

**STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL
(No. 2) 1988**

NEW SOUTH WALES



EXPLANATORY NOTE

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

The objects of this Bill are—

- (a) to make amendments to various Acts (Schedules 1–25); and
- (b) to amend certain other Acts for the purpose of effecting statute law revision (Schedule 26); and
- (c) to repeal certain Acts containing only—
 - (i) amendments to other Acts that have been incorporated in a reprint under the Reprints Act 1972; or
 - (ii) spent or unnecessary provisions of a saving or transitional nature; or
 - (iii) validation provisions,(Schedule 27); and
- (d) to repeal the Matraville Oil Refinery Act 1980; and
- (e) to make other provisions of a minor, consequential or ancillary nature (Schedule 28).

Schedule 1 amends sections 6 (definition of “Child”) and 21 of the Adoption of Children Act 1965 to lower the age referred to in those provisions from 21 to 18 years. The proposed amendments will make the age consistent with that specified in sections 18, 26 and 33 of the Act (Schedule 1 (1) and (2)). The Schedule also includes amendments by way of statute law revision to update certain references (Schedule 1 (3)).

Schedule 2 amends section 21 (Infected bees etc. not to be kept or sold) of the Apiaries Act 1985—

- (a) to make it an offence for a beekeeper to keep or allow to remain on any land bees, beehives, apiary products or appliances infected with or liable to spread prescribed diseases among bees except as provided by the section (at present it is an offence only if the beekeeper is the occupier of the land); and

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- (b) to require beekeepers to follow directions given by inspectors (instead of prescribed procedures) in relation to the treatment or eradication of such diseases in bees, beehives, apiary products and appliances and the sale and disposal of infected bees, beehives, apiary products and appliances.

Schedule 3 amends the Children (Care and Protection) Act 1987—

- (a) to recast the definition of “abuse” in section 3 (1) of the Act in a clearer form (Schedule 3 (1) (a)); and
- (b) to make the definitions of “maintenance” and “proprietor” in section 3 (1) of the Act consistent with definitions of those terms in the Disability Services and Guardianship Act 1987 (Schedule 3 (1) (b) and (d)); and
- (c) to enable the terms “non-Government children’s home” and “non-Government organisation” to be given their ordinary meaning instead of being defined (at present the terms are described in a manner that requires corporations, societies, associations or other bodies of persons to be declared by order to be non-Government organisations) (Schedule 3 (1) (c) and (e)); and
- (d) to make it clear that section 20 (Ordinary medical and dental treatment) of the Act applies to children under the age of 16 years who have been placed in the care of a person by, or with the written approval of, the Minister or the Director-General (Schedule 3 (2)); and
- (e) to modify the requirement that the licensed manager of a licensed residential child care centre forward notice of the death of a child at the centre to a member of the police force at the police station nearest the centre so that notice is simply required to be given to a member of the police force without limitation as to locality (Schedule 3 (3)); and
- (f) to make it clear that proceedings on a care application commence when the care application is made (Schedule 3 (4)); and
- (g) to make it clear that the Director-General may exercise the powers relating to the care of children pending care proceedings described in section 62 (3) of the Act where a child is placed in the care of the Director-General under section 77 of the Act (Schedule 3 (5) (a)); and
- (h) to make it clear that a child placed in the care of the Director-General may be discharged from care or kept in care under section 62 (3) of the Act until the commencement of the hearing of the care application in respect of the child (Schedule 3 (5) (b)); and
- (i) to make it clear that, in proceedings under Part 5 of the Act, the power of the Children’s Court to consider certain statements, documents, information or matters is limited by section 24A (Taped recordings of interviews with certain child crime victims) (Schedule 3 (6) (a)); and
- (j) to change certain titles as a consequence of the enactment of the Children’s Court (Amendment) Act 1987 (Schedule 3 (6) (b) and (c)); and
- (k) to correct an omission from section 84 (2) by providing that, if it is proved that a child placed in the custody of a person by an order made under section 72 (1) (c) (ii) has ceased (without lawful authority) to be in that person’s care, the Children’s Court may vary or rescind the order and make certain other orders (Schedule 3 (7)); and
- (l) to apply to proceedings under Part 5 of the Act the provisions of the Justices Act 1902 relating to the production of documents by persons summoned to appear as witnesses (Schedule 3 (8)); and

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- (m) to enable an authorised justice to issue a search warrant under section 116 of the Act authorising an officer or member of the police force to observe and converse with any person apparently residing at the premises concerned (a similar power is contained in section 102 (2) (c) of the Disability Services and Guardianship Act 1987) (Schedule 3 (9)); and
- (n) to enable the Minister to consent to a person other than the proprietor of the premises concerned making an application for a licence for a child care service or residential child care centre (the Minister has this power under clause 1 of Schedule 2 to the Disability Services and Guardianship Act 1987) (Schedule 3 (10)).

Schedule 4 amends the Disability Services and Guardianship Act 1987—

- (a) to enable the President and Deputy President of the Guardianship Board to be appointed and remunerated on a full-time basis (Schedule 4 (1) and (2) (a)); and
- (b) to preserve the existing superannuation rights of a person appointed as a full-time President or Deputy President in certain defined circumstances (Schedule 4 (2) (b)).

Schedule 5 amends section 21F of the Electricity Act 1945 to limit the powers of authorised persons in relation to the prohibition of the sale of unsafe electrical articles. At present an authorised person may prohibit the sale of all electrical articles of a class in the custody, control or possession of a person. The proposed amendment will enable the authorised person to prohibit the sale of all electrical articles of a type rather than a class (for the purposes of the relevant Part of the Act electrical articles of a type are all electrical articles of the same design constructed to identical specifications) (Schedule 5 (2)). The Schedule also includes an amendment by way of statute law revision to omit section 19c (4) of the Act which is superfluous as a consequence of the substitution of section 19c (1) of the Act by the Electricity Development (Amendment) Act 1987 (Schedule 5 (1)).

Schedule 6 amends the Energy Administration Act 1987 to make it clear that regulations may be made to prescribe fees payable (such as those to accompany applications for registration of a label for an appliance) in relation to the labelling of appliances that consume energy.

Schedule 7 amends section 44 of the Fair Trading Act 1987 by including in it an express prohibition on false representations as to the value of goods and services. The amendment will ensure that the section is uniform with section 53 of the Trade Practices Act 1974 of the Commonwealth. The existing provision prohibits, among other things, false representations that goods or services are of a particular standard, quality or grade. The Commonwealth provision was recently clarified by including such a prohibition. In *Ducret v. Chaudhary's Oriental Carpet Palace Pty. Ltd.* (1987) ATPR 40-804, Ryan J. stated that "Notwithstanding the differences in width between 'quality' and 'standard' as used in sec. 53 (a), I consider that a representation as to each of them in respect of goods is capable of being made by attributing to the goods a value expressed as an amount of money. Whether such an attribution constitutes a representation of that kind is a matter of fact to be determined on the evidence in each case." (At p. 48,762).

Schedule 8 amends the Fertilizers Act 1985 to facilitate the administration of the Act by enabling the form of certificates of identification issued to inspectors to be approved by the Director-General rather than prescribed by regulation.

Schedule 9 amends the Forestry Act 1916—

- (a) to increase the maximum penalty under section 29 of the Act for the unauthorised operation of a sawmill from \$200 to \$500 (Schedule 9 (1)); and

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- (b) to enable the Minister administering the Crown Lands Acts to delegate the Minister's functions under section 31 of the Act involving giving concurrence to the granting of grazing permits and permits to occupy Crown land as a site for a sawmill or other building, tramway, wharf or timber depot or for charcoal burning, bee-farming or other purposes approved by the Forestry Commission (Schedule 9 (2)).

Schedule 10 amends the Industrial Arbitration (Miscellaneous Provisions) Amendment Act 1986 to enable the differential commencement of the provisions of the Act.

Schedule 11 amends section 17A (Unauthorised use of water) of the Irrigation Act 1912 to ensure that the provisions of that section will apply to protect a low pressure system of irrigation water supply which is to be implemented in the Curlwaa Irrigation Area in place of the existing supply by open channels.

Schedule 12 amends Division 9A (Disclosure of interests) of Part 4 of the Local Government Act 1919 to make it clear that a member or designated employee of a council is not required to disclose the pecuniary interests of a spouse, de facto partner or relative in a return lodged under section 46B of the Act.

The proposed amendment will remove any doubt which might arise as to whether interpretation provisions deeming the interests of certain persons to include the interests of their spouses, de facto partners and relatives (section 46A (3)–(5)) apply to both the disclosure of pecuniary interests in written returns and to disclosures made orally at council and committee meetings. Although the deeming provisions are expressed to apply only for the purposes of Division 9A and so do not relate to Schedule 5 to the Act (which sets out the interests to be disclosed in written returns) argument arises because the deeming provisions are placed at the front of Division 9A in which some provisions relating to the returns are also present. The proposed amendment will clarify the application of the provisions and ensure that section 46B operates as intended when it was enacted (that is, so as to “incorporate into the law on pecuniary interests, so far as it relates to local government . . . the relevant law applicable to members of the New South Wales Parliament” (Hansard 29 April 1987 at p. 10763)).

Schedule 13 amends section 2 (Commencement) of the Miscellaneous Acts (Children's Court and Criminal Proceedings) Amendment Act 1987 so that Item (2) of the provisions of Schedule 1 to that Act relating to the Bail Act 1978 may be commenced on a day to be proclaimed instead of on the commencement of section 9 of the Children (Criminal Proceedings) Act 1987.

Schedule 14 amends the Motor Dealers Act 1974 to remove any doubt as to whether a caravan is a trailer (and therefore a motor vehicle) within the meaning of the Act.

Schedule 15 amends the Motor Traffic Act 1909 to remove any doubt as to whether a caravan is a trailer (and therefore a motor vehicle) within the meaning of the Act.

Schedule 16 amends the Pipelines Act 1967 to provide for the making of applications for pipeline searches. The proposed amendment will enable a person to obtain from the Director of the Department of Energy certain information concerning applications made, and authorities held, under the Act.

Schedule 17 amends the Prevention of Cruelty to Animals Act 1979—

- (a) to effect a minor alteration to the definition of “multi-deck vehicle” in section 7 (Carriage and conveyance of animals) of that Act so that the definition more accurately describes the motor vehicles and trailers to which it refers (Schedule 17 (1)); and

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- (b) to prohibit the possession of articles, implements and other things for use in animal fighting (Schedule 17 (2)—proposed section 17 (b)).

The penalty for an offence against proposed section 17 (b) will be a fine of up to \$2,000 or imprisonment for 6 months, or both. The penalty is the same as that presently applicable under section 17 of the Act for a person having in his or her possession a spur or similar appliance with sharpened rowels.

Schedule 18 amends section 13A (Working accounts) of the Public Finance and Audit Act 1983 to enable a government authority which is able to recover costs incurred in the provision of goods and services by it to pay the costs recovered into a working account within the Special Deposits Account despite the fact that it may be required by the provisions of another Act to pay them into the Consolidated Fund.

Schedule 19 amends sections 4D and 9 of the Senators' Elections Act 1903 so as to make them consistent with the sections of the Commonwealth Electoral Act 1918 (sections 159 and 286, respectively) which they follow.

The proposed amendments will—

- (a) extend the time for return of the writ for a Senate election from 90 to 100 days after its issue (Schedule 19 (1)); and
- (b) remove existing time limits on the ability to extend the time for holding an election or returning the writ (Schedule 19 (2)).

Schedule 20 amends the Statutory and Other Offices Remuneration Act 1975 to provide for the remuneration of a full-time President or Deputy President of the Guardianship Board. The proposed amendment complements the proposed amendments to the Disability Services and Guardianship Act 1987 (Schedule 4).

Schedule 21 amends the Stock (Artificial Breeding) Act 1985—

- (a) to permit persons who are employees of the holder of a licence under the Act to carry out an artificial breeding procedure on the licensed premises and other persons to carry out such a procedure under the supervision of the holder of a certificate of competency or of a veterinary surgeon (Schedule 21 (1)); and
- (b) to correct a printing omission in section 26 (Importation from other countries) of the Act (Schedule 21 (2)); and
- (c) to extend the operation of section 29 (Offences relating to semen and ova) of the Act to include a prohibition against a person causing or permitting the use in any artificial breeding procedure, or the sale of semen or ova, in conditions contrary to those required by the Act (Schedule 21 (3) (a) and (b)); and
- (d) to modify the requirements of the Act relating to such conditions by permitting ova to be used, sold or distributed if they have been collected in the State from stock on unlicensed premises (Schedule 21 (3) (c) and (d)).

Schedule 22 amends the Stock (Chemical Residues) Act 1975 to enable an inspector to extend the period during which a person who owns or is in charge of stock which are, or are suspected of being, residue affected may be required to keep the stock at a particular place.

Schedule 23 amends the Stock Diseases Act 1923—

- (a) so that the provisions of section 6 of the Act providing for the automatic revocation of the appointment and authorisation of a person employed in the person's capacity as an officer or temporary employee of the Public Service in the Department of Agriculture and Fisheries will apply to a person appointed and authorised in some other capacity (Schedule 23 (1) (a) and (b)); and

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- (b) to provide for the revival of an authority revoked by the operation of section 6 of the Act where the person who was given the authority is later re-employed in the same or a similar capacity to that in which he or she was formerly appointed or authorised to act (Schedule 23 (1) (c)); and
- (c) so that an inspector may, with the approval of the Chief of the Division of Animal Health of the Department of Agriculture and Fisheries, extend the period for which land may be declared a quarantine area for stock beyond the 40 day period for which such declarations may presently be made (Schedule 23 (2)); and
- (d) to make it clear that section 19A (Identification of certain cattle, swine and other stock) of the Act applies to all cattle, not only to cattle of or above the age of 3 months as presently stated in section 19A (1) (a) (section 19A (1) (a) in its present form could be misleading because a proclamation under section 19A (2) has extended the application of the section to cattle under the age of 3 months) (Schedule 23 (3)); and
- (e) to extend the operation of section 19C (Identification of stock) so as to include prohibitions against a person causing or permitting the attachment of tags to stock, or the branding of swine, contrary to the provisions of the Act (Schedule 23 (4) (a) and (c)); and
- (f) to enable tags attached to stock sent or delivered to an abattoir for slaughter from an approved feedlot to bear additional prescribed particulars (Schedule 23 (4) (b)); and
- (g) to require the person in charge of an abattoir to make or cause to be made the records of untagged stock to be kept under section 19G of the Act within 24 hours (instead of 14 days) of the slaughter of the stock (Schedule 23 (5)); and
- (h) to provide that it is an offence under section 20 (1) (j1) of the Act to remove or cause the removal of a tag from certain stock sold within the preceding 28 (instead of 14) days (Schedule 23 (6)).

Schedule 24 amends the Trade Union Act 1881 to allow an application to register a trade union to be accompanied by a typed copy of the rules of the union. Under the current provisions the rules must be in a printed form (Schedule 24 (1)).

The Schedule also includes an amendment by way of statute law revision to section 17 of the Act (Schedule 24 (2)). The amendment clarifies section 17 by casting it in modern form.

Schedule 25 amends the Wool, Hide and Skin Dealers Act 1935 to enable fees to be prescribed for applications for the issue, renewal, variation and transfer of licences under the Act. At present a fee is payable only if an application is granted.

Schedule 26 amends certain other Acts for the purpose of effecting statute law revision. A number of amendments are made relating to formal drafting matters, such as the ranging of provisions and cross-references within Acts and minor corrections. The Schedule also contains amendments for the following purposes:

To amend section 407 (Competency of parties and accused persons and their husbands and wives to give evidence) of the Crimes Act 1900 to update certain references to the Child Welfare Act 1923 to refer to the provisions replacing them contained in the Children (Care and Protection) Act 1987.

To amend the Real Property Act 1900 to update certain references to the Registration of Deeds Act 1897.

To amend the Third Schedule to the Trustee Companies Act 1964 to update a reference to a trustee company which changed its name on 4 July 1988.

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To amend section 20B (Authority) of the Water Act 1912 so that the provision will be (as intended) consistent with other provisions amended by Schedule 8 to the Water (Amendment) Act 1986 (the amendments related to the period for which the various entitlements to take and use water may be granted and renewed).

To amend section 3A (5) of the Wild Dog Destruction Act 1921 to alter a reference to a body which changed its name on 1 January 1987.

Schedule 27 repeals a number of Acts. Since the Statute Law (Miscellaneous Provisions) Act 1985 the number of Acts in force has been gradually reduced by repealing amending Acts once the amendments contained in the Acts have been incorporated in a reprint. The Schedule continues this process.

The Schedule also repeals the Matraville Oil Refinery Act 1980. The substantive provisions of the Act have never been commenced. (When passed by Parliament the Act was intended to give effect to a proposal to develop part of the Bunnerong Power Station site as an oil refinery but the project has been abandoned).

Schedule 28 contains savings, transitional and other provisions.
