

**STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL  
1988**

NEW SOUTH WALES



**EXPLANATORY NOTE**

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The objects of this Bill are—

- (a) to make amendments to various Acts (Schedules 1–19); and
- (b) to amend certain other Acts for the purpose of effecting statute law revision (Schedule 20); and
- (c) to repeal certain Acts containing only—
  - (i) amendments to other Acts that have been incorporated in a reprint under the Reprints Act 1972; or
  - (ii) spent or unnecessary provisions of a saving or transitional nature; or
  - (iii) validation or referential provisions (Schedule 21); and
- (d) to make other provisions of a minor, consequential or ancillary nature.

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**Schedule 1** amends sections 12 and 14 of the Children (Equality of Status) Act 1976. The effect of these sections is that orders made by a court under the Maintenance Act 1964 for the maintenance of exnuptial children (or ancillary matters) are conclusive evidence of paternity or maternity. (Such orders are not made except in the light of an admission or finding as to paternity or maternity.)

The purpose of the amendments is to widen the class of orders that may be regarded as furnishing conclusive evidence of this kind, by including similar orders made under Acts (such as the Infant Protection Act 1904) that were in force before the Maintenance Act.

**Schedule 2** amends the Crimes Act 1900—

- (a) so as to ensure that where an inquiry is to be conducted into the question of a person's fitness to be tried for an offence as a result of a determination made under section 428E of that Act, the inquiry need not be conducted if, before the inquiry commences, the Attorney General subsequently determines that there is no longer any need for such an inquiry to be conducted (Schedule 2 (1) and (2)); and

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- (b) to make it clear that the Attorney General's functions under section 428M of the Act (following notification of a determination of the Mental Health Review Tribunal as to the fitness of a person to be tried for an offence) may be exercised not only after consultation with the Director of Public Prosecutions but also after consideration of the written advice of the Director (Schedule 2 (3)).

**Schedule 3** amends section 5F of the Criminal Appeal Act 1912 (as inserted by the Criminal Appeal (Amendment) Act 1987) to ensure that the section operates in the manner intended when it was enacted. Section 5F (2) was inserted to enable the Attorney General or Director of Public Prosecutions to appeal as of right to the Court of Criminal Appeal against an interlocutory judgment or order in proceedings (including committal proceedings) for the prosecution of offenders on indictment in the Supreme Court or the District Court. The recent decision of the High Court of Australia in *John L Pty Ltd v. Attorney-General (NSW)* (1987 (73 ALR 545)) interpreted the phrase "proceedings to which the Crown was a party" in section 5C of the Act in a manner which, if applied to section 5F, might prevent the Attorney General or Director of Public Prosecutions appealing as of right in committal proceedings.

The amended section 5F (2) will read:

- (2) The Attorney General or the Director of Public Prosecutions may appeal to the Court of Criminal Appeal against an interlocutory judgment or order given or made in proceedings to which this section applies [*and to which the Crown is a party*].

Matter to be omitted is shown in italics.

The proposed amendments to section 5F (3) are by way of statute law revision.

The proposed amendment to section 5F (4) corrects a printing error that occurred in the late stages of preparation of the Criminal Appeal (Amendment) Act 1987.

**Schedule 4** amends the District Court Act 1973 to confer on the Sheriff functions currently conferred only on bailiffs of the District Court. The Sheriff will be empowered to delegate those functions to Sheriff's officers. (Currently, all Sheriff's officers are bailiffs under the Act.) Sheriff's officers will in future exercise their functions under the Act as "Sheriff's officer" rather than as "bailiff" as at present. The amendments will also enable functions to be conferred on the Sheriff by District Court rules. Current provisions concerning bailiffs are retained with minor and consequential amendments.

Parallel amendments are made to the Local Courts (Civil Claims) Act 1970 by Schedule 10.

**Schedule 5** amends section 13 of the Environmental Planning and Assessment Act 1979 to change the name of the Director of Environment and Planning to the Director of Planning.

**Schedule 6** amends section 5 of the Judges' Pensions Act 1953 which provides for pensions of judges who retire because of ill-health. The proposed amendments will—

- (a) enable the Secretary of the Department of Health to authorise another person to provide certificates under section 5; and
- (b) require a certificate that a person is not suffering from any impairment of health likely to affect capacity for judicial office to be given before the person's appointment as a judge (at present, such a certificate may be given after appointment).

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**Schedule 7** amends the Jury Act 1977 to streamline the procedure for taking proceedings against a person who has failed to attend for jury service at a court or jury pool and declined to be dealt with under the penalty notice procedure. The proposed amendment repeals a provision requiring the approval of a judge before proceedings can be taken against such a person and permitting a judge to summarily impose a penalty for the failure to attend.

**Schedule 8** amends the Justices Act 1902 in the following respects:

Section 48E (2) of the Act requires a Justice to reject a paper committal and direct the relevant prosecution witness to give evidence orally if the defendant makes the necessary application before the paper committal is received in evidence. The provision must be read in the light of the mandatory paper committal provisions introduced by the Justices (Paper Committals) Amendment Act 1987, and, in particular, the amendment to section 48E (1) (b) which limited the obligation of a Justice to grant such an application to cases in which it was in the interests of justice to do so. The proposed consequential amendment to section 48E (2) (Schedule 8 (1)) will put the matter beyond doubt.

Section 100ZA (1) of the Act requires applications under section 100y and references from the Minister under section 100z relating to certain traffic offences to be dealt with by the Clerk of the Local Court nearest to the place where the offence was allegedly committed. The proposed amendment to the subsection (Schedule 8 (2)) will overcome the inconvenience this requirement can cause by enabling the application or reference to be dealt with by the Clerk of any Local Court.

**Schedule 9** amends the Legal Profession Act 1987—

- (a) to make the language of sections 25 and 163 consistent with that used in parallel provisions of the Act (Schedule 9 (1) and (4)); and
- (b) to enable a solicitor to withdraw money from a general trust account for disbursements yet to be paid (Schedule 9 (2) (a)); and
- (c) to ensure that the requirements of that Act in relation to the keeping of trust account records extend to all trust money, whether or not it is for the time being held in a general trust account (Schedule 9 (2) (b)); and
- (d) to amend section 117 (2) of the Act so that it provides (as did the former section 40c (1) of the Legal Practitioners Act 1898 on which it is based) that it is an offence for a person to directly or indirectly do any general legal work, or any probate work, for a fee unless the person is a legal practitioner (Schedule 9 (3)); and
- (e) to decrease from 8 to 6 members the quorum required for a joint sitting of the Barristers Admission Board and the Solicitors Admission Board (Schedule 9 (5) (a)); and
- (f) to enable one or more reserve members to be nominated to act in the office of a member of an Admission Board during the member's illness or absence (the reserve member is to hold the same qualification and be nominated in the same manner as the member for whom he or she is to act) (Schedule 9 (5) (b)).

**Schedule 10** amends the Local Courts (Civil Claims) Act 1970 in 2 respects.

Firstly, to enable rules to be made to authorise and provide for the auctioning by a licensed auctioneer of goods and other personal property seized under a writ of execution issued by a Local Court. Currently, seized property can only be sold by the bailiff. The amendment brings Local Courts into line with the Supreme and District Courts.

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Secondly, to confer on the Sheriff functions currently conferred only on bailiffs of Local Courts. The Sheriff will be empowered to delegate those functions to Sheriff's officers. (The Act currently provides that all Sheriff's officers are bailiffs.) Sheriff's officers will in future exercise their functions under the Act as "Sheriff's officer" rather than as "bailiff" as at present. The amendments will also enable functions to be conferred on the Sheriff by Local Court rules. Current provisions concerning bailiffs are retained with minor and consequential amendments. Parallel amendments are made to the District Court Act 1973 by Schedule 4.

**Schedule 11** amends the Local Government Act 1919 in the following respects:

Under section 93A of the Act a person holding the position of a health surveyor of a council under the section before its substitution by the Local Government (General Revision) Amendment Act 1986 is taken to be qualified to hold the position of chief health surveyor or assistant health surveyor of the council. The proposed amendment to the section (Schedule 11 (1)) will provide for persons who were qualified for appointment to the position of a health surveyor before the substitution to be treated in the same way. (A person was qualified for appointment if the person held a certificate as prescribed or was exempted from doing so.)

Under section 161 of the Act rates cannot be abandoned or written off the books of account of a council unless the auditor of the council certifies that the abandonment or writing off complies with the relevant ordinance. The proposed amendment to the section (Schedule 11(2)) omits this obsolete requirement. The ordinance will be appropriately amended to take into account modern auditing practice.

Under section 546 (Various powers) of the Act a shire council may, by resolution, alter the boundaries of adjoining urban areas, add to the area of an urban area, constitute a new urban area or unite an urban area. The proposed amendment to section 546 (Schedule 11 (3)) will make it clear that a shire council may also declare that land has ceased to form part of an urban area.

**Schedule 12** amends the Marketing of Primary Products Act 1983 to widen the existing power in section 163 (3) (b) of the Act to make regulations for or with respect to the making and keeping of records by a producer so that regulations may be made to require other persons involved in the marketing of primary products to make or keep records (Schedule 12 (3)). The Schedule also includes amendments to sections 117 and 144 of the Act by way of statute law revision (Schedule 12 (1) and (2)).

**Schedule 13** amends the Motor Vehicles (Taxation) Act 1980 so as to ratify the collection of a tax which has been paid since 27 October 1987 on heavy motor vehicles not used substantially for private purposes.

**Schedule 14** amends the Pay-roll Tax Act 1971—

- (a) to restore a definition ("corresponding law") repealed by the Pay-roll Tax (Information Disclosure) Amendment Act 1987 so that any uncertainty as to the effect of provisions of the Act using the definition is avoided (Schedule 14 (1)); and
- (b) to provide for the approval rather than prescription of forms referred to in section 13 of the Act (Schedule 14 (2)); and
- (c) to correct a typographical error contained in a formula (relating to the calculation of the amount of pay-roll tax payable by the members of a group of employers from 1 July 1987) inserted by the Pay-roll Tax (Amendment) Act 1987 (Schedule 14 (3)).

(The relevant provision will only apply to the annual adjustment of pay-roll tax from 30 June 1988.)

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**Schedule 15** amends the definition of “charitable organisation” in section 4 of the Prevention of Cruelty to Animals Act 1979 to enable persons who are officers of certain organisations or associations which are exempted from registration as a charity by or under the Charitable Collections Act 1934 to be officers for the purposes of the Prevention of Cruelty to Animals Act 1979.

The Schedule also includes amendments by way of statute law revision to the definition of “officer” in section 4, and to section 25, of the Act.

**Schedule 16** amends the Real Property Act 1900—

- (a) to make it clear that the Registrar-General can record certain dealings (such as a transfer pursuant to the exercise of a mortgagee’s power of sale) effected by the registered proprietor of a mortgage, lease, charge or covenant charge which was able to be registered because a caveat lapsed (Schedule 16 (1)); and
- (b) to make it clear that if a caveator is given notice of the lodging of a dealing for registration and does not take the required action to prevent the dealing from being registered the caveat lapses only in respect of that particular dealing (Schedule 16 (2)); and
- (c) to allow the registered proprietor of an estate or interest in the land described in a caveat to apply to the Registrar-General to have notice sent to the caveator that the caveat will lapse if no further action is taken (Schedule 16 (3)); and
- (d) to declare that the Supreme Court, on hearing an application for an order extending the operation of a caveat, may make any orders it thinks fit (Schedule 16 (4)); and
- (e) to permit a person having an estate or interest in land the subject of a caveat to apply to the Supreme Court for an order that the caveat be withdrawn (Schedule 16 (5)); and
- (f) to enable the Supreme Court to determine the manner of service of a notice on a caveator (Schedule 16 (6)).

It is also proposed to amend section 105A of the Act as a consequence of the amendment of the Supreme Court Act 1970 by Schedule 18 (2) which will authorise (in certain circumstances) the sale or mortgage by a judgment debtor of land affected by a Supreme Court writ. The amendments to the Real Property Act will authorise the Registrar-General to register certain dealings affecting the land free of the writ. The proposed arrangements currently exist in respect of the District Court.

**Schedule 17** amends section 8 of the Revenue Laws (Reciprocal Powers) Act 1987 to widen the defences available to a person who fails or refuses to comply with a requirement made under section 6 (Investigation powers) of the Act so that they are consistent with those available under section 11 for a failure or refusal to comply with a requirement made under section 9 or 10 of the Act (relating to the powers of the relevant principal New South Wales revenue officer and designated Commonwealth and State revenue officer to obtain information and evidence). When amended, section 8 will provide that if a person charged with an offence under the section satisfies the court hearing the charge that he or she could not, by the exercise of reasonable diligence, have complied with a requirement made under section 6 (or that the person complied with it to the extent of the person’s ability) the person will not be guilty of the offence. Under the existing provision a defence is available only in relation to the failure or refusal to answer certain questions and does not extend to, for example, a failure to produce records for inspection or to produce a statement in English of any records produced not written in the English language.

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**Schedule 18** amends the Supreme Court Act 1970 in the following respects:

The proposed amendments to section 17 and the Third Schedule (Schedule 18 (1) and (4)) clarify the effect of amendments made by the Supreme Court (Appeals) Amendment Act 1987. The latter amendments excluded the making of an application or appeal to the Court of Appeal against the refusal of an interlocutory judgment or order in criminal proceedings in the District Court. The proposed amendments make it clear that the exclusion applies to an order made in committal proceedings.

Proposed section 98A (Schedule 18 (2)) will introduce a procedure (the same as currently exists in the District Court Act 1973) to enable the sale or mortgage by a judgment debtor of land affected by a Supreme Court writ. The procedure embodies appropriate safeguards for judgment creditors and the purchaser or mortgagee.

Proposed section 99A will make it clear that the Sheriff is under no obligation to remove goods from land when executing a writ of possession (Schedule 18 (3)).

**Schedule 19** amends the Victims Compensation Act 1987 so as—

- (a) to effect minor statute law revision (Schedule 19 (1)); and
- (b) to remove the existing \$1,000 limit relating to the scale of costs that may be prescribed by the rules of the Victims Compensation Tribunal (Schedule 19 (2) (a)); and
- (c) to enable an award of costs in proceedings before the Victims Compensation Tribunal to be made payable to the applicant in the proceedings or to any other person for the benefit of the applicant (Schedule 19 (2) (b)); and
- (d) to ensure that the provisions of Part 6 (Compensation awarded by a court) enable a court to give directions for compensation for loss as well as for injury (Schedule 19 (3) and (4)).

**Schedule 20** amends certain other Acts for the purpose of effecting statute law revision. A number of amendments are made relating to formal drafting matters, such as the ranging of provisions and cross-references within Acts and minor corrections. The Schedule also contains amendments for the following purposes:

To amend the following Acts to transfer referential provisions in amending Acts to be repealed by this Act that are not saved by the Interpretation Act 1987 to the Principal Acts to which they relate:

Coal and Oil Shale Mine Workers (Superannuation) Act 1941  
Mines Inspection Act 1901  
Pastures Protection Act 1934.

To amend section 39 (Duration of licences) of the Business Franchise Licences (Tobacco) Act 1987 to ensure that the period of a licence is defined as being from the 28th day of one month (or such other day as is specified in the licence) until the end of the 27th day of the following month. (In its present form the section could, in some instances, have the unintended effect of providing that a licence ceases to be in force before it takes effect.)

To amend section 8 of the Colleges of Advanced Education Act 1975 to make it clear that a member of the council of a corporate college is taken to have vacated office if the member is removed from office under section 47 of the Interpretation Act 1987. The proposed amendment removes any doubt that might have been raised in this respect by the repeal of section 7 (6) of the Act consequent on the enactment of the Interpretation Act 1987.

To repeal a superfluous section of the State Public Service Superannuation Act 1985 (relating to a provision repealed by the State Public Service Superannuation (Amendment) Act 1987).

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To amend section 58 of the Strata Titles Act 1973 and section 87 of the Strata Titles (Leasehold) Act 1986 to alter cross-references that should have been altered consequentially on amendments made to the sections by the Statute Law (Miscellaneous Provisions) Act (No. 2) 1987.

To amend the Third Schedule to the Trustee Companies Act 1964 to up-date a reference to a trustee company which changed its name on 4 May 1988.

**Schedule 21** repeals a number of Acts. Since the Statute Law (Miscellaneous Provisions) Act 1985 the number of Acts in force has been gradually reduced by repealing amending Acts once the amendments contained in the Act have been incorporated in a reprint. The Schedule continues this process.

**Schedule 22** contains savings, transitional and other provisions.

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