

Act No. 48

**STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL
(No. 1) 1987**

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 1–30);
- (b) to amend certain other Acts for the purpose of effecting statute law revision (Schedules 31 and 32);
- (c) to repeal certain Acts containing only—
 - (i) amendments to other Acts that have been incorporated in a reprint under the Reprints Act 1972;
 - (ii) repeals of other Acts;
 - (iii) spent or unnecessary provisions of a saving or transitional nature; or
 - (iv) validation or referential provisions,(Schedules 33 and 34);
- (d) to repeal an expired Act (Schedule 33); and
- (e) to make other provisions of a minor, consequential or ancillary nature.

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Schedule 1 repeals section 17 (4) of the Agricultural Holdings Act 1941 (under which an agricultural committee may state a case for the opinion of the district court on any question of law arising in the course of an arbitration) to provide that, instead of that subsection, sections 38 and 39 of the Commercial Arbitration Act 1984 apply to an arbitration under the Act. Those sections provide for appeal to the Supreme Court on any question of law arising out of an award and for the Court to determine any question of law arising in the course of an arbitration.

Schedule 2 amends the Compensation Court Act 1984 to enable rules to be made relating to the payment or transfer of money into or out of Court.

Schedule 3 amends the Conveyancing Act 1919 to make it clear that section 184D (2) of the Act (which states that registration of instruments in the General Register of Deeds has effect for the purposes of record only) does not affect other provisions relating to the effect of such registration.

Schedule 4 amends the Crimes Act 1900—

- (a) to facilitate verification of the existence of a warrant for the purposes of section 352 (4) of the Act by enabling the existence of the warrant to be certified by use of communication devices such as those used to transmit facsimiles of documents (Schedule 4 (1) and (5));
- (b) to amend sections 73 and 74 of the Act to maintain consistency of language with other provisions of the Act (Schedule 4 (2) and (3));
- (c) to amend section 125 of the Act to make it clear that a person deemed to be guilty of larceny under the section is liable to be indicted for the offence of larceny (instead of for a separate offence under the section) (Schedule 4 (4));
- (d) to amend section 352AA of the Act to enable a warrant to be issued for the arrest of a person who is unlawfully at large within the meaning of that section (Schedule 4 (6));
- (e) to amend section 405B of the Act to extend the operation of that section to cover certain homosexual offences against males under the age of 18 years (that section requires the Judge to explain to the jury that the absence of complaint, or delay in complaining, about a sexual offence does not necessarily mean that the allegation of an offence is false) (Schedule 4 (7));
- (f) to amend section 405C of the Act (which by virtue of the proposed amendment to section 405B will also operate to cover certain homosexual offences against males under the age of 18 years) to make savings with respect to the operation of any rule of law requiring a Judge to warn a jury in relation to uncorroborated evidence given by persons upon whom certain sexual offences are alleged to have been committed (Schedule 4 (8));
- (g) to amend section 440B of the Act, so as to increase (from \$4,000 to \$10,000) the maximum fine that may be imposed when a court defers sentence for an indictable offence and requires the offender to enter into a recognizance (Schedule 4 (9));

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- (h) to amend section 444 of the Act to enable a Judge in New South Wales to impose a cumulative sentence on a prisoner serving an unexpired sentence passed outside New South Wales (Schedule 4 (10)); and
- (i) to amend section 447B of and the Ninth Schedule to the Act to enable a Judge to take into account summary offences for which a person has been charged in sentencing the person for any indictable offence (at present the procedure, which enables a Judge to take into account offences that have been admitted in sentencing and for no further proceedings to be taken in respect of those offences, is available only in respect of indictable offences) (Schedule 4 (11) and (12)).

Schedule 5 amends the Dangerous Goods Act 1975 to enable the making of a regulation requiring a person concerned in the conveyance of dangerous goods to effect a policy of insurance to indemnify the person in respect of liability incurred on account of injury or damage arising out of a fire or explosion in, on or in the vicinity of, or the escape or spillage of dangerous goods in, on or from, the container in which the dangerous goods are carried. The amendment will enable the adoption by regulation of a provision of the Australian Code for the Transport of Dangerous Goods by Road and Rail.

Schedule 6 amends the Dormant Funds Act 1942—

- (a) to enable a person who has made a request under section 13 of the Act for a proposal formulated in relation to a dormant fund to be referred to the Charity Referees to request that the reference be withdrawn (Schedule 6 (2));
- (b) to extend the powers, protections and immunities presently conferred on the Charity Referees and chairman of the Charity Referees (which are the same as those conferred on commissioners and on the chairman of a commission, respectively, under Division 1 of Part II of the Royal Commissions Act 1923) with respect to the examination of proposals for the application of dormant funds to include the hearing by the Charity Referees of an appeal against a determination by the Commissioner of Dormant Funds that a fund is dormant (Schedule 6 (4) (a));
- (c) to make it clear that both in hearing such an appeal and in considering such a proposal the Charity Referees may require the production of books and documents (Schedule 6 (4) (a)); and
- (d) to make amendments by way of statute law revision.

Schedule 7 amends section 11 (Possession of equipment for administration of prohibited drugs) of the Drug Misuse and Trafficking Act 1985. In its present form the section provides (section 11 (2) (e)) that a person is not guilty of an offence if the person has in his or her possession an item of equipment which has been lawfully supplied. The provision does not make sufficiently clear the relationship between possession of the equipment (which in most cases will have been lawfully supplied) and the purpose for which the equipment so supplied is used. The proposed amendment will provide instead that a person is not guilty of an offence if the person possesses the equipment for use in the administration of a prohibited drug lawfully prescribed or supplied.

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Schedule 8 amends the Egg Industry Act 1983—

- (a) to replace a provision describing the persons to whom Part V of the Act applies that will be ineffective once a levy (payable under the Poultry Industry Levy Act 1985 of the Commonwealth) is discontinued with a provision that describes the same persons without reference to that levy (Schedule 8 (2));
- (b) to repeal a definition that will be unnecessary if the amendment referred to in paragraph (a) is made (Schedule 8 (1)); and
- (c) to make an amendment by way of statute law revision (Schedule 8 (3)).

Schedule 9 amends the definition of “prescribed narcotics offence” in section 6 (1) of the Firearms and Dangerous Weapons Act 1973 to include within that definition certain offences committed under the Poisons Act 1966 (or the regulations under that Act) before the commencement of the Drug Misuse and Trafficking Act 1985. The offences to be included in the definition were replaced by those offences under the Drug Misuse and Trafficking Act 1985 referred to in paragraph (a) of the definition. The amendment will assist in interpreting sections 7 (5) (c1) and 10 (4) (c1) of the Firearms and Dangerous Weapons Act 1973 by making it clear that references in those sections to offences committed in a 10 year period include both the offences under the Drug Misuse and Trafficking Act 1985 described in paragraph (a) of the definition and the offences under the Poisons Act 1966 they replaced.

Schedule 10 amends the Industrial Arbitration Act 1940—

- (a) to make it clear that a conciliation commissioner may summon a person to a compulsory conference under section 25 of the Act to attend and confer, attend and give evidence or attend and produce documents or things (Schedule 10 (1));
- (b) to amend references to a company that has changed its name (Schedule 10 (2) and (4)); and
- (c) to extend the purposes for which a summons may be issued under section 79A (1) of the Act to include the production of things (Schedule 10 (3)).

Schedule 11 substitutes section 5 (1A) of the Intoxicated Persons Act 1979 to make it clear that the effect of the provision (which was designed to encourage the use of non-police or “civilian” proclaimed places for the purpose of detaining intoxicated persons) is to prevent a member of the police force detaining an intoxicated person in a police station unless—

- (a) the person is, or is likely to become violent; or
- (b) where the person is not violent, or likely to become violent, no proclaimed place other than a police station is available and it is impractical to take the person home.

Schedule 12 amends the Justices Act 1902—

- (a) to amend an obsolete requirement to pay a fee of 10 cents in order to obtain a certificate under section 25 of the Act (Schedule 12 (1));

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- (b) to amend section 40 (2) of the Act (which enables a person charged upon an information under section 21 to obtain a copy of the depositions taken at the hearing of the matter of the information) so that it accords with section 73 (1) of the Act (Schedule 12 (2));
- (c) to amend section 76 of the Act to permit the hearing together of all or any charges against a defendant who does not appear at an adjourned hearing (under section 75A of the Act a similar procedure is available where a person does not appear to summonses) (Schedule 12 (4)); and
- (d) to make amendments by way of statute law revision (Schedule 12 (3) and (5)).

Schedule 13 amends clause 2 (2) of Schedule 1 to the Law Foundation Act 1979 to increase from 1 to 3 the number of members of the Board of Governors of the Foundation who may be barristers or solicitors. The members appointed under that subclause are persons who, in the opinion of the Attorney General, have special knowledge, experience or interest in relation to any of the objects of the Foundation.

Schedule 14 amends the Local Courts (Civil Claims) Act 1970—

- (a) to extend from 14 to 28 days the minimum period after service on a defendant of a default summons which must pass before judgment may be entered under section 27 of the Act (the amendment will have the effect of extending the time in which a defendant may file a notice of defence or statement of confession) (Schedule 14 (1));
- (b) to enable courts and registrars authorised by the rules to order costs against a party making an application to set aside any judgment or order if the application is refused (Schedule 14 (2) and (5));
- (c) to discourage the making of vexatious applications in relation to payment of judgment debts by instalments by enabling courts and registrars authorised by the rules to order costs against a party making an unreasonable application (Schedule 14 (3)); and
- (d) to increase from \$100 to \$1,000 the penalty for interfering with, disposing of or removing property seized or subject to a notice under section 59 of the Act without the consent of the bailiff seizing the property or serving the notice (Schedule 14 (4)).

Schedule 15 amends the Local Government Act 1919—

- (a) to enable the making of an ordinance to authorise the public to inspect either the original or a copy of council minutes or an extract from the minutes (Schedule 15 (1));
- (b) to require councils to keep a register, to be available for public inspection and without charge, of approvals of the erection of buildings required under Division 4 of Part XI of the Act (Schedule 15 (2)); and
- (c) to enable service of notices under section 628 of the Act through document exchanges (Schedule 15 (3)).

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Schedule 16 amends the Lotto Act 1979 to create an offence of organising or promoting for fee, gain or reward the formation of syndicates to enter in, or subscribe to, games of lotto. The offence is similar to that under section 6A of the State Lotteries Act 1930.

Schedule 17 contains an amendment to the Motor Vehicles (Third Party Insurance) Act 1942 as a consequence of the proposed amendment of the State Transport (Coordination) Act 1931 (Schedule 26).

Schedule 18 amends the Pay-roll Tax Act 1971—

- (a) to amend section 3 of the Act, which defines certain expressions for the purposes of that Act, by providing that a travelling or accommodation allowance will be regarded as wages for the purposes of that Act only to the extent that the allowance exceeds an amount to be prescribed by regulation or an amount calculated at a rate to be so prescribed (the effect will be to reduce the amount of wages liable to pay-roll tax in a case where an employer pays travelling or accommodation allowances to employees) (Schedule 18 (1));
- (b) to amend formulae (inserted in sections 11A (2) and 16J (2) of the Act by the Pay-roll Tax (Further Amendment) Act 1986) relating to calculation of deductions from taxable wages liable to pay-roll tax so as to include brackets omitted from the formulae (Schedule 18 (2) and (4)); and
- (c) to omit an unnecessary requirement that employers who are members of a group who do not incur any pay-roll tax liability (as the combined weekly wages paid or payable by the group do not exceed \$5,769 per week) register as employers under section 12 of the Act (Schedule 18 (3)).

Schedule 19 amends the Pesticides and Allied Chemicals Act 1978—

- (a) to repeal those provisions of the Act relating to the approval of aircraft used for the application of pesticides (Schedule 19 (1) (a), (2)–(10) and (12)–(14));
- (b) to enable pesticides relating to animals to be controlled under the Stock Foods and Medicines Act 1940 (Schedule 19 (1) (b)); and
- (c) to omit the requirement that the holder of an aircraft (pesticide applicator) licence keep a record of causing an aircraft to be used in the application of a fertilizer (Schedule 19 (11)).

The provisions of the Act to be repealed as referred to in paragraph (a) were intended to be used to determine the suitability of spray equipment for use in the application of pesticides attached to aircraft but have proved to be inappropriate. It is proposed instead, at a later date, to prescribe standards for pesticide application equipment under section 73 (1) of the Act.

Schedule 20 amends the Police Board Act 1983 to make it clear that a member of the Board who is an applicant for appointment to the office of Commissioner shall not exercise any functions of the Board with respect to the appointment.

Schedule 21 amends the Police Regulation Act 1899 to enable the Minister to invite applications for appointment to the offices of Commissioner of Police, Deputy Commissioner of Police and Assistant Commissioner of Police from persons other than members of the police force without first considering a recommendation by the Police Board as to whether applications should be invited from such persons.

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Schedule 22 amends the Public Authorities Superannuation Act 1985—

- (a) to enable the Public Authorities Superannuation Board to determine, having regard to the circumstances of a contributor, the date on which an election to reduce contribution rates because of financial hardship will take effect (at present, such an election takes effect, irrespective of the circumstances of the contributor, from 1 April of the superannuation year in which the election is received at the office of the Board) (Schedule 22 (1)); and
- (b) to include the Orange Agricultural College as an employer within the meaning of the Act (Schedule 22 (2)).

Schedule 23 amends the Registration of Interests in Goods Act 1986 to extend from 7 to 14 days the time within which the holder of a registered interest in goods is required to register early termination of the registered interest.

Schedule 24 amends the State Development and Industries Assistance Act 1966—

- (a) to make amendments consequential on the proposed amendment of the State Development and Industries Assistance (Amendment) Act 1986 (Schedule 25) (Schedule 24 (1) and (2));
- (b) to enable the Ministerial Corporation, once the Industries Assistance Fund is established under section 34IA of the Act, to exercise its powers under—
 - (i) Part III of the Act; and
 - (ii) Part IIIA of the Act in relation to the acquisition of land for the purposes of Part III, or in relation to land acquired for those purposes,in relation to all industries not just country industries (Schedule 24 (4), (5) (b), (6)–(10));
- (c) to clarify the relationship between sections 34IA and 34G (2) of the Act (Schedule 24 (11)); and
- (d) to make amendments by way of statute law revision (Schedule 24 (3) and (5) (a)).

Schedule 25 amends the State Development and Industries Assistance (Amendment) Act 1986 to omit those parts of the Act making provision for the establishment of the New South Wales Economic Development Advisory Council and prescribing its functions. The need for such a Council has been superseded by establishment of the State Development Council.

Schedule 26 amends the State Transport (Co-ordination) Act 1931 to omit those provisions of the Act relating to the licensing of public motor vehicles which carry goods. The Schedule also omits certain anachronistic provisions relating to charges (which have not been collected since 1974) payable in respect of the carriage of goods and passengers in such vehicles. The abolition of the requirement to license goods carrying vehicles as of 1 July 1986 has already been reported to Parliament as a variation of statute.

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Schedule 27 repeals section 3 (4) of the Transport Act 1930 to omit an anomalous requirement to obtain the consent of a local authority to the inclusion in, addition to or exclusion from a transport district of the area, or part of the area, of the local authority. The provision was complementary to section 507 of the Local Government Act 1919 which was repealed as a consequence of the enactment of the State Transport (Co-ordination) Amendment Act 1980 which transferred certain functions relating to the operation of public passenger vehicles from local authorities to the Commissioner for Motor Transport.

Schedule 28 amends the Transport Authorities Act 1980 to enable the person currently holding office as Chairman of the State Rail Authority to remain in office for a period of up to 2 years after the person reaches the age of 70 years.

Schedule 29 amends the Auctioneers and Agents Act 1941 and the Landlord and Tenant (Rental Bonds) Act 1977 to enable money contained in the Auctioneers and Agents Statutory Interest Account and the Rental Bond Interest Account, respectively, to be used for paying the costs of administration of the Residential Tenancies Act 1987. The amendments could not be introduced in the Legislative Council with the Residential Tenancies Bill 1987 (which, as was made clear by clause 129 (2) of the Bill, includes no provision to appropriate public revenue) because section 5 of the Constitution Act 1902 requires Bills appropriating any part of the public revenue to originate in the Legislative Assembly. The Schedule omits section 129 (2) of the Residential Tenancies Act 1987 as the provision will be unnecessary if the Auctioneers and Agents Act 1941 and the Landlord and Tenant (Rental Bonds) Act 1977 are amended in the manner proposed.

Schedule 30 amends the Crown Advocate Act 1979, the Crown Prosecutors Act 1986, the Director of Public Prosecutions Act 1986, the Law Reform Commission Act 1967, the Public Defenders Act 1969 and the Solicitor General Act 1969 to give the Attorney General statutory authority to determine the leave entitlements of certain persons appointed to offices under those Acts.

Schedule 31 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 referential provisions and cross-references within Acts and minor corrections.

Schedule 31 also contains amendments for the following purposes:

To amend section 48 of the Housing Act 1912 to omit a misleading reference to rebate of rental being granted under that Act (such rebates are granted under the Housing Act 1976).

To amend the Legal Aid Commission Act 1979 so that the provisions of that Act requiring the Director of the Commission to devote the whole of his or her time to the duties of office are consistent with provisions of this nature in other Acts.

To amend the Plant Diseases (Amendment) Act 1987 so that a provision intended to clarify the powers of the Governor with respect to the making of proclamations for the purpose of the definition of "disease" in the Plant Diseases Act 1924 will not omit more words from the definition than are necessary to achieve the intended effect.

To amend section 5A of the Police Regulation (Appeals) Act 1923 as a consequence of the enactment of the Government and Related Employees Appeal Tribunal (Amendment) Act 1986.

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To amend the Statute Law (Miscellaneous Provisions) Act (No. 2) 1986 as a consequence of the proposed amendment of the State Development and Industries Assistance (Amendment) Act 1986 (Schedule 24).

Schedule 32 amends a number of Acts as a consequence of the enactment of the Interpretation Act 1987. The Schedule—

- (a) repeals provisions containing express references to the Interpretation Act 1897 (such as those applying section 41 of the 1897 Act in relation to the machinery for making regulations);
- (b) repeals provisions that provide for the gazettal, commencement and disallowance of what will, after the commencement of the 1987 Act, be “statutory rules” within the meaning of that Act;
- (c) repeals other such provisions in relation to other subordinate legislation and expressly applies the 1987 Act to them; and
- (d) repeals certain provisions that currently provide for the adoption of publications by reference.

The Statute Law (Miscellaneous Provisions) Act 1985 reduced the number of Acts previously in force by approximately 45 per cent. Schedule 33 repeals certain Acts and further reduces the number of Acts previously in force. The Acts repealed are also listed alphabetically in the note at the end of the Bill.

Schedule 33 also repeals the Commissioner of Public Complaints Act 1984 which expired on 20 August 1986 in accordance with section 37 (1) of that Act.

Schedule 34 contains savings, transitional and other provisions.
