prescribe different fees for different classes of cases, and

- (b) may authorise the Registrar to waive, reduce or refund fees in particular cases or classes of cases.

Explanatory note

Items [1] and [2] of the proposed amendments update definitions (which presently refer to repealed provisions of the *Corporations Law*).

Items [3] and [6] of the proposed amendments update references to provisions of the *Corporations Law*.

Item [4] of the proposed amendments omits a reference to a repealed provision.

Item [5] of the proposed amendments updates references.

Items [7] and [8] of the proposed amendments clarify that references to certain obligations imposed by the regulations are only relevant if such obligations have in fact been imposed by the regulations.

Item [9] of the proposed amendments inserts a specific power to make regulations imposing fees and provides for the regulations to empower the Registrar to waive, reduce or refund certain fees.

1.6 Crimes (Administration of Sentences) Act 1999 No 93

[1] Section 192 Report to Minister

Omit “in strict custody in a correctional centre” from section 192 (2) (b).

[2] Section 193 Information concerning offenders and correctional centres

Omit “in strict custody in a correctional centre” from section 193 (1) (d).

[3] Section 257 Disclosure of information

Insert “or with any request made by the Ombudsman” after “*Ombudsman Act 1974*” in section 257 (d).

Explanatory note

Disclosure of information

Section 257 of the *Crimes (Administration of Sentences) Act 1999* makes it an offence to disclose any information obtained in connection with the administration or execution of the Act unless the disclosure was made with lawful excuse, including any disclosure made in accordance with a requirement of the *Ombudsman Act 1974*.

Item [3] of the proposed amendments also makes it a lawful excuse to disclose information in accordance with any request made by the Ombudsman.

Statute law revision

Items [1] and [2] of the proposed amendments replace out of date references to an offender held in strict custody under section 39 of the *Mental Health (Criminal Procedure) Act 1990* with references to an offender detained or held under that provision.

1.7 Dental Technicians Registration Act 1975 No 40

Section 6 Constitution of Dental Technicians Registration Board

Omit “Public Service Association of New South Wales” from section 6 (1) (h).

Insert instead “Health and Research Employees’ Association of New South Wales”.

Transitional

The person holding office under section 6 (1) (h) of the *Dental Technicians Registration Act 1975* immediately before the commencement of the amendment to that paragraph is taken to have been nominated under that paragraph as amended.

Explanatory note

Section 6 (1) (h) of the *Dental Technicians Registration Act 1975* provides for one of the members of the Dental Technicians Registration Board to be a dental technician nominated by the Public Service Association of New South Wales. Since 1998 dental technicians employed in public hospitals have been represented by the Health and Research Employees’ Association of New South Wales.

The proposed amendment provides for the Health and Research Employees’ Association of New South Wales to nominate the union representative on the Dental Technicians Registration Board.

1.8 Environmental Planning and Assessment Act 1979 No 203

[1] Section 4 Definitions

Omit the definitions of *Department* and *Director* from section 4 (1).

Insert in alphabetical order:

Department means Department of Urban Affairs and Planning.

Director-General means the Director-General of the Department of Urban Affairs and Planning.

[2] Whole Act (except sections 5C (2) (c), 13 (4) and 34A)

Omit “Director” wherever occurring. Insert instead “Director-General”.

[3] Section 5C Application of Act with respect to threatened species conservation—fish and marine vegetation

Omit “Director of National Parks and Wildlife” from section 5C (2) (c).
Insert instead “Director-General of National Parks and Wildlife”.

[4] Section 13 Director-General of Department of Urban Affairs and Planning

Omit “Director under this Act” from section 13 (4).
Insert instead “Director-General”.

[5] Section 13 (5)

Insert after section 13 (4):

- (5) A reference in any environmental planning instrument, or any regulation or other instrument made under this Act, to the Director is taken to be a reference to the Director-General.

[6] Section 34A Consultation with Director-General of National Parks and Wildlife about preparation of studies or instruments

Omit “Director” wherever occurring in section 34A (1).
Insert instead “Director-General of the Department of Urban Affairs and Planning”.

[7] Section 34A (3), (4), (5) and (6)

Omit “Director or council” wherever occurring.
Insert instead “Director-General of the Department of Urban Affairs and Planning or the council”.

[8] Section 34A (4)

Omit “Director’s”. Insert instead “Director-General’s”.

[9] Section 82A Review of determination

Omit section 82A (2). Insert instead:

- (2) The request for a review must be made within 28 days after the date on which the applicant received notice, given in accordance with the regulations, of the determination of the application.

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

Insert “to be displayed” after “advertisement” where firstly occurring in Column 3 of the matter relating to order No 5.

Explanatory note

Items [1], [2] and [4]–[8] of the proposed amendments update references to the chief executive officer of the Department of Urban Affairs and Planning.

Item [3] of the proposed amendments updates a reference to the Director-General of National Parks and Wildlife.

Item [9] of the proposed amendments provides for requests for the review of a determination of a development application to be made within 28 days after the applicant was notified of a determination.

Item [10] of the proposed amendments clarifies that an order to alter, obliterate, demolish or remove an advertisement and any associated advertising structure may be given to a person who caused an advertisement to be displayed as well as to a person who caused an advertising structure to be erected. (This is consistent with the analogous order applicable under the *Local Government Act 1993* before its amendment by the *Environmental Planning and Assessment Amendment Act 1997*).

1.9 Law Enforcement (Controlled Operations) Amendment Act 1999 No 79

[1] Schedule 1 Amendments

Omit “1 March 2001” from section 32 (4) of the *Law Enforcement (Controlled Operations) Act 1997* (as inserted by Schedule 1 [24]).

Insert instead “1 December 2002”.

[2] Schedule 1 [24]

Omit “1 June 2001” from section 32 (5) of the *Law Enforcement (Controlled Operations) Act 1997* (as inserted by Schedule 1 [24]).

Insert instead “1 December 2003”.

Explanatory note

Section 32 of the *Law Enforcement (Controlled Operations) Act 1997* provides for the Minister to review the Act 12 months after its commencement. Section 32 was amended in 1999 to provide for a further review to be conducted after 1 March 2001 and for a report on the outcome of that review to be tabled in Parliament by 1 June 2001 (see Schedule 1 [24] to the *Law Enforcement (Controlled Operations) Amendment Act 1999*). Those amendments are uncommenced.

The proposed amendments postpone the review until after 1 December 2002 and provide for the report on the outcome of that review to be tabled in Parliament by 1 December 2003.

1.10 Liquor Act 1982 No 147

[1] Section 24 Hotelier's licence—trading hours

Insert after section 24 (3):

- (4) Nothing in this section enables a person (including a lodger, an inmate or an employee of a licensee) to use or operate an approved gaming device at premises to which a hotelier's licence relates at a time other than a time permitted by subsection (2) or (3).

[2] Section 152 Forfeiture of liquor and other things

Omit "proved to have sold" from section 152 (1).

Insert instead "found guilty of having sold".

[3] Section 152 (2)

Omit "proved to have committed".

Insert instead "found guilty of having committed".

[4] Section 171E Consultation on application and social impact assessment

Omit "Part" from section 171E (1). Insert instead "Division".

Explanatory note

Item [1] of the proposed amendments makes it clear that a person cannot use or operate gaming machines at premises to which a hotelier's licence relates except during the trading hours specified in section 24 (2) or (3) of the *Liquor Act 1982*. Section 24 (1) provides for liquor to be sold or supplied to lodgers, inmates or employees of a licensee outside those hours and for liquor to be consumed by such people outside those hours. The proposed amendment makes it clear that the relaxation of restrictions on trading hours to allow those people to buy or consume liquor does not extend so as to allow

them to operate approved gaming devices at times when those devices would not be available for use by the general public.

Under section 556A of the *Crimes Act 1900* a court that found a charge proven had power to dismiss the charge or discharge the offender conditionally on his or her entering a recognizance to be of good behaviour. Section 556A has been repealed and replaced by section 10 of the *Crimes (Sentencing Procedure) Act 1999*, which provides for the dismissal of charges against or conditional discharge of offenders found guilty of an offence. Items [2] and [3] of the proposed amendments update references to a charge being proved to reflect the language used in section 10 of the *Crimes (Sentencing Procedure) Act 1999*, which refers to a finding of guilt.

Item [4] of the proposed amendments corrects a reference to certain provisions.

1.11 Motor Accidents Compensation Act 1999 No 41

Section 134 Maximum of amount of damages for non-economic loss

Omit “\$260,000” from section 134 (1). Insert instead “\$284,000”.

Commencement

The amendment to the *Motor Accidents Compensation Act 1999* commences on 1 January 2001.

Transitional

Clause 5 of the *Motor Accidents Compensation (Determination of Loss) Order No 1* ceases to have effect on 1 January 2001.

Explanatory note

The *Motor Accidents Act 1988* and the *Motor Accidents Compensation Act 1999* provide for the recovery of damages for the death of or injury to a person as a consequence of a motor accident.

Under the *Motor Accidents Act 1988*, the maximum amount of damages that a court may award for non-economic loss is set out in sections 79 and 79A and is indexed annually under section 80.

The *Motor Accidents Compensation Act 1999* (which was assented to on 8 July 1999) also contains a cap on damages for non-economic loss. Section 134 of the Act sets that cap at \$260,000, which was the cap applicable under the 1988 Act at the time of assent to the 1999 Act. Section 146 provides for annual indexation of that cap. On 1 October 1999 the cap under the 1988 Act increased from \$260,000 to \$273,000 as a result of indexation. However, the annual indexation of the cap under the 1999 Act did not commence until 1 October 2000 (when it was increased from \$260,000 to \$271,000). That is, the amount under the 1999 Act was not increased by indexation on 1 October 1999 and no longer mirrors the cap under the 1988 Act.

The proposed amendment provides for the restoration of consistency between the caps under the two Acts.

1.12 National Rail Corporation (Agreement) Act 1991 No 82

Section 7 Intra-State rail services by Company

Omit the section.

Explanatory note

The *National Rail Corporation (Agreement) Act 1991* gives effect to an agreement between the State of New South Wales, the Commonwealth and certain other States relating to the National Rail Corporation Limited. Section 7 of the Act provides that the National Rail Corporation Limited must not carry on intra-State rail services in the State of New South Wales unless the Minister has given written approval for the company to do so. Such approval was given in 1998.

The proposed amendment removes the restriction on intra-state rail services.

1.13 Ombudsman Act 1974 No 68

[1] Section 15 Reasons for refusal to conciliate, investigate or continue investigation

Insert after section 15 (2):

(3) Where the Ombudsman:

- (a) refuses to carry out any other investigation, or
- (b) refuses to deal with any other complaint, disclosure or allegation by conciliation, or
- (c) discontinues any other investigation,

the Ombudsman must inform the complainant, or the person who made the disclosure or allegation, in writing of the decision and the reasons for the decision.

[2] Section 25A Definitions

Insert “, or that the person is guilty of an offence,” after “proven” in the definition of *child abuse conviction* in section 25A (1).

[3] Section 29 Report to complainant or the relevant person

Insert at the end of section 29:

- (2) Where the Ombudsman carries out any other kind of investigation, the Ombudsman:
 - (a) may from time to time report to the complainant, or the person who made the disclosure or allegation that led to the investigation, on the progress of the investigation, and
 - (b) may report to the complainant, or the person who made the disclosure or allegation that led to the investigation, on the results of the investigation, and
 - (c) may make any comments to the complainant, or the person who made the disclosure or allegation that led to the investigation, on the investigation and its consequences that the Ombudsman thinks fit.

Explanatory note

Information about progress of investigations

Sections 15 and 29 of the *Ombudsman Act 1974* provide for the Ombudsman to keep complainants informed of the progress of investigations made by the Ombudsman in relation to their complaints. Those obligations are expressed to apply to complainants who made complaints under section 12 of the Act. However, the Ombudsman conducts investigations into complaints made under other provisions of the Act (including complaints of child abuse made under section 25G) as well as complaints made under certain other Acts (including complaints about the determination of a freedom of information request made under section 52 of the *Freedom of Information Act 1989*). Items [1] and [3] of the proposed amendments authorise the Ombudsman to give the same information about investigations to any complainant, regardless of the provision under which the complaint arose.

Statute law revision

Under section 556A of the *Crimes Act 1900* a court that found a charge proven had power to dismiss the charge or discharge the offender conditionally on his or her entering a recognizance to be of good behaviour. Section 556A has been repealed and replaced by section 10 of the *Crimes (Sentencing Procedure) Act 1999*, which provides for the dismissal of charges against or conditional discharge of offenders found guilty of an offence.

Item [2] of the proposed amendments updates a reference to a charge being proved to reflect the language used in section 10 of the *Crimes (Sentencing Procedure) Act 1999*, which refers to a finding of guilt.

1.14 Poisons and Therapeutic Goods Act 1966 No 31

Section 8 Poisons List

Omit “a standard published by the National Health and Medical Research Council” from section 8 (7).

Insert instead “the current Poisons Standard (within the meaning of Part 5B of the Commonwealth Act)”.

Explanatory note

Section 8 of the *Poisons and Therapeutic Goods Act 1966* provides for a Poisons List that classifies substances into eight Schedules. Section 8 (7) provides for the list to apply, adopt or incorporate, with or without modification, a standard published by the National Health and Medical Research Council or any other published standard.

The proposed amendment provides for an amendment of the Poisons List to be made by instead applying, adopting or incorporating, with or without modification, the current Poisons Standard under Part 5B of the *Therapeutic Goods Act 1989* of the Commonwealth.

1.15 Police Service Act 1990 No 47

Section 166 Limitation on delegation of functions by Ombudsman

Insert “or 157” after “section 155” in section 166 (2).

Explanatory note

Section 166 (2) of the *Police Service Act 1990* provides that the functions of the Ombudsman that may be delegated to an Assistant Ombudsman under the *Ombudsman Act 1974* do not include any power or duty to make a report under the *Police Service Act 1990* other than a report under section 155 (that is, a report by the Ombudsman on an investigation or decision made by the Police Commissioner at the Ombudsman's request).

The proposed amendment provides for the delegation of the Ombudsman's power to report on the Ombudsman's investigation (under the *Ombudsman Act 1974*) of a complaint made under the *Police Service Act 1990*. This restores the position that previously existed under the *Police Service Act 1990* before its amendment by the *Police Service Amendment (Complaints and Management Reform) Act 1998*.

1.16 Privacy and Personal Information Protection Act 1998 No 133

[1] Section 3 Definitions

Insert after paragraph (c) of the definition of *investigative agency*:

- (c1) the Inspector of the Police Integrity Commission and any staff of the Inspector,

[2] Section 3

Insert in alphabetical order of definitions:

staff of the Inspector of the Police Integrity Commission
means:

- (a) any staff employed under section 92 (1) or (2) of the *Police Integrity Commission Act 1996*, and
- (b) any consultants engaged under section 92 (3) of that Act.

[3] Section 27 Specific exemptions (ICAC, Police Service, PIC, Inspector of PIC and Inspector's staff and NSW Crime Commission)

Insert “, the Inspector of the Police Integrity Commission, the staff of the Inspector of the Police Integrity Commission” after “Police Integrity Commission” wherever occurring.

[4] Sections 38 (2) and 42 (3)

Insert “, Inspector of the Police Integrity Commission, staff of the Inspector of the Police Integrity Commission” after “Police Integrity Commission” wherever occurring.

[5] Section 40 Personal information digest

Insert “, the Inspector of the Police Integrity Commission, the staff of the Inspector of the Police Integrity Commission” after “Police Integrity Commission” in section 40 (4).

Explanatory note

The *Privacy and Personal Information Protection Act 1998* provides for the protection of personal information and the privacy of individuals and establishes information protection principles that must be observed by public sector agencies. Section 27 of the Act exempts certain agencies, including the Police Integrity Commission, from having to

comply with the information protection principles (except in relation to the exercise of administrative and educative functions). Section 24 exempts investigative agencies (which are defined to include the Police Integrity Commission) from specific obligations. Sections 38 (2), 40 (4) and 42 (3) also exempt the Police Integrity Commission from various obligations under the Act.

The proposed amendments will have the effect that the exemptions that are presently applicable to the Police Integrity Commission will also apply to the office of Inspector of the Police Integrity Commission (appointed under Part 6 of the *Police Integrity Commission Act 1996*) and to the staff of that Inspector.

1.17 Property, Stock and Business Agents Act 1941 No 28

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

Omit “1 March 2001” from section 22A (4). Insert instead “1 March 2004”.

[2] Section 38C

Insert after section 38B:

38C Power to obtain books or records

- (1) An authorised officer may give a licensee a written notice requiring the licensee to produce any books or records specified in the notice at the time and place specified in the notice.
- (2) A licensee who:
 - (a) refuses or fails to comply with a notice under this section, to the extent that the licensee is capable of complying with it, or
 - (b) in purported compliance with such a notice, knowingly produces a book or record that is false or misleading in a material particular,is guilty of an offence against this Act.
- (3) An authorised officer may inspect a book or record produced in response to a notice under this section and may make copies of, or take extracts from, the book or record.
- (4) An authorised officer may retain possession of a book or record produced in response to a notice under this section for as long as is necessary for the purposes of this Act.

- (5) A licensee:
- (a) is not guilty of a contravention of section 38 (1), and
 - (b) is not in breach of an obligation under section 38B (1), if the relevant books or records were not available for inspection, or were not at the registered office of the licensee, because they were being, or had been, produced in accordance with a notice under this section.
- (6) This section applies to and in respect of a written record preserved in accordance with section 38 (2) by a person who has ceased to hold a licence under this Act or by a person (other than the licensee who made the written record) who has the possession, custody or control of that written record as required by section 38 (2), in the same way as it applies to a record kept by a licensee.
- (7) In this section:
- authorised officer*** means:
- (a) the Director-General, or
 - (b) an investigator appointed under section 18 of the *Fair Trading Act 1987*.

[3] Section 57 Procedure

Insert “(other than subsection (5) (b))” after “Act” in section 57 (4A) (a).

[4] Section 57 (4A) (c)

Insert after section 57 (4A) (b):

- (c) in the case of an applicant who is precluded from being granted registration by reason only of subsection (5) (b)—if the Director-General is satisfied that the applicant will have obtained the qualification referred to in that subsection within 6 months of the application,

[5] Section 57 (5) (b)

Omit “if the application is made more than 18 months after this paragraph commences,”.

Explanatory note

Phasing in of 3-year licences

Section 22A of the *Property, Stock and Business Agents Act 1941* enables an applicant for a licence or for renewal of a licence to elect to be issued with a licence for a term of 1 year only instead of automatically receiving a licence for a term of 3 years. At present, the section provides that it ceases to have effect on 1 March 2001.

Item [1] of the proposed amendments provides that section 22A ceases to have effect on 1 March 2004.

Inspection of records

Section 38 of the Act requires a licensee to keep written records of all transactions at his or her registered office. Section 38B (1) requires certain books of account and written records of a licensee to be available at all reasonable times for inspection by the Director-General of Fair Trading, the police or certain other authorised people. Section 38B (2) specifies the circumstances in which persons may be required to produce certain books or records for inspection.

Item [2] of the proposed amendments facilitates the inspection of books or records without the need to enter premises by imposing a requirement for a licensee to produce books or records for inspection at a time and place specified in a written notice given by an authorised officer. The amendment makes it clear that a person is not guilty of a contravention of section 38, or in breach of section 38B (1), if the relevant books or records were not available for inspection, or were not at the registered office of a licensee, because they were being or had been produced in accordance with such a notice.

Provisional certificates of registration

Items [3] and [4] of the proposed amendments make it clear that a person may be issued with a provisional certificate of registration despite the fact that the person is precluded from being granted registration because the person has not attained an approved educational qualification required by section 57 (5) (b).

Item [5] of the proposed amendments omits redundant words of a transitional nature.

1.18 Protection of the Environment Operations Act 1997 No 156

[1] Section 146 Owners and drivers of motor vehicles and trailers involved in littering

Insert “, or from a trailer attached to a motor vehicle,” after “motor vehicle” in section 146 (1).

[2] Section 146 (1) (a), (b) and (c)

Omit section 146 (1) (a) and (b). Insert instead:

- (a) in the case of litter deposited from a motor vehicle—the driver of the motor vehicle,
- (b) in the case of litter deposited from a motor vehicle—the owner of the motor vehicle,

- (c) in the case of litter deposited from a trailer attached to a motor vehicle—the owner of the trailer.

[3] Section 146 (4A)

Insert after section 146 (4):

(4A) Exception for stolen trailers

Subsection (1) (c) does not apply if the trailer was at the time a stolen trailer or a trailer illegally taken or used.

[4] Section 146 (5)

Omit “Subsection (1) (b)”. Insert instead “Subsection (1) (b) or (c)”.

[5] Section 146 (5)

Insert “, including the motor vehicle to which the trailer was attached,” after “motor vehicle” where firstly occurring.

[6] Section 242 Other powers of court

Omit the section.

Explanatory note

Littering

Sections 145 and 145A of the *Protection of the Environment Operations Act 1997* create offences relating to littering in or on a public place or an open private place. Section 146 of the Act makes the owner and driver of a motor vehicle responsible for any litter deposited from the motor vehicle contrary to section 145 or 145A.

Items [1]–[5] of the proposed amendments extend section 146 to include litter deposited from a trailer attached to a motor vehicle.

Statute law revision

Item [6] of the proposed amendments omits a redundant section. (The *Crimes (Sentencing Procedure) Act 1999* consolidates the law with respect to the sentencing of offenders.)

1.19 Registered Clubs Act 1976 No 31

[1] Section 35 Complaint against current or former secretary or member of governing body

Insert “or was” after “who is” in section 35 (1).

[2] Section 35 (1)

Insert “, or should not be prevented from holding such a position in that or another club in the future,” after “that club”.

[3] Section 35 (1A) (a)

Insert “, or former secretary or member,” after “member” where firstly occurring.

[4] Section 35 (1A) (a)

Omit “continue in his or her”. Insert instead “hold”.

[5] Section 35 (1A) (b)

Insert “, or former secretary or member,” after “member”.

[6] Section 35 (2)

Insert “, or former membership,” after “membership”.

[7] Section 35 (4) (c)

Insert after section 35 (4) (b):

, or

(c) that the defendant is, for such period not exceeding 3 years as is specified in the declaration, ineligible to stand for election or to be appointed to, or to hold office in, the position of secretary or member of the governing body or both of those positions (whether he or she was summonsed as the former secretary or as a former member of the governing body) of:

(i) all registered clubs, or all registered clubs of, or other than of, a class specified in the declaration, or

(ii) all registered clubs specified in the summons or any registered club so specified.

[8] Section 35 (6)

Insert “or (c)” after “(4) (b)”.

[9] Section 67A Removal of persons from premises of registered club

Insert after section 67A (5):

(6) In this section:

employee includes a person engaged under a contract for services.

[10] Section 88AJ Application of Part

Insert “, or an application under section 22 that involves increasing the area of the premises of a registered club that is used for gaming operations” after “21” in section 88AJ (1) (a).

[11] Section 88AM Consultation on application and social impact assessment

Insert after section 88AM (3):

(4) If the premises to which the application relates are not yet erected or are not occupied by the applicant, subsection (1) (a) is complied with if the application is dealt with in accordance with the regulations.

[12] Section 96 Expenses of investigation of application

Insert “and any amount involved in investigating whether or not to issue a certificate under section 90 (7)” at the end of section 96 (1).

Transitional provision

The amendments to sections 88AJ and 88AM of the *Registered Clubs Act 1976* do not apply to an application made before the commencement of the amendments that has not been finally determined on that commencement.

Explanatory note

Items [1]–[8] of the proposed amendments provide for summonses to be issued against any former secretary of a registered club, or any former member of the governing body of the registered club. (At present, a summons can be issued only to existing office holders. If an office holder of a registered club is removed from office or resigns before a summons is issued, there is no procedure for the making of an order in relation to that person’s eligibility to again hold that or any other office in that or any other club.)

Item [9] of the proposed amendments will have the effect that a person engaged under a contract for services will be entitled to turn certain people (including people who are intoxicated, violent, quarrelsome or disorderly) out of a registered club. (The relevant definition of *employee* was inserted in section 4 of the Act by Schedule 2 [2] to the *Liquor and Registered Clubs Legislation Amendment Act 2000*. That definition, which is uncommenced, would affect the interpretation of the term “employee” throughout the Act.)

Item [10] of the proposed amendments provides for the assessment of the social impact of proposals to alter the layout of club premises.

Item [11] of the proposed amendments makes provision for the public exhibition of a social impact assessment in circumstances where the premises to which the application relates are not yet erected or are not occupied by the applicant.

Item [12] of the proposed amendments provides for the Licensing Court to make an order that an applicant for a gaming-related licence pay to the Liquor Administration Board any costs associated with investigating whether or not to issue a certificate that, in the Board's opinion, a person is qualified and competent to undertake the testing of gaming machines and that premises are suitable for the testing of poker machines.

1.20 Residential Parks Act 1998 No 142

[1] Section 9 Agreements to be in standard form

Omit "avoids" from section 9 (4). Insert instead "voids".

[2] Section 78 Security of mail facilities

Omit "tenant" from section 78 (2). Insert instead "resident".

[3] Section 135 Goods left by resident, but not abandoned, after residential tenancy agreement is terminated

Insert after section 135 (3):

- (4) To avoid doubt, an application may be made under subsection (1) even though, when the application is made, the goods are no longer on the residential premises.

Explanatory note

Section 135 of the *Residential Parks Act 1998* allows a resident or person with an interest in goods to apply to the Residential Tribunal in relation to goods left on the residential premises by the resident after a residential tenancy agreement is terminated. Item [3] of the proposed amendments makes it clear that such an order can be made despite the fact that the goods are no longer on the residential premises, for instance, if the goods have been removed by the park owner for storage or to allow for the residential premises to be let to another person.

Item [1] of the proposed amendments makes the language of section 9 of the *Residential Parks Act 1998* consistent with section 9 of the *Residential Tenancies Act 1987*.

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

1.21 Residential Tenancies Act 1987 No 26

Section 79A Goods left by tenant, but not abandoned, after residential tenancy agreement is terminated

Insert after section 79A (3):

- (4) To avoid doubt, an application may be made under subsection (1) even though, when the application is made, the goods are no longer on the residential premises.

Explanatory note

Section 79A of the *Residential Tenancies Act 1987* allows a tenant or person with an interest in goods to apply to the Residential Tribunal in relation to goods left on the residential premises by the tenant after a residential tenancy agreement is terminated.

The proposed amendment makes it clear that such an order can be made despite the fact that the goods are no longer on the residential premises, for instance, if the goods have been removed by the landlord for storage or to allow for the residential premises to be let to another person.

1.22 Restraints of Trade Act 1976 No 67

[1] Section 2 Definitions

Insert after section 2 (2):

- (3) Notes included in this Act do not form part of this Act.

[2] Section 3 Application of Act

Omit section 3 (3) (b).

[3] Section 3

Insert at the end of the section:

Note. The *Competition Code of New South Wales* and the *Trade Practices Act 1974* of the Commonwealth make provision in relation to restraints of trade.

Explanatory note

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

Item [3] of the proposed amendments inserts a note referring to other legislation relating to restraints of trade.

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

1.23 Rural Lands Protection Act 1998 No 143

[1] Section 60

Omit the section. Insert instead:

60 What is rateable land?

For the purposes of this Act, land within a district is rateable land if it is the whole or any part of a holding that is within the district and either:

- (a) the land has an area that is not less than the area prescribed by the regulations in relation to the district for the purposes of this paragraph, or
- (b) if the regulations provide for land to be rateable land in any other specified circumstances—those circumstances exist in respect of the land.

Note. See section 8 for when a holding is within a district.

[2] Section 198 Offence: obstructing authorised officer

Insert “or the regulations” after “Act” in section 198 (1) (c).

[3] Schedule 1 Constitution and procedure of State Council and boards

Omit “ceases to represent a region” from clause 6 (1) (j).

Insert instead “ceases to be qualified to be elected to represent a region”.

[4] Schedule 2 Election or appointment of directors

Insert after clause 4 (1):

- (1A) A person is not qualified for election or appointment as a director of a board for a district if, on the relevant day:
 - (a) the person is a director of that or any other board, or
 - (b) the person has nominated as a candidate for an election as director of a board for another district, being an election that has not yet been determined, or
 - (c) the person has nominated as a candidate for an election as director for another division in the same district, being an election that has not yet been determined.

[5] Schedule 6 Amendment of other Acts and instruments

Omit Schedule 6.15.

[6] Schedule 7 Savings and transitional provisions

Omit clause 30. Insert instead:

30 Registration of brand designs and earmark designs

The registration of a brand design or earmark design under Part 12 of the former Act continues in force in relation to stock as if that Act had not been repealed until a scheme has been established in relation to the identification of stock by or under the regulations made for the purposes of this Act.

Explanatory note

The *Rural Lands Protection Act 1998* is uncommenced.

Item [1] of the proposed amendments clarifies the operation of a provision that determines what is rateable land. Under the amended provision, land is rateable land if it meets a minimum area requirement or if it conforms with the circumstances set out in the regulations (which may, for example, provide for rating based on stock units). This is consistent with the position under the *Rural Lands Protection Act 1989*.

Item [2] of the proposed amendments makes it an offence to refuse or fail to comply with a requirement to answer a question of an authorised officer asked in accordance with the regulations. (The existing offence applies only to questions asked in accordance with the Act).

Item [3] of the proposed amendments provides that a person loses office as a member of the State Council of Rural Lands Protection Boards if the person ceases to be qualified to be elected to represent a region. (The members of the State Council are the persons who represent each region. A person represents the districts comprising a region if he or she has been elected, in accordance with the regulations, to represent the region. It is intended that the qualification to be elected will be being a director of a rural lands protection board.)

Item [4] of the proposed amendments prevents a person standing for election as a director for more than one division of a district.

Item [5] of the proposed amendments omits uncommenced amendments to a regulation that has been repealed (as part of the staged repeal of regulations under the *Subordinate Legislation Act 1989*).

Item [6] of the proposed amendments continues in force the scheme of registration of brand designs and earmark designs applicable under the *Rural Lands Protection Act 1989*, until regulations made under the *Rural Lands Protection Act 1998* have established a scheme of identification of stock.

1.24 Senators' Elections Act 1903 No 9

[1] Section 4A Date of nomination

Omit “not be less than 11 days nor more than 28 days” from section 4A (1).
Insert instead “not be less than 10 days nor more than 27 days”.

[2] Section 4B Date of polling

Omit “not be less than 22 days nor more than 30 days”.
Insert instead “not be less than 23 days nor more than 31 days”.

Explanatory note

The *Senators' Elections Act 1903* provides for certain matters relating to the election of Senators for New South Wales of the Parliament of the Commonwealth, including the fixing by the Governor of the date for nomination of candidates for an election and the date of polling.

The *Commonwealth Electoral Act 1918* of the Commonwealth was recently amended so as to change the time periods permissible between the issue of the writs for an election, the date of nomination and the date of polling (see *Electoral and Referendum Amendment Act 1998* of the Commonwealth). The proposed amendments amend the NSW Act as a consequence of the Commonwealth amendments.

1.25 State Owned Corporations Act 1989 No 134

[1] Section 10A

Insert after section 10:

10A Authority for Minister to act for and on behalf of a voting shareholder

- (1) A voting shareholder of a company SOC may authorise any Minister to act for and on behalf of the voting shareholder in his or her capacity as a voting shareholder while he or she is unavailable (by reason of his or her absence or disability or for any other reason).
- (2) If a Minister is authorised under this section to act for and on behalf of a voting shareholder, any function of a voting shareholder may, while the authority remains in force, be exercised from time to time by the Minister instead of by that

voting shareholder. However, the Minister authorised under this section may not exercise the function of authorising another Minister under this section.

- (3) Any act, matter or thing done or omitted to be done by a Minister while acting for or on behalf of a voting shareholder pursuant to an authority under this section is to be as valid and have the same consequences as if the act, matter or thing had been done or omitted to be done by that voting shareholder.
 - (4) A Minister who purports to act for or on behalf of a voting shareholder is presumed, until the contrary is proved, to be authorised under this section.
 - (5) An authority under this section may be revoked by the voting shareholder who granted it, or by the Premier.
 - (6) An authority under this section operates until:
 - (a) the end of the term specified in the authority, or
 - (b) the authority is revoked, or
 - (c) the voting shareholder who granted the authority ceases to be a voting shareholder, or
 - (d) by virtue of this or any other Act, the Minister authorised under the authority becomes a person who cannot be a voting shareholder of the company SOC,whichever occurs first.
 - (7) In the constitution of the company SOC of which the Minister is a voting shareholder, and in any Act or instrument, a reference to a voting shareholder under this Act includes a reference to any Minister who is acting for or on behalf of a voting shareholder pursuant to an authority under this section.
 - (8) A Minister may be authorised under this section by reference to his or her name or by reference to the title of the office that he or she holds as Minister.
 - (9) An authority under this section must be in writing, signed by the voting shareholder who granted it.
 - (10) The revocation of an authority under this section must be in writing, signed by the voting shareholder who granted the authority or by the Premier.
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- (11) Notice of an authority under this section, or of the revocation of such an authority, may be published in the Gazette at any time, and, where such a notice is so published, judicial notice is to be taken of the notice and of the authority or revocation, as the case may be.
- (12) Every authority under this section must be recorded by the Minister administering this Act.
- (13) The following Ministers may not be authorised under this section:
 - (a) the Treasurer, or
 - (b) a Minister who is also a voting shareholder of the same company SOC, or
 - (c) a Minister who, by virtue of this or any other Act, cannot be a voting shareholder of the company SOC.
- (14) This section applies despite any provision of the *Corporations Law*.
- (15) This section does not affect the operation of section 36 or 37 of the *Constitution Act 1902*.
- (16) In this section, a reference to a ***function of a voting shareholder*** includes a reference to any function of a voting shareholder whether conferred or imposed:
 - (a) by the constitution of the company SOC, or
 - (b) by the terms, express or implied, of this or any other Act or of any instrument under this or any other Act, or
 - (c) by or under any other law,and to any other function that is incidental to any such function.

[2] Section 20HA

Insert after section 20H:

20HA Authority for Minister to act for and on behalf of a voting shareholder

- (1) A voting shareholder of a statutory SOC may authorise any Minister to act for and on behalf of the voting shareholder in his or her capacity as a voting shareholder while he or she is

unavailable (by reason of his or her absence or disability or for any other reason).

- (2) If a Minister is authorised under this section to act for and on behalf of a voting shareholder, any function of a voting shareholder may, while the authority remains in force, be exercised from time to time by the Minister instead of by that voting shareholder. However, the Minister authorised under this section may not exercise the function of authorising another Minister under this section.
 - (3) Any act, matter or thing done or omitted to be done by a Minister while acting for or on behalf of a voting shareholder pursuant to an authority under this section is to be as valid and have the same consequences as if the act, matter or thing had been done or omitted to be done by that voting shareholder.
 - (4) A Minister who purports to act for or on behalf of a voting shareholder is presumed, until the contrary is proved, to be authorised under this section.
 - (5) An authority under this section may be revoked by the voting shareholder who granted it, or by the Premier.
 - (6) An authority under this section operates until:
 - (a) the end of the term specified in the authority, or
 - (b) the authority is revoked, or
 - (c) the voting shareholder who granted the authority ceases to be a voting shareholder, or
 - (d) by virtue of this or any other Act, the Minister authorised under the authority becomes a person who cannot be a voting shareholder of the statutory SOC,whichever occurs first.
 - (7) In the constitution of the statutory SOC of which the Minister is a voting shareholder, and in any Act or instrument, a reference to a voting shareholder under this Act includes a reference to any Minister who is acting for or on behalf of a voting shareholder.
 - (8) A Minister may be authorised under this section by reference to his or her name or by reference to the title of the office that he or she holds as Minister pursuant to an authority under this section.
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- (9) An authority under this section must be in writing, signed by the voting shareholder who granted it.
- (10) The revocation of an authority under this section must be in writing, signed by the voting shareholder who granted the authority or by the Premier.
- (11) Notice of an authority under this section, or of the revocation of such an authority, may be published in the Gazette at any time, and, where such a notice is so published, judicial notice is to be taken of the notice and of the authority or revocation, as the case may be.
- (12) Every authority under this section must be recorded by the Minister administering this Act.
- (13) The following Ministers may not be authorised under this section:
 - (a) the Treasurer, or
 - (b) a Minister who is also a voting shareholder of the same statutory SOC, or
 - (c) a Minister who, by virtue of this or any other Act, cannot be a voting shareholder of the statutory SOC.
- (14) This section applies despite any provision of the *Corporations Law* prescribed by any regulations made under section 20G.
- (15) This section does not affect the operation of section 36 or 37 of the *Constitution Act 1902*.
- (16) In this section, a reference to a ***function of a voting shareholder*** includes a reference to any function of a voting shareholder whether conferred or imposed:
 - (a) by the constitution of the statutory SOC, or
 - (b) by the terms, express or implied, of this or any other Act or of any instrument under this or any other Act, or
 - (c) by or under any other law,and to any other function that is incidental to any such function.

Explanatory note

The voting shareholders of a company State owned corporation or any of its subsidiaries are the Treasurer and the four or more Ministers who are for the time being nominated by the Premier as voting shareholders of the SOC. The voting shareholders of a statutory State owned corporation or any of its subsidiaries are the Treasurer and one other Minister (who may be the Premier) for the time being nominated by the Premier as a

voting shareholder of the SOC. (See section 20H, and the definitions of **eligible Ministers** and **voting shareholders** in section 3 (1), of the *State Owned Corporations Act 1989*.)

The proposed amendments provide for a voting shareholder to authorise another Minister to act for and on behalf of the voting shareholder in the exercise of functions of a voting shareholder.

1.26 **Stock (Chemical Residues) Act 1975 No 26**

Section 4 Order declaring stock to be chemically affected

Insert after section 4 (4):

- (4A) An order under subsection (1) or (3) may declare stock to which the order relates to be chemically affected for the purposes of the whole of this Act or for the purposes only of specified provisions of this Act.

Savings

An order made under section 4 (1) or 4 (3) of the *Stock (Chemical Residues) Act 1975* and in force immediately before the commencement of the amendment to that Act is taken to have declared the stock the subject of the order to be chemically affected for the purposes of the whole of that Act.

Explanatory note

Subsections (1) and (3) of section 4 of the *Stock (Chemical Residues) Act 1975* provide that the Minister may, by order published in the Gazette, declare certain stock to be chemically affected.

The proposed amendment provides for such orders to declare the stock to be chemically affected for the purposes of the whole of the Act or for the purposes only of specified provisions of the Act.

1.27 **Strata Schemes Management Act 1996 No 138**

[1] Whole Act (except Part 3 of Chapter 6 and Schedule 4)

Omit “Strata Schemes Board” wherever occurring.

Insert instead “Residential Tribunal”.

[2] Whole Act (except Parts 3 and 4 of Chapter 6, section 246 (2) (b), Schedule 4 and the Dictionary and in references to the Strata Schemes Board)

Omit “Board” wherever occurring. Insert instead “Tribunal”.

[3] Section 200 Appeal to Supreme Court on question of law

Omit “on question of law” from the heading to the section.

[4] Section 202 Civil penalties for contravention of orders under this Chapter

Insert after section 202 (2) (c):

, or

- (d) in the case of an order that gives effect to any agreement or arrangement arising out of a mediation session, by either party to the mediation.

[5] Chapter 6 Administration

Omit the second and third sentences of the Introductory note to the Chapter.

[6] Chapter 6, Part 3

Omit “Strata Schemes Board” from the heading to the Part.
Insert instead “Proceedings before Tribunal”.

[7] Sections 220 and 221

Omit the sections.

[8] Section 222 Proceedings before Tribunal

Omit section 222 (1). Insert instead:

- (1) The provisions of the *Residential Tribunal Act 1998*, and of the regulations made under that Act, apply in relation to proceedings before the Tribunal under this Act, subject to any modifications prescribed by the regulations.

[9] Section 222 (2)

Omit “Board”. Insert instead “Tribunal under this Act”.

[10] Section 222 (3)

Omit “Board”. Insert instead “Tribunal”.

[11] Chapter 6, Part 4

Omit “and Deputy Registrar” from the heading to the Part.

[12] Section 223

Omit the section.

[13] Section 224 Delegation

Omit “the Deputy Registrar or”.

[14] Section 224

Omit “Board”. Insert instead “Tribunal”.

[15] Section 244 Protection of Commissioner and Adjudicator

Omit “, an Adjudicator and the Board”.

Insert instead “and an Adjudicator”.

[16] Section 246 Regulations

Omit “a Board” from section 246 (2) (b). Insert instead “the Tribunal”.

[17] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Statute Law (Miscellaneous Provisions) Act (No 2) 2000, but only in relation to the amendments made to this Act.

[18] Schedule 4, Part 3

Insert after clause 10:

Part 3 Provisions consequent on amendment of Act

11 Construction of references

In any other Act or instrument:

- (a) a reference to the Strata Schemes Board is taken to be a reference to the Residential Tribunal, and

- (b) a reference to an order or declaration of the Residential Tribunal made in the exercise of jurisdiction conferred by the *Strata Schemes (Freehold Development) Act 1973*, the *Strata Schemes (Leasehold Development) Act 1986* or this Act includes a reference to an order or declaration made by the Strata Schemes Board under any of those Acts and in force immediately before the commencement of the *Residential Tribunal Act 1998*, and
- (c) a reference to the Registrar of the Strata Schemes Board is taken to be a reference to the Registrar of the Residential Tribunal.

[19] Dictionary

Omit the definitions of *Board*, *Deputy Registrar* and *Registrar*.

[20] Dictionary

Insert in alphabetical order:

Deputy Registrar means a Deputy Registrar of the Tribunal.

Registrar means the Registrar of the Tribunal.

Tribunal means the Residential Tribunal established by the *Residential Tribunal Act 1998*.

Commencement

The amendments to the *Strata Schemes Management Act 1996* commence on a day or days to be appointed by proclamation.

Explanatory note

Item [3] of the proposed amendments omits redundant words from the heading to a provision concerning appeals.

Item [4] makes it clear that a party to mediation can apply for an order to require a person to pay a pecuniary penalty for a contravention of the order made as part of an agreement reached at the mediation.

The remainder of the proposed amendments omit references to the Strata Schemes Board, the functions of which have been exercised by the Residential Tribunal since March 1999 (see section 220 of the *Strata Schemes Management Act 1996*) or make consequential amendments.

1.28 Victims Support and Rehabilitation Act 1996 No 115

[1] Section 21 Special payments for approved counselling services

Insert “under this section” after “decision of a compensation assessor” where secondly occurring in section 21 (8).

[2] Section 21 (8)

Insert “under subsection (6)” after “decision of the Director”.

Explanatory note

Section 21 of the *Victims Support and Rehabilitation Act 1996* provides for payments to be made for approved counselling services for victims as a consequence of an act of violence. Generally, payments may be made only with the approval of a compensation assessor. However, any payments for a period of counselling to the extent to which it exceeds 20 hours may be made only with the approval of the Director, Victims Services. Section 21 (8) provides for the review by the Director of decisions of a compensation assessor and for the review by the Victims Compensation Tribunal of decisions of the Director.

The proposed amendments make it clear that it is only decisions of a compensation assessor under section 21, and decisions of the Director as to payments for periods of counselling in excess of 20 hours, that are subject to review.

1.29 Waste Minimisation and Management Act 1995 No 102

[1] Section 17 Objectives of Waste Boards

Insert “(whether by carrying out such services, arranging for them to be carried out or otherwise co-ordinating their provision for the region)” after “region” in section 17 (a).

[2] Section 18 Functions of Waste Boards

Omit “to enter into arrangements for carrying out” from section 18 (1) (b).
Insert “to carry out, or enter into arrangements for the carrying out of,”.

Explanatory note

Part 3 of the *Waste Minimisation and Management Act 1995* constitutes Waste Boards, the functions of which include entering into arrangements for carrying out waste services and recycling services in respect of the waste generated in their management regions. Section 18 (1) (f) of the Act provides for a Waste Board to enter into arrangements with any person for the performance of services, or for the supply of goods, plant, machinery or material, with respect to the exercise by the Waste Board of its functions.

Statute Law (Miscellaneous Provisions) Act (No 2) 2000 No 93

Schedule 1 Minor amendments

The proposed amendments make it clear that a Waste Planning and Management Board may itself carry out waste services and recycling services in respect of the waste generated in its waste management region and may therefore enter into arrangements with other persons with respect to the exercise of that function.

Schedule 2 Amendments by way of law revision

(Section 3)

2.1 Aboriginal Housing Act 1998 No 47

Section 38 Personal liability

Insert “or thing” after “matter” where secondly occurring.

Explanatory note

The proposed amendment inserts omitted words to achieve consistency in language.

2.2 Albury Local Environmental Plan 2000

[1] Clause 39 What is complying development?

Omit “withing” from clause 39 (3) (j). Insert instead “within”.

[2] Clause 47 Which advertisements do not require development consent?

Omit “(1)”.

[3] Clause 48 Protection of heritage items, heritage conservation areas, places and archaeological sites

Omit “archeological” from clause 48 (3) (b). Insert instead “archaeological”.

Explanatory note

Items [1] and [3] of the proposed amendments correct spelling.

Item [2] of the proposed amendments omits a redundant subclause identifier.

2.3 Anzac Memorial (Building) Act 1923 No 27

Section 11 Compensation

Omit “section 556A of the *Crimes Act 1900*” from section 11 (4).
Insert instead “section 10 of the *Crimes (Sentencing Procedure) Act 1999*”.

Explanatory note

The proposed amendment updates a reference to a repealed provision.

2.4 Child Protection (Prohibited Employment) Act 1998 No 147

Section 3 Definitions

Insert “, or that a person is guilty of an offence,” after “proven” in the definition of *conviction*.

Explanatory note

Under section 556A of the *Crimes Act 1900* a court that found a charge proven had power to dismiss the charge or discharge the offender conditionally on his or her entering into a recognizance to be of good behaviour. Section 556A has been repealed and replaced by section 10 of the *Crimes (Sentencing Procedure) Act 1999*, which provides for the dismissal of charges against, or conditional discharge of, offenders found guilty of an offence.

The proposed amendment updates a reference to a charge being proved to reflect the language used in section 10 of the *Crimes (Sentencing Procedure) Act 1999*, which refers to a finding of guilt.

2.5 Children and Young Persons Legislation (Repeal and Amendment) Act 1998 No 158

Section 3 Repeal of Children (Care and Protection) Act 1987 No 54

Insert at the end of the section:

- (3) For the purpose of giving effect to the amendment made by section 5 and Schedule 2.7, and despite the terms of that amendment:
 - (a) a provision of the *Children (Care and Protection) Act 1987* specified in Schedule 1 to the *Commonwealth Powers (Family Law—Children) Act 1986* does not

cease to be so specified until the provision is repealed pursuant to this section, and

- (b) a provision of the *Children and Young Persons (Care and Protection) Act 1998* does not become a provision specified in Schedule 1 to the *Commonwealth Powers (Family Law—Children) Act 1986* until the provision is commenced pursuant to section 2 of the *Children and Young Persons (Care and Protection) Act 1998*.

Explanatory note

Under the *Commonwealth Powers (Family Law—Children) Act 1986*, certain matters, to the extent to which they are not otherwise included in the legislative powers of the Commonwealth Parliament, are referred to the Commonwealth Parliament. They include matters dealt with under various provisions of the *Children (Care and Protection) Act 1987* which are specified in Schedule 1 to the *Commonwealth Powers (Family Law—Children) Act 1986*. The *Children (Care and Protection) Act 1987* is to be repealed and replaced by the *Children and Young Persons (Care and Protection) Act 1998*. Section 5 of, and Schedule 2.7 to, the *Children and Young Persons Legislation (Repeal and Amendment) Act 1998* make a consequential amendment to the *Commonwealth Powers (Family Law—Children) Act 1986* to replace references to provisions of the *Children (Care and Protection) Act 1987* with references to the corresponding provisions of the *Children and Young Persons (Care and Protection) Act 1998*. Because the repeal of the provisions of the earlier Act and their replacement by the provisions of the later Act may occur progressively, the amendment of Schedule 1 to the *Commonwealth Powers (Family Law—Children) Act 1986* may also need to occur progressively. The proposed amendment is to be made for this purpose.

2.6 Children’s Court Act 1987 No 53

[1] Section 7 Appointment of Children’s Magistrates

Insert after section 7 (3):

- (4) Schedule 3 (Savings and transitional provisions relating to part-time Children’s Magistrates) has effect.

[2] Schedule 2

Omit the heading to the Schedule. Insert instead:

Schedule 3 Savings and transitional provisions relating to part-time Children's Magistrates

[3] Schedule 3 (as renumbered), clause 1

Omit "regulations may" from clause 1 (1).

Insert instead "Governor may make regulations that".

Explanatory note

The proposed amendments rearrange savings and transitional provisions and clarify the operation of a regulation-making power.

2.7 Community Land Development Act 1989 No 201

[1] Section 3 Definitions

Omit the definition of *Community Schemes Board* from section 3 (1).

[2] Section 3 (1)

Insert in alphabetical order:

Residential Tribunal means the Residential Tribunal established by the *Residential Tribunal Act 1998*.

[3] Sections 22 (3) (d) and 40 (1), clause 4 (b) of Schedule 7 and clause 3 (b) of Schedule 10

Omit "Community Schemes Board" wherever occurring.

Insert instead "Residential Tribunal".

[4] Section 40 Recording of certain orders

Omit paragraph (a) of the definition of *certified* in section 40 (5).

Insert instead:

- (a) if the order is an order of the Residential Tribunal—certified by the Registrar of that Tribunal, or

Commencement

The amendments to the *Community Land Development Act 1989* commence on the day appointed for the commencement of the amendment made to the *Community Land Management Act 1989* by Schedule 1.4 [8] to this Act.

Explanatory note

The proposed amendments omit references to the Community Schemes Board, the functions of which have been exercised by the Residential Tribunal since March 1999 (see section 109K of the *Community Land Management Act 1989*).

2.8 Community Land Management Regulation 2000

Clauses 18 and 20

Omit “Board” wherever occurring. Insert instead “Tribunal”.

Commencement

The amendment to the *Community Land Management Regulation 2000* commences on the day appointed for the commencement of the amendment made to the *Community Land Management Act 1989* by Schedule 1.4 [8] to this Act.

Explanatory note

The proposed amendment omits references to the Community Schemes Board, the functions of which have been exercised by the Residential Tribunal since March 1999 (see section 109K of the *Community Land Management Act 1989*).

2.9 Contaminated Land Management Act 1997 No 140

[1] Section 62 Determination of appeals

Omit “a declaration or” from section 62 (2) (a). Insert instead “an”.

[2] Section 62 (2) (b)

Omit the paragraph.

[3] Section 62 (2) (c)

Omit “a declaration or order and make no further declaration or”.
Insert instead “an order and make no further”.

[4] Section 62 (2) (d)

Omit “declaration or” wherever occurring.

[5] Section 62 (3)

Omit “A declaration or”. Insert instead “An”.

[6] Section 100 Other powers of court

Omit the section.

[7] Schedule 2 Savings and transitional provisions

Omit clause 4.

Explanatory note

Items [1]–[5] of the proposed amendments omit references to appeals against declarations. (Under section 61 of the *Contaminated Land Management Act 1997* a person may appeal only against an investigation or remediation order.)

Item [6] of the proposed amendments omits a redundant section. (The *Crimes (Sentencing Procedure) Act 1999* consolidates the law with respect to the sentencing of offenders.)

Item [7] of the proposed amendments omits a redundant savings provision.

2.10 Crimes Act 1900 No 40

Section 562P Recognizance to keep peace not affected

Omit the section.

Explanatory note

The proposed amendment omits a redundant section (which deals with the application of a repealed section).

2.11 Crimes (Forensic Procedures) Act 2000 No 59

[1] Section 87 Destruction of forensic material taken from offender after conviction quashed

Omit “section 75”. Insert instead “section 74”.

[2] Section 89 Destruction of forensic material where related evidence is inadmissible

Omit “section 85” from section 89 (1). Insert instead “that section”.

Explanatory note

The proposed amendments correct cross-references.

2.12 Criminal Procedure Act 1986 No 209

Section 148 What is a protected confidence?

Omit paragraph (d) of the definition of *counselling communication* in section 148 (4).

Insert instead:

- (d) made in confidence by or to the counsellor, by or to another counsellor or by or to a person who is counselling or otherwise treating, or has counselled or otherwise treated, the counselled person at any time for any emotional or psychological condition of the person.

Explanatory note

The propose amendment clarifies the meaning of a provision.

2.13 Criminal Records Act 1991 No 8

Sections 5 (a) and (b), 8 (2) and (4) and 18 (b) and (c)

Insert “, or that a person is guilty of an offence,” after “proved” wherever occurring.

Explanatory note

Under section 556A of the *Crimes Act 1900* a court that found a charge proven had power to dismiss the charge or discharge the offender conditionally on his or her entering into a recognizance to be of good behaviour. Section 556A has been repealed and replaced by section 10 of the *Crimes (Sentencing Procedure) Act 1999*, which provides for the dismissal of charges against, or conditional discharge of, offenders found guilty of an offence.

The proposed amendment updates references to a charge being proved to reflect the language used in section 10 of the *Crimes (Sentencing Procedure) Act 1999*, which refers to a finding of guilt.

2.14 Dangerous Goods Act 1975 No 68

Sections 5 (3) and 41 (2)

Omit “*Radioactive Substances Act 1957*” wherever occurring.

Insert instead “*Radiation Control Act 1990*”.

Explanatory note

The proposed amendment updates a reference to an Act.

2.15 Defamation Act 1974 No 18

[1] Sections 7 (3) and 56 (3)

Omit “his” wherever occurring. Insert instead “the person’s”.

[2] Section 19 Report of inquiry

Omit “him”. Insert instead “the person”.

[3] Section 22 Information

Omit “him” from section 22 (1) (b). Insert instead “the recipient”.

[4] Section 24 Protected reports—Schedule 2

Insert “or her” after “him” wherever occurring in section 24 (3) and (4).

[5] Section 34 Comment of stranger

Omit “his” from section 34 (1). Insert instead “the defendant”.

[6] Sections 36, 37 (1) and (2) (c) and 38 (1) (a)

Insert “or her” after “his” wherever occurring.

[7] Sections 55 (2) and 56 (1)

Omit “he” wherever occurring. Insert instead “the person”.

[8] Section 56 Criminating answer etc

Omit “him or his” wherever occurring in section 56 (1) and (2).

Insert instead “the person or the person’s”.

Explanatory note

The proposed amendments replace gender-specific language with gender-neutral language.

2.16 Environmentally Hazardous Chemicals Act 1985 No 14

[1] Section 3 Definitions

Omit “*Radioactive Substances Act 1957*” from the definition of *chemical* in section 3 (1).

Insert instead “*Radiation Control Act 1990*”.

[2] Section 5 Relationship to other laws

Omit “*Radioactive Substances Act 1957*” wherever occurring in section 5 (2) and (3).

Insert instead “*Radiation Control Act 1990*”.

[3] Section 5 (3)

Omit “regulation made under that Act”.

Insert instead “regulations made under those Acts”.

Explanatory note

Items [1] and [2] of the proposed amendments update references to an Act. Item [3] of the proposed amendments corrects a reference to certain Acts.

2.17 Fair Trading Act 1987 No 68

[1] Schedule 1 Paramount legislation

Omit “*Electricity Development Act 1945*”.

Insert instead “*Electricity Safety Act 1945*”.

[2] Schedules 1 and 2

Omit “*Fertilizers Act 1985*”, “*Poisons Act 1966*” and “*Radioactive Substances Act 1957*” wherever occurring.

Insert instead “*Fertilisers Act 1985*”, “*Poisons and Therapeutic Goods Act 1966*” and “*Radiation Control Act 1990*”, respectively.

[3] Schedule 1

Omit “*Public Health Act 1902*”. Insert instead “*Public Health Act 1991*”.

[4] Schedules 1 and 2

Omit “*Stock Foods and Medicines Act 1940*” wherever occurring.

Insert instead:

Stock Foods Act 1940

Stock Medicines Act 1989

Explanatory note

The proposed amendments update references to Acts.

2.18 Family Day Care and Home Based Child Care Services Regulation 1996

Clause 36 Definitions

Omit “*Home-based Child Care Service Regulation 1989*” from paragraph (b) of the definition of *repealed Regulation*.

Insert instead “*Home-based Child Care Services Regulation 1989*”.

Explanatory note

The proposed amendment corrects a reference to a Regulation.

2.19 Forestry Regulation 1999

Clause 6 Management plans to be consistent with integrated forestry operations approvals

Omit “*Forestry and National Parks Estate Act 1998*” from the definition of *integrated forestry operations approval* in clause 6 (1).

Insert instead “*Forestry and National Park Estate Act 1998*”.

Explanatory note

The proposed amendment corrects a reference to an Act.

2.20 Freedom of Information Regulation 2000

Schedule 1 Principal offices

Omit the matter relating to the Community Schemes Board and the Strata Schemes Board.

Commencement

The amendment to the *Freedom of Information Regulation 2000* commences on the day appointed for the commencement of the amendment made to the *Community Land Management Act 1989* by Schedule 1.4 [8] to this Act.

Explanatory note

The proposed amendment omits references to the Community Schemes Board and the Strata Schemes Board, the functions of which have been exercised by the Residential Tribunal since March 1999 (see section 109K of the *Community Land Management Act 1989* and section 220 of the *Strata Schemes Management Act 1996*).

2.21 Heritage Act 1977 No 136

Section 11 Vacation of office

Omit “officer of the Heritage Office” from section 11 (g).

Insert instead “officer of the Department of Urban Affairs and Planning”.

Explanatory note

The proposed amendment corrects a reference to an office that qualifies a person to be a member of the Heritage Council (see section 8 (2) (a) (iv) of the *Heritage Act 1977*).

2.22 Hunter Water Act 1991 No 53

Section 67 Regulations may authorise or exempt for purposes of Trade Practices Act 1974 (Cth)

Omit section 67 (2) (b).

Explanatory note

The proposed amendment omits a reference to a repealed Act.

2.23 Independent Pricing and Regulatory Tribunal and Other Legislation Amendment Act 2000 No 60

[1] Schedule 1 Amendments relating to regulation of utilities

Omit “a licence” from proposed section 13A (3) of the *Gas Supply Act 1996* in Schedule 1.3 [3].

Insert instead “an authorisation”.

[2] Schedule 1.3 [3]

Omit “licence” from proposed section 13A (4) of the *Gas Supply Act 1996*.

Insert instead “authorisation”.

[3] Schedule 1.3 [7]

Omit “section 42A” from proposed section 17A (1) of the *Gas Supply Act 1996*.

Insert instead “section 13A”.

[4] Schedule 1.3 [15]

Omit “to impose a monetary penalty on” from proposed section 45A (1) of the *Gas Supply Act 1996*.

Insert instead “to take action under section 42A in relation to”.

[5] Schedule 1.4 [2]

Omit “the holder” wherever occurring in proposed section 17A (3) and (4) of the *Hunter Water Act 1991*.

Insert instead “the Corporation”.

[6] Schedule 1.4 [2]

Omit “of a licence” from proposed section 17A (3) of the *Hunter Water Act 1991*.

[7] Schedule 1.4 [2]

Omit “of the licence” from proposed section 17A (4) of the *Hunter Water Act 1991*.

[8] Schedule 1.5 [2]

Omit “the holder” wherever occurring in proposed section 19A (3) and (4) of the *Sydney Water Act 1994*.

Insert instead “the Corporation”.

[9] Schedule 1.5 [2]

Omit “of a licence” from proposed section 19A (3) of the *Sydney Water Act 1994*.

[10] Schedule 1.5 [2]

Omit “of the licence” from proposed section 19A (4) of the *Sydney Water Act 1994*.

[11] Schedule 1.6 [5]

Omit “the holder” wherever occurring in proposed section 29A (3) and (4) of the *Sydney Water Catchment Management Act 1998*.

Insert instead “the Authority”.

[12] Schedule 1.6 [5]

Omit “of a licence” from proposed section 29A (3) of the *Sydney Water Catchment Management Act 1998*.

[13] Schedule 1.6 [5]

Omit “of the licence” from proposed section 29A (4) of the *Sydney Water Catchment Management Act 1998*.

Explanatory note

Items [1], [2] and [5]–[13] of the proposed amendments ensure consistency in terminology between existing provisions of various Acts and provisions inserted in those Acts by amendments in committee made to the *Independent Pricing and Regulatory Tribunal and Other Legislation Amendment Act 2000* during the passage of the Bill for that amending Act through Parliament.

Item [3] of the proposed amendments corrects a cross-reference inserted by those amendments in committee.

Item [4] of the proposed amendments makes a consequential amendment to proposed section 45A of the *Gas Supply Act 1996* as a result of those amendments in committee.

2.24 Industrial Relations Act 1996 No 17

Section 298 Right of entry for investigating breaches

Insert “industrial” after “authorised” in section 298 (3).

Explanatory note

The proposed amendment inserts an omitted word.

2.25 Irrigation Corporations Act 1994 No 41

Section 90 Exemptions from Monopolies Act 1923

Omit the section.

Explanatory note

The proposed amendment omits a section that relates to a repealed Act.

2.26 Law Enforcement and National Security (Assumed Identities) Act 1998 No 154

Section 3 (definition of “evidence of identity”) and sections 5 (4) and 6 (1) (b)

Omit “driver’s licence” wherever occurring. Insert instead “driver licence”.

Explanatory note

The proposed amendment updates terminology used in an Act.

2.27 Legal Profession Act 1987 No 109

Section 203 How is an application to be made?

Omit “subsection (3)” from section 203 (1). Insert instead “subsection (4)”.

Explanatory note

The proposed amendment corrects a cross-reference.

2.28 Liquor and Registered Clubs Legislation Amendment Act 2000 No 62

Schedule 2 Amendment of Registered Clubs Act 1976

Omit the proposed definition of *employee* from Schedule 2 [2].

Explanatory note

The proposed amendment repeals a redundant uncommenced amendment. (See the amendment made to section 67A of the *Registered Clubs Act 1976* by Schedule 1 to this Act.)

2.29 Maclean Local Environmental Plan 1992

Clause 7 Interpretation

Omit “*Factories, Shop and Industries Act 1962*” from paragraph (a) of the definition of **home occupation** in clause 7 (1).

Insert instead “*Factories, Shops and Industries Act 1962*”.

Explanatory note

The proposed amendment corrects a reference to an Act.

2.30 Manly Local Environmental Plan 1988

Clause 7 Interpretation

Omit “*Physiotherapist Registration Act 1945*” from paragraph (c) of the definition of **health care professional** in clause 7 (1).

Insert instead “*Physiotherapists Registration Act 1945*”.

Explanatory note

The proposed amendment corrects a reference to an Act.

2.31 Marine Safety Act 1998 No 121

[1] Section 26 Application of section 10 of Crimes (Sentencing Procedure) Act 1999

Omit “section 556A (Power to permit release of offenders) of the *Crimes Act 1900*” from section 26 (1).

Insert instead “section 10 of the *Crimes (Sentencing Procedure) Act 1999*”.

[2] Section 26 (1)

Insert “or of section 556A of the *Crimes Act 1900*” after “that section”.

Explanatory note

The proposed amendments update references to a repealed provision.

2.32 Mines Inspection Act 1901 No 75

Section 36A Supplementary powers of inspectors and mine safety officers

Omit “section 36 and” from section 36A (1) (a) (i).

Insert instead “section 36 or”.

Explanatory note

The proposed amendment makes section 36A of the *Mines Inspection Act 1901* consistent with the analogous provision in section 60 (1) (a) (i) of the *Coal Mines Regulation Act 1982*.

2.33 Native Vegetation Conservation Act 1997 No 133

[1] Section 20 Clearing not affected by other instruments or Acts

Omit section 20 (2) (b). Insert instead:

- (b) a licence under the *Protection of the Environment Operations Act 1997*,

[2] Section 23 Clearing not affected by other instruments or Acts

Omit section 23 (2) (b). Insert instead:

- (b) a licence under the *Protection of the Environment Operations Act 1997*,

Explanatory note

The proposed amendments update references to Acts.

2.34 Parking Space Levy Act 1992 No 32

Schedule 1 Savings, transitional and other provisions

Omit “*Parking Space Levy Regulation 1992*” from clause 3 (5).

Insert instead “*Parking Space Levy Regulation 1997*”.

Explanatory note

The proposed amendment corrects a reference to a regulation.

2.35 Passenger Transport (Ferry Services) Regulation 2000

Clause 31 Property not to be removed or damaged

Omit “Maximum penalty: 5 penalty units” from clause 31 (3).

Explanatory note

The proposed amendment omits a redundant penalty provision from a subclause that deals with the application of a provision.

2.36 Pawnbrokers and Second-hand Dealers Act 1996 No 13

[1] Section 33 Revocation of licence as a consequence of offence

Insert “a licensee is guilty of” before “an offence” in section 33 (1).

[2] Section 33 (1)

Omit “has been proven against a licensee”.

Explanatory note

Under section 556A of the *Crimes Act 1900* a court that found a charge proven had power to dismiss the charge or discharge the offender conditionally on his or her entering a recognizance to be of good behaviour. Section 556A has been repealed and replaced by section 10 of the *Crimes (Sentencing Procedure) Act 1999*, which provides for the dismissal of charges against or conditional discharge of offenders found guilty of an offence.

The proposed amendment updates a reference to a charge being proved to reflect the language used in section 10 of the *Crimes (Sentencing Procedure) Act 1999*, which refers to a finding of guilt.

2.37 Pesticides Act 1999 No 80

[1] Section 92 Operation of Division

Omit “section 556A of the *Crimes Act 1900*” from section 92 (2) (b).

Insert instead “section 10 of the *Crimes (Sentencing Procedure) Act 1999*”.

[2] Section 110 Other powers of court

Omit the section.

Explanatory note

Item [1] of the proposed amendments updates a reference to a repealed provision.
Item [2] of the proposed amendments omits a redundant section. (The *Crimes (Sentencing Procedure) Act 1999* consolidates the law with respect to the sentencing of offenders.)

2.38 Poisons and Therapeutic Goods Regulation 1994

Appendix E Supply by wholesale

Omit “*Occupational Health and Safety (First Aid) Regulation 1989*” from clause 17.

Insert instead “*Occupational Health and Safety (First-aid) Regulation 1989*”.

Explanatory note

The proposed amendment corrects a reference to a regulation.

2.39 Protection of the Environment Operations (Noise Control) Regulation 2000

[1] Schedule 1 Prescribed noise levels of classes of motor vehicles

Omit “On or before 1 July 1983” from the matter relating to a motor lorry or motor bus with any engine other than a diesel engine, with a manufacturer’s gross vehicle mass of more than 3,500 kg and with a height above ground of exhaust pipe of 1,500 mm or more.

Insert instead “On or after 1 July 1983”.

[2] Schedule 1

Insert “and before 1 July 1983” after “On or after 1 July 1980” in the matter relating to a motor lorry or motor bus with a diesel engine, with a manufacturer’s gross vehicle mass of more than 3,500 kg but not more than 12,000 kg and with a height above ground of exhaust pipe of less than 1,500 mm.

Explanatory note

The proposed amendments correct references to time periods for the manufacture of certain motor lorries and motor buses in provisions relating to the maximum prescribed noise level for those vehicles.

2.40 Public Sector Management Act 1988 No 33

Section 22 Officers to whom Division applies

Insert “, 26A” after “sections 26” in section 22 (1) (b).

Explanatory note

The proposed amendment reconciles sections 15 and 22 of the *Public Sector Management Act 1988*, which deal with the application of certain provisions to appointments to senior executive positions.

2.41 Residential Tribunal Act 1998 No 168

Section 25A Parties to proceedings

Re-number section 25A (as inserted by the *Statute Law (Miscellaneous Provisions) Act 2000*) as section 25B.

Explanatory note

The proposed amendment corrects a duplication of section numbers.

2.42 Retirement Villages Act 1999 No 81

Section 128 Orders of Tribunal

Omit section 128 (1) (k). Insert instead:

- (k) in the case of an application in relation to any other dispute made by a resident (or residents) or an operator of a retirement village that is subject to a community land scheme and with the concurrence of the other party to the dispute—any order that the Tribunal may make under the *Community Land Management Act 1989* to determine the dispute,

- (k1) in the case of an application in relation to any other dispute made by a resident (or residents) or an operator of a retirement village that is subject to a strata scheme and with the concurrence of the other party to the dispute—any order that the Tribunal may make under the *Strata Schemes Management Act 1996* to determine the dispute,

Commencement

The amendment to the *Retirement Villages Act 1999* commences on the day appointed for the commencement of the amendment made to the *Community Land Management Act 1989* by Schedule 1.4 [8] to this Act.

Explanatory note

The proposed amendment omits references to the Community Schemes Board and the Strata Schemes Board, the functions of which have been exercised by the Residential Tribunal since March 1999 (see section 109K of the *Community Land Management Act 1989* and section 220 of the *Strata Schemes Management Act 1996*).

2.43 Road Obstructions (Special Provisions) Act 1979 No 9

Schedule 1 Form

Omit “\$1,000” wherever occurring. Insert instead “\$1,100”.

Explanatory note

The proposed amendment updates a reference to a penalty that is described in penalty units.

2.44 Road Transport (General) Act 1999 No 18

[1] Section 24 Court may impose penalty and disqualify driver on conviction

Omit “section 556A” from section 24 (6).

Insert instead “that section, or section 556A of the *Crimes Act 1900*,”

[2] Section 27 Relevant offences

Insert “, or a person is found guilty,” after “proven” where firstly occurring in section 27 (2).

[3] Section 27 (2)

Insert “, or section 556A of the *Crimes Act 1900*,” after “*Crimes (Sentencing Procedure) Act 1999*”.

[4] Section 27 (2)

Omit “a finding that the charge for the offence is proven”.

Insert instead “a reference to the making of an order with respect to the person”.

[5] Section 40 Impounding or forfeiture of vehicles on finding of guilt or admission of offence

Omit “is found to be proven before any court” wherever occurring in section 40 (1) and (2).

Insert instead “any court finds that a person is guilty of”.

[6] Section 40 (3)

Omit “before which”. Insert instead “that found a person to be guilty of”.

[7] Section 40 (3)

Omit “is found to be proven”.

[8] Section 40 (6)

Omit “offence was proven”. Insert instead “person was guilty of the offence”.

Explanatory note

The proposed amendments update references relating to the operation of section 10 of the *Crimes (Sentencing Procedure) Act 1999*, which provides for the dismissal of charges and for the conditional discharge of offenders. That provision is the equivalent of the former section 556A of the *Crimes Act 1900*.

The proposed amendments also update references to a charge being proved to reflect the language used in section 10 of the *Crimes (Sentencing Procedure) Act 1999*, which refers to a finding of guilt. (Under section 556A of the *Crimes Act 1900* a court that found a charge proven had power to dismiss the charge or discharge the offender conditionally on his or her entering a recognizance to be of good behaviour. Section 10 of the *Crimes (Sentencing Procedure) Act 1999* provides for the dismissal of charges against or conditional discharge of offenders found guilty of an offence.)

2.45 Road Transport (Safety and Traffic Management) Act 1999 No 20

[1] Section 49 Surrender and forfeiture of prohibited speed measuring evasion articles

Insert “any person guilty of” after “finds” in section 49 (4).

[2] Section 49 (4)

Omit “to have been proven against any person”.

Explanatory note

Under section 556A of the *Crimes Act 1900* a court that found a charge proven had power to dismiss the charge or discharge the offender conditionally on his or her entering a recognizance to be of good behaviour. Section 556A has been repealed and replaced by section 10 of the *Crimes (Sentencing Procedure) Act 1999*, which provides for the dismissal of charges against or conditional discharge of offenders found guilty of an offence.

The proposed amendment updates a reference to a charge being proved to reflect the language used in section 10 of the *Crimes (Sentencing Procedure) Act 1999*, which refers to a finding of guilt.

2.46 Roads Act 1993 No 33

[1] Section 87 Traffic control facilities

Omit “*Traffic Act 1909* (other than roads or road related areas that are the subject of any declaration made under section 2A (1) (b) of that Act)” from section 87 (1).

Insert instead “*Road Transport (General) Act 1999* (other than roads or road related areas that are the subject of any declaration made under section 9 (1) (b) of that Act relating to all of the provisions of that Act)”.

[2] Section 87 (3)

Omit “*Traffic Act 1909* (other than a road or road related area that is the subject of a declaration made under section 2A (1) (b) of that Act)”.

Insert instead “*Road Transport (General) Act 1999* (other than a road or road related area that is the subject of any declaration made under section 9 (1) (b) of that Act relating to all of the provisions of that Act)”.

Explanatory note

The proposed amendments are consequential on the repeal of the *Traffic Act 1909* by the *Road Transport Legislation Amendment Act 1999*.

2.47 State Environmental Planning Policy No 59—Central Western Sydney Economic and Employment Area

Schedule 2 Exempt development

Omit “*Rural Fire Act 1997*” from the matter relating to bush fire hazard reduction in the Table to clause 2.

Insert instead “*Rural Fires Act 1997*”.

Explanatory note

The proposed amendment corrects a reference to an Act.

2.48 Statute Law (Miscellaneous Provisions) Act 2000 No 53

[1] Schedule 2 Amendments consequent on abolition of statutory and other bodies

Omit “**the**” from the heading to Schedule 2.4 [3].

Insert instead “**Second Schedule and**”.

[2] Schedule 2.4 [6]

Omit “**Third Schedule Certificates of competency**” from the heading to the item.

Insert instead “**Second Schedule and Third Schedule**”.

[3] Schedule 2.7

Omit “**Authority**”. Insert instead “**Advisory**”.

Explanatory note

Items [1] and [2] of the proposed amendments correct incorporation directions.

Item [3] of the proposed amendments corrects a reference to a statutory body.

2.49 Strata Schemes (Freehold Development) Act 1973 No 68

[1] Section 5 Definitions

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

[2] Section 5 (1)

Insert in alphabetical order:

Residential Tribunal means the Residential Tribunal established by the *Residential Tribunal Act 1998*.

[3] Schedule 1C Strata management statements

Omit “a Board” wherever occurring in clause 2 (1) (d) and (6).
Insert instead “the Residential Tribunal”.

[4] Schedule 1C, clause 2 (6)

Omit “the Board”. Insert instead “the Residential Tribunal”.

[5] Schedule 4 Transitional and savings provisions

Omit “a Board” wherever occurring in clause 15 (3), (4) and (5).
Insert instead “the Residential Tribunal”.

[6] Schedule 4, clause 15 (5)

Omit “the Board”. Insert instead “the Residential Tribunal”.

Commencement

The amendments to the *Strata Schemes (Freehold Development) Act 1973* commence on the day appointed for the commencement of the amendment made to the *Strata Schemes Management Act 1996* by Schedule 1.27 [8] to this Act.

Explanatory note

The proposed amendments omit references to the Strata Schemes Board, the functions of which have been exercised by the Residential Tribunal since March 1999 (see section 220 of the *Strata Schemes Management Act 1996*).

2.50 Strata Schemes (Leasehold Development) Act 1986 No 219

[1] Section 4 Definitions

Omit the definition of *Board* from section 4 (1).

[2] Section 4 (1)

Insert in alphabetical order:

Residential Tribunal means the Residential Tribunal established by the *Residential Tribunal Act 1998*.

[3] Section 196 Regulations—general

Omit “a Board” from section 196 (1) (g).
Insert instead “the Residential Tribunal”.

[4] Schedule 2A Strata management statements

Omit “a Board” wherever occurring in clause 2 (1) (d) and (6).
Insert instead “the Residential Tribunal”.

[5] Schedule 2A, clause 2 (6)

Omit “the Board”. Insert instead “the Residential Tribunal”.

Commencement

The amendments to the *Strata Schemes (Leasehold Development) Act 1986* commence on the day appointed for the commencement of the amendment made to the *Strata Schemes Management Act 1996* by Schedule 1.27 [8] to this Act.

Explanatory note

The proposed amendments omit references to the Strata Schemes Board, the functions of which have been exercised by the Residential Tribunal since March 1999 (see section 220 of the *Strata Schemes Management Act 1996*).

2.51 Strata Schemes Management Regulation 1997

[1] Part 6, heading

Omit “**Board**”. Insert instead “**Tribunal**”.

[2] Clauses 18 and 19

Omit “Board” wherever occurring. Insert instead “Tribunal”.

Commencement

The amendments to the *Strata Schemes Management Regulation 1997* commence on the day appointed for the commencement of the amendment made to the *Strata Schemes Management Act 1996* by Schedule 1.27 [8] to this Act.

Explanatory note

The proposed amendments omit references to the Strata Schemes Board, the functions of which have been exercised by the Residential Tribunal since March 1999 (see section 220 of the *Strata Schemes Management Act 1996*).

2.52 Summary Offences Act 1988 No 25

Section 27D Unlawful possession of offensive weapons or instruments

Omit “implement” wherever occurring. Insert instead “instrument”.

Explanatory note

The proposed amendment corrects a reference to a term defined in the *Crimes Act 1900*.

2.53 Supreme Court Act 1970 No 52

[1] Section 19 Definitions generally

Omit the definition of *rules* from section 19 (1). Insert instead:

rules means rules of the Court from time to time in force and includes:

- (a) rules made by the Rule Committee, and
- (b) rules that have effect, by virtue of section 122, as rules made by the Rule Committee, and
- (c) any Schedule to rules of the Court.

[2] Section 19 (3)

Insert after section 19 (2):

- (3) Notes included in this Act do not form part of this Act.

[3] Section 69C Stay of execution of conviction, order or sentence pending review

Omit “driver’s licence” from section 69C (5).

Insert instead “driver licence”.

[4] Section 122 Rules taken to have effect as rules made by the Rule Committee

Insert at the end of section 122:

Note. A proclamation was not published under subsection (2). Therefore, the Fourth Schedule was repealed on 1 January 1973 (six months after the commencement of this Act).

[5] Section 124 Rule-making power

Omit “of the rules contained in the Fourth Schedule or any rules for the time being in force” from section 124 (1).

Insert instead “rules”.

[6] Section 124 (1) (o)

Omit the paragraph. Insert instead:

- (o) for regulating and prescribing any matter concerning or in relation to which provision was made by the rules set out in the Fourth Schedule to this Act when it commenced,

[7] Section 124 (5)

Omit “in the Fourth Schedule or any rule made under this Act rescinds”.

Insert instead “rescind”.

[8] Section 124 (6)

Omit “in the Fourth Schedule or any rule made under this Act rescinds or amends”.

Insert instead “rescind or amend”.

[9] Fourth Schedule Savings and transitional provisions

Renumber Part 10 and clause 15 (as inserted by the *Supreme Court Amendment (Referral of Proceedings) Act 2000*) as Part 11 and clause 18, respectively.

Explanatory note

Items [1], [2] and [4]–[8] of the proposed amendments are consequential on the repeal of the Fourth Schedule to the *Supreme Court Act 1970* which formerly set out rules of the Supreme Court (but now includes savings and transitional provisions).

Item [3] of the proposed amendments updates the terminology used in a provision.

Item [9] corrects a duplication of Part and clause numbers.

2.54 Supreme Court (Summary Jurisdiction) Act 1967 No 72

Section 14 Judge may order payment of costs

Omit “subsection (1) of section 556A of the *Crimes Act 1900*, as amended by subsequent Acts,” from section 14 (1) (c).

Insert instead “section 10 of the *Crimes (Sentencing Procedure) Act 1999*”.

Explanatory note

The proposed amendment updates a reference to a repealed provision.

2.55 Sydney Water Catchment Management (General) Regulation 2000

Clause 9 Requirement to state name and address

Omit “in any other case” from clause 9 (2).

Explanatory note

The proposed amendment omits redundant words.

2.56 Tenterfield Local Environmental Plan 1996

Schedule 5 Complying development

Omit “*Food (General Regulation) 1997*”.

Insert instead “*Food (General) Regulation 1997*”.

Explanatory note

The proposed amendment corrects a reference to a regulation.

2.57 Threatened Species Conservation Act 1995 No 101

[1] Schedule 1 Endangered species, populations and ecological communities

Omit the matter relating to “*Polytelis anthopeplus* (Lear, 1831)” from under the headings “Animals”, “Vertebrates”, “Birds” and “Psittacidae” in Part 1.
Insert instead:

<i>Polytelis anthopeplus</i> <i>monarchoides</i> (Schodde, 1993)	Regent Parrot (eastern subspecies)
---	---------------------------------------

[2] Schedule 1, Part 1, Animals, Vertebrates, Birds

Omit the matter relating to “*Amytornis textilis* (Dumont, 1824)” from under the heading “Maluridae”.
Insert instead:

<i>Amytornis textilis modestus</i> (North, 1902)	Thick-billed Grasswren (eastern subspecies)
---	--

[3] Schedule 1, Part 1, Animals, Vertebrates, Birds

Omit the matter relating to “*Poephila cincta* (Gould, 1837)” from under the heading “Passeridae”.
Insert instead:

<i>Poephila cincta cincta</i> (Gould, 1837)	Black-throated Finch (southern subspecies)
--	---

[4] Schedule 1, Part 1, Animals, Vertebrates, Mammals

Omit the matter relating to “*Isoodon obesulus* (Shaw, 1797)” from under the heading “Peramelidae”.
Insert instead:

<i>Isoodon obesulus obesulus</i> (Shaw, 1797)	Southern Brown Bandicoot (eastern)
--	---------------------------------------

[5] Schedule 1, Part 1, Plants

Omit “*Davidsonia pruriens* var. *jerseyana* Bailey” and “*Davidsonia* sp. A Mullumbimby-Currumbin Ck (A.G. Floyd 1595)” from under the heading “Davidsoniaceae”.

Insert instead:

**Davidsonia jerseyana* (F. Muell. ex F.M. Bailey) G. Harden & J.B. Williams

**Davidsonia johnsonii* J.B. Williams & G. Harden

[6] Schedule 1, Part 1, Plants

Insert an asterisk before the matter relating to “*Melichrus* sp. *Gibberagee* (A.S. Benwell & J.B. Williams 97239)” under the heading “Epacridaceae”.

[7] Schedule 1, Part 1, Plants

Omit “*Acacia terminalis* (Salisb.) J. F. Macbr. subsp. *terminalis*” from under the heading “Fabaceae”.

Insert instead:

**Acacia terminalis* (Salisb.) J. F. Macbr. subsp. *terminalis*

[8] Schedule 1, Part 1, Plants

Insert an asterisk before “*Pultenaea parrisiae* subsp. *elusa* J.D. Briggs & Crisp” under the heading “Fabaceae”.

[9] Schedule 1, Part 1, Plants

Insert an asterisk before “*Persoonia hirsuta* Pers.” under the heading “Proteaceae”.

[10] Schedule 1, Part 4 Species presumed extinct

Omit the matter relating to “*Isoodon auratus* (Ramsay, 1887)” from under the headings “Animals”, “Vertebrates”, “Mammals” and “Peramelidae”.

Insert instead:

Isoodon auratus auratus
(Ramsay, 1887)

Golden Bandicoot (mainland)

[11] Schedule 1, Part 4, Animals, Vertebrates, Mammals

Omit the matter relating to “*Perameles bougainville* Quoy & Gaimard, 1834” from under the heading “Peramelidae”.

Insert instead:

* <i>Perameles bougainville fasciata</i> Gray, 1841	Western Barred Bandicoot (mainland)
--	--

[12] Schedule 1, Part 4, Animals, Vertebrates, Mammals

Omit the matter relating to “*Bettongia lesueur* (Quoy & Gaimard, 1824)” from under the heading “Potoroidae”.

Insert instead:

* <i>Bettongia lesueur graii</i> (Gould, 1841)	Boodie, Burrowing Bettong (mainland)
---	---

[13] Schedule 1, Part 4, Animals, Vertebrates, Mammals

Omit the matter relating to “*Bettongia penicillata* Gray, 1837” from under the heading “Potoroidae”.

Insert instead:

* <i>Bettongia penicillata penicillata</i> Gray, 1837	Brush-tailed Bettong (South- East Mainland)
--	--

[14] Schedule 2 Vulnerable species

Omit the matter relating to “*Pterodroma neglecta* (Schlegel, 1863)” from under the headings “Animals”, “Vertebrates”, “Birds” and “Procellariidae”.

Insert instead:

* <i>Pterodroma neglecta neglecta</i> (Schlegel, 1863)	Kermadec Petrel (west Pacific subspecies)
---	--

[15] Schedule 2, Animals, Vertebrates, Birds

Omit the matter relating to “*Pezoporus wallicus* (Kerr, 1792)” from under the heading “Psittacidae”.

Insert instead:

<i>Pezoporus wallicus wallicus</i> (Kerr, 1792)	Eastern Ground Parrot
--	-----------------------

[16] Schedule 2, Animals, Vertebrates, Mammals

Omit the matter relating to “*Miniopterus schreibersii* (Kuhl, 1817)” from under the heading “Vespertilionidae”.

Insert instead:

<i>Miniopterus schreibersii</i> <i>oceanensis</i> Maeda, 1982	Eastern Bent-wing Bat
--	-----------------------

[17] Schedule 2, Animals, Vertebrates, Mammals

Omit the matter relating to “*Nyctophilus timoriensis* (Geoffroy, 1806)” from under the heading “Vespertilionidae”.

Insert instead:

<i>Nyctophilus timoriensis</i> (Geoffroy, 1806) (South-eastern form)	Eastern Long-eared Bat
--	------------------------

[18] Schedule 2, Plants

Insert an asterisk before “*Astrotricha crassifolia* Blakely” under the heading “Araliaceae”.

[19] Schedule 2, Plants

Insert an asterisk before “*Acacia pycnostachya* F. Muell.” under the heading “Fabaceae”.

[20] Schedule 2, Plants

Insert an asterisk before the matter relating to “*Angophora inopina* K. D. Hill” under the heading “Myrtaceae”.

[21] Schedule 2, Plants

Insert an asterisk before “*Melaleuca biconvexa* Byrnes” under the heading “Myrtaceae”.

[22] Schedule 2, Plants

Omit “**Erythranthera pumila* (Kirk) Zotov” from under the heading “Poaceae”.

Insert in alphabetical order:

**Rytidosperma pumilum* (Kirk) Linder

[23] Schedule 2, Plants

Insert an asterisk before “*Grevillea parviflora* R. Br. subsp. *parviflora*” under the heading “Proteaceae”.

[24] Schedule 2, Plants

Insert an asterisk before “*Boronia umbellata* P. Weston” under the heading “Rutaceae”.

[25] Schedule 2, Plants

Omit the heading “Scrophulaceae”. Insert instead “Scrophulariaceae”.

[26] Schedule 2, Plants

Insert an asterisk before the matter relating to “*Pimelea curviflora* R. Br. var. *curviflora*” under the heading “Thymelaeaceae”.

Explanatory note

Schedule 1 to the *Threatened Species Conservation Act 1995* contains lists of endangered species, populations and ecological communities and species presumed extinct. Schedule 2 lists vulnerable species.

Items [1]–[5], [10]–[17] and [22] of the proposed amendments amend species names and common names as a result of revisions in taxonomy.

Item [25] corrects a spelling mistake.

Species that are listed in the analogous Schedules to the *Endangered Species Protection Act 1992* of the Commonwealth are marked with an asterisk.

Items [6]–[9], [15], [18]–[21], [23], [24] and [26] of the proposed amendments insert asterisks where appropriate, as a consequence of amendments to the Commonwealth Act.

2.58 Trade Measurement Act 1989 No 233

Section 64 Return, disposal or forfeiture of seized property

Omit “the offence proved” from section 64 (3) (a).

Insert instead “a person guilty of the offence”.

Explanatory note

Under section 556A of the *Crimes Act 1900* a court that found a charge proven had power to dismiss the charge or discharge the offender conditionally on his or her entering a recognizance to be of good behaviour. Section 556A has been repealed and replaced by section 10 of the *Crimes (Sentencing Procedure) Act 1999*, which provides for the dismissal of charges against or conditional discharge of offenders found guilty of an offence.

The proposed amendment updates a reference to a charge being proved to reflect the language used in section 10 of the *Crimes (Sentencing Procedure) Act 1999*, which refers to a finding of guilt.

2.59 Uranium Mining and Nuclear Facilities (Prohibitions) Act 1986 No 194

Section 6 Act to prevail over other Acts and laws

Omit “*Radioactive Substances Act 1957*” from section 6 (2) (a).

Insert instead “*Radiation Control Act 1990*”.

Explanatory note

The proposed amendment updates a reference to an Act.

2.60 Victims Compensation Rule 1997

Clause 12D Other modifications of Parts 27–30A of Local Courts (Civil Claims) Rules 1988

Omit “*Local Court (Civil Claims) Act 1970*”.

Insert instead “*Local Courts (Civil Claims) Act 1970*”.

Explanatory note

The proposed amendment corrects a reference to an Act.

2.61 Water Traffic Regulations—NSW

Clause 9 Exclusive use of waters

Omit “*Ports Corporation and Waterways Management Act 1995*” from clause 9 (5).

Insert instead “*Ports Corporatisation and Waterways Management Act 1995*”.

Explanatory note

The proposed amendment corrects a reference to an Act.

Schedule 3 Repeals

(Section 4)

Liquor (Amendment) Act 1994 No 42¹
Registered Clubs (Amendment) Act 1994 No 43²
Legal Profession Amendment Act 1996 No 95²
Transport Administration Amendment (Light Rail) Act 1996 No 128¹
Prevention of Cruelty to Animals Amendment Act 1997 No 83¹
Listening Devices Amendment (Warrants) Act 1998 No 3¹
Petroleum (Onshore) Amendment Act 1998 No 5¹
Transport Administration Amendment (Railway Services Authority
Corporatisation) Act 1998 No 8¹
Judicial Officers Amendment Act 1998 No 9¹
Professional Standards Amendment Act 1998 No 10¹
Farm Debt Mediation Amendment Act 1998 No 14¹
Fire Services Legislation Amendment Act 1998 No 19¹
Road Transport (Vehicle Registration) Amendment Act 1998 No 26²
Dairy Industry Amendment (Trade Practices Exemption) Act 1998 No 28¹
Real Property Amendment Act 1998 No 31¹
Disability Discrimination Legislation Amendment Act 1998 No 34¹
Partnership Amendment Act 1998 No 36¹
State Revenue Legislation Amendment Act 1998 No 44¹
Administrative Decisions Tribunal Legislation Amendment Act 1998 No 48¹
Courts Legislation Amendment Act 1998 No 49¹
Crimes Legislation Amendment Act 1998 No 53¹
Fair Trading Amendment Act 1998 No 55¹
Motor Vehicle Repairs Amendment Act 1998 No 58¹
Retirement Villages Amendment Act 1998 No 61¹
Thoroughbred Racing Board Amendment Act 1998 No 66¹

Energy Services Corporations Amendment (TransGrid Corporatisation) Act 1998 No 68¹

Road Improvement (Special Funding) Amendment Act 1998 No 71¹

Drug Misuse and Trafficking Amendment (Ongoing Dealing) Act 1998 No 73¹

Workers Compensation Legislation Amendment Act 1998 No 85¹

Native Title (New South Wales) Amendment Act 1998 No 88¹

Law Enforcement (Controlled Operations) Amendment Act 1998 No 89¹

Liquor Amendment (Restaurants and Nightclubs) Act 1998 No 91¹

Greyhound Racing Authority Amendment Act 1998 No 94¹

Harness Racing New South Wales Amendment Act 1998 No 95¹

Lotteries and Art Unions Amendment Act 1998 No 97¹

Protected Disclosures Amendment (Police) Act 1998 No 98¹

Legal Profession Amendment Act 1998 No 101¹

Nurses Amendment (Nurse Practitioners) Act 1998 No 102¹

State Revenue Legislation (Miscellaneous Amendments) Act 1998 No 104¹

Agriculture Legislation Amendment Act 1998 No 116¹

Charles Sturt University Amendment Act 1998 No 117¹

Mines Legislation Amendment (Mines Safety) Act 1998 No 122¹

Carbon Rights Legislation Amendment Act 1998 No 124¹

Meat Industry Amendment Act 1998 No 129²

Workers Compensation Legislation Amendment (Dust Diseases and Other Matters) Act 1998 No 130¹

Crimes Legislation Amendment (Child Sexual Offences) Act 1998 No 131¹

Victims Compensation Amendment Act 1998 No 134¹

Justices Legislation Amendment (Appeals) Act 1998 No 137²

Heritage Amendment Act 1998 No 138¹

Superannuation Legislation Further Amendment Act 1998 No 144¹

Ombudsman Amendment (Child Protection and Community Services) Act 1998 No 148¹

Crimes Legislation Further Amendment Act 1998 No 149¹

Liquor and Registered Clubs Legislation Amendment (Gaming) Act 1998 No 151¹
Drug Misuse and Trafficking Amendment (Controlled Operations and Integrity Testing Programs) Act 1998 No 160¹
Protection of the Environment Administration Amendment (Environmental Education) Act 1998 No 167¹
Courts Legislation Further Amendment Act 1998 No 172¹
Thoroughbred Racing Board Amendment Act 1999 No 15³
Crimes Amendment (Offensive Weapons) Act 1999 No 21³
Crimes Legislation Amendment Act 1999 No 40³
Mining Amendment Act 1999 No 43³
Thoroughbred Racing Board Further Amendment Act 1999 No 66³
Crimes Amendment (Apprehended Violence) Act 1999 No 88³
Fair Trading Amendment (Substantiation of Claims) Act 2000 No 5³

Key

- ¹ indicates repeal of an Act that was assented to at least 2 years ago and that contains only amendments
- ² indicates repeal of an Act that was assented to at least 2 years ago and that contains only amendments and uncommenced provisions that are redundant
- ³ indicates repeal of a recent amending Act that contains no substantive provision that needs to be retained, where the amendments made by the Act have been incorporated in a paper reprint of the Act amended

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 or provisions 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 Act is amended or repealed, no amendment made by the Act is affected. Section 30 (2) also ensures that the following matters are not affected:

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

Schedule 4 General savings, transitional and other provisions

(Section 5)

1 Effect of amendment of amending provisions

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

- (2) In this clause:

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

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

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

Explanatory note

This clause ensures that certain amendments, including amendments correcting errors in 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 instrument,
- (b) repeals and re-enacts (with or without modification) a provision of an Act or 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 provided, vitiate any act done or decision made under the provision as in force before the amendment or repeal.

3 Application of Interpretation Act 1987 to amendments to statutory rules

Sections 39, 40 and 41 of the *Interpretation Act 1987* do not apply to any amendments to statutory rules made by this Act.

Explanatory note

This clause makes it clear that certain provisions concerning the making, tabling and disallowance of statutory rules do not apply to amendments to statutory rules made by the proposed Act.

4 Effect of amendment on regulations

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

Explanatory note

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

5 Effect of amendment on environmental planning instruments

The amendment of an environmental planning instrument by this Act does not prevent its later amendment or repeal by another environmental planning instrument.

Explanatory note

This clause ensures that the amendment of a local environmental plan or other environmental planning instrument does not prevent its amendment or repeal by an environmental planning instrument.

6 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 and 2

- Aboriginal Housing Act 1998 No 47—Schedule 2
- Access to Neighbouring Land Act 2000 No 2—Schedule 1
- Albury Local Environmental Plan 2000—Schedule 2
- Anzac Memorial (Building) Act 1923 No 27—Schedule 2
- Child Protection (Offenders Registration) Act 2000 No 42—Schedule 1
- Child Protection (Prohibited Employment) Act 1998 No 147—Schedule 2
- Children and Young Persons Legislation (Repeal and Amendment) Act 1998 No 158—Schedule 2
- Children (Detention Centres) Act 1987 No 57—Schedule 1
- Children’s Court Act 1987 No 53—Schedule 2
- Community Land Development Act 1989 No 201—Schedule 2
- Community Land Management Act 1989 No 202—Schedule 1
- Community Land Management Regulation 2000—Schedule 2
- Contaminated Land Management Act 1997 No 140—Schedule 2
- Co-operative Housing and Starr-Bowkett Societies Act 1998 No 11—Schedule 1
- Crimes Act 1900 No 40—Schedule 2
- Crimes (Administration of Sentences) Act 1999 No 93—Schedule 1
- Crimes (Forensic Procedures) Act 2000 No 59—Schedule 2
- Criminal Procedure Act 1986 No 209—Schedule 2
- Criminal Records Act 1991 No 8—Schedule 2
- Dangerous Goods Act 1975 No 68—Schedule 2
- Defamation Act 1974 No 18—Schedule 2
- Dental Technicians Registration Act 1975 No 40—Schedule 1
- Environmental Planning and Assessment Act 1979 No 203—Schedule 1
- Environmentally Hazardous Chemicals Act 1985 No 14—Schedule 2
- Fair Trading Act 1987 No 68—Schedule 2

Family Day Care and Home Based Child Care Services Regulation 1996—Schedule 2

Forestry Regulation 1999—Schedule 2

Freedom of Information Regulation 2000—Schedule 2

Heritage Act 1977 No 136—Schedule 2

Hunter Water Act 1991 No 53—Schedule 2

Independent Pricing and Regulatory Tribunal and Other Legislation Amendment Act 2000 No 60—Schedule 2

Industrial Relations Act 1996 No 17—Schedule 2

Irrigation Corporations Act 1994 No 41—Schedule 2

Law Enforcement and National Security (Assumed Identities) Act 1998 No 154—Schedule 2

Law Enforcement (Controlled Operations) Amendment Act 1999 No 79—Schedule 1

Legal Profession Act 1987 No 109—Schedule 2

Liquor Act 1982 No 147—Schedule 1

Liquor and Registered Clubs Legislation Amendment Act 2000 No 62—Schedule 2

Maclean Local Environmental Plan 1992—Schedule 2

Manly Local Environmental Plan 1988—Schedule 2

Marine Safety Act 1998 No 121—Schedule 2

Mines Inspection Act 1901 No 75—Schedule 2

Motor Accidents Compensation Act 1999 No 41—Schedule 1

National Rail Corporation (Agreement) Act 1991 No 82—Schedule 1

Native Vegetation Conservation Act 1997 No 133—Schedule 2

Ombudsman Act 1974 No 68—Schedule 1

Parking Space Levy Act 1992 No 32—Schedule 2

Passenger Transport (Ferry Services) Regulation 2000—Schedule 2

Pawnbrokers and Second-hand Dealers Act 1996 No 13—Schedule 2

Pesticides Act 1999 No 80—Schedule 2

Poisons and Therapeutic Goods Act 1966 No 31—Schedule 1

Statute Law (Miscellaneous Provisions) Act (No 2) 2000 No 93

Notes

Poisons and Therapeutic Goods Regulation 1994—Schedule 2
Police Service Act 1990 No 47—Schedule 1
Privacy and Personal Information Protection Act 1998 No 133—Schedule 1
Property, Stock and Business Agents Act 1941 No 28—Schedule 1
Protection of the Environment Operations Act 1997 No 156—Schedule 1
Protection of the Environment Operations (Noise Control) Regulation 2000—Schedule 2
Public Sector Management Act 1988 No 33—Schedule 2
Registered Clubs Act 1976 No 31—Schedule 1
Residential Parks Act 1998 No 142—Schedule 1
Residential Tenancies Act 1987 No 26—Schedule 1
Residential Tribunal Act 1998 No 168—Schedule 2
Restraints of Trade Act 1976 No 67—Schedule 1
Retirement Villages Act 1999 No 81—Schedule 2
Road Obstructions (Special Provisions) Act 1979 No 9—Schedule 2
Road Transport (General) Act 1999 No 18—Schedule 2
Road Transport (Safety and Traffic Management) Act 1999 No 20—Schedule 2
Roads Act 1993 No 33—Schedule 2
Rural Lands Protection Act 1998 No 143—Schedule 1
Senators' Elections Act 1903 No 9—Schedule 1
State Environmental Planning Policy No 59—Central Western Sydney Economic and Employment Area—Schedule 2
State Owned Corporations Act 1989 No 134—Schedule 1
Statute Law (Miscellaneous Provisions) Act 2000 No 53—Schedule 2
Stock (Chemical Residues) Act 1975 No 26—Schedule 1
Strata Schemes (Freehold Development) Act 1973 No 68—Schedule 2
Strata Schemes (Leasehold Development) Act 1986 No 219 —Schedule 2
Strata Schemes Management Act 1996 No 138—Schedule 1
Strata Schemes Management Regulation 1997—Schedule 2

Summary Offences Act 1988 No 25—Schedule 2
Supreme Court Act 1970 No 52—Schedule 2
Supreme Court (Summary Jurisdiction) Act 1967 No 72—Schedule 2
Sydney Water Catchment Management (General) Regulation 2000—Schedule 2
Tenterfield Local Environmental Plan 1996—Schedule 2
Threatened Species Conservation Act 1995 No 101—Schedule 2
Trade Measurement Act 1989 No 233—Schedule 2
Uranium Mining and Nuclear Facilities (Prohibitions) Act 1986
No 194—Schedule 2
Victims Compensation Rule 1997—Schedule 2
Victims Support and Rehabilitation Act 1996 No 115—Schedule 1
Waste Minimisation and Management Act 1995 No 102—Schedule 1
Water Traffic Regulations—NSW—Schedule 2

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BY AUTHORITY