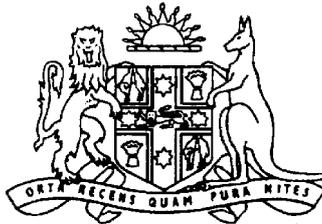


Passed by both Houses



New South Wales

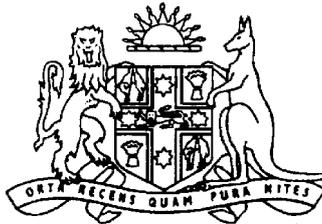
Statute Law (Miscellaneous Provisions) Bill 2004

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2004*



New South Wales

Statute Law (Miscellaneous Provisions) Bill 2004

Act No , 2004

An Act to repeal certain Acts, provisions of Acts and an instrument and to amend certain other Acts and instruments in various respects and for the purpose of effecting statute law revision; and to make certain savings.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

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

This Act is the *Statute Law (Miscellaneous Provisions) Act 2004*.

2 Commencement

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

3 Amendments

The Acts and instruments specified in Schedules 1 and 2 are amended as set out in those Schedules.

4 Repeals

Each Act and instrument specified in Schedule 3 is, to the extent indicated in that Schedule, repealed.

5 General savings, transitional and other provisions

Schedule 4 has effect.

6 Explanatory notes

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

Schedule 1 Minor amendments

(Section 3)

1.1 Anglican Clergy Provident Fund (Sydney) Act 1908

[1] Sections 3 (2) and 8

Omit “Church of England” wherever occurring.

Insert instead “Anglican Church of Australia”.

[2] Section 9

Insert after section 8:

9 Power to delegate to Standing Committee of Synod

The Anglican Church of Australia Synod of the Diocese of Sydney may, by ordinance, delegate to the Standing Committee of that Synod any one or more of the powers conferred on the Synod by sections 3 (2) and 8.

Explanatory note

Item [1] of the proposed amendments updates outdated references.

Item [2] of the proposed amendments permits the Anglican Church of Australia Synod of the Diocese of Sydney to delegate to the Standing Committee of that Synod any one or more of the Synod’s powers under sections 3 (2) and 8 of the *Anglican Clergy Provident Fund (Sydney) Act 1908 (the Act)*. Those powers include the power to change, by ordinance, the name of the Board of Directors of the Anglican Provident Fund (***the Fund***) established by the Act, to amend or repeal any ordinance made under the Act (such as the *Anglican Provident Fund Ordinance 1990* that is currently in force) and to provide for the admission to membership of the Fund of teachers in Anglican schools, officials of Anglican Diocesan Registries and certain other lay persons engaged in the work of the Anglican Church or employed by any institution, school or organisation of that Church.

1.2 Apprenticeship and Traineeship Act 2001 No 80

Section 7 Applications to establish apprenticeships and traineeships

Omit “An employer who employs a person as an apprentice or trainee may, with the person’s consent,” from section 7 (1).

Insert instead “An employer who employs, or proposes to employ, a person as an apprentice or trainee may”.

Explanatory note

At present, section 7 (1) of the *Apprenticeship and Traineeship Act 2001 (the Act)* permits a person who employs another person as an apprentice or trainee to apply,

with the consent of the apprentice or trainee, to the Commissioner for Vocational Training for the establishment of an apprenticeship or traineeship under the Act.

Section 7 (2) of the Act requires the employer to make such an application (if the employer has not already done so) within 28 days after the date on which the employer employs the apprentice or trainee. Failure to comply with that requirement constitutes an offence.

The proposed amendment extends section 7 (1) so as to permit an application under that subsection to be made by a person who has not yet actually employed the apprentice or trainee but who proposes to do so. In view of the requirement imposed by section 7 (2), the amendment also dispenses with the necessity to obtain the consent of the employee or prospective employee before making the application.

1.3 Associations Incorporation Act 1984 No 143

[1] Section 65 Powers of Director-General in relation to documents

Insert “or under section 11 of the *Country Women’s Association of New South Wales Incorporation Act 1931*” after “lodgment under this Act” in section 65 (1).

[2] Section 65 (1) (d)

Omit “this Act or the regulations”.

Insert instead “this Act or the *Country Women’s Association of New South Wales Incorporation Act 1931* (as the case may require) or with the requirements of the regulations made under the relevant Act”.

Commencement

The amendments to the *Associations Incorporation Act 1984* commence on a day to be appointed by proclamation.

Explanatory note

The proposed amendments are related to the amendments proposed to be made to the *Country Women’s Association of New South Wales Incorporation Act 1931* elsewhere in this Schedule. The Explanatory note to those proposed amendments explains the effect of the proposed amendments to the *Associations Incorporation Act 1984*.

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

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

Chief Executive Officer means the Chief Executive Officer of the WorkCover Authority.

[2] Section 3 (1)

Omit the definition of *Director-General*.

[3] Sections 4 (2), (3) and (5), 6 (3), 8 (2) (a), 45, 47 (5), 60 and 62

Omit “Director-General” wherever occurring.

Insert instead “Chief Executive Officer”.

[4] Section 7 Delegation

Omit “Department of Industrial Relations” wherever occurring in section 7 (1) (a) and (b).

Insert instead “WorkCover Authority”.

[5] Section 28 Entitlement to long service payments

Omit “subsection (1) (a) or (f)” from section 28 (2) (a).

Insert instead “subsection (1) (a), (f) or (g)”.

[6] Section 28 (3)–(3B)

Insert after section 28 (2):

- (3) A payment made by the Corporation in respect of an application under subsection (2) is valid and effectual against any demand in respect of the payment by any other person.
- (3A) If payment is made in respect of an application under subsection (2), before the grant of letters of administration of the estate, to the personal representative of a person who died intestate, the personal representative holds the payment subject to the same trusts as if he or she had obtained such a grant.
- (3B) A payment must not be made in respect of an application under subsection (2) after evidence has been produced to the Corporation of the grant of letters of administration of the estate, or probate of the will, of the deceased person, except to the person who has obtained the letters of administration or probate of the will (as appropriate).

[7] Section 28 (5)

Insert after section 28 (4):

- (5) In this section, *personal representative*, in relation to a payment in respect of a person who has died, means:

- (a) in the case of a person who died wholly or partially intestate—any person who appears to the Corporation to be entitled to obtain a grant of letters of administration of the estate of the person, and
- (b) in the case of a person who died testate—any person who appears to the Corporation to be entitled to receive the relevant payment under the will of the person.

[8] Section 29 Amount of long service payment

Omit “section 28 (1) (a) or (f)” from section 29 (2) (a).

Insert instead “section 28 (1) (a), (f) or (g)”.

[9] Section 29 (3)

Omit paragraph (a) of the definition of *P*. Insert instead:

- (a) in the case of a registered worker who, in the opinion of the Corporation, performed work under a contract of employment during the whole or a majority of the relevant period before that date—the amount of ordinary pay that is, in the opinion of the Corporation:
 - (i) payable for the classification of the registered worker under the award fixing a rate of pay for that work, calculated as at that date in respect of work on 5 working days during those hours in which ordinary pay is payable, or
 - (ii) payable under an award fixing a rate of pay for work that is equivalent, or substantially equivalent, to the type of work carried out by the registered worker, calculated as at that date in respect of work on 5 working days during those hours in which ordinary pay is payable, or
 - (iii) if the registered worker is a person referred to in paragraph (c) (i) of the definition of *building and construction work* in section 3—payable under an award fixing a rate of pay for work that is equivalent, or substantially equivalent, to the type of work carried out by workers under the supervision of the registered worker, calculated as at that date in respect of work on 5 working days during those hours in which ordinary pay is payable, or

-
- (iv) if the registered worker is a person referred to in paragraph (c) (ii) of the definition of ***building and construction work*** in section 3—payable under an award fixing a rate of pay for work that is equivalent, or substantially equivalent, to the type of work carried out by workers for whom the registered worker has responsibility in his or her capacity as a clerk of works, calculated as at that date in respect of work on 5 working days during those hours in which ordinary pay is payable, or

[10] Section 32 Payments to employers

Omit paragraph (a) of the definition of ***P*** in section 32 (1). Insert instead:

- (a) in the case of a registered worker who, in the opinion of the Corporation, performed work under a contract of employment during the whole or a majority of the relevant period before that date—the amount of ordinary pay that is, in the opinion of the Corporation:
 - (i) payable for the classification of the registered worker under the award fixing a rate of pay for that work, calculated as at that date in respect of work on 5 working days during those hours in which ordinary pay is payable, or
 - (ii) payable under an award fixing a rate of pay for work that is equivalent, or substantially equivalent, to the type of work carried out by the registered worker, calculated as at that date in respect of work on 5 working days during those hours in which ordinary pay is payable, or
 - (iii) if the registered worker is a person referred to in paragraph (c) (i) of the definition of ***building and construction work*** in section 3—payable under an award fixing a rate of pay for work that is equivalent, or substantially equivalent, to the type of work carried out by workers under the supervision of the registered worker, calculated as at that date in respect of work on 5 working days during those hours in which ordinary pay is payable, or
 - (iv) if the registered worker is a person referred to in paragraph (c) (ii) of the definition of ***building and construction work*** in section 3—payable

under an award fixing a rate of pay for work that is equivalent, or substantially equivalent, to the type of work carried out by workers for whom the registered worker has responsibility in his or her capacity as a clerk of works, calculated as at that date in respect of work on 5 working days during those hours in which ordinary pay is payable, or

[11] Section 32 (4)

Omit “section 19 (1)” where firstly occurring. Insert instead “section 19”.

[12] Section 32 (4)

Omit “section 19 (1)” where secondly occurring.

Insert instead “section 19 (2A) or (3)”.

[13] Section 32A Entitlement to long service benefit for service in a reciprocating State or Territory

Insert after section 32A (4):

- (4A) A payment made by the Corporation in respect of an application under subsection (2) is valid and effectual against any demand in respect of the payment by any other person.
- (4B) If payment is made in respect of an application under subsection (2), before the grant of letters of administration of the estate, to the personal representative of a registered worker who died intestate, the personal representative holds the payment subject to the same trusts as if he or she had obtained such a grant.
- (4C) A payment must not be made in respect of an application under subsection (2) after evidence has been produced to the Corporation of the grant of letters of administration of the estate, or probate of the will, of the deceased registered worker, except to the person who has obtained the letters of administration or probate of the will (as appropriate).

[14] Section 32A (9)

Insert after section 32A (8):

- (9) In this section, *personal representative*, in relation to a payment in respect of a deceased registered worker, means:

-
- (a) in the case of a person who died wholly or partially intestate—any person who appears to the Corporation to be entitled to obtain a grant of letters of administration of the estate of the person, and
 - (b) in the case of a person who died testate—any person who appears to the Corporation to be entitled to receive the relevant payment under the will of the person.

[15] Schedule 1 Provisions relating to members and procedure of Committee

Insert after clause 12:

13 Transaction of business outside meetings or by telephone

- (1) The Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Committee for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Committee.
- (2) The Committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Committee.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Committee.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

Explanatory note

Administrative changes

Items [1]–[4] of the proposed amendments reflect the administrative changes made by clause 4 of the *Public Sector Employment and Management (Long Service Payments Corporation) Order 2003* which was gazetted on 19 December 2003.

Item [1] inserts a definition of **Chief Executive Officer** in section 3 (Definitions) of the *Building and Construction Industry Long Service Payments Act 1986 (the Act)* and item [2] repeals the definition of **Director-General** in that section. Items [3] and [4] make consequential amendments.

Personal representative's application for long service payment

Section 28 (2) of the Act specifies the circumstances in which the personal representative of a person who died having service credits (as provided for in the Act) may apply for a long service payment in respect of the person.

Among other things, the subsection provides that application may be made if, immediately prior to the deceased's death, he or she was entitled to apply for a long service payment by virtue of section 28 (1) (a) or (f)—that is, because the deceased had completed 10 years' service as a worker (paragraph (a)) or had completed a further 5 years' service as a worker on top of the original 10 years' service (paragraph (f)).

However, section 28 (1) (g), which was not in that section when the original section 28 was repealed and re-enacted in 1986, now provides an additional entitlement to living workers for long service payment in respect of every subsequent 5 years' service as a worker after the original 15 years' service dealt with by paragraphs (a) and (f). Paragraph (g) is not reflected in section 28 (2).

Item [5] of the proposed amendments amends section 28 (2) (a) so as to ensure that, for parity with living workers, an entitlement to long service payment in respect of a deceased worker includes an entitlement in respect of each 5 years' service of the worker that is subsequent to the worker's original 15 years' service.

Item [8] makes a consequential amendment.

Meaning of "personal representative"

Section 32A (2) permits the personal representative of a deceased registered worker to apply for the payment of a long service benefit in respect of the deceased worker's service as a worker in another State or Territory (if that State or Territory is a reciprocating State or Territory within the meaning of the Act).

"Personal representative" is not defined in the Act. Items [7] and [14] of the proposed amendments define that term for the purposes of sections 28 and 32A, respectively, so as to include:

- (a) in the case of a deceased worker who died without having made a will (or having made a will that does not dispose of the whole of the deceased's estate)—any person who appears to the Building and Construction Industry Long Service Payments Corporation (**the Corporation**) to be entitled to obtain a grant of letters of administration of the estate of the deceased worker, and
- (b) in the case of a deceased worker who died having made a will that disposes of the whole of the deceased's estate—any person who appears to the Corporation to be entitled to receive the relevant payment under the deceased worker's will.

In consequence of permitting payment to be made to a beneficiary or prospective administrator in advance of the grant of probate or letters of administration, items [6] and [13] of the proposed amendments insert additional provisions in sections 28 and 32A, respectively. Those provisions:

- (a) protect the Corporation against any subsequent claims for payment after it has paid out in respect of an application under section 28 (2) or 32A (2) to a personal representative, and
- (b) provide that any prospective administrator who is paid in respect of an application under either of those subsections in advance of the grant of letters of administration holds the payment on the same trusts as if that grant had been made, and

-
- (c) prohibit payment in respect of an application under those subsections, once letters of administration or probate of a will have been granted, to anyone but the administrator of the estate or executor of the will (as appropriate).

A similar provision is to be found in section 83 of the *Co-operatives Act 1992*.

Amount of long service payment

Sections 29 and 32 of the Act contain formulas for calculation of the long service payment to be made to registered workers or their personal representatives (section 29) and employers (section 32). The sections contain identical definitions of **P** (pay).

Paragraph (a) in each of the definitions applies to registered workers who, in the opinion of the Corporation, performed work under a contract of employment during the whole or the majority of the relevant period (within the meaning of the sections). However, paragraph (a) in each case assumes that the registered workers concerned are all covered by rates of pay fixed by an award. This is not the case in respect of clerks of works or certain supervisors—the persons referred to in paragraph (c) of the definition of **building and construction work** in section 3 of the Act. Consequently, there is no mechanism in section 29 or 32 by which the payments relevant to those persons can be calculated.

Items [9] and [10] of the proposed amendments repeal and re-enact paragraph (a) of the definition of **P** in those sections so as to provide such a mechanism (paragraph (a) (ii)–(iv)).

Transaction of business outside meetings or by telephone

Item [15] of the proposed amendments inserts a standard provision permitting the Building and Construction Industry Long Service Payments Committee constituted by the Act to transact any of its business by circulation of papers among all its members or by telephone, closed-circuit television or the like.

Statute law revision

Items [11] and [12] of the proposed amendments are consequential on the reorganisation of section 19 of the Act by the *Building and Construction Industry Long Service Payments Amendment Act 1998*.

1.5 Centenary Institute of Cancer Medicine and Cell Biology Act 1985 No 192

[1] Section 7 Constitution of the Board

Omit section 7 (3) (c) and (d). Insert instead:

- (c) 2 are to be persons approved by the Central Sydney Area Health Service,

[2] Schedule 1 Provisions relating to the governors

Insert after clause 9:

10 Transitional provision

A person appointed as a governor under section 7 (3) (c) or (d) and holding office as such immediately before the commencement of the amendment made to section 7 (3) by

the *Statute Law (Miscellaneous Provisions) Act 2004* is taken to have been appointed under that section as so amended.

Explanatory note

Section 7 of the *Centenary Institute of Cancer Medicine and Cell Biology Act 1985 (the Act)* constitutes the Centenary Institute Board, consisting of 13 governors appointed by the Governor. Section 7 (3) specifies who the governors are to be. Section 7 (3) (c) provides that one governor is to be “the Chairman of the Board of the Royal Prince Alfred Hospital or the Chairman’s nominee, approved by the Board of that Hospital”, and section 7 (3) (d) provides that another governor is to be the General Superintendent of that Hospital (or the General Superintendent’s nominee), approved in the same way.

The Royal Prince Alfred Hospital was transferred to an area health service under the *Area Health Services Act 1986* and, under Schedule 6 to that Act, the members of its Board ceased to hold office on that transfer. However, the position of the governors of the Centenary Institute Board appointed under section 7 (3) (c) and (d) of the Act was preserved by section 7 (6), which was inserted in the Act by the *Miscellaneous Acts (Area Health Services) Amendment Act 1986* in the following terms:

“If the Royal Prince Alfred Hospital is, under the *Area Health Services Act 1986*, transferred to an area health service constituted under that Act—

- (a) the governor referred to in subsection (3) (c) or (d) does not cease to hold office because of that transfer; and
- (b) the person who may, after that transfer, be appointed as such a governor shall be a person approved by the area health service.”

Section 7 (6) was repealed by the *Health Services Act 1997*, which also repealed the *Area Health Services Act 1986* (to which section 7 (6) referred).

Item [1] of the proposed amendments preserves the effect of section 7 (6) (b). Item [2] of the proposed amendments inserts a transitional provision.

1.6 Conveyancers Licensing Act 2003 No 3

Section 53 Payment of trust money into trust account and payment of controlled money as directed

Omit section 53 (4) (b). Insert instead:

- (b) may not be exercised unless:
 - (i) the licensee has disclosed to the client, in accordance with Division 5 of Part 3, the basis of the costs for the conveyancing work concerned, or
 - (ii) if such a disclosure is not required to be made (as provided by sections 39 and 40 and any relevant regulations)—the licensee has served a bill of costs on the client.

Explanatory note

At present, section 53 of the *Conveyancers Licensing Act 2003 (the Act)* provides for the way in which money received for or on behalf of any person by a licensed conveyancer in connection with the licensee’s conveyancing business is to be dealt

with. Generally, the money is to be held in a trust account or, if the person for or on whose behalf the money is received directs that it be paid otherwise than into a general trust account, is to be paid as directed and, pending that payment, is to be held (in certain circumstances) in accordance with the regulations relating to controlled money.

Section 53 (3) (c) provides for the licensee to exercise a general retaining lien for unpaid costs and disbursements in respect of certain money in a trust account or controlled money account. Section 53 (4) (b) provides that such a lien may not be exercised “unless the licensee has delivered an outline bill of costs and disbursements”.

The term “outline bill of costs and disbursements” is not used elsewhere in the Act. Division 5 of Part 3 of the Act (sections 36–41) requires the basis of the costs for conveyancing work to be carried out for a client to be disclosed to the client in accordance with that Division, unless disclosure is not required to be made (as provided by sections 39 and 40 and the regulations).

The proposed amendment removes the reference to an “outline bill of costs and disbursements” from section 53 (4) (b) and provides, instead, that the lien is not exercisable unless the licensee has disclosed the basis of the costs to the client in accordance with Division 5 of Part 3 or, if that disclosure is not required, has served a bill of costs on the client. (The Act defines **costs** as including disbursements.)

1.7 Country Women’s Association of New South Wales Incorporation Act 1931

[1] Section 11 Registration of rules

Omit “shall be registered in the Companies Office established under the *Companies Act 1961*, as amended by subsequent Acts, in a manner similar to that in which documents filed or lodged under that Act, as so amended, are recorded, filed and kept, and the said rules or any alteration or repeal of any rule or any new rule shall not be in force until so registered”.

Insert instead “is to be lodged in the same way as a notice setting out particulars of an alteration of the rules of an association incorporated under the Associations Act is required by section 20 (2) of that Act to be lodged, and, on and after the commencement of subsection (3), any alteration or repeal of any rule or any new rule does not take effect until the copy is so lodged”.

[2] Section 11

Omit the last sentence of the section.

[3] Section 11 (2)–(5)

Insert at the end of section 11:

- (2) Section 59 (3) of the Associations Act (which provides for the inspection of documents lodged under that Act, and for the provision of copies or extracts of such documents, on the

payment of a fee prescribed under that Act) applies in respect of any copy of the rules, and in respect of any copy of any alteration or repeal of any rule and any copy of any new rule, lodged under this section as if the copy were a document lodged under the Associations Act.

- (3) For the purposes of subsection (1), the following provisions have effect in respect of references in section 20 (2) of the Associations Act:
- (a) a reference to the public officer of an incorporated association is taken to be a reference to the president of the said corporation,
 - (b) a reference to a special resolution is taken to be a reference to the method of altering or repealing a rule or of making a new rule specified in section 10,
 - (c) a reference to a notice in an approved form verified as prescribed is taken to be a reference to a copy of the alteration or repeal of the rule or of the new rule (as the case may be) proved to be such in accordance with subsection (1).
- (4) For avoidance of doubt:
- (a) the penalty provided by section 20 (2) of the Associations Act for failure to comply with that subsection does not apply in respect of a failure to comply with this section, and
 - (b) any fee that is required to be paid under the Associations Act in connection with a lodgment of a notice under section 20 (2) of that Act is also to be paid in connection with a lodgment under this section, and
 - (c) section 64 of the Associations Act (relating to the failure to pay any requisite fee on the lodgment of documents under that Act) applies in respect of a lodgment under this section as if it were a lodgment under that Act.
- (5) In this section, *the Associations Act* means the *Associations Incorporation Act 1984*.

Commencement

The amendments to the *Country Women's Association of New South Wales Incorporation Act 1931* commence on a day or days to be appointed by proclamation.

Explanatory note**Lodgment of copies of rules of Country Women's Association**

The Country Women's Association of New South Wales (*the CWA*) is incorporated under the *Country Women's Association of New South Wales Incorporation Act 1931 (the CWA Act)*.

At present, section 11 of the CWA Act requires copies of the rules of the CWA, and of any alteration or repeal of any rule and of every new rule, to be "registered in the Companies Office established under the *Companies Act 1961*". The Companies Office no longer exists, and the *Companies Act 1961* has been effectively superseded by the *Corporations Act 2001* of the Commonwealth.

As the CWA is an incorporated association rather than a company, item [1] of the proposed amendments amends section 11 so as to require the copies of the rules, and of the alteration or repeal of a rule, and of any new rule, to be lodged in the same way as evidence of an alteration of any rule of an association incorporated under the *Associations Incorporation Act 1984 (the Associations Act)* is required under section 20 (2) of that Act to be lodged.

Supplemental provisions

Item [2] of the proposed amendments omits the last sentence of the current section 11 of the CWA Act. That sentence provides that any copy of a document lodged under section 11 is to be open for inspection at all reasonable times by the public. The provision is silent as to the cost of any such inspection.

Item [3] of the proposed amendments inserts four new subsections in section 11.

Proposed section 11 (2) provides for the inspection of copy documents lodged under section 11 as if they had been lodged under the Associations Act (which also provides for the provision of copies or extracts of the documents and involves the payment of a fee for an inspection, copy or extract).

Proposed section 11 (3) "translates" certain references in section 20 (2) of the Associations Act for the purposes of section 11 of the CWA Act as amended by item [1].

Proposed section 11 (4) removes any doubt as to the operation of certain other provisions of the Associations Act in respect of the lodgment of material under section 11 (1).

Proposed section 11 (5) inserts a definition for the purposes of section 11.

Related amendments are proposed to be made to section 65 of the Associations Act elsewhere in this Schedule. The effect of those amendments will be to permit the rejection, and require the rectification, of documents lodged under section 11 if the documents are deficient in some way.

1.8 Crimes (Administration of Sentences) Amendment Act 2002 No 36**Section 4 Monitoring of amendments by Ombudsman**

Omit section 4 (3). Insert instead:

- (3) For that purpose, the Ombudsman may require NSW Police, the Department of Corrective Services or the Attorney General's Department to provide information concerning its participation in the operation of the relevant provisions.

Explanatory note

Section 4 of the *Crimes (Administration of Sentences) Amendment Act 2002 (the Act)* requires the Ombudsman to keep under scrutiny, for a period of 2 years after the commencement of the section (that is, the period of 2 years commencing on 21 February 2003), the operation of the provisions amended by the Act and the provisions of the *Summary Offences Act 1988* amended or inserted by the *Summary Offences Amendment (Places of Detention) Act 2002* (which was cognate with the Act).

Section 4 (3) of the Act provides that, for the purpose of that scrutiny, the Ombudsman may require the Department of Corrective Services or the Attorney General's Department to provide information concerning the Department's participation in the operation of the relevant provisions.

However, those provisions may also require the participation of NSW Police. Accordingly, the proposed amendment extends the Ombudsman's power to require the provision of information so as to permit the Ombudsman to make that requirement of NSW Police as well as of the relevant Department.

1.9 Criminal Appeal Act 1912 No 16

[1] Section 2 Definitions

Omit "*Victims Compensation Act 1996*" from paragraph (f) of the definition of *sentence* in section 2 (1).

Insert instead "*Victims Support and Rehabilitation Act 1996*".

[2] Section 2 (1), definition of "sentence"

Omit "section 126" from paragraph (g). Insert instead "section 43".

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

Omit "Part 6" from paragraph (h). Insert instead "Division 3 of Part 5".

Explanatory note

Item [1] of the proposed amendments updates a reference to the "*Victims Compensation Act 1996*" in consequence of the renaming of that Act as the *Victims Support and Rehabilitation Act 1996*.

Item [2] of the proposed amendments corrects a cross-reference to section 126 of the *Criminal Procedure Act 1986* in consequence of the rearrangement and renumbering of the provisions of that Act by the *Criminal Procedure Amendment (Justices and Local Courts) Act 2001*. Section 126 was renumbered as section 43.

Item [3] of the proposed amendments corrects a cross-reference to "Part 6 of Chapter 4" of the *Criminal Procedure Act 1986*. The renumbering of the *Criminal Procedure Act 1986* did not include a Part 6 in Chapter 4. The correct reference is to Division 3 of Part 5 of Chapter 4.

1.10 Dental Practice Act 2001 No 64

Schedule 7 Savings and transitional provisions

Omit “the subject of an inquiry by a Professional Standards Committee or an inquiry by or appeal before the Dental Tribunal under that Act” from clause 15 (2).

Insert instead “the subject of an inquiry by or appeal before the old Board”.

Commencement

The amendment to the *Dental Practice Act 2001* commences, or is taken to have commenced, on the commencement of clause 15 of Schedule 7 to that Act.

Explanatory note

Clause 15 of Schedule 7 to the *Dental Practice Act 2001* (**the new Act**) deals with complaints that have been made to the Dental Board constituted by the *Dentists Act 1989* (**the old Act**) and not finally disposed of as at the commencement of the new Act.

Generally, those complaints are to be dealt with as if they had been made under the new Act. However, clause 15 (2) provides that such a complaint is to be dealt with under the old Act as if that Act had not been repealed if, on the commencement of clause 15, the complaint “is the subject of an inquiry by a Professional Standards Committee or an inquiry by or appeal before the Dental Tribunal under [the old Act]”.

Although many health professional Acts provide for Professional Standards Committees, neither the old Act nor the new Act does so, and the old Act did not provide for a Dental Tribunal (although the new Act does).

Accordingly, the proposed amendment removes the references to those bodies and provides, instead, that a complaint under the old Act is to be dealt with under that Act if, at the commencement of clause 15 of Schedule 7, the complaint was the subject of an inquiry by or an appeal before the Dental Board constituted by the old Act.

1.11 Forestry Act 1916 No 55

[1] Section 27 Penalty for unlawfully taking timber, products or forest materials

Omit “*Native Vegetation Conservation Act 1997*” from section 27 (3) (a) (ia).

Insert instead “*Native Vegetation Act 2003*”.

[2] Section 27H (d1)

Omit “*Native Vegetation Conservation Act 1997*”.

Insert instead “*Native Vegetation Act 2003*”.

Commencement

Item [1] of the amendments to the *Forestry Act 1916* commences, or is taken to have commenced, on the commencement of Part 3 of the *Native Vegetation Act 2003*.

Item [2] of the amendments to the *Forestry Act 1916* commences, or is taken to have commenced, on the commencement of section 6 of the *Native Vegetation Act 2003*.

Explanatory note

The proposed amendments are consequential on the repeal of the *Native Vegetation Conservation Act 1997* and its replacement by the *Native Vegetation Act 2003*.

1.12 Gaming Machine Tax Act 2001 No 72

[1] Section 9 Calculation and assessment of tax

Insert “(and the hotelier or registered club concerned)” after “the Chief Commissioner” in section 9 (1) (b).

[2] Section 9 (2A)

Insert after section 9 (2):

- (2A) The Chief Commissioner must notify the hotelier or registered club concerned of any recalculation advised to the Chief Commissioner under subsection (2).

Explanatory note

Section 8 of the *Gaming Machine Tax Act 2001* (**the Act**) provides that the Liquor Administration Board (**the Board**) may, from time to time, require certain (or all) hoteliers and registered clubs that keep gaming machines to lodge a return in relation to the performance of those gaming machines and the tax payable under the Act in respect of them. The return is to be lodged with the holder of the centralised monitoring system licence under the *Gaming Machines Act 2001* (**the CMS licensee**).

Section 9 (1) of the Act requires the CMS licensee, as soon as practicable after the receipt of such a return, to calculate the amount of each quarterly instalment of tax payable by the hotelier or registered club concerned and to advise the Chief Commissioner of State Revenue (**the Chief Commissioner**) of the calculated amount.

Section 9 (2) of the Act permits the Board, in certain circumstances, to recalculate the amount of any such quarterly instalment and to advise the Chief Commissioner accordingly.

Item [1] of the proposed amendments requires the CMS licensee to advise the hotelier or registered club concerned, as well as the Chief Commissioner, of the amount it has calculated in respect of the hotelier or registered club.

Item [2] of the proposed amendments requires the Chief Commissioner to notify the hotelier or registered club concerned of any recalculation of that amount advised to the Chief Commissioner under section 9 (2).

1.13 Geographical Names Act 1966 No 13

[1] Section 3 Geographical Names Board

Omit “Department of Urban Affairs and Planning” from section 3 (2) (b).

Insert instead “Department of Infrastructure, Planning and Natural Resources”.

[2] Section 3 (2) (d)

Omit “Department of Information Technology and Management”.

Insert instead “Department of Lands”.

[3] Section 5 Powers and functions of board

Insert at the end of section 5:

- (2) The board may compile, maintain and publish a list of road names.

[4] Section 7A

Insert after section 7:

7A Certain names taken to be recorded names

- (1) The board may resolve to regard a name of a place as the recorded name of the place if the name appears in the same way on or in more than one map or other publication, or database, published or maintained:
 - (a) by a government agency, or
 - (b) by any other body, if:
 - (i) the publication or database has been publicly available for a minimum of three years, and
 - (ii) the board is of the opinion that the publication or database is of a reliable cartographic and geospatial standard.
- (2) A name cannot be the subject of a resolution under this section if the board is aware that the name appears differently on or in two or more publications or databases referred to in subsection (1), even if the name appears in the same way on or in more than one such publication or database.
- (3) A name the subject of a resolution under this section is taken to be a recorded name for the purposes of this Act.

[5] Section 18 Delegation of powers

Omit “Under Secretary” from section 18 (2) (a) and (c) wherever occurring.

Insert instead “Director-General”.

Explanatory note

Updating of references

Items [1], [2] and [5] of the proposed amendments update outdated references in the *Geographical Names Act 1966* (**the Act**) to the names of two Departments and to a position in a Department.

Powers and functions of Geographical Names Board

Section 5 of the Act sets out the powers and functions of the Geographical Names Board (**the Board**) constituted under the Act. Those powers and functions include the function of publishing a gazetteer of geographical names. There is no reference in the section to road names.

Item [3] of the proposed amendments specifically authorises (but does not oblige) the Board to compile, maintain and publish a list of road names.

Assignment of geographical names to places

Section 7 of the Act permits the Board to assign, by notice in the Gazette, a **recorded name** as the geographical name of a place. (A recorded name is “the name of a place as it appears on a Lands Department map”.) If the Board proposes to assign as the geographical name of a place a name that is not a recorded name, section 8 of the Act requires the Board to give notice of its intention to do so in the Gazette and in a newspaper circulating in the neighbourhood of the place concerned. Section 9 of the Act provides for the making and consideration of public submissions in respect of any such proposal.

Item [4] of the proposed amendments inserts section 7A in the Act so as to permit the Board to assign as the geographical name of a place a name that is not a recorded name, without giving notice of its intention to do so, if the name appears in the same way on or in more than one map or other publication (including a database) of a kind specified in the section.

1.14 National Environment Protection Council (New South Wales) Act 1995 No 4

[1] Section 14 Council may make national environment protection measures

Omit “National Road Transport Commission” from section 14 (2) (a).

Insert instead “National Transport Commission”.

[2] Section 14 (2) (b)

Omit “*National Road Transport Commission Act 1991*”.

Insert instead “*National Transport Commission Act 2003*”.

Explanatory note

The proposed amendments are consequential on the repeal of the *National Road Transport Commission Act 1991* of the Commonwealth and its replacement by the *National Transport Commission Act 2003* of that jurisdiction.

1.15 Ombudsman Act 1974 No 68

[1] Section 34 Disclosure by Ombudsman or officer

Omit “or” where lastly occurring in section 34 (1) (c).

[2] Section 34 (1) (c1)

Insert after section 34 (1) (c):

- (c1) to a police officer (or any other investigative authority that the Ombudsman considers appropriate) for the purpose of making any inquiry, or carrying out any investigation, to determine whether any proceedings referred to in paragraph (c) should be instituted, or

Explanatory note

Section 34 (1) of the *Ombudsman Act 1974* (**the Act**) prohibits the disclosure, by the Ombudsman or an officer of the Ombudsman, of “any information obtained by the Ombudsman or officer in the course of the Ombudsman’s or officer’s office” unless the disclosure is made in the circumstances set out in section 34.

Section 34 (1) (c) permits the making of such a disclosure “for the purpose of any proceedings under section 37 [of the Act] or under Part 3 of the *Royal Commissions Act 1923* or Part 4 of the *Special Commissions of Inquiry Act 1983*”. The Parts 3 and 4 referred to are in substantially the same terms, and create offences relating to the relevant commission (such as failure to comply with a summons to attend the commission or to produce documents to it, the giving of false testimony before the commission, and the like). Section 37 of the Act creates offences under the Act (such as failure to comply with any lawful requirement of the Ombudsman).

At present, section 34 (1) (c) does not permit a disclosure for the purpose of an investigation to determine whether proceedings should be instituted under section 37 or Part 3 or Part 4 (for example, an investigation to determine whether a witness has given false testimony to a Royal Commission and should, therefore, be prosecuted for that offence).

Item [2] of the proposed amendments extends section 34 (1) (c) accordingly. Item [1] makes a consequential amendment.

1.16 Optometrists Act 2002 No 30

Section 21 Authority for use of drugs by optometrists

Omit “and miotics” from section 21 (5).

Insert instead “, miotics and such other drugs (being one or more of the drugs prescribed under section 29A (2) of the *Optometrists Act 1930* immediately before the repeal of that section)”.

Commencement

The amendment to the *Optometrists Act 2002* commences, or is taken to have commenced, on the commencement of section 21 of that Act.

Explanatory note

Section 29A of the *Optometrists Act 1930* (**the 1930 Act**—which is to be repealed and replaced by the *Optometrists Act 2002*—**the 2002 Act**) prohibits a registered optometrist from (among other things) using in the practice of optometry “any drugs other than cycloplegics, local anaesthetics, mydriatics, myotics and such other drugs as may be prescribed”.

Section 21 of the 2002 Act and section 17B of the *Poisons and Therapeutic Goods Act 1966* set up a new scheme, under which the Optometrists Drug Authority Committee established under section 17B (**the Committee**) may from time to time approve of the use in the practice of optometry of “specified poisons and restricted substances”. The holder of an optometrists drug authority under section 21 of the 2002 Act is authorised to “possess, use, supply or prescribe, in the practice of optometry, such poisons and restricted substances” as are approved under section 17B in respect of the class of authority concerned.

To avoid the necessity for the Committee to evaluate and approve the use by optometrists of drugs that optometrists have been using for many years under the 1930 Act, section 21 (5) of the 2002 Act provides that, despite the provisions of the *Poisons and Therapeutic Goods Act 1966*, a registered optometrist “is authorised to possess and use, in the practice of optometry, such cycloplegics, local anaesthetics, mydriatics and miotics as may be prescribed”. However, section 21 (5) omits the reference to “such other drugs” contained in section 29A of the 1930 Act.

The proposed amendment inserts the missing reference, so as to ensure that drugs prescribed under the 1930 Act may also be prescribed under the 2002 Act. However, the amendment limits that reference so that it applies only in respect of drugs that are prescribed under the 1930 Act immediately before the repeal of the relevant provision. Any other drugs (including any new drugs that may be developed) will require approval by the Committee before they may be used by registered optometrists in the practice of optometry.

1.17 Parliamentary Electorates and Elections Act 1912 No 41

[1] Sections 6A and 31

Omit “members of the police force” wherever occurring.

Insert instead “police officers”.

[2] Sections 90 (7), 93, 114 (1), 151D, 178, 181 and 184

Omit “member of the police force” wherever occurring.

Insert instead “police officer”.

[3] Section 178 (2)

Insert at the end of section 178:

- (2) This section does not apply (and is taken never to have applied) so as to prevent a police officer from being a candidate for election to the Legislative Assembly or

Legislative Council or from doing anything done by a police officer as such a candidate.

Explanatory note

Items [1] and [2] of the proposed amendments update outdated references in the *Parliamentary Electorates and Elections Act 1912 (the Act)* to a “member of the police force”. That term has been replaced by the term “police officer” (which is defined in section 21 of the *Interpretation Act 1987*).

Item [3] of the proposed amendments makes it clear that the provision of the Act that imposes a penalty on a police officer who “takes part in any election (except by recording his or her vote) or seeks to influence in any manner any elector in giving his or her vote for any candidate or candidates” does not prevent a police officer from being a candidate in the election concerned and does not apply to anything done by the police officer in the capacity of a candidate.

1.18 Plantations and Reafforestation Act 1999 No 97

Section 27 Content of Code

Omit “*Native Vegetation Conservation Act 1997*” from section 27 (2) (a).

Insert instead “*Native Vegetation Act 2003*”.

Commencement

The amendment to the *Plantations and Reafforestation Act 1999* commences, or is taken to have commenced, on the commencement of section 3 of the *Native Vegetation Act 2003*.

Explanatory note

The proposed amendment is consequential on the repeal of the *Native Vegetation Conservation Act 1997* and its replacement by the *Native Vegetation Act 2003*.

1.19 Property, Stock and Business Agents Act 2002 No 66

[1] Section 43 Duty of licensee not to employ certain persons

Omit “(unless the person currently holds a licence or certificate of registration)” from section 43 (1) (b) and (c) wherever occurring.

Insert instead “(unless a licence or certificate of registration has subsequently been granted to the person and is not suspended or cancelled)”.

[2] Section 55 No entitlement to commission or expenses without agency agreement

Omit “may order that the commission or expenses” from section 55 (4).

Insert instead “, or before which a licensee is a respondent to a consumer claim relating to commission or expenses (as referred to in section 36), may order that the commission or expenses concerned”.

Explanatory note

Employment by licensee

At present, section 43 of the *Property, Stock and Business Agents Act 2002 (the Act)* prohibits a person licensed under the Act (**a licensee**) from employing a person “in any capacity in connection with the carrying on of the business conducted by the licensee” if the person (among other things):

- (a) has had his or her licence or certificate of registration suspended or cancelled under the Act (section 43 (1) (b)), or
- (b) has had an application for a licence or certificate of registration refused on the ground that the person was not a fit and proper person to hold a licence or certificate of registration (section 43 (1) (c)),

unless (in each case) “the person currently holds a licence or certificate of registration”.

The exceptions are provided because (for example) problems that gave rise to the suspension or cancellation of the licence or certificate of registration might have been rectified by the person concerned, or the circumstances of an applicant for a licence or certificate of registration who had been found not to be a “fit and proper person” might have changed so as to render the applicant a fit and proper person, and a licence or certificate of registration has subsequently been issued to the person or applicant concerned.

However, the holding of a licence or certificate of registration is not a prerequisite for all employment in a licensee’s agency (for example, employment in an administrative capacity). Accordingly, item [1] of the proposed amendments alters the exceptions provided by section 43 (1) (b) and (c) so as to permit the employment of a person whose licence or certificate has previously been cancelled or suspended, or whose application has previously been refused, if the person has subsequently been granted a licence or certificate even if the person has allowed the licence or certificate to lapse (but not if the subsequent licence or certificate has been suspended or cancelled).

Waiver of technical requirement

Section 55 of the Act provides that a licensee “is not entitled to any commission or expenses from a person for or in connection with services performed by the licensee in the capacity of licensee for or on behalf of the person” unless certain requirements of the Act are complied with. One of those requirements is that the licensee serve a copy of the relevant agency agreement (signed by or on behalf of the licensee) on the person concerned within 48 hours after the agreement was signed by or on behalf of that person (section 55 (1) (c)).

Section 55 (4) and (5) of the Act permit, in certain circumstances, a court or tribunal “before which proceedings are taken by a licensee for the recovery of commission or expenses” to order that the commission or expenses are wholly or partly recoverable despite the failure of the licensee to comply with section 55 (1) (c).

Item [2] of the proposed amendments ensures that the section 55 (1) (c) requirement in relation to the service of the agency agreement may be waived in consumer claim proceedings under section 36 (which relate to commission or expenses) in which the licensee is the respondent in the same way as it may be waived in proceedings in which the licensee is the applicant.

1.20 Protection of the Environment Operations Act 1997 No 156

[1] Section 80 Surrender of licence

Omit section 80 (3).

[2] Section 189 Identification

Insert “or other” after “regulatory” in section 189 (1).

[3] Section 216 Time within which summary proceedings may be commenced

Insert “or application” after “court attendance notice” in section 216 (3).

[4] Section 216 (3)

Omit “information or application”.

Insert instead “court attendance notice or application”.

[5] Schedule 5 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbers:

Part Provisions consequent on enactment of Statute Law (Miscellaneous Provisions) Act 2004

Surrender of licences

Fees relating to any surrendered licence (including a licence that was surrendered before the repeal of section 80 (3) by the *Statute Law (Miscellaneous Provisions) Act 2004*) may be refunded or waived in accordance with this Act and the regulations.

Explanatory note

Surrender of licences

Item [1] of the proposed amendments repeals section 80 (3) of the *Protection of the Environment Operations Act 1997 (the Act)*. That subsection currently provides that no fees are refundable on the surrender of a licence under the Act.

Item [5] of the proposed amendments inserts a transitional provision to make it clear that fees relating to licences that were surrendered before the repeal of section 80 (3) may be refunded or waived in accordance with the Act and the regulations. A related amendment is proposed to be made to the *Protection of the Environment Operations (General) Regulation 1998* elsewhere in this Schedule.

Appointment of enforcement officers

At present, section 189 (1) of the Act requires a regulatory authority (as defined in the Act) that appoints an authorised officer or an enforcement officer for the purposes of the Act to provide the officer concerned with an identification card. However, enforcement officers may be appointed by authorities other than regulatory authorities.

Item [2] of the proposed amendments amends section 189 (1) to take account of that fact.

Originating process

Section 216 of the Act provides that proceedings for an offence that is to be dealt with summarily under the Act may be commenced:

- (a) within a specified time after the date on which the offence is alleged to have been committed, or
- (b) within a specified time after the date on which evidence of the alleged offence first came to the attention of any relevant authorised officer within the meaning of the Act.

In the latter case, section 216 (3) of the Act requires the originating process to contain particulars of the date on which that evidence first came to the attention of the officer concerned. The originating process is referred to as a “court attendance notice” in the Local Court and an “application” in the Land and Environment Court and Supreme Court.

Items [3] and [4] of the proposed amendments correct incomplete or inaccurate references to that originating process.

1.21 Protection of the Environment Operations (General) Regulation 1998

[1] Clause 15 Refunds and waivers—annual licence fees

Omit the Note to the clause.

[2] Clause 15 (5)

Insert after clause 15 (4):

- (5) Without limiting the other provisions of this clause, on approval of an application under section 80 of the Act for surrender of a licence, the EPA may waive the payment of all or any part of an administrative fee that is an annual licence fee in respect of the licence concerned if the EPA considers it appropriate to do so having regard to the administrative costs incurred by the EPA in connection with the licence.

Explanatory note

Item [1] of the proposed amendments omits a Note to clause 15 of the *Protection of the Environment Operations (General) Regulation 1998 (the Regulation)* to the effect that section 80 (3) of the *Protection of the Environment Operations Act 1997* provides that no fees are refundable on the surrender of a licence. Section 80 (3) is repealed by an amendment proposed to be made elsewhere in this Schedule.

Item [2] of the proposed amendments inserts an additional subclause in clause 15 of the Regulation so as to permit the waiver of payment of certain administrative fees in relation to a licence that is surrendered. The grounds for the waiver are the same as those for the refund of fees actually paid (as currently set out in the clause).

1.22 Public Reserves Management Fund Act 1987 No 179

[1] Section 3 Definitions

Omit “within the meaning of Part 3B of the *Crown Lands Consolidation Act 1913*” from paragraph (a) of the definition of **public reserve**.

Insert instead “within the meaning of Part 5 of the *Crown Lands Act 1989*”.

[2] Section 5 Payments into Public Reserves Management Fund

Omit “under Part 3B of the *Crown Lands Consolidation Act 1913*” from section 5 (e).

Insert instead “under Division 5 of Part 5 of the *Crown Lands Act 1989*”.

[3] Section 5 (f)

Omit “under section 136L of the *Crown Lands Consolidation Act 1913* or section 39A of the *Closer Settlement Act 1904*”.

Insert instead “under Division 5 of Part 4 of the *Crown Lands Act 1989*”.

[4] Section 6 Payments out of Public Reserves Management Fund

Omit “under Part 3B of the *Crown Lands Consolidation Act 1913*” from section 6 (d).

Insert instead “under Division 7 of Part 5 of the *Crown Lands Act 1989*”.

[5] Section 6 (e) and (f)

Omit “under section 37HH of the *Crown Lands Consolidation Act 1913*” wherever occurring.

Insert instead “under section 111 of the *Crown Lands Act 1989*”.

Explanatory note

The proposed amendments update outdated references to repealed Acts.

1.23 Radiation Control Act 1990 No 13

[1] Section 4 Definitions

Omit the definitions of **sealed radioactive source** and **unsealed radioactive source** from section 4 (1).

[2] Section 4 (1)

Insert in alphabetical order:

sealed radioactive source means a radioactive substance sealed in a capsule, or closely bound in a solid form, so as:

- (a) to prevent escape or dispersion of the radioactive substance, and
- (b) to allow the emission of ionising radiation.

sealed source device means equipment or a gauge, instrument or device that contains a sealed radioactive source and permits the controlled emission of radiation, but does not include a container used solely for the storage or transport of a sealed radioactive source.

[3] Section 7 Responsibilities of owners of sealed source devices and certain radiation apparatus

Omit “sealed radioactive sources” from section 7 (1) (a).

Insert instead “sealed source devices”.

[4] Section 7 (4) and (5)

Omit “sealed radioactive source” wherever occurring.

Insert instead “sealed source device”.

[5] Section 8 Responsibilities of occupier of premises on which certain radioactive substances are kept or used

Omit “an unsealed radioactive source” from section 8 (1).

Insert instead “a radioactive substance that is not contained in a sealed source device”.

[6] Section 8 (2)

Omit “unsealed radioactive source kept”.

Insert instead “radioactive substance that is not contained in a sealed source device and is kept”.

[7] Section 9A Authority may seek advice from Council

Omit “sealed radioactive source” from section 9A (b).

Insert instead “sealed source device”.

[8] Section 18 Notices to take action

Omit “the owner” from section 18 (2) (c). Insert instead “the person”.

[9] Schedule 2 Savings and transitional provisions

Insert at the end of the Schedule with appropriate Part and clause numbers:

**Part Provisions consequent on enactment of
Statute Law (Miscellaneous Provisions)
Act 2004**

Construction of references to “sealed radioactive source”

- (1) A reference to a sealed radioactive source in any licence, accreditation or registration (and in any related document, such as a variation, suspension, surrender or cancellation), being a licence, accreditation, registration or other document that is issued by the Authority for the purposes of this Act and that was in force immediately before the repeal and re-enactment of the definition of *sealed radioactive source* in section 4 by the *Statute Law (Miscellaneous Provisions) Act 2004* is taken to be a reference to a sealed source device.
- (2) Subclause (1) applies in respect of any application made to the Authority in the same way as it applies in respect of a document issued by the Authority.

Commencement

Items [1]–[4], [7] and [9] of the amendments to the *Radiation Control Act 1990* commence, or are taken to have commenced, on 1 July 2004.

Items [5] and [6] of the amendments to the *Radiation Control Act 1990* commence, or are taken to have commenced, on the commencement of section 8 of that Act.

Explanatory note

Definitions

Section 4 (1) of the *Radiation Control Act 1990* (**the Act**) defines (among other terms) *sealed radioactive source* and *unsealed radioactive source* for the purposes of the Act. At present, section 4 (1) defines *sealed radioactive source* as “a radioactive substance enclosed in a container which prevents escape of the substance and permits controlled emission of radiation from the container”. In certain other jurisdictions, the two concepts embodied in this definition are contained in separate

definitions. The concept of the sealed radioactive source is contained in one definition and the concept of a container or device that holds the sealed radioactive source and controls the emission of radiation is contained in another definition.

For consistency with those other jurisdictions, item [2] of the proposed amendments inserts a new definition of **sealed radioactive source** and a definition of **sealed source device** to provide for the separate embodiment of the two concepts. Item [1] of the proposed amendments repeals the current definition of **sealed radioactive source** and the definition of **unsealed radioactive source** (which is used in only one section of the Act). The changes effected by item [2] are changes in terminology only, not changes of substance.

Items [3]–[7] of the proposed amendments make consequential amendments. Item [9] inserts a savings provision.

Statute law amendment

Section 18 of the Act permits an authorised officer to serve a notice on a person whom the authorised officer believes to be in breach of certain requirements or responsible for unnecessary exposure to or contamination by radiation. The notice may direct the person to take certain steps specified in it.

Section 18 (2) (c) provides that the notice must contain a statement to the effect that the person on whom it is served is entitled to make a submission to the Environment Protection Authority as to why “the owner” should not comply with the direction concerned.

Item [8] of the proposed amendments corrects the incorrect reference to the owner.

1.24 Radiation Control Regulation 2003

[1] Clause 9

Omit the clause. Insert instead:

9 Exemptions from section 7 registration requirements for certain sealed source devices

The sealed source devices specified in Schedule 3A are exempt from the application of section 7 of the Act.

[2] Clause 12 Consulting radiation experts

Omit “sealed radioactive sources” from clause 12 (1) (e)–(h) wherever occurring.

Insert instead “sealed source devices”.

[3] Clause 17 Personal monitoring devices

Omit “unsealed radioactive sources” from clause 17 (1) (d).

Insert instead “radioactive substances that are not contained in sealed source devices”.

[4] Clause 26 Certain occurrences are taken to be radiation accidents

Omit “sealed radioactive source” from clause 26 (2) (c).

Insert instead “sealed source device”.

[5] Clause 29 Faults or defects

Omit “sealed radioactive source” from clause 29 (2) wherever occurring.

Insert instead “sealed source device”.

[6] Schedule 3 Exemptions from licensing

Omit “Sealed radioactive sources” from item 2 in Part 1.

Insert instead “Sealed source devices”.

[7] Schedule 3A

Insert after Schedule 3:

Schedule 3A Exemptions from application of section 7 of the Act

(Clause 9)

- 1 Gas chromatography detectors
- 2 Enclosed x-ray diffraction, absorption and fluorescence analysers that comply with the requirements for enclosed units as defined in the document published by the National Health and Medical Research Council entitled *Code of practice for protection against ionizing radiation emitted from X-ray analysis equipment* (or as defined in any document replacing that document that is published by the Australian Radiation Protection and Nuclear Safety Agency)

Commencement

The amendments to the *Radiation Control Regulation 2003* commence, or are taken to have commenced, on 1 July 2004.

Explanatory note

Items [2]–[6] of the proposed amendments (and item [1] in part) are consequential on certain of the amendments to the *Radiation Control Act 1990* (**the Act**) proposed to be made elsewhere in this Schedule. The amendments concerned are the repeal and re-enactment of the definition of **sealed radioactive source** and the insertion of a definition of **sealed source device**.

Clause 9 of the *Radiation Control Regulation 2003* currently provides an exemption from the registration requirements of section 7 of the Act for all “sealed radioactive sources” (in the current terminology) other than fixed radiation gauges. That exemption is due to expire on 1 July 2004. Items [1] and [7] of the proposed amendments continue the exemption in respect of certain of those “sealed source devices” (in the new terminology).

1.25 Real Property Act 1900 No 25

Section 135J Appeals to Land and Environment Court

Insert after section 135J (3):

- (3A) The appellant must join each owner of land adjoining the boundary (except, in each case, an appellant owner) as a party to the following proceedings:
- (a) proceedings on an appeal under this section,
 - (b) proceedings on any appeal under the *Land and Environment Court Act 1979* in respect of the appeal.

Explanatory note

At present, section 135J of the *Real Property Act 1900* (**the Act**) permits a person who is dissatisfied with a boundary determination under Part 14A of the Act to appeal to the Land and Environment Court for a determination by that Court of the position of the boundary.

Section 135J (2) provides that the persons entitled to appeal under the section are the following:

- (a) an owner of land adjoining the boundary,
- (b) a person who applied for the determination as purchaser under a contract for the sale of land adjoining the boundary,
- (c) a public or local authority or the Head of a Government Department.

The proposed amendment inserts a new subclause in section 135J to require the appellant to join all owners of land adjoining the boundary concerned as parties to proceedings on the appeal (and in proceedings on any subsequent appeal). Any owner so joined who does not wish to be actively involved in the proceedings may either file a submitting appearance or apply to the Court for removal from the proceedings.

1.26 Registered Clubs Act 1976 No 31

[1] Section 41C Disclosure of interests in contracts

Omit “section 41X” from section 41C (2) (a).

Insert instead “section 41ZC”.

[2] Section 41H Annual reporting requirements

Omit section 41H (1) (k). Insert instead:

- (k) the total amount of the profits (within the meaning of the *Gaming Machine Tax Act 2001*) from the operation of approved gaming machines in the club during the gaming machine tax period relating to the reporting period,

[3] Section 41H (3)

Omit the subsection. Insert instead:

- (3) In this section:

gaming machine tax period means:

- (a) in relation to the financial year of a registered club that includes 31 August 2004—the period of 9 months beginning on 1 December 2003 and ending on 31 August 2004, and
- (b) in relation to the financial year of a registered club immediately preceding the financial year referred to in paragraph (a)—the period of 12 months ending on 30 November 2003, and
- (c) in relation to each financial year of a registered club subsequent to the financial year referred to in paragraph (a)—the period of 12 months beginning on 1 September in the financial year concerned and ending on 31 August in the following year.

reporting period means the relevant financial year of the registered club in relation to which the information is provided.

Explanatory note

Gaming machine tax

As originally enacted, the *Gaming Machine Tax Act 2001* provided that a tax year, in relation to a registered club, meant the period of 12 months commencing on 1 December in any year. The *State Revenue Legislation Amendment Act 2003* amended that definition to provide, instead, that the tax year of a registered club is the period of 12 months commencing on 1 September.

Section 41H (Annual reporting requirements) of the *Registered Clubs Act 1976* (**the Act**) requires registered clubs to send to each of their members written information relating to each financial year of the club ending after the commencement of that section. (The section commenced on 9 April 2004.) Among the information that must be provided is “the total amount of the profits (within the meaning of the *Gaming Machine Tax Act 2001*) from the operation of approved gaming machines in the club

during the period of 12 months ending on 30 November in the year to which the report relates (***the gaming machine tax period***)—section 41H (1) (k).

In view of the change in the definition of ***tax year***, item [2] of the proposed amendments repeals and re-enacts section 41H (1) (k) so as to remove the reference to 30 November and to refer, instead, to the gaming machine tax period relating to the reporting period in respect of which the information is being provided.

Section 41H (3) of the Act currently defines ***reporting period*** for the purposes of section 41H. Item [3] of the proposed amendments repeals and re-enacts that subsection (without any change to the definition of ***reporting period***) so as to permit the insertion of a definition of ***gaming machine tax period***. The latter definition covers the transitional 9-month period from 1 December 2003 to 31 August 2004 that is provided for in Schedule 2A to the *Gaming Machine Tax Act 2001* (which was also inserted in that Act by the *State Revenue Legislation Amendment Act 2003*).

Statute law revision

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

**1.27 Road and Rail Transport (Dangerous Goods) Act 1997
No 113**

[1] Section 34 Application orders and emergency orders

Omit section 34 (2).

[2] Section 41 Use of codes of practice etc in proceedings

Omit “the Ministerial Council for Road Transport or” from section 41 (1).

Explanatory note

Item [1] of the proposed amendments repeals a provision relating to certain provisions of the Agreements scheduled in the now-repealed *National Road Transport Commission Act 1991* of the Commonwealth. The Agreements themselves have been independently terminated (by clause 21 of the *Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport*).

Item [2] of the proposed amendment omits a reference in section 41 (1) of the *Road and Rail Transport (Dangerous Goods) Act 1997* to a body that has been replaced by the Australian Transport Council (to which section 41 (1) also refers).

1.28 Road Transport (Driver Licensing) Act 1998 No 99

[1] Section 3 Objects of Act

Insert at the end of the Note to the section:

The Commonwealth Act referred to in paragraph (a) has been repealed and replaced by the *National Transport Commission Act 2003* of the Commonwealth, and the agreements scheduled to the repealed Act have been independently terminated and replaced by the *Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport*.

[2] Section 19 Regulations generally

Omit “National Road Transport Commission” from section 19 (2).

Insert instead “National Transport Commission (formerly the National Road Transport Commission)”.

[3] Dictionary

Omit “section 3 of the *National Road Transport Commission Act 1991*” from the definition of ***Australian Transport Council***.

Insert instead “section 4 of the *National Transport Commission Act 2003*”.

Explanatory note

The proposed amendments are consequential on the repeal of the *National Road Transport Commission Act 1991* of the Commonwealth and its replacement by the *National Transport Commission Act 2003* of that jurisdiction.

1.29 Road Transport (General) Act 1999 No 18

[1] Section 12 Application orders and emergency orders

Omit section 12 (2).

[2] Section 12 (5)

Omit “section 3 of the *National Road Transport Commission Act 1991*” from the definition of ***Australian Transport Council***.

Insert instead “section 4 of the *National Transport Commission Act 2003*”.

Explanatory note

Item [1] of the proposed amendments repeals a provision relating to certain provisions of the Agreements scheduled in the now-repealed *National Road Transport Commission Act 1991* of the Commonwealth (***the Commonwealth Act***). The Agreements themselves have been independently terminated (by clause 21 of the *Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport*).

Item [2] of the proposed amendments is consequential on the repeal of the *Commonwealth Act* and its replacement by the *National Transport Commission Act 2003* of that jurisdiction.

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

[1] Section 9 Variations in charges

Omit section 9 (2). Insert instead:

- (2) Before such a regulation is made, the Minister must cause notice to be published in the Gazette of the maximum registration charges that may be imposed for the time being, as calculated:
- (a) in accordance with such procedures (if any) as are for the time being approved, and
 - (b) subject to such parameters (if any) as are for the time being set,
- by the Australian Transport Council or the National Transport Commission under the Agreement referred to in section 4 of the Commonwealth Act.

[2] Section 9 (5)

Omit the subsection. Insert instead

- (5) In this section:
- Australian Transport Council* has the same meaning as it has in the Commonwealth Act.
- National Transport Commission* means the Commission of that name established by the Commonwealth Act.
- the Commonwealth Act* means the *National Transport Commission Act 2003* of the Commonwealth.

Explanatory note

The proposed amendments are consequential on the repeal of the *National Road Transport Commission Act 1991* of the Commonwealth and its replacement by the *National Transport Commission Act 2003* of that jurisdiction.

1.31 Road Transport (Mass, Loading and Access) Regulation 1996

[1] Clause 27 Issuing a Class 3 notice or permit

Omit “National Road Transport Commission” from clause 27 (6).

Insert instead “National Transport Commission”.

[2] Dictionary

Omit “National Road Transport Commission’s Heavy Vehicle Accreditation Scheme” from the definition of *Mass Management Accreditation Scheme*.

Insert instead “National Heavy Vehicle Accreditation Scheme”.

[3] Dictionary, definition of “Ministerial Council”

Omit the definition.

[4] Dictionary, definition of “National Road Transport Commission”

Omit the definition. Insert instead:

National Transport Commission means the National Transport Commission established under the *National Transport Commission Act 2003* of the Commonwealth.

Explanatory note

Items [1] and [4] of the proposed amendments are consequential on the repeal of the *National Road Transport Commission Act 1991* of the Commonwealth and its replacement by the *National Transport Commission Act 2003* of that jurisdiction.

Item [2] of the proposed amendments updates a reference to a national scheme.

Item [3] of the proposed amendments omits a definition of a term that is no longer used in the Regulation.

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

[1] Section 3 Objects of Act

Insert after section 3 (a):

Note. The Agreements concerned were the *Heavy Vehicle Agreement* and the *Light Vehicle Agreement*. The Commonwealth Act referred to has been repealed and replaced by the *National Transport Commission Act 2003*. That Act does not have any Agreements scheduled to it but does make provision for an Agreement “entered into in relation to [that] Act”. That Agreement is the *Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport*.

[2] Section 32 Evidence of alcohol concentration revealed by breath or blood analysis in proceedings for offence under section 9

Omit “under Division 4” from section 32 (1) (b).

Insert instead “under this Part”.

[3] Section 33 Certificate evidence about breath or blood analysis in proceedings for offences under section 9

Omit “under this section” from section 33 (6) (a).

Insert instead “under this Part”.

[4] Section 71 Regulations

Omit “National Road Transport Commission” from section 71 (3) (a), (4), (5) (d) and (6) wherever occurring (including where occurring in the heading to section 71 (6)).

Insert instead “National Transport Commission”.

[5] Section 72A

Insert after section 72:

72A Rules

- (1) The Governor may make rules, not inconsistent with this Act, for or with respect to any matter for or with respect to which the Governor may make regulations under this Act.
- (2) The rules may repeal or amend the regulations and the regulations may repeal or amend the rules.
- (3) A reference in this or any other Act or law to a matter prescribed by the regulations under this Act (however expressed) includes a reference to a matter prescribed by the rules.
- (4) The same legal rules and principles apply to the resolution of an inconsistency between a rule and a regulation as apply to the resolution of an inconsistency between regulations.

[6] Dictionary

Omit “section 3 of the *National Road Transport Commission Act 1991*” from the definition of ***Australian Transport Council***.

Insert instead “section 4 of the *National Transport Commission Act 2003*”.

[7] Dictionary, definition of “National Road Transport Commission”

Omit the definition. Insert instead:

National Transport Commission means the National Transport Commission established under the *National Transport Commission Act 2003* of the Commonwealth.

Explanatory note

Evidence arising from analysis of blood samples

Items [2] and [3] of the proposed amendments arise out of the repeal of the *Traffic Act 1909 (the 1909 Act)* and the re-enactment of many of its provisions in the *Road Transport (Safety and Traffic Management) Act 1999 (the current Act)*.

Section 9 of the current Act creates the offence of driving (or attempting to drive, or supervising a learner driver) with a prescribed concentration of alcohol in the blood.

Section 32 (1) (b) of the current Act provides that, in proceedings for an offence under section 9, evidence may be given of the concentration of alcohol present in the blood of the person charged as determined by “an analysis of the person’s blood under Division 4”. This reflects section 4G (8) of the 1909 Act, changing the reference to an analysis “under this section” in that subsection to a reference to an analysis “under Division 4” [of Part 2] of the current Act.

Section 33 (6) (a) of the current Act provides for the giving of certificate evidence in such proceedings and refers to a certificate concerning “a sample of a specified person’s blood...submitted for analysis under this section”. This reflects section 4G (11) (a) of the 1909 Act, but omits to change the reference to an analysis “under this section” in that subsection.

Under the current Act, blood is submitted and analysed under section 18 of Division 3 of Part 2 (following random breath testing), section 23 of Division 4 of that Part (following a driving accident) or section 27 of Division 5 of that Part (following arrest for failure to submit to, or to pass, a sobriety assessment).

Accordingly, items [2] and [3] of the proposed amendments replace the incorrect references in section 32 (1) (b) and section 33 (6) (a) with references to Part 2.

Power to make rules

Item [5] of the proposed amendments enables the Governor to make rules instead of regulations for the purposes of the Act. Rules made by the Governor are statutory rules for the purposes of the *Interpretation Act 1987* and are therefore disallowable. Such rules are also subject to staged repeal under the *Subordinate Legislation Act 1989* unless specifically excluded from repeal under that Act.

The amendment does not confer any power to make statutory rules under the *Road Transport (Safety and Traffic Management) Act 1999* in respect of additional subject-matters.

Amendments consequential on certain repeal

Items [1], [4], [6] and [7] of the proposed amendments are consequential on the repeal of the *National Road Transport Commission Act 1991* of the Commonwealth and its replacement by the *National Transport Commission Act 2003* of that jurisdiction.

1.33 Road Transport (Safety and Traffic Management) (Driver Fatigue) Regulation 1999

[1] Clause 46 What is an approved DSMD

Omit the Note to the clause. Insert instead:

Note. Information about approved DSMDs can be obtained from the National Transport Commission, Level 15/628 Bourke Street, Melbourne Vic 3000 or through the National Transport Commission's web site (URL: www.ntc.gov.au).

[2] Dictionary

Omit the Note to the definition of *approved fatigue management training course*.

Insert instead:

Note. Information about approved fatigue management training courses can be obtained from the National Transport Commission, Level 15/628 Bourke Street, Melbourne Vic 3000 or through the National Transport Commission's web site (URL: www.ntc.gov.au).

Explanatory note

The proposed amendments are consequential on the repeal of the *National Road Transport Commission Act 1991* of the Commonwealth (which established the National Road Transport Commission) and its replacement by the *National Transport Commission Act 2003* of that jurisdiction (which establishes the National Transport Commission).

1.34 Road Transport (Vehicle Registration) Act 1997 No 119

Section 3 Objects of Act

Insert after section 3 (a):

Note. The Agreements concerned were the *Heavy Vehicle Agreement* and the *Light Vehicle Agreement*. The Commonwealth Act referred to has been repealed and replaced by the *National Transport Commission Act 2003* of the Commonwealth. That Act does not have any Agreements scheduled to it but does make provision for an Agreement "entered into in relation to [that] Act". That Agreement is the *Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport*.

Explanatory note

The proposed amendment is consequential on the repeal of the *National Road Transport Commission Act 1991* of the Commonwealth and its replacement by the *National Transport Commission Act 2003* of that jurisdiction.

1.35 Road Transport (Vehicle Registration) Regulation 1998

[1] Schedule 4 Vehicle standards

Omit “apply” from clause 123 (2). Insert instead “applies”.

[2] Schedule 4, clause 160

Omit the Note to the clause. Insert instead:

Note. The *Roadworthiness Guidelines* were published by the National Road Transport Commission (subsequently replaced by the National Transport Commission) and are available from Ausinfo Bookshops. The Ministerial Council was the Ministerial Council for Road Transport which was established by a national agreement called the *Heavy Vehicles Agreement*. The Council’s functions are now exercised by the Australian Transport Council, which was established on 11 June 1993.

[3] Dictionary

Omit “National Road Transport Commission’s” from the definition of *Maintenance Management Accreditation Scheme*.

[4] Dictionary, definition of “Ministerial Council”

Omit the definition.

[5] Dictionary, definition of “Non-national Maintenance Scheme”

Insert “or the National Transport Commission” after “National Road Transport Commission”.

Explanatory note

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

Item [2] of the proposed amendments updates a Note relating to a body (the National Road Transport Commission) established by a now-repealed Act of the Commonwealth. The new Note also elucidates a reference to the “Ministerial Council”.

Item [3] of the proposed amendments repeals a reference to the abolished body.

Item [4] of the proposed amendments repeals the outdated definition of *Ministerial Council*.

Item [5] of the proposed amendments adds a reference to the body that has replaced the National Road Transport Commission to a definition.

1.36 Royal Botanic Gardens and Domain Trust Act 1980 No 19

Section 22 Regulations

Omit “5 penalty units” from section 22 (4).

Insert instead “10 penalty units”.

Explanatory note

At present, section 22 (4) of the *Royal Botanic Gardens and Domain Trust Act 1980* provides that the regulations made under that Act may impose a penalty “not exceeding 5 penalty units” for any breach of a regulation. A penalty unit currently equates to \$110.

The proposed amendment will permit the regulations to impose a penalty of up to 10 penalty units. This is the same maximum penalty as may be imposed by regulations under the *Centennial Park and Moore Park Trust Act 1983* and the *Parramatta Park Trust Act 2001*.

1.37 Rural Fires Act 1997 No 65

Section 100C Carrying out of bush fire hazard reduction work

Omit “*Native Vegetation Conservation Act 1997*” from section 100C (4).

Insert instead “*Native Vegetation Act 2003*”.

Commencement

The amendment to the *Rural Fires Act 1997* commences, or is taken to have commenced, on the commencement of section 12 of the *Native Vegetation Act 2003*.

Explanatory note

The proposed amendment is consequential on the repeal of the *Native Vegetation Conservation Act 1997* and its replacement by the *Native Vegetation Act 2003*.

1.38 Rural Lands Protection Act 1998 No 143

[1] Sections 85 (1), 86 (1), 87 (1), 88 (1) and (3), 101 (3) (b), 129 and 133 (1) and (3)

Omit “Minister for Land and Water Conservation” wherever occurring.

Insert instead “Minister administering the *Crown Lands Act 1989*”.

[2] Section 92 Relationship to other Acts

Omit “*Native Vegetation Conservation Act 1997*”.

Insert instead “*Native Vegetation Act 2003*”.

[3] Dictionary

Omit the definition of *Minister for Crown Lands*.

Commencement

Item [2] of the amendments to the *Rural Lands Protection Act 1998* commences, or is taken to have commenced, on the commencement of Part 3 of the *Native Vegetation Act 2003*.

Explanatory note

Item [1] of the proposed amendments updates outdated references.

Item [2] of the proposed amendments is consequential on the repeal of the *Native Vegetation Conservation Act 1997* and its replacement by the *Native Vegetation Act 2003*.

Item [3] of the proposed amendments repeals a definition of a term that is no longer used in the *Rural Lands Protection Act 1998* or in the Regulations made under that Act.

1.39 Shops and Industries Act 1962 No 43

[1] Section 8 Variation, suspension or cancellation of approval

Insert “, at the request of the bank that holds the approval or on the Director-General’s own initiative,” after “The Director-General may” in section 8 (1).

[2] Section 8 (2) (b)

Insert at the end of the paragraph:

, or

(c) the bank has requested the suspension or cancellation.

[3] Section 8 (4)

Omit “the cancellation of”.

Insert instead “a variation of a condition of, or the suspension or cancellation of,”.

Explanatory note

Section 8 of the *Shops and Industries Act 1962* (**the Act**) provides for the variation, suspension or cancellation, by the Director-General (**the Director-General**) of the Department of Industrial Relations (now the Department of Commerce), of approvals for banks to open on weekends.

Section 8 (3) prohibits the Director-General from varying the conditions of, or suspending or cancelling, such an approval unless the Director-General has:

(a) given the bank concerned both written reasons for the Director-General’s intention to vary, suspend or cancel and an opportunity to make submissions in respect of that intention, and

(b) considered any submissions duly made by the bank.

Section 8 (4) provides that section 8 (3) does not apply to the cancellation of an approval at the request of the bank that holds the approval.

Although section 8 (4) necessarily implies that a bank holding an approval may request the cancellation of the approval, the Act does not make this explicit.

Item [1] of the proposed amendments explicitly provides that a bank holding an approval to open at the weekend may request the cancellation (or suspension) of the approval, or the variation of a condition of the approval. Item [3] of the proposed amendments extends the operation of section 8 (4) to cover a bank-initiated request for the suspension of, or variation of a condition of, its approval.

It might be noted that an approval for a bank to open on weekends does not oblige the bank to do so.

1.40 Subordinate Legislation Act 1989 No 146

[1] Section 10 Staged repeal of statutory rules

Omit section 10 (3). Insert instead:

- (3) Despite the other provisions of this Part, the *Seeds Regulation 1994* remains in force until 1 September 2005, unless sooner repealed.

[2] Schedule 3 Matters not requiring regulatory impact statements

Omit item 4A. Insert instead:

- 4A** Matters involving the substantial implementation of Agreed Reforms, within the meaning of the *Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport* entered into by the Commonwealth and each of the States and Territories (which came into effect on 15 January 2004), being Reforms that have been progressed in accordance with clause 11 of that Agreement.

Explanatory note

Staged repeal of statutory rules

The *Subordinate Legislation Act 1989 (the Act)* provides for the automatic repeal of statutory rules. The repeal takes effect on the fifth anniversary of the date on which the statutory rule was published (in the case of a statutory rule published on 1 September in any year) or on the 1 September following the fifth anniversary of the date on which it was published (in any other case)—see section 10 (2) of the Act. Unless it is intended to allow the statutory rule to lapse, a statutory rule that is due for repeal under the Act is usually remade in advance of the repeal date.

Section 11 of the Act permits the repeal of a statutory rule to be postponed, by order of the Governor, for a period of one year. However, the repeal of a particular statutory rule cannot be postponed on more than five occasions.

The repeal of the *Seeds Regulation 1994 (the Regulation)* has been postponed on five occasions, and the Regulation is now due to be repealed on 1 September 2004. However, it is intended to repeal the *Seeds Act 1982* (under which the Regulation is made). In view of this, there seems little point in remaking the Regulation. On the other hand, it is desirable to keep the regulatory scheme of the Regulation in place until such time as replacement provisions come into force under other legislation.

Accordingly, item [1] of the proposed amendments has the effect of keeping the Regulation in force for a further period of one year after the date on which it would otherwise be repealed by the Act, unless the Regulation is sooner repealed by other legislation (such as the repeal of the *Seeds Act 1982*).

The current section 10 (3) of the Act, which the proposed amendment repeals, is a spent provision that had the effect of keeping certain regulations concerning occupational health and safety in force until 1 April 2001.

Exemptions from requirement for regulatory impact statements

Schedule 3 to the Act specifies matters that do not require the preparation of a regulatory impact statement under section 5 of the Act. Item [2] of the proposed amendments repeals an item of that Schedule referring to the implementation of the Agreements scheduled in the now-repealed *National Road Transport Commission Act 1991* of the Commonwealth. (The Agreements themselves have been independently terminated by clause 21 of the *Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport*.) The provision is re-enacted so as to refer, instead, to the “Agreed Reforms” within the meaning of a new Agreement that provides generally for assessment of Proposed Reforms before they become Agreed Reforms.

1.41 Sydney Water Catchment Management Act 1998 No 171**[1] Section 7 Board**

Insert after section 7 (2) (a):

(a1) the Chief Executive, and

[2] Schedule 1 Constitution and procedure of Board

Insert “or the Chief Executive” after “Managing Director” in the definition of *appointed member* in clause 1.

[3] Schedule 1, clause 12 (2)

Omit the subclause. Insert instead:

(2) The Chief Executive (if present) is to preside at a meeting of the Board in the absence of the Chairperson. If both the Chairperson and the Chief Executive are absent, the Managing Director (if present) is to preside.

Explanatory note**Board of Sydney Catchment Authority**

Section 7 of the *Sydney Water Catchment Management Act 1998* (**the Act**) provides for a Board of the Sydney Catchment Authority (**the Authority**) constituted by the Act. The Board consists of the Managing Director of the Authority and at least 4 but no more than 8 members appointed by the Minister (two of whom are nominees of specified organisations and one of whom is an elected councillor of a local government area within the catchment area).

Item [1] of the proposed amendments adds the Chief Executive of the Authority to the Board.

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

Presiding member at Board meetings

Clause 12 (1) of Schedule 1 to the Act provides that the Chairperson of the Board is to preside at a meeting of the Board. If the Chairperson is absent from the meeting, the members of the Board who are present at the meeting are, “subject to subclause (2)”, to elect one of their number to preside. Clause 12 (2) provides that the Managing Director, if present, is to preside in the absence of the Chairperson.

Item [3] of the proposed amendments repeals and re-enacts clause 12 (2) so as to provide for the Chief Executive of the Authority (rather than the Managing Director), if present, to preside in the absence of the Chairperson. If both the Chairperson and the Chief Executive are absent, the Managing Director is to preside (if present).

1.42 Transport Administration Act 1988 No 109

[1] Section 42L Disclosure of information by ITSRR

Omit “*Rail Safety Act 2003*” from section 42L (6).

Insert instead “*Rail Safety Act 2002*”.

[2] Section 53 Miscellaneous functions of RTA

Insert at the end of section 53 (1) (c):

, and

- (d) perform, in accordance with the *Interstate Road Transport Act 1985* of the Commonwealth, the functions of a Regulatory Authority under that Act.

[3] Section 119 Regulations

Insert after section 119 (1):

- (1A) Without limiting subclause (1), the regulations may prescribe fees in respect of the performance by the Roads and Traffic Authority of the functions of a Regulatory Authority under the *Interstate Road Transport Act 1985* of the Commonwealth.

[4] Schedule 6 Transfer of certain staff

Omit “*former Railcorp staff*” from clause 1.

Insert instead “*former RailCorp staff*”.

Explanatory note

Functions of Roads and Traffic Authority

Section 6 of the *Interstate Road Transport Act 1985* of the Commonwealth (***the Cth Act***) provides for the Governor-General to make an arrangement with the Governor of a State “for and in relation to designating an authority or officer of the State as the authority or officer who is to perform the functions of” a Registration Authority or a Licensing Authority (collectively, a ***Regulatory Authority***) under that Act and the regulations.

The Cth Act prescribes various fees—for example, the fee to accompany an application for registration of a motor vehicle. Section 3 (10) of the Cth Act provides that a reference in that Act to a prescribed fee is a reference to “in the case where the fee relates to the performance of a function of a Regulatory Authority in respect of a State, not being the Minister—the fee (if any) payable under a law of the State in respect of

the performance of that function, not being a fee that exceeds the maximum fee specified in the regulations made under this Act in respect of the performance of that function”.

The Roads and Traffic Authority (*the RTA*) has been nominated as a Regulatory Authority in an agreement under section 6 of the Cth Act. Accordingly:

- (a) item [2] of the proposed amendments formally confers on the RTA the power under New South Wales law to perform the functions of a Regulatory Authority in accordance with the Cth Act, and
- (b) item [3] enables the regulations to prescribe fees payable in respect of the performance of that function, as contemplated by the Cth Act.

Statute law revision

Item [1] of the proposed amendments corrects an incorrect citation of an Act.

Item [4] of the proposed amendments corrects a typographical error.

1.43 Valuation of Land Act 1916 No 2

Section 37 Right of appeal

Omit section 37 (1). Insert instead:

- (1) Any person entitled under Part 3 to object to a valuation may appeal to the Land and Environment Court if the person is dissatisfied with the Valuer-General’s determination of any such objection to the valuation concerned (whether or not the person was the objector).

Explanatory note

Part 3 (Notices and objections) of the *Valuation of Land Act 1916 (the Act)* provides for the making of objections to determinations of land values under the Act. Notices of valuation are required to be given to owners of land, such lessees who are liable to pay any rate or tax in respect of the land, and mortgagees in possession. Each person who is given such a notice, and any public taxing or rating authority, is entitled to object to the valuation (see sections 29 and 31 of the Act).

Part 4 (Appeals to Land and Environment Court) provides a right of appeal against the Valuer-General’s determination of an objection. Under section 37 (1), “[an] owner of land” may make such an appeal if dissatisfied with the Valuer-General’s determination of the owner’s objection. Prior to the enactment of the *Valuation of Land Amendment Act 2000*, that right was conferred on “an objector” and every person entitled under section 29 to receive notice of a valuation, not merely on the owner.

The proposed amendment repeals and re-enacts section 37 (1) so as to reinstate the right of appeal to all persons on whom it was previously conferred. The loss of that right has ramifications for the *Land Tax Management Act 1956* also, as that Act applies Parts 3 and 4 of the Act in respect of various determinations of the Valuer-General under that Act.

1.44 Waste Avoidance and Resource Recovery Act 2001 No 58

[1] Schedule 4 Savings, transitional and other provisions

Omit “material” wherever occurring in clause 12 (2), (3) and (4).

Insert instead “materials”.

[2] Schedule 4, clause 12 (3) (a)

Omit “1 July 2004”. Insert instead “1 July 2006”.

[3] Schedule 4, clause 12 (3A)

Insert after clause 12 (3):

- (3A) Paragraph 5.1 of the used packaging materials IWRP is to be construed as if it read as follows:

This Plan comes into force on the commencement date and will continue in force until 1 July 2006, or until a date appointed by proclamation for the purposes of clause 12 of Schedule 4 to the *Waste Avoidance and Resource Recovery Act 2001*, whichever occurs first.

[4] Schedule 4, clause 12 (4)

Omit “subclause (3)”. Insert instead “subclauses (3) and (3A)”.

Commencement

The amendments to the *Waste Avoidance and Resource Recovery Act 2001* commence, or are taken to have commenced, on 1 July 2004.

Explanatory note

The *Used Packaging Materials Industry Waste Reduction Plan (the IWRP)* was made under Part 4 of the *Waste Minimisation and Management Act 1995 (the former Act)*.

On the repeal of the former Act by the *Waste Avoidance and Resource Recovery Act 2001*, clause 12 (3) of Schedule 4 (Savings, transitional and other provisions) to the latter Act provided that the IWRP continues to have effect until 1 July 2004 or a date appointed by proclamation for the purposes of clause 12 (whichever first occurs). Clause 12 (4) provides that the relevant provisions of the former Act (and related provisions of the *Protection of the Environment Operations Act 1997*) continue to have effect, despite their repeal, with respect to the IWRP while it continues to have effect under clause 12 (3).

Item [2] of the proposed amendments extends the life of the IWRP until 1 July 2006 (unless it is sooner terminated by proclamation), and item [3] ensures that the IWRP itself is to be construed in the same way. Item [4] makes a consequential amendment.

Item [1] of the proposed amendments corrects incorrect citations of the abbreviated form of the IWRP.

1.45 Western Lands Act 1901 No 70

Schedule 2 Applicable provisions of the Crown Lands Act 1989

Insert at the end of the provision numbered as 50A in Part 4:

- (2) Despite subsection (1), the consent of the lessee is not required in respect of a licence to remove gravel, sand or any other material that is not a mineral within the meaning of the *Mining Act 1992*.

Explanatory note

Schedule 2 (previously Schedule B) to the *Western Lands Act 1901 (the WL Act)* applies certain provisions of the *Crown Lands Act 1989 (the CL Act)* to and in respect of land in the Western Division of the State. One of those provisions is section 49 (3) of the CL Act, which provides for the granting of licences for the removal of certain extractive material (such as gravel and sand) from land.

The *Western Lands Amendment Act 2002* introduced a deemed section 50A in the CL Act for the purposes of the WL Act. That section is to the effect that the Minister may grant a licence for any purpose over land the subject of a lease granted under the WL Act, but only with the consent of the lessee. However, Schedule 2 continues to apply section 49 (3) for the purposes of the WL Act.

An unintended consequence of the introduction of section 50A is that the consent of the lessee is now required in relation to a licence to remove extractive material from the land, when that consent had not previously been required. To overcome this unintended consequence, the proposed amendment makes it clear that the lessee's consent is not required in the case of a licence to remove that material.

Schedule 2 Amendments by way of statute law revision

(Section 3)

2.1 Apiaries Act 1985 No 16

Section 38 General powers of inspection

Renumber paragraphs (a), (b) and (c) where secondly occurring in section 38 (9) as paragraphs (d), (e) and (f), respectively.

Explanatory note

The proposed amendment corrects duplicate paragraph numbering.

2.2 Children's Services Regulation 2004

Clause 76 Information and access to be denied to certain persons

Insert "and" at the end of clause 76 (1) (b).

Explanatory note

The proposed amendment inserts a missing conjunction.

2.3 Consumer, Trader and Tenancy Tribunal Act 2001 No 82

Schedule 1 Divisions of the Tribunal

Omit "section 42A of the *Property, Stock and Business Agents Act 1941*" from clause 1 (a) (i) and (b) wherever occurring.

Insert instead "section 36 of the *Property, Stock and Business Agents Act 2002*".

Explanatory note

The proposed amendment updates a cross-reference.

2.4 Contaminated Land Management Act 1997 No 140

[1] Section 58 EPA's record of current declarations and orders

Omit "section 52" from section 58 (1) (c). Insert instead "section 53B".

[2] Section 59 Local authorities to be informed

Omit "Section 52" from the Note to section 59 (1).

Insert instead "Section 53B".

[3] Section 59 (1), Note

Omit “site audits for the purposes of statutory requirements”.

Insert instead “statutory site audits”.

Commencement

The amendments to the *Contaminated Land Management Act 1997* are taken to have commenced on 1 February 2004.

Explanatory note

The proposed amendments are consequential on amendments made by the *Contaminated Land Management Amendment Act 2003* and are taken to have commenced on the commencement of that Act (1 February 2004).

2.5 Contractors Debts Act 1997 No 110

Section 14 Attachment order

Omit “a money” from section 14 (1). Insert instead “money”.

Explanatory note

The proposed amendment omits an unnecessary word.

2.6 Conveyancing (General) Regulation 2003

Clause 51 Easements in gross

Renumber clause 51 (1) (n) and (o) where firstly occurring as clause 51 (1) (m1) and (m2) respectively.

Explanatory note

The proposed amendment corrects duplicate paragraph numbering.

2.7 Crimes Act 1900 No 40

Section 431A Life sentences

Insert “section” before “61JA” in section 431A (2).

Explanatory note

The proposed amendment inserts a missing word.

2.8 Crimes (Administration of Sentences) Act 1999 No 93

Section 236E Definitions

Omit “In this Part”. Insert instead “In this Division”.

Commencement

The amendment to the *Crimes (Administration of Sentences) Act 1999* commences, or is taken to have commenced, on the commencement of section 236E of that Act as

inserted by Schedule 1 [14] to the *Crimes (Administration of Sentences) Further Amendment Act 2002*.

Explanatory note

The proposed amendment corrects an incorrect cross-reference.

2.9 Duties Act 1997 No 123

[1] Sections 101 (2) and 298 (1)

Omit “a form approved by the Chief Commissioner” wherever occurring.

Insert instead “an approved form”.

[2] Schedule 1 Savings, transitional and other provisions

Omit “*State Revenue Legislation Further Amendment Act (No 2) 2001*” from clause 24.

Insert instead “*State Revenue Legislation Further Amendment (No 2) Act 2001*”.

Explanatory note

Item [1] of the proposed amendments updates terminology.

Item [2] of the proposed amendments corrects an incorrect citation of an Act.

2.10 Environmentally Hazardous Chemicals Act 1985 No 14

Schedule 1 Provisions relating to the Committee

Omit “officer of the Board of Fire Commissioners for the time being nominated by the Minister for Police and Emergency Services” from clause 2 (g).

Insert instead “officer of New South Wales Fire Brigades for the time being nominated by the Minister administering the *Fire Brigades Act 1989*”.

Explanatory note

The proposed amendment updates a reference to the dissolved Board of Fire Commissioners and a reference to a portfolio.

2.11 Eurobodalla Urban Local Environmental Plan 1999

Clause 73 What special controls apply to development on archaeological sites that have Aboriginal or non-Aboriginal heritage significance?

Omit “*Heritage Act 1997*” from clause 73 (2) (c).

Insert instead “*Heritage Act 1977*”.

Explanatory note

The proposed amendment corrects an incorrect citation of an Act.

2.12 Evidence (Audio and Audio Visual Links) Act 1998 No 105

Section 5B Taking evidence and submissions from outside courtroom or place where court is sitting—proceedings generally

Omit “make direction” from section 5B (2A).

Insert instead “make a direction”.

Explanatory note

The proposed amendment inserts a missing word.

2.13 Financial Transaction Reports Act 1992 No 99

Sections 6 (2) (b) and 7 (1) (b) and (7) (b)

Omit “*Drug Trafficking (Civil Proceedings) Act 1990*” wherever occurring.

Insert instead “*Criminal Assets Recovery Act 1990*”.

Explanatory note

The proposed amendments updates references to a renamed Act.

2.14 Food Production (Dairy Food Safety Scheme) Regulation 1999

Schedule 1 Dairy Food Safety Scheme

Omit “Safe Food’s” from clause 45H (1) (e) (ii).

Insert instead “the Food Authority’s”.

Explanatory note

The proposed amendment updates terminology.

2.15 Food Production (Meat Food Safety Scheme) Regulation 2000

[1] Clause 9 Renewal of licence

Omit “Safe Food’s” from clause 9 (3) (b) (ii).

Insert instead “Food Authority’s”.

[2] Clause 13 Suspension or cancellation of licence

Omit “Safe Food’s” from clause 13 (1) (e) (ii).

Insert instead “the Food Authority’s”.

Explanatory note

The proposed amendments update terminology.

2.16 Greater Taree Local Environmental Plan 1995

Clause 16 Subdivision and development within Zone No 1 (c1) or 1 (c2)

Renumber clause 16 (7) where secondly occurring as clause 16 (7A).

Explanatory note

The proposed amendment corrects duplicate subclause numbering.

2.17 Home Building Act 1989 No 147

[1] Section 3 Definitions

Omit the definitions of *contractor contractor licence*, *contractor licence* and *endorsed contractor contractor licence* from section 3 (1).

[2] Section 3 (1)

Insert in alphabetical order:

contractor licence means a contractor licence referred to in section 4, 5 or 16A.

endorsed contractor licence means a contractor licence endorsed under this Act to show that it is the equivalent of a supervisor certificate.

[3] Sections 3 (1) (definitions of “nominated supervisor” and “plumbing work”), 13 (1), 14 (1) (a), 15, 16, 24 (2), 28, 33 (a), 37, 53 (1) and (2), 83A (a) and 131 (b)

Omit “endorsed contractor contractor licence” wherever occurring.

Insert instead “endorsed contractor licence”.

[4] Section 18K Form of contracts

Omit “business consultancy” from section 18K (6).

Insert instead “building consultancy”.

Explanatory note

Items [1]–[3] of the proposed amendments:

- (a) repeal and replace with a single definition two definitions that purport to define the same term (“contractor licence”) for the purposes of the *Home Building Act 1989*, and
- (b) repeal and replace another definition containing duplicated words, and
- (c) omit duplicated wording in respect of the latter definition elsewhere in the *Home Building Act 1989*.

Item [4] of the proposed amendments corrects a typographical error.

2.18 Lake Macquarie Local Environmental Plan 2004

Dictionary

Omit “*Crimes Act 1990*” from paragraph (b) of the definition of *restricted premises*.

Insert instead “*Crimes Act 1900*”.

Explanatory note

The proposed amendment corrects an incorrect citation of an Act.

2.19 Local Courts (Civil Claims) Act 1970 No 11

Schedule 2 Savings and transitional provisions

Renumber clause 1 where secondly, thirdly, fourthly, fifthly, sixthly and seventhly occurring in Parts 5–10 as clauses 3–8 respectively.

Explanatory note

The proposed amendment corrects duplicated clause numbering.

2.20 Local Government Act 1993 No 30

Chapter 14 Honesty and disclosure of interests

Omit the bullet point and matter relating to periodic returns in the table following section 448 and headed “Disclosure of Interests”.

Explanatory note

The proposed amendment omits matter relating to a repealed Schedule.

2.21 Lotteries and Art Unions Regulation 2002

Clause 112M Definitions

Omit “In this part” from clause 112M (1). Insert instead “In this Part”.

Explanatory note

The proposed amendment corrects a typographical error.

2.22 Mental Health Act 1990 No 9

Section 84 Release of persons after review

Omit “Minister for Police and Emergency Services” from section 84 (3).

Insert instead “Minister for Police”.

Explanatory note

The proposed amendment updates a reference to a renamed portfolio.

2.23 Mental Health (Criminal Procedure) Act 1990 No 10

Sections 18 (b) and 29 (3)

Omit “Minister for Police and Emergency Services” wherever occurring.

Insert instead “Minister for Police”.

Explanatory note

The proposed amendment updates references to a renamed portfolio.

2.24 New South Wales Crime Commission Act 1985 No 117

[1] Section 6 Principal functions of the Commission

Omit “*Drug Trafficking (Civil Proceedings) Act 1990*” from section 6 (1A).

Insert instead “*Criminal Assets Recovery Act 1990*”.

[2] Section 24 (1) (a) and Schedule 3, clause 3 (1)

Omit “Minister for Police and Emergency Services” wherever occurring.

Insert instead “Minister for Police”.

[3] Schedule 3, clause 6

Omit the clause.

Explanatory note

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

Item [2] of the proposed amendments updates references to a renamed portfolio.

Item [3] of the proposed amendments repeals a spent provision.

2.25 Occupational Health and Safety Regulation 2001

[1] Clause 287A Immediate suspension

Omit “assessor, or” from clause 287A (1) (b). Insert instead “assessor.”

[2] Schedule 3 Savings and transitional provisions

Omit “cresylic formaldehyde resin” from clause 2 (c).

Insert instead “cresylic formaldehyde resin”.

Explanatory note

Item [1] of the proposed amendments omits a superfluous word.

Item [2] of the proposed amendments corrects a typographical error.

2.26 Passenger Transport Act 1990 No 39

Schedule 5 Transport safety employees—alcohol or other drugs

Insert “or 53C as the case requires” after “section 9C” in the definition of *transport safety work* in clause 1.

Explanatory note

The proposed amendment inserts a missing cross-reference.

2.27 Passenger Transport (Ferry Services) Regulation 2000

[1] Clause 39 Penalty notice offences

Omit “Column 4” from section 39 (1) (b). Insert instead “Column 2”.

[2] Schedule 1 Penalty notice offences

Omit “(Clauses 39 and 40)”. Insert instead “(Clause 39)”.

[3] Schedule 1, Part 1

Re-number Column 4 as Column 2.

Explanatory note

Before the repeal of section 145B of the *Justices Act 1902* (which authorised the making of regulations prescribing short descriptions of offences), Columns 2 and 3 of Schedule 1 to the *Passenger Transport (Ferry Services) Regulation 2000* contained short descriptions of offences under that Act and related processing codes. Columns 2 and 3 no longer appear in that Schedule.

Schedule 1 [16] to the *Passenger Transport (Ferry Services) Amendment (Safety and Reliability) Regulation 2003* omitted clause 40 from the *Passenger Transport (Ferry Services) Regulation 2000*. Item [2] makes a consequential amendment.

Item [3] of the proposed amendments renumbers Column 4 in consequence of the omission of Columns 2 and 3. Item [1] makes a consequential amendment.

2.28 Passenger Transport (Taxi-cab Services) Regulation 2001

Clause 52 Criteria to be met by applicants for authorisation to operate taxi-cab networks

Omit “areas of operations” from clause 52 (7) (a) (ii).

Insert instead “areas of operation”.

Explanatory note

The proposed amendment updates terminology.

2.29 Police Integrity Commission Act 1996 No 28

Sections 19 and 84

Omit “*Drug Trafficking (Civil Proceedings) Act 1990*” wherever occurring (including where occurring in the heading to section 19 and in the Note to section 84 (2)).

Insert instead “*Criminal Assets Recovery Act 1990*”.

Explanatory note

The proposed amendment updates references to a renamed Act.

2.30 Police Regulation (Superannuation) Act 1906 No 28

Section 2H Constitution of Committee

Omit “Minister for Police and Emergency Services” from section 2H (3) (e).

Insert instead “Minister administering the *Police Act 1990*”.

Explanatory note

The proposed amendment updates a reference to a renamed portfolio.

2.31 Public Authorities Superannuation Act 1985 No 41

Schedule 5 Repeal, savings and transitional provisions

Omit “this Act” from clause 11 (2). Insert instead “the Act concerned”.

Explanatory note

The proposed amendment is consequential on an amendment made to clause 11 (1) of Schedule 5 to the *Public Authorities Superannuation Act 1985*. That amendment extended the power to make savings and transitional regulations in consequence of the enactment of the *Superannuation Legislation Amendment (Family Law) Act 2003*.

2.32 Public Finance and Audit Regulation 2000

Clause 17 Definitions of “authority” and “officer of an authority”

Omit “, Resource NSW” from clause 17 (11).

Explanatory note

The proposed amendment is consequential on the dissolution of the statutory body Resource NSW by clause 14 of Schedule 4 to the *Waste Avoidance and Resource Recovery Act 2001*.

2.33 Public Sector Management (Goods and Services) Regulation 2000

[1] Schedule 1 Provisions relating to members of Board

Omit “(Clause 10 (1))”. Insert instead “(Clause 44 (1))”.

[2] Schedule 2 Provisions relating to procedure of Board

Omit “(Clause 10 (2))”. Insert instead “(Clause 44 (2))”.

Explanatory note

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

2.34 State Environmental Planning Policy No 4—Development Without Consent and Miscellaneous Exempt and Complying Development

Clause 2 Definitions

Omit “Division 2 of Part 4” from clause 2 (4) (c) and (d) wherever occurring.

Insert instead “Division 10 of Part 4”.

Explanatory note

The proposed amendment corrects incorrect cross-references.

2.35 State Environmental Planning Policy No 29—Western Sydney Recreation Area

Clause 3 Definitions

Omit “hydraulic” from paragraph (b) of the definition of *public utility undertaking*.

Insert instead “hydraulic”.

Explanatory note

The proposed amendment corrects a spelling error.

2.36 State Environmental Planning Policy No 72—Linear Telecommunications Development—Broadband

Clause 12 Amendment of master plans

Omit “dissatisfied” from clause 12 (5). Insert instead “dissatisfied”.

Explanatory note

The proposed amendment corrects a spelling error.

2.37 Strata Schemes Management Act 1996 No 138

Schedule 2 Meetings and procedure of owners corporation

Omit “In this Part” from clause 30. Insert instead “In this Division”.

Explanatory note

The proposed amendment corrects an incorrect cross-reference.

2.38 Strata Schemes Management Amendment Act 2004 No 9

Schedule 1 Amendment of Strata Schemes Management Act 1996

Omit “*Property, Stock and Business Agent’s Act 2002*” from Schedule 1 [59].

Insert instead “*Property, Stock and Business Agents Act 2002*”.

Explanatory note

The proposed amendment corrects an incorrect citation of an Act.

2.39 Sydney Regional Environmental Plan No 28—Parramatta

[1] Clause 28 Special Areas

Omit “seperation” from clause 28 (2) (i) (xviii).

Insert instead “separation”.

[2] Clause 69 Development within foreshore building line

Re-number clause 69 (6) (g) where secondly occurring as section 69 (6) (g1).

Explanatory note

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

Item [2] of the proposed amendments corrects duplicate paragraph numbering.

2.40 Sydney Water Regulation 2000

Clause 32 Investigation of suspected contraventions

Omit “subclause (2)” from clause 32 (2). Insert instead “subclause (1)”.

Explanatory note

The proposed amendment corrects an incorrect cross-reference.

2.41 Totalizator Act 1997 No 45

Section 43A Additional conditions of TAB Limited licences

Insert “of the *Totalizator Agency Board Privatisation Act 1997*” after “section 37A (6)” in the definition of *nominated* in section 43A (4).

Commencement

The amendment to section 43A of the *Totalizator Act 1997* commences, or is taken to have commenced, on the commencement of section 43A of that Act as inserted by Schedule 2 [6] to the *Totalizator Legislation Amendment Act 2003*.

Explanatory note

The proposed amendment completes an incomplete cross-reference.

2.42 Transport Administration (General) Regulation 2000

[1] Clause 3 Definitions

Omit “Chief Executive of the RailCorp” from paragraph (c) of the definition of *traffic control officer*.

Insert instead “Chief Executive of RailCorp”.

[2] Clause 16 Penalty notice offences

Omit “Column 4” from clause 16 (1) (b). Insert instead “Column 2”.

[3] Schedule 1 Penalty notice offences

Omit “(Clauses 16 and 17)”. Insert instead “(Clause 16)”.

[4] Schedule 1, Parts 1 and 2

Renumber Column 4 as Column 2 wherever occurring.

Explanatory note

Item [1] of the proposed amendments omits a superfluous word.

Before the repeal of section 145B of the *Justices Act 1902* (which authorised the making of regulations prescribing short descriptions of offences), Columns 2 and 3 of Schedule 1 to the *Transport Administration (General) Regulation 2000* contained short descriptions of offences under that Act and related processing codes. Columns 2 and 3 no longer appear in that Schedule.

Schedule 1 [10] to the *Transport Administration (General) Amendment (RailCorp) Regulation 2003* omitted clause 17 from the *Transport Administration (General) Regulation 2000*. Item [3] makes a consequential amendment.

Item [4] renumbers Column 4 in consequence of the omission of Columns 2 and 3. Item [2] makes a consequential amendment.

2.43 Veterinary Practice Act 2003 No 87

Section 51 Tribunal’s powers when complaint proved

Omit “25,000” from section 51 (1) (d). Insert instead “\$25,000”.

Explanatory note

The proposed amendment inserts a missing dollar sign in a provision specifying the maximum amount of a particular fine.

2.44 Victims Support and Rehabilitation Act 1996 No 115

Section 68 Payments into Compensation Fund

Omit “*Drug Trafficking (Civil Proceedings) Act 1990*” from section 68 (b).

Insert instead “*Criminal Assets Recovery Act 1990*”.

Explanatory note

The proposed amendment updates a reference to a renamed Act.

2.45 Witness Protection Act 1995 No 87

Section 3 Definitions

Insert at the end of the section:

(2) Notes in the text of this Act do not form part of this Act.

Explanatory note

The proposed amendment inserts a standard provision in the *Witness Protection Act 1995* to clarify the status of Notes in that Act.

Schedule 3 Repeals

(Section 4)

Name of Act	Extent of repeal
<i>Local Government (Areas) Act 1948 No 30</i>	Divisions 3, 5, 6, 8, 10, 11 and 13 of Part 3 and sections 27 (1) and 32 (2) ²
<i>New South Wales Retirement Benefits Act 1972 No 70</i>	Section 51 ²
<i>Coal Acquisition Act 1981 No 109</i>	Section 5A ²
<i>Marketing of Primary Products Act 1983 No 176</i>	Section 165 ²
<i>Public Authorities Superannuation Act 1985 No 41</i>	Clause 3A of Schedule 7 ²
<i>Gas Industry Restructuring Act 1986 No 213</i>	Section 72 ²
<i>Workers Compensation Act 1987 No 70</i>	Part 7A ²
<i>Legal Profession Act 1987 No 109</i>	Section 36 (6) and Schedule 2A ²
<i>Federation of New South Wales Police-Citizens Youth Clubs (Reconstitution) Act 1989 No 163</i>	Whole Act ²
<i>Local Government Act 1993 No 30</i>	Part 20 of Schedule 8 ²
<i>Fisheries Management Act 1994 No 38</i>	Section 221K ²
<i>Energy Services Corporations Act 1995 No 95</i>	Clause 14 of Schedule 5 ²
<i>Gas Supply Act 1996 No 38</i>	Clauses 5 and 7 of Schedule 2 ²
<i>Superannuation Administration Act 1996 No 39</i>	Clause 25 of Schedule 3 ²
<i>Fines Act 1996 No 99</i>	Clause 5A of Schedule 3 ²

Name of Act	Extent of repeal
<i>Accommodation Levy Act 1997 No 32</i>	Whole Act ²
<i>Irrigation Corporations Amendment Act 1998 No 125</i>	Whole Act ¹
<i>Consumer Claims Act 1998 No 162</i>	Clauses 3, 4, 5, 5A and 6 of Schedule 1 ²
<i>Intergovernmental Agreement Implementation (GST) Act 2000 No 44</i>	Sections 6 and 7 ²
<i>AGL Corporate Conversion Act 2002 No 16</i>	Section 29 ²
<i>Police Service Amendment (NSW Police) Act 2002 No 51</i>	Whole Act ¹
<i>Road Transport Legislation Amendment (Interlock Devices) Act 2002 No 72</i>	Whole Act ¹
<i>Legislation Review Amendment Act 2002 No 77</i>	Whole Act ¹
<i>Guardianship Amendment (Enduring Guardians) Act 2002 No 89</i>	Whole Act ¹
<i>Rail Safety Act 2002 No 96</i>	Clause 6 of Schedule 5 ²
<i>State Revenue Legislation Amendment Act 2002 No 108</i>	Whole Act ¹
<i>Summary Offences Amendment (Spray Paint Cans) Act 2002 No 118</i>	Whole Act ¹
<i>Driving Instructors Amendment Act 2002 No 127</i>	Whole Act ¹
<i>Defamation Amendment Act 2002 No 136</i>	Whole Act ¹
<i>Crimes Legislation Amendment (Property Identification) Act 2003 No 5</i>	Whole Act ¹
<i>Rural Lands Protection Amendment Act 2003 No 6</i>	Whole Act ¹

Statute Law (Miscellaneous Provisions) Bill 2004

Schedule 3 Repeals

Name of Act	Extent of repeal
<i>City of Sydney Amendment (Electoral Rolls) Act 2003 No 7</i>	Whole Act ¹
<i>Local Government Amendment (National Competition Policy Review) Act 2003 No 8</i>	Whole Act ¹
<i>Victims Legislation Amendment Act 2003 No 10</i>	Whole Act ¹
<i>Gaming Machines Amendment (Shutdown Periods) Act 2003 No 16</i>	Whole Act ¹
<i>Lotteries and Art Unions Amendment Act 2003 No 19</i>	Whole Act ¹
<i>Bail Amendment Act 2003 No 22</i>	Whole Act ¹
<i>Crimes Legislation Amendment (Parole) Act 2003 No 25</i>	Whole Act ¹
<i>Commission for Children and Young People Amendment (Child Death Review Team) Act 2003 No 26</i>	Whole Act ¹
<i>Crimes Legislation Amendment Act 2003 No 27</i>	Whole Act ¹
<i>Local Government Amendment (Employment Protection) Act 2003 No 30</i>	Whole Act ¹
<i>State Revenue Legislation Amendment Act 2003 No 34</i>	Whole Act ¹
<i>Firearms Amendment (Prohibited Pistols) Act 2003 No 36</i>	Whole Act ¹
<i>National Parks and Wildlife Amendment (Telecommunications Facilities) Act 2003 No 37</i>	Whole Act ¹
<i>Valuation of Land Amendment (Valuer-General) Act 2003 No 41</i>	Whole Act ¹
<i>Criminal Procedure Amendment (Sexual Offence Evidence) Act 2003 No 42</i>	Whole Act ¹
<i>Drug Summit Legislative Response Amendment (Trial Period Extension) Act 2003 No 47</i>	Whole Act ¹

Name of Act	Extent of repeal
<i>Industrial Relations Amendment (Adoption Leave) Act 2003</i> No 48	Whole Act ¹
<i>Community Relations Commission and Principles of Multiculturalism Amendment Act 2003</i> No 50	Whole Act ¹
<i>Education Amendment (Computing Skills) Act 2003</i> No 51	Whole Act ¹
<i>Health Legislation Amendment Act 2003</i> No 52	Whole Act ¹
<i>Prevention of Cruelty to Animals Amendment (Penalties) Act 2003</i> No 54	Whole Act ¹
<i>Sydney Water Amendment (Water Restrictions) Act 2003</i> No 55	Whole Act ¹
<i>Local Government Amendment (Cudgegong (Abattoir) County Council Dissolution) Act 2003</i> No 56	Whole Act ¹
<i>Evidence Legislation Amendment (Accused Child Detainees) Act 2003</i> No 57	Whole Act ¹
<i>Gaming Machines Amendment (Miscellaneous) Act 2003</i> No 58	Whole Act ¹
<i>Police Association Employees (Superannuation) Amendment Act 2003</i> No 59	Whole Act ¹
<i>Environmental Planning and Assessment Amendment (Development Consents) Act 2003</i> No 60	Whole Act ¹
<i>Industrial Relations Amendment (Public Vehicles and Carriers) Act 2003</i> No 63	Whole Act ¹
<i>Transport Legislation Amendment (Safety and Reliability) Act 2003</i> No 65	Whole Act ¹
<i>Coptic Orthodox Church (NSW) Property Trust Amendment Act 2003</i> No 67	Whole Act ¹

Statute Law (Miscellaneous Provisions) Bill 2004

Schedule 3 Repeals

Name of Act	Extent of repeal
<i>Motor Accidents Compensation Amendment (Terrorism) Act 2003</i> No 68	Whole Act ¹
<i>Sydney Water Catchment Management Amendment Act 2003</i> No 70	Whole Act ¹
<i>Courts Legislation Amendment Act 2003</i> No 71	Whole Act ¹
<i>Coroners Amendment Act 2003</i> No 72	Whole Act ¹
<i>Independent Commission Against Corruption Amendment (Ethics Committee) Act 2003</i> No 73	Whole Act ¹
<i>Police Legislation Amendment (Civil Liability) Act 2003</i> No 74	Whole Act ¹
<i>Evidence (Audio and Audio Visual Links) Amendment Act 2003</i> No 76	Whole Act ¹
<i>City Tattersall's Club Amendment Act 2003</i> No 78	Whole Act ¹
<i>Duties Amendment (Land Rich) Act 2003</i> No 79	Whole Act ¹
<i>State Revenue Legislation Further Amendment Act 2003</i> No 80	Whole Act ¹
<i>Occupational Health and Safety Amendment (Prosecutions) Act 2003</i> No 83	Whole Act ¹
<i>Marketing of Primary Products Amendment (Rice Marketing) Act 2003</i> No 86	Whole Act ¹
<i>Contaminated Land Management Amendment Act 2003</i> No 91	Whole Act ¹
<i>Firearms and Crimes Legislation Amendment (Public Safety) Act 2003</i> No 92	Whole Act ¹
<i>Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003</i> No 95	Whole Act ³

Name of Act	Extent of repeal
<i>Workers Compensation Legislation Amendment (Trainees) Act 2003 No 97</i>	Whole Act ¹
<i>Public Finance and Audit (SOCOG and State Brickworks) Regulation 2004</i>	Whole Regulation ¹

Key

- 1 indicates repeal of an Act or statutory rule that contains only amendments or amendments and repeals
- 2 indicates repeal of an Act or provision that is spent or no longer of practical utility or that has expired or ceased to have effect
- 3 indicates repeal of an Act or provisions that include one or more uncommenced provisions that are not to be commenced

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 or statutory rule is amended or repealed, no amendment made by the Act or statutory rule 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 or statutory rule,
- (c) any amendment or validation made by the Act or statutory rule,
- (d) the operation of any savings or transitional provision contained in the Act or statutory rule.

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

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- Consumer, Trader and Tenancy Tribunal Act 2001* No 82—Schedule 2
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