

Passed by both Houses



New South Wales

# Statute Law (Miscellaneous Provisions) Bill 2009

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

*Legislative Council*  
2009

*Clerk of the Parliaments*



New South Wales

## **Statute Law (Miscellaneous Provisions) Bill 2009**

Act No     , 2009

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An Act to repeal certain Acts 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.

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

This Act is the *Statute Law (Miscellaneous Provisions) Act 2009*.

**2 Commencement**

- (1) This Act commences on 17 July 2009, 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.

**3 Repeal of provisions of Act**

- (1) A subschedule of Schedule 1, 2, 3 or 4 is repealed on the day following the day on which all of the provisions of the subschedule have commenced.
- (2) The repeal of any such subschedule does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by those subschedules.

**4 Explanatory notes**

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

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## Schedule 1 Minor amendments

### 1.1 Adoption Act 2000 No 75

**[1] Section 54 When consent of parent or person who has parental responsibility not required**

Omit “and the Director-General or appropriate principal officer has given reasonable notice, or used their best endeavours to give reasonable notice, of the application for the adoption order to the parent or person who has parental responsibility whose consent would otherwise be required” from section 54 (1) (c).

**[2] Section 54 (3) and (4)**

Insert after section 54 (2) before the note:

- (3) However, the Court must not make an adoption order in relation to a child who is less than 18 years of age who gives sole consent to his or her adoption, unless:
  - (a) the Court is satisfied that at least 14 days’ notice of the application for the adoption order has been given by the Director-General or appropriate principal officer to the parent or person who has parental responsibility whose consent would otherwise be required, or
  - (b) the Court dispenses with the giving of notice.
- (4) The regulations may prescribe the particulars to be contained in a notice under this section.

**[3] Dictionary**

Omit “3 years” from paragraph (b) of the definition of *spouse*.

Insert instead “2 years”.

**[4] Dictionary, definition of “step parent”**

Omit “3 or more years” from paragraph (b).

Insert instead “2 or more years”.

**Explanatory note**

Item [2] of the proposed amendments to the *Adoption Act 2000 (the Act)* specifies the type of notice of an adoption application that must be given to the birth parent of a child before the child is permitted to give sole consent to his or her adoption. Under the amendments, a child aged between 12 and 18 years of age may give sole consent to his or her adoption if at least 14 days’ notice of the application for the adoption order (containing the prescribed particulars) has been given to his or her birth parents or if the Court dispenses with the giving of notice. At present, the Act requires such notice

to be given but does not specify the period for giving the notice or the particulars to be included in the notice. Item [1] is a consequential amendment.

The *Adoption Amendment Act 2008* reduced the length of time that a step parent and a child must live together before the step parent can adopt the child from 3 years to 2 years. Item [4] makes a consequential amendment to the definition of **step parent** so that a person is a step parent if the person has been in a de facto relationship (that is, a relationship between a man and a woman who live together as husband and wife but who are not married) with a child's birth parent or adoptive parent for 2 years (rather than 3 years, as is currently the case). Item [3] makes a similar amendment to the definition of **spouse** that, for consistency with the provisions relating to step parents, reduces the required length of a de facto relationship from at least 3 years to at least 2 years.

## 1.2 Adoption Amendment Act 2008 No 103

### [1] Schedule 1 Amendments

Insert “(including prescribed information relating to the adopted person’s birth parents, siblings and adopted brothers and sisters)” after “information source” in proposed section 133C (1) (c) in Schedule 1 [23].

### [2] Schedule 1 [27]

Omit proposed section 136A (7). Insert instead:

- (7) The Director-General cannot delegate his or her functions under this section to any person other than an officer of the Department.

#### **Explanatory note**

The *Adoption Amendment Act 2008 (the Act)* establishes arrangements for more open access to adoption information. Under the new provisions, which have not yet commenced, an adopted person may obtain prescribed information relating to the adopted person. Item [1] of the proposed amendments to the Act makes it clear that the type of information relating to an adopted person that may be obtained includes prescribed information relating to the adopted person's family members. This puts beyond doubt that the type of information that is made available to adopted persons under existing access arrangements (which includes information relating to birth parents and siblings) can also be made available under the new access arrangements.

Item [2] of the proposed amendments allows the Director-General of the Department of Community Services to delegate certain functions relating to the supply of adoption information, but only to an officer of the Department. At present, the functions concerned cannot be delegated by the Director-General.

## 1.3 Annual Reports (Departments) Regulation 2005

### **Clause 5 Additional matters for inclusion in annual reports**

Insert after clause 5 (c):

- (c1) a statement of the action taken by the Department in complying with the requirements of the *Privacy and Personal Information Protection Act 1998*, and

- (c2) statistical details of any review conducted by or on behalf of the Department under Part 5 of the *Privacy and Personal Information Protection Act 1998*, and

**Explanatory note**

The proposed amendment to the *Annual Reports (Departments) Regulation 2005* inserts a provision (omitted from the *Privacy and Personal Information Protection Act 1998* by a proposed amendment elsewhere in this Schedule) requiring the annual reports of Government Departments to include a statement of their compliance with the Act and statistical details of internal reviews they conduct under the Act.

## **1.4 Annual Reports (Statutory Bodies) Regulation 2005**

### **Clause 8 Additional matters for inclusion in annual reports**

Insert at the end of the clause:

- (3) For the purposes of section 7 (1) (a) (v) of the Act, the following matters are prescribed as matters that the annual report of a statutory body must comprise:
- (a) a statement of the action taken by the body in complying with the requirements of the *Privacy and Personal Information Protection Act 1998*,
  - (b) statistical details of any review conducted by or on behalf of the body under Part 5 of the *Privacy and Personal Information Protection Act 1998*.

**Explanatory note**

The proposed amendment to the *Annual Reports (Statutory Bodies) Regulation 2005* inserts a provision (omitted from the *Privacy and Personal Information Protection Act 1998* by a proposed amendment elsewhere in this Schedule) requiring the annual reports of statutory bodies to include a statement of their compliance with the Act and statistical details of internal reviews they conduct under the Act.

## **1.5 Australian Museum Trust Act 1975 No 95**

### **[1] Schedule 1 Composition and procedure of the Trust**

Omit “for 3 years” from clause 3 (1).

Insert instead “for such period, not exceeding 3 years, as is specified in the trustee’s instrument of appointment”.

**[2] Schedule 3 Savings and other provisions**

Insert at the end of the Schedule:

**7 Provision consequent on enactment of Statute Law (Miscellaneous Provisions) Act 2009**

The amendment to clause 3 (1) of Schedule 1 made by the *Statute Law (Miscellaneous Provisions) Act 2009* does not affect the term of office that a person holds as a trustee immediately before the amendment took effect.

**Explanatory note**

Currently, the *Australian Museum Trust Act 1975 (the Act)* provides that (subject to various provisions of the Act) a trustee of the Australian Museum Trust is to hold office for 3 years. Item [1] of the proposed amendments to the Act instead requires a trustee to hold office for such period, not exceeding 3 years, as is specified in the trustee's instrument of appointment. The amendment is consistent with provision made for the term of office of trustees under the *Art Gallery of New South Wales Act 1980* and the *Historic Houses Act 1980* and for the term of like offices under the *Film and Television Office Act 1988*.

Item [2] of the proposed amendments inserts a savings and transitional provision relating to the amendment proposed to be made by item [1].

**1.6 Coastal Protection Act 1979 No 13**

**[1] Section 55B Requirement for coastal zone management plans**

Insert after section 55B (3):

- (4) A coastal zone management plan may be made in relation to the whole, or any part, of the area included within the coastal zone.

**[2] Schedule 1 Savings, transitional and other provisions**

Insert after Part 2:

**Part 3 Provisions consequent on enactment of Statute Law (Miscellaneous Provisions) Act 2009**

**4 Coastal zone management plans applying to only part of a coastal zone**

A coastal zone management plan that was made by a council or councils under section 55B before the commencement of section 55B (4) (as inserted by the *Statute Law (Miscellaneous Provisions) Act 2009*), that would have been validly made had that subsection been in force, is taken to have been validly made.

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**Explanatory note**

Item [1] of the proposed amendments to the *Coastal Protection Act 1979 (the Act)* makes it clear that a coastal zone management plan made under the Act in relation to a coastal zone within a local council's area may be made in relation to the whole or any part of the coastal zone.

Item [2] validates any coastal zone management plan made before the commencement of the proposed amendment in item [1] that would have been validly made had the provision been in force.

## **1.7 Community Land Management Act 1989 No 202**

### **Section 109B Functions of Director-General**

Omit section 109B (2) (a)–(c). Insert instead:

- (a) investigating and carrying out research into matters relating to or affecting community schemes,
- (b) investigating and attempting to resolve complaints and disputes relating to community schemes and taking such action as the Director-General thinks appropriate,
- (c) prosecuting any offence under this Act or the regulations,

**Explanatory note**

The proposed amendment to the *Community Land Management Act 1989 (the Act)* makes it clear that the Director-General may investigate and carry out research into matters relating to community schemes, investigate complaints and disputes relating to community schemes and may prosecute any offence under the Act or the regulations made under the Act.

## **1.8 Community Services (Complaints, Reviews and Monitoring) Act 1993 No 2**

### **Schedule 1 Savings and transitional provisions**

Insert at the end of clause 1 (1):

*Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009*, to the extent that it amends this Act

**Commencement**

The amendment commences on the date of assent to this Act.

**Explanatory note**

The *Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009 (the amending Act)* amends the *Community Services (Complaints, Reviews and Monitoring) Act 1993 (the principal Act)* and various other Acts and legislation to give effect to certain recommendations in the *Report of the Special Commission of Inquiry into Child Protection Services in NSW* (also known as the Wood Report).

The proposed amendment allows regulations of a savings or transitional nature to be made as a consequence of the (as yet uncommenced) amendments made by the amending Act to the principal Act (consistent with amendments made by the amending Act to other Acts, that enable such regulations to be made as a consequence of its amendment of those Acts).

## 1.9 Crimes (Domestic and Personal Violence) Act 2007 No 80

### Section 84 Review and appeal provisions concerning making etc of apprehended violence orders

Insert “or the Children’s Court” after “Local Court” in section 84 (5B).

#### Explanatory note

Section 84 allows, among other things, appeals to be made to the District Court against decisions of the Local Court or Children’s Court to refuse to annul an apprehended violence order made by the Court. Section 84 (5B) refers to the District Court allowing such an appeal and remitting the matter to the Local Court. The proposed amendment to the *Crimes (Domestic and Personal Violence) Act 2007* inserts a missing reference to the Children’s Court in this context.

## 1.10 Dangerous Goods (Road and Rail Transport) Act 2008 No 95

### [1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

*consign*—see subsection (1A).

### [2] Section 4 (1A)

Insert after section 4 (1):

(1A) For the purposes of this Act, a person *consigns* goods if they are the consignor of the goods.

### [3] Section 6 Licensing of vehicles transporting dangerous goods

Omit “500 penalty units or imprisonment for 2 years, or both, for an individual or 2,500 penalty units for a body corporate” from section 6 (2).

Insert instead “100 penalty units for an individual or 500 penalty units for a body corporate”.

### [4] Section 53 Supervisory intervention orders

Omit “500 penalty units or imprisonment for 2 years, or both, for an individual or 2,500 penalty units for a body corporate” from section 53 (9).

Insert instead “100 penalty units for an individual or 500 penalty units for a body corporate”.

#### Explanatory note

Items [1] and [2] of the proposed amendments to the *Dangerous Goods (Road and Rail Transport) Act 2008 (the Act)* insert a definition of the verb *consign* into the Act. The

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amendment is consistent with the national uniform approach to the regulation of transport of dangerous goods across Australia and from overseas as contained in the model provisions prepared by the National Transport Commission.

Items [3] and [4] of the proposed amendments reduce the penalty for an offence under sections 6 (2) and 53 (9). Currently the sections provide that the maximum penalty is 500 penalty units or imprisonment for 2 years, or both, for an individual or 2,500 penalty units for a body corporate. The proposed amendments bring the penalties into line with the model provisions.

## 1.11 District Court Act 1973 No 9

### Section 15 Remuneration

Insert after section 15 (2):

- (3) However, a Judge is not entitled to the remuneration referred to in subsection (1) for any period for which the Judge is on leave without pay (being leave that is agreed to by the Judge).

#### Explanatory note

Section 15 of the *District Court Act 1973* (**the Act**) provides that the remuneration referred to in that section that is payable to a Judge of the District Court is to be paid so long as the Judge continues to hold office as such. The proposed amendment to the Act clarifies that Judges are not entitled to such remuneration for any period for which they are on leave without pay (being leave that they have agreed to take).

## 1.12 Electricity Supply Act 1995 No 94

### [1] Sections 97AB, definition of “market customer” and 105A (1), (3) and (4)

Omit “NEMMCO” wherever occurring. Insert instead “AEMO”.

### [2] Section 97AB

Omit the definition of *NEMMCO*. Insert in alphabetical order:

*AEMO* means the Australian Energy Market Operator Limited  
ACN 072 010 327.

### [3] Dictionary

Omit the definition of *NEMMCO*. Insert in alphabetical order:

*AEMO* has the same meaning as it has in Part 8A.

#### Commencement

The amendments to the *Electricity Supply Act 1995* commence, or are taken to have commenced, on the commencement of section 17 of the *National Electricity (South Australia) (National Electricity Law—Australian Energy Market Operator) Amendment Act 2009* of South Australia.

#### Explanatory note

The Council of Australian Governments has agreed to establish a national energy market operator, Australian Energy Market Operator Limited (**AEMO**) which is to replace the National Electricity Market Management Company Limited. AEMO is to

have its statutory functions conferred on it by way of amendments to the National Electricity Law (the Schedule to the *National Electricity (South Australia) Act 1996* of South Australia) and the National Gas Law (the Schedule to the *National Gas (South Australia) Act 2008* of South Australia). Those laws apply as laws of NSW by virtue of the *National Electricity (New South Wales) Act 1997* and the *National Gas (New South Wales) Act 2008*, respectively.

The proposed amendments to the *Electricity Supply Act 1995* replace references to NEMMCO with AEMO as a consequence of those changes.

### **1.13 Environmental Planning and Assessment Act 1979 No 203**

**[1] Section 72I Application of Division**

Insert after section 72I (2):

- (3) A reference in this Division to the appropriate amendment of an environmental planning instrument includes a reference to the making of an appropriate principal environmental planning instrument.

**[2] Section 72K Joint exhibition of instrument and advertising of application**

Insert “if that is practicable or, if that is not practicable, as closely together as is practicable” after “same notice” in section 72K (1).

**[3] Section 72K (2)**

Insert “the subject of the same notice” after “development application”.

**[4] Section 94EC Contributions plans—complying development**

Insert after section 94EC (1):

- (1A) The imposition of a condition by an accredited certifier as authorised by a contributions plan is subject to compliance with any directions given under section 94E (1) (a), (b) or (d) with which a council would be required to comply if issuing the complying development certificate concerned.

**[5] Section 94EE Minister to determine development contributions**

Insert at the end of the section:

- (7) Subsection (3A) does not limit any payments being made out of the Fund to a council or the Department under section 94EL (1) (a).

**[6] Section 109H Restrictions on issue of occupation certificates**

Insert “, or any requirements of a planning agreement referred to in section 93F that, by its terms, are required to be complied with before such a certificate is issued,” after “complying development certificate” in section 109H (2).

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**[7] Sections 109H and 109J**

Omit “section 93F” wherever occurring. Insert instead “section 116T”.

**[8] Section 109J Restriction on issue of subdivision certificates**

Insert after section 109J (1) (c):

- (c1) in the case of subdivision of land to which a planning agreement referred to in section 93F applies, all the requirements of the agreement that, by its terms, are required to be complied with before a subdivision certificate is issued in relation to the plan of subdivision have been complied with, and

**[9] Schedule 6 Savings, transitional and other provisions**

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

**Part Statute Law (Miscellaneous Provisions)  
Act 2009**

**Restrictions on the issue of occupation or subdivision certificate**

The amendments made by Schedule 1.13 [6] and [8] to the *Statute Law (Miscellaneous Provisions) Act 2009* apply only in relation to an application for an occupation certificate or a subdivision certificate made on or after the commencement of those amendments.

**Commencement**

Items [6], [8] and [9] of the amendments commence on a day or days to be appointed by proclamation.

Item [7] of the amendments commences, or is taken to have commenced, on the commencement of Schedule 3.1 [6] to the *Environmental Planning and Assessment Amendment Act 2008*.

**Explanatory note**

**Development applications and new or amending environmental planning instruments**

Sections 72L–72K of the *Environmental Planning and Assessment Act 1979* (**the EP&A Act**) allow for the making, and consideration by a consent authority, of development applications related to development that may only be carried out if an environmental planning instrument applying to the land is appropriately amended, and require the joint notification of such a development application and the draft environmental planning instrument allowing the development.

The effect of item [1] of the proposed amendments to the EP&A Act is to allow these provisions to operate where the development will be allowed by a principal (and not just an amending) environmental planning instrument.

The effect of item [2] of the proposed amendments is to require joint notification of the relevant development application and environmental planning instrument only if that is practicable and, if that is not practicable, to require the separate notification of each to be given as closely together as is practicable. Item [3] makes a consequential amendment.

**Ministerial directions to accredited certifiers about development contributions**

Under the EP&A Act, both local councils and accredited certifiers may, when issuing complying development certificates, impose conditions requiring contributions for local infrastructure. Section 94E of the EP&A Act authorises the Minister to direct a **consent authority** (which is defined to include a local council in this context, but not an accredited certifier) as to various matters in relation to such contributions, including the matters in relation to which they may be imposed and the maximum amount of any such contribution.

The effect of item [4] of the proposed amendments is to extend the application of the Minister's directions under section 94E that are relevant to accredited certifiers and that relate to complying development, to accredited certifiers.

**Special infrastructure contributions**

The EP&A Act enables the State to require development contributions for the provision of infrastructure in relation to development on land within a special contributions area. In determining the level and nature of such a contribution, the Minister is required by section 94EE (3A) of the EP&A Act to identify what part (if any) of the contribution is for the provision of infrastructure by a local council or for the provision of certain infrastructure by the Minister, the Department or the Director-General. Those parts that are so identified are not required to be paid into the Special Contributions Areas Infrastructure Fund (**the Fund**) established under the Act and are instead to be paid to the local council or the Department as the case requires.

Item [5] of the proposed amendments inserts a provision to clarify that section 94EE (3A) does not limit any payments being made out of the Fund to a local council or the Department for the provision of infrastructure in relation to development.

**Prerequisites to issue of subdivision or occupation certificates**

The EP&A Act provides for voluntary agreements between planning authorities and developers (**planning agreements**), under which the developer is required to provide a development contribution for a public purpose.

Section 109J of the EP&A Act sets out requirements that must be satisfied before a subdivision certificate may be issued. Item [8] of the proposed amendments includes a requirement that all the requirements of a planning agreement that, by its terms, are required to be complied with before such a certificate is issued, have been met. Item [6] of the proposed amendments makes a parallel amendment to section 109H of the EP&A Act, which provides for requirements that must be satisfied before an occupation certificate may be issued. (Similar requirements exist in relation to conditions of a development consent (including any condition requiring a development contribution to be made) that are required to be met before a subdivision or occupation certificate may be issued.) Item [9] inserts a consequential savings and transitional provision.

**Updating references**

Item [7] of the proposed amendments updates a cross-reference as a consequence of (uncommenced) amendments to the EP&A Act by the *Environmental Planning and Assessment Amendment Act 2008*.

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## 1.14 Environmental Planning and Assessment Amendment Act 2008 No 36

### [1] Schedule 3 Amendments relating to development contributions

Omit “a direct contribution that requires” from proposed clause 10 (1) (b) of Schedule 1 to the *Environmental Planning and Assessment Act 1979* in Schedule 3.1 [7].

### [2] Schedule 3.1 [7]

Insert after proposed clause 10 (1) of Schedule 1 to the *Environmental Planning and Assessment Act 1979*:

- (1A) The imposition of a condition by an accredited certifier as authorised by a contributions plan is subject to compliance with any directions given under section 116L (1) (a), (b), (c) or (e) with which a council would be required to comply if issuing the complying development certificate concerned.

### [3] Schedule 3.1 [7]

Insert at the end of proposed clause 18 of Schedule 1 to the *Environmental Planning and Assessment Act 1979*:

- (3) Subclause (1) does not limit any payments being made out of the Fund to a council or the Department under section 116ZF (1) (a).

#### Explanatory note

The proposed amendments amend uncommenced provisions of the *Environmental Planning and Assessment Act 1979* (**the EP&A Act**) as proposed to be inserted by the *Environmental Planning and Assessment Amendment Act 2008* (**the 2008 Act**). References in this explanatory note to proposed provisions of the EP&A Act are references to those provisions as proposed to be inserted by the 2008 Act.

#### Accredited certifiers' authority to impose indirect contributions

Proposed clause 10 (1) (a) of Schedule 1 to the EP&A Act requires a contributions plan under that Act to specify whether or not an accredited certifier must impose a condition requiring a community infrastructure contribution when issuing a complying development certificate. A **community infrastructure contribution** is defined to mean a direct contribution (being a monetary or other contribution the equivalent of a section 94 contribution) or an indirect contribution (being a monetary contribution the equivalent of a section 94A contribution).

Proposed clause 10 (1) (b) of Schedule 1 to the EP&A Act provides that a contributions plan can only authorise the imposition by an accredited certifier of a condition requiring a direct contribution that requires the payment of a monetary contribution. The intended effect of this subclause is to limit the direct contributions that an accredited certifier may impose to monetary contributions. However, the subclause is capable of being interpreted as limiting, generally, the type of contributions that an accredited certifier may impose to direct contributions that are monetary contributions. Accordingly, item [1] of the proposed amendments omits the words in the subclause that give rise to this ambiguity and, in so doing, confirms that a contributions plan can only authorise the imposition by an accredited certifier of a condition requiring payment of a monetary contribution (whether by way of a direct or an indirect contribution).

**Parallel amendments**

Items [2] and [3] make the same amendments as those made elsewhere in this Schedule to provisions of the *Environmental Planning and Assessment Act 1979*, to the provisions that will replace them when Schedule 3.1 [7] to the 2008 Act commences.

## **1.15 Fire Brigades Act 1989 No 192**

### **Section 80 Information to policy holders**

Insert at the end of section 80 (2) (b):

, and

- (c) any contribution required under the *State Emergency Service Act 1989*.

### **Commencement**

The amendment commences, or is taken to have commenced, on 1 July 2009, the date of commencement of Part 5A of the *State Emergency Service Act 1989*, as inserted by Schedule 6.3 to the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2008*.

### **Explanatory note**

Schedule 6.3 to the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2008* commences on 1 July 2009 and inserts Part 5A into the *State Emergency Service Act 1989*. That Part requires local government councils and insurance companies to contribute, along with the State Government, to the costs of State Emergency Service expenditure.

The object of the proposed amendment to the *Fire Brigades Act 1989* is to require an insurance company that issues a person with an invoice or other statement in relation to property, home or contents insurance to provide that person with a statement that estimates the amount of the premium that is attributable to any contribution required under the *State Emergency Service Act 1989*. This is consistent with the statement already required to be provided by insurance companies with respect to similar contributions paid under the *Rural Fires Act 1997*.

## **1.16 Firearms Act 1996 No 46**

### **Section 36 Unregistered firearms**

Insert after section 36 (3):

- (4) A person who is a resident of another State or Territory does not commit an offence under this section of possessing or using an unregistered firearm if the firearm is registered under a law in force in that other State or Territory.

### **Explanatory note**

The proposed amendment to the *Firearms Act 1996* provides that a person who is a resident of a State or Territory other than New South Wales will not commit an offence under section 36 of that Act of possessing or using an unregistered firearm if the firearm is registered in that other State or Territory.

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## 1.17 Gas Supply Act 1996 No 38

### Section 33K Market operations rules

Omit section 33K (1) (d).

#### Commencement

The amendment commences, or is taken to have commenced, on the commencement of section 14 of the *National Gas (South Australia) (National Gas Law—Australian Energy Market Operator) Amendment Act 2009* of South Australia.

#### Explanatory note

The Council of Australian Governments has agreed to establish a national energy market operator, Australian Energy Market Operator Limited (**AEMO**) which is to have its statutory functions conferred on it by way of amendments to the National Electricity Law (the Schedule to the *National Electricity (South Australia) Act 1996* of South Australia) and the National Gas Law (the Schedule to the *National Gas (South Australia) Act 2008* of South Australia). Those laws apply as laws of NSW by virtue of the *National Electricity (New South Wales) Act 1997* and the *National Gas (New South Wales) Act 2008*, respectively.

The proposed amendment to the *Gas Supply Act 1996* omits a power for the Minister for Energy to approve rules for or with respect to the establishment and operation of retail market business systems for the natural gas industry. These matters are now to be the responsibility of AEMO.

## 1.18 Holiday Parks (Long-term Casual Occupation) Act 2002 No 88

### [1] Sections 26 (2), 32 (3), 34 (5) and 35 (5)

Omit the subsections.

### [2] Section 33 Right of park owner to compensation where occupant abandons site

Omit “in the form prescribed by the regulations” from section 33 (3).

#### Explanatory note

The proposed amendments to the *Holiday Parks (Long-term Casual Occupation) Act 2002* omit the requirement that an application to the Consumer, Trader and Tenancy Tribunal (the **Tribunal**) under that Act must be made using the form prescribed by the regulations. This requirement is redundant because section 24 (2) of the *Consumer, Trader and Tenancy Tribunal Act 2001* requires an application to be made to the Tribunal in accordance with the regulations made under that Act.

## 1.19 Holiday Parks (Long-term Casual Occupation) Regulation 2003

### Part 2 and Schedule 1

Omit the Part and the Schedule.

**Explanatory note**

The proposed amendment to the *Holiday Parks (Long-term Casual Occupation) Regulation 2003* is consequential on the proposed amendments to the *Holiday Parks (Long-term Casual Occupation) Act 2002* made elsewhere in this Schedule.

**1.20 Innovation Council Act 1996 No 77**

**[1] Section 6 Membership and procedure of Council**

Omit “16 members” from section 6 (1).

Insert instead “no fewer than 10, and no more than 16, members”.

**[2] Section 6 (2)**

Omit “is to be” where secondly occurring. Insert instead “may be”.

**[3] Schedule 1 Provisions relating to members of Council**

Omit clauses 1 and 2 (2).

**[4] Schedule 1, clause 6 (1) (d)**

Omit “Part 8 of the *Public Sector Management Act 1988*”.

Insert instead “Chapter 5 of the *Public Sector Employment and Management Act 2002*”.

**[5] Schedule 1, clause 8 (1)**

Omit “Part 2 of the *Public Sector Management Act 1988*”.

Insert instead “Chapter 2 of the *Public Sector Employment and Management Act 2002*”.

**[6] Schedule 2 Provisions relating to procedure of Council**

Omit “at least 12 of the members” from clause 1.

Insert instead “a simple majority of the members”.

**[7] Schedule 2, clause 3**

Omit “9 members”. Insert instead “a simple majority of members”.

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[8] **Schedule 3 Savings and transitional provisions**

Insert after Part 2:

**Part 3 Provisions consequent on enactment of  
Statute Law (Miscellaneous Provisions)  
Act 2009**

**7 Definition**

In this Part:

*amending Act* means the *Statute Law (Miscellaneous Provisions) Act 2009*.

**8 Continuation of office of members**

- (1) A person who, immediately before the commencement of the amendments to section 6 made by the amending Act, held office as a member of the Council is taken to have been appointed as such under section 6 as amended by the amending Act.
- (2) A person who, immediately before the commencement of the amendments to section 6 made by the amending Act, held office as Chairperson or Deputy Chairperson of the Council is taken to have been appointed as such under section 6 as amended by the amending Act.
- (3) Subject to this Act, each person referred to in subclause (1) or (2) holds the relevant office for the residue of the term for which he or she was appointed to that office under section 6 as in force immediately before its amendment by the amending Act.

**Explanatory note**

Currently, section 6 of the *Innovation Council Act 1996 (the Act)* provides that the New South Wales Innovation Council (*the Innovation Council*) established under the Act is to consist of 16 members appointed by the Governor. Item [1] of the proposed amendments to the Act instead provides for the Innovation Council to consist of no fewer than 10, and no more than 16, members so appointed.

Section 6 of the Act also requires the appointment of one of the members of the Innovation Council as a Deputy Chairperson. Item [2] of the proposed amendments makes this requirement discretionary.

Item [3] of the proposed amendments omits spent provisions relating to the terms of office of first members of the Innovation Council.

Items [4] and [5] of the proposed amendments update references to a repealed Act.

Item [7] of the proposed amendments changes the quorum for a meeting of the Innovation Council from 9 members of the Council to a simple majority of members of the Council. Similarly, item [6] of the proposed amendments changes (from at least 12 of the members, to a simple majority of the members) the number of members who are required to agree to an additional meeting of the Innovation Council (beyond its first

6 meetings in a year) before such an additional meeting may be held. These amendments are consequential on that made by item [1].

Item [8] of the proposed amendments inserts savings and transitional provisions consequent on the amendments made by items [1] and [2].

## **1.21 Land Acquisition (Just Terms Compensation) Act 1991 No 22**

### **[1] Section 43A**

Insert after section 43:

#### **43A Amendment or rescission of compensation notice**

- (1) An authority of the State may, by a further notice, amend a compensation notice to correct a clerical error or obvious mistake.
- (2) An authority of the State must, by a further notice, amend a compensation notice to correct the amount of compensation offered if the Valuer-General changes his or her determination of the amount of compensation to be offered.
- (3) A further notice under this section is to be given in the same manner as the compensation notice concerned was given.
- (4) A compensation notice cannot be amended under this section after the offer of compensation in the notice has been accepted.
- (5) An amendment of a compensation notice by a further notice under this section has effect:
  - (a) from the date of the original notice (or a later date specified in the further notice) if there has been no change in the amount of compensation offered, or
  - (b) from the date of the further notice if there has been such a change.
- (6) If an amendment made to a compensation notice under this section takes effect on a day other than the day on which the original notice was received by the former owner, the notice is taken, for the purposes of sections 45 and 66, to have been received by the former owner on the day on which the amendment takes effect.
- (7) If an acquisition notice is rescinded, the compensation notice relating to the acquisition is also rescinded.

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**[2] Section 70 Compensation for rescission of acquisition notice**

Omit “compensation notice” wherever occurring in section 70 (3) and (4).

Insert instead “acquisition notice”.

**Explanatory note**

Section 47 of the *Land Acquisition (Just Terms Compensation) Act 1991 (the Act)* provides for the Valuer-General to determine the amount of compensation to be offered to a former owner of land for the compulsory acquisition of the land. A compensation notice is given under section 42 of that Act which offers the affected land owner compensation of the amount determined by the Valuer-General. Section 45 of that Act provides that an offer of compensation in a compensation notice is deemed to be accepted following 90 days after the compensation notice is given unless it is rejected and proceedings are taken by the owner of the land.

Item [1] of the proposed amendments to the Act requires an authority of the State to amend a compensation notice if the Valuer-General redetermines the amount of compensation that is to be offered to the former owner and authorises the authority of the State to amend a compensation notice for the purpose of correcting a clerical error or an obvious mistake in the notice. If any such amendment alters the amount of compensation offered to the former owner, the compensation notice is taken to have been received on the date that the amendment to the notice takes effect. The proposed amendment also provides that a compensation notice may not be amended after the offer of compensation in the notice has been accepted.

Item [2] of the proposed amendments amends section 70 of the Act to remove an incorrect reference to a ‘compensation notice’, and to replace it with a reference to an ‘acquisition notice’.

## **1.22 Law Enforcement (Controlled Operations) Act 1997 No 136**

**[1] Section 10 Variation of authority**

Insert after section 10 (9):

- (10) If an authority to conduct a controlled operation is varied, it is a sufficient defence to criminal or disciplinary proceedings arising from conduct that is engaged in by the defendant in reliance on the authority as in force prior to that variation if the defendant satisfies the court or tribunal before which the proceedings are being heard:
- (a) that the defendant engaged in the conduct in good faith for the purposes of, and in the course of, the controlled operation, and
  - (b) that, had the authority not been varied, the conduct would have been lawful by operation of section 16, and
  - (c) that the defendant was unaware, and could not reasonably be expected to have been aware, that the authority had been varied.

**[2] Section 20O Effect of being unaware of variation or cancellation of authority**

Omit “Section 12 (3) does” from section 20O (4).

Insert instead “Sections 10 (10) and 12 (3) do”.

**[3] Section 20S Mutual recognition of corresponding authorities**

Insert at the end of the section:

- (h) section 20O (Effect of being unaware of variation or cancellation of authority).

**Explanatory note**

Item [1] of the proposed amendments to the *Law Enforcement (Controlled Operations) Act 1997 (the Act)* provides for a defence to criminal or disciplinary proceedings arising from certain conduct engaged in the course of a controlled operation in circumstances where the authority to conduct the controlled operation was varied and the defendant was not aware of the variation. Item [2] is a consequential amendment.

Item [3] of the proposed amendments extends the provisions of the Act, which provide protection to a participant in a cross-border controlled operation authorised under a corresponding law, to cases where the participant was unaware of a variation or cancellation of an authority.

## **1.23 Library Act 1939 No 40**

**[1] Schedule 1 Composition and procedure of the Council**

Omit “for 3 years” from clause 3 (1).

Insert instead “for such period, not exceeding 3 years, as is specified in the member’s instrument of appointment”.

**[2] Schedule 2 Savings and transitional provisions**

Insert at the end of the Schedule:

**2 Provision consequent on enactment of Statute Law (Miscellaneous Provisions) Act 2009**

The amendment to clause 3 (1) of Schedule 1 made by the *Statute Law (Miscellaneous Provisions) Act 2009* does not affect the term of office that a person holds as a member of the Council immediately before the amendment took effect.

**Explanatory note**

Currently, the *Library Act 1939 (the Act)* provides that (subject to various provisions of the Act) a member of the Library Council of New South Wales is to hold office for 3 years. Item [1] of the proposed amendments to the Act instead requires a member to hold office for such period, not exceeding 3 years, as is specified in the member’s instrument of appointment. The amendment is consistent with provision made for the term of office of trustees under the *Art Gallery of New South Wales Act 1980* and the *Historic Houses Act 1980* and for the term of like offices under the *Film and Television Office Act 1988*.

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Item [2] of the proposed amendments inserts a savings and transitional provision relating to the amendment proposed to be made by item [1].

## 1.24 Local Courts Act 1982 No 164

### Section 24 Remuneration

Insert after section 24 (4):

- (5) However, a Magistrate is not entitled to the remuneration and allowances referred to in this section for any period for which the Magistrate is on leave without pay (being leave that is agreed to by the Magistrate).

#### Explanatory note

Section 24 of the *Local Courts Act 1982 (the Act)* provides that the remuneration and allowances referred to in that section and payable to a Magistrate appointed under the Act are to be paid so long as the Magistrate continues to hold office as such. The proposed amendment to the Act clarifies that Magistrates are not entitled to such remuneration and allowances for any period for which they are on leave without pay (being leave that they have agreed to take).

## 1.25 Mental Health Act 2007 No 8

### [1] Section 32 Detention on order of Magistrate or bail officer

Omit “police officer” from section 32 (2) and where firstly occurring in section 32 (3).

Insert instead “relevant person”.

### [2] Section 32 (7)

Insert after section 32 (6):

- (7) In subsections (2) and (3):  
**relevant person** means:
- (a) if the detained person was taken to the mental health facility on an order under section 33 of the *Mental Health (Forensic Provisions) Act 1990*, any person (including a police officer) charged by the order with taking the person from the facility, or
  - (b) in any other case, a police officer.

#### Explanatory note

The proposed amendments to the *Mental Health Act 2007* update provisions for the release of a person following a mental illness assessment to provide for their release into the custody of any person (not just a police officer) who is responsible for bringing the person before a magistrate or justice following the assessment. The amendments are consequential on recent changes to the procedures for the transporting of persons to and from mental illness assessments that enable persons other than police officers to be assigned that role.

## 1.26 Mental Health (Forensic Provisions) Act 1990 No 10

### [1] Section 33 Mentally ill persons

Omit “a person authorised to take persons to or from a mental health facility under this Act who is” from section 33 (5A) (b).

### [2] Section 76E Transfer and transport of patients

Omit “or correctional patient” from section 76E (4).

Insert instead “, a correctional patient or a person the subject of a transfer order under section 55 who has not yet been transferred”.

### [3] Section 76E (5)

Omit “or correctional patient”.

Insert instead “, a correctional patient or a person the subject of a transfer order under section 55 who has not yet been transferred,”.

### [4] Section 76J Exchange of information

Omit section 76J (1). Insert instead:

- (1) The Director-General, the Commissioner of Corrective Services and the Director-General of the Department of Juvenile Justice may enter into arrangements (an *information sharing protocol*) with each other to enable information held by their Departments and (in the case of the Director-General of the Department of Health) associated agencies to be shared or exchanged between those Departments and agencies.

### [5] Section 76J (3)

Omit the subsection. Insert instead:

- (3) Under an information sharing protocol, each Department and associated agency the subject of the arrangement is authorised:
  - (a) to request and receive information held by any other Department or associated agency the subject of the arrangement, and
  - (b) to disclose information to any of those Departments or associated agencies,and without the consent of any person concerned, but only to the extent that the information is reasonably necessary to assist in the exercise of functions under this Act or the functions of the relevant Departments or associated agencies concerned.

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**[6] Section 76J (4)**

Insert “or associated agency” after “Department”.

**[7] Section 76J (6)**

Insert after section 76J (5):

(6) In this section:

*associated agency* means any of the following:

- (a) an area health service (within the meaning of the *Health Services Act 1997*),
- (b) a statutory health corporation (within the meaning of the *Health Services Act 1997*).

**Explanatory note**

**Persons who may transport defendants to a mental health facility under section 33**

Item [1] of the proposed amendments to the *Mental Health (Forensic Provisions) Act 1990 (the Act)* relates to restrictions on the kinds of persons who can be assigned to transport a defendant to a mental health facility for a mental illness assessment. The existing requirement is that the person be a kind of person prescribed by the regulations with an additional requirement that the person be authorised under the Act to do so. The amendment omits the additional requirement for authorisation under the Act on the basis that it is an unintended duplication of the requirement for authorisation by the regulations.

**Application of section 76E to persons the subject of section 55 transfer orders**

Item [2] of the proposed amendments makes it clear that when a prisoner in a correctional centre is ordered to be transferred to a mental health facility, the existing arrangements for the transfer of patients of mental health facilities (which currently only apply to prisoners once they have been transferred to and become patients of those facilities) will apply to the transport of the prisoner even though the prisoner is not (until transferred) a patient of a mental health facility. Item [3] makes a consequential amendment to the provision that deals with the powers and responsibilities of persons who transport patients to and from a mental health facility.

**Parties to information sharing protocols under section 76J**

Item [4] of the proposed amendments requires the existing powers of the Departments of Health, Corrective Services and Juvenile Justice to enter into information sharing protocols with each other to be exercised by the heads of those Departments and also allows associated agencies of the Department of Health to share and exchange information under those protocols. Item [7] defines *associated agencies* to mean area health services and statutory health corporations (within the meaning of the *Health Services Act 1997*). Item [6] makes a consequential amendment.

**Persons whose consent is not required before information may be shared under section 76J**

Item [5] of the proposed amendments allows information to be shared and exchanged by Departments and associated agencies under an information sharing protocol without the consent of any person concerned (not just any patient concerned, as at present) to allow for the fact that information sharing protocols need not be limited to information about patients and can relate to information about other persons (as a result of the regulations extending the information to which they can relate).

## 1.27 Mining Amendment Act 2008 No 19

### [1] Schedule 1 Amendment of Mining Act 1992

Omit “must be” where secondly and thirdly occurring in proposed section 163 (6A) in Schedule 1 [109].

### [2] Schedule 1 [215]

Insert at the end of proposed section 248C (1) (b):

, and

- (c) any premises where the inspector reasonably believes that documents that relate to any activity referred to in paragraph (a) or (b) are kept—at any time.

### [3] Schedule 1 [215]

Omit proposed section 248E (2) (g). Insert instead:

- (g) take extracts from, or a copy of, any records,

#### Explanatory note

Item [1] of the proposed amendments to the *Mining Amendment Act 2008 (the Act)* omits words that are repeated unnecessarily.

The Act makes various amendments to the *Mining Act 1992*, including to provisions that confer powers on inspectors. On the commencement of those amendments, proposed sections 248C and 248E will replace sections 247 and 247A, which currently set out the powers of inspectors and royalty officers.

Item [2] of the proposed amendments enables an inspector to enter at any time any premises where the inspector reasonably believes that documents that relate to prospecting operations, mining operations or mining purposes are being kept. (Section 248D makes it clear that the power of entry in the amended section 248C does not entitle an inspector to enter any part of premises used only for residential purposes unless the inspector has the permission of the occupier or has a search warrant.)

Item [3] enables inspectors to take extracts from (not only copies of) records at premises entered by the inspectors.

The powers conferred on inspectors by the sections amended by items [2] and [3] are similar to those currently exercisable by a royalty officer under section 247A.

## 1.28 Museum of Applied Arts and Sciences Act 1945 No 31

### [1] Section 4 Appointment of trustees

Omit “for 3 years” from section 4 (3).

Insert instead “for such period, not exceeding 3 years, as is specified in the trustee’s instrument of appointment”.

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**[2] Schedule 1 Savings, transitional and other provisions**

Insert at the end of the Schedule:

**2 Provision consequent on enactment of Statute Law (Miscellaneous Provisions) Act 2009**

The amendment to section 4 (3) made by the *Statute Law (Miscellaneous Provisions) Act 2009* does not affect the term of office that a person holds as a trustee immediately before the amendment took effect.

**Explanatory note**

Currently, the *Museum of Applied Arts and Sciences Act 1945 (the Act)* provides that (subject to various provisions of the Act) a trustee of the Museum of Applied Arts and Sciences is to hold office for 3 years. Item [1] of the proposed amendments to the Act instead requires a trustee to hold office for such period, not exceeding 3 years, as is specified in the trustee's instrument of appointment. The amendment is consistent with provision made for the term of office of trustees under the *Art Gallery of New South Wales Act 1980* and the *Historic Houses Act 1980* and for the term of like offices under the *Film and Television Office Act 1988*.

Item [2] of the proposed amendments inserts a savings and transitional provision relating to the amendment proposed to be made by item [1].

**1.29 Pesticides Act 1999 No 80**

**[1] Section 22 Fee**

Insert “(if any)” after “prescribed fee” in section 22 (2).

**[2] Section 27 Fee**

Insert “(if any)” after “prescribed fee” in section 27 (2).

**[3] Section 46 Application for licence**

Insert “if required by the regulations—” before “be accompanied” in section 46 (3) (b).

**[4] Section 50 Licence fees**

Omit “, before the date prescribed by the regulations for the purpose,” from section 50 (1).

**[5] Section 50 (1A)**

Insert after section 50 (1):

- (1A) The annual licence fee must be paid:
- (a) within the time prescribed by the regulations, or

- (b) if no such time is prescribed, within the time determined by the Environment Protection Authority and notified to the holder of the licence.

**[6] Section 56 Application for certificate of competency**

Insert “(if any)” after “fee” in section 56 (2) (b).

**Explanatory note**

Items [1], [2] and [6] of the proposed amendments to the *Pesticides Act 1999* (**the Act**) make it clear that the regulations may, but need not necessarily, prescribe the fees referred to in sections 22 (2), 27 (2) and 56 (2) (b).

Item [3] of the proposed amendments provides that applications for an aircraft (pesticide applicator) licence must be accompanied by evidence relating to insurance only if the regulations require it.

Items [4] and [5] of the proposed amendments provide that an annual licence fee under the Act must be paid within the time prescribed by the regulations or, if no such time is prescribed, within the time determined by the Environment Protection Authority and notified to the holder of the licence. Currently such annual licence fees must be paid before the date prescribed by the regulations.

**1.30 Police Act 1990 No 47**

**Section 8 Commissioner to manage and control NSW Police Force**

Insert after section 8 (4):

- (4A) The Commissioner (on behalf of the Crown) may make or enter into contracts or arrangements with any person for the carrying out of works or the performance of services or the supply of goods or materials in connection with the exercise of the functions of the NSW Police Force.

**Explanatory note**

The proposed amendment to the *Police Act 1990* puts beyond doubt the authority of the Commissioner of Police to enter into commercial contracts or arrangements with any person for the carrying out of works or services or the supply of goods or materials that involves the NSW Police Force.

**1.31 Privacy and Personal Information Protection Act 1998  
No 133**

**Section 33 Preparation and implementation of privacy management plans**

Omit section 33 (3).

**Explanatory note**

The proposed amendment to the *Privacy and Personal Information Protection Act 1998* (**the Act**) removes a provision requiring public sector agencies to include in their annual reports a statement of their compliance with the Act and statistical details of internal reviews they conduct under the Act. The provision is transferred to more appropriate

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locations (namely, the *Annual Reports (Departments) Regulation 2005* and the *Annual Reports (Statutory Bodies) Regulation 2005*) by proposed amendments elsewhere in this Schedule.

### **1.32 Protection of the Environment Operations Act 1997 No 156**

#### **[1] Section 104 Compliance cost notices**

Omit “(other than the EPA)” from section 104 (3).

#### **[2] Section 212A Revocation or variation**

Omit section 212A (4). Insert instead:

- (4) A notice may only be revoked or varied by:
  - (a) the authority that gave the notice, or
  - (b) the authorised officer who gave the notice, or
  - (c) another authorised officer who is a member of staff of the authority that appointed the officer who gave the notice.

#### **Explanatory note**

Item [1] of the proposed amendments to the *Protection of the Environment Operations Act 1997 (the Act)* amends section 104 of the Act so as to enable the EPA to recover all or any reasonable costs incurred by the EPA in connection with a prevention notice from the person to whom the notice was given. Currently section 104 excludes the EPA from recovering such costs.

Item [2] of the proposed amendments provides that a notice given under Chapter 7 (Investigation) of the Act may be revoked or varied by an authorised officer who is a member of staff of the authority who gave the notice. Currently section 212A (4) of the Act enables only the authority or the authorised officer who gave the notice to revoke or vary the notice.

### **1.33 Real Property Act 1900 No 25**

#### **Section 47 Recording, variation and release of easements etc**

Omit “transfer registered under this Act and altered as the circumstances of the case may require” from section 47 (6).

Insert instead “registered dealing in the approved form”.

#### **Explanatory note**

The proposed amendment updates section 47 of the *Real Property Act 1900 (the Act)* to make provision for an easement, profit à prendre or restriction on the use of land that is recorded in the Register to be released by a registered dealing in the approved form (rather than only by way of a transfer registered under the Act).

### **1.34 Registered Clubs Act 1976 No 31**

#### **Schedule 2 Savings, transitional and other provisions**

Omit clause 94 (3) and (4).

**Commencement**

The amendment commences, or is taken to have commenced, on 30 June 2009.

**Explanatory note**

When the *Liquor Act 2007* was enacted, a transitional arrangement was included in the *Registered Clubs Act 1976* to allow an existing registered club (that is, a club in respect of which a certificate of registration was in force before the commencement of the new liquor licensing scheme on 1 July 2008) that was already operating under unrestricted trading hours to continue to trade on that basis after that date. The transitional arrangement as enacted is conditional on the club providing the Casino, Liquor and Gaming Control Authority, within 12 months of the commencement of the new licensing scheme, with a statement (verified by statutory declaration) of its current trading hours. Failure to provide the statement by 1 July 2009 results in the trading hours of the club reverting to the standard trading period under the *Liquor Act 2007* (that is, midnight closing time) which applies to new clubs licensed under that Act.

The proposed amendment to the *Registered Clubs Act 1976* removes the requirement for an existing registered club that was operating under unrestricted on-premises trading hours before 1 July 2008 to provide a statement of its current trading hours in order to be able to continue to trade on that basis after 1 July 2009.

**1.35 Residential Parks Act 1998 No 142**

**[1] Section 137 Functions of Director-General**

Omit “, including prosecution,” from section 137 (b).

**[2] Section 137 (b1)**

Insert after section 137 (b):

(b1) to prosecute any offence under this Act or the regulations,

**Explanatory note**

The proposed amendments to the *Residential Parks Act 1998 (the Act)* make it clear that the Director-General may prosecute any offence under the Act or regulations made under the Act, without the need for such prosecution to follow on from the investigation and attempted resolution of a complaint by a park owner or resident.

**1.36 Residential Tenancies Act 1987 No 26**

**[1] Section 118 Functions of Tenancy Commissioner**

Omit “, including prosecution,” from section 118 (b).

**[2] Section 118 (b1)**

Insert after section 118 (b):

(b1) to prosecute any offence under this Act or the regulations,

**Explanatory note**

The proposed amendments to the *Residential Tenancies Act 1987 (the Act)* make it clear that the Tenancy Commissioner may prosecute any offence under the Act or the regulations made under the Act, without the need for the prosecution to follow on from the investigation or resolution of a complaint by a landlord or tenant.

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### 1.37 State Property Authority Act 2006 No 40

**[1] Schedule 1 Property transferred to Authority**

Omit the following matter from under the heading “**Miscellaneous properties**”:

Lot 112 in Deposited Plan 48439

Lot 701 in Deposited Plan 96508

Lot 1 in Deposited Plan 738477

Lot 4, Section 79 in Deposited Plan 758536

**[2] Schedule 1**

Omit the following matter from under the heading “**Miscellaneous properties**”:

Lot 7, Section 5 in Deposited Plan 759003

**[3] Schedule 1**

Omit “AB382627” from the matter relating to the lease of suite 3A (including small store room) and suite 3B, 490 David Street, Albury, under the heading “**Leases**” wherever occurring.

Insert instead “AE216673”.

**[4] Schedule 1**

Omit “8789017” from the matter relating to the lease of Lots 4, 5 and 6 in Strata Plan 65943 at 1 Darling Street, Tamworth, under the heading “**Leases**”.

Insert instead “AE117231”.

**[5] Schedule 1**

Omit “AC207393” wherever occurring in the matter relating to the lease of area 3, 3rd floor, 43 Burelli Street, Wollongong under the heading “**Leases**”.

Insert instead “AE133390”.

**[6] Schedule 1**

Omit “6215606” from the matter relating to the lease of Level 24, Governor Macquarie Tower, 1 Farrer Place, Sydney under the heading “**Leases**”.

Insert instead “9215606”.

**[7] Schedule 2 Savings, transitional and other provisions**

Insert before clause 1:

**Part 1 General**

**[8] Schedule 2, Part 2, heading**

Insert after clause 1:

**Part 2 Provisions consequent on enactment of  
Statute Law (Miscellaneous Provisions)  
Act 2008**

**[9] Schedule 2, Part 3**

Insert after clause 2:

**Part 3 Provisions consequent on enactment of  
Statute Law (Miscellaneous Provisions)  
Act 2009**

**3 Transfer of certain property removed from Schedule 1**

- (1) This clause applies to Lot 7, Section 5 in Deposited Plan 759003.
- (2) On the transfer date, the property to which this clause applies vests in the original owner for an estate in fee simple:
  - (a) without the need for any further conveyance, transfer, assignment or assurance, and
  - (b) subject to any trusts, estates, interests, dedications, conditions, restrictions and covenants to which the land was subject immediately before the transfer date.
- (3) Sections 18 (2) and 20 (1)–(4) apply, with any necessary modifications, to, and in respect of, the transfer of the property by the operation of this clause in the same way as those provisions apply to and in respect of the transfer of property under Part 4.
- (4) For the avoidance of doubt, in section 18 (2), as applied:
  - (a) a reference to the transfer date is taken to be a reference to the transfer date within the meaning of this clause, and
  - (b) a reference to the Authority is taken to be a reference to the original owner, and

(c) a reference to the transferor is taken to be a reference to the Authority.

(5) In this clause:

**original owner** means the government agency which held the property to which this clause applies immediately before it was vested in the Authority by this Act.

**transfer date** means the date on which the description of the property to which this clause applies was omitted from Schedule 1 by the *Statute Law (Miscellaneous Provisions) Act 2009*.

#### **4 Transfer date of amended descriptions**

For the avoidance of doubt, the amendment of the description of a lease listed in Schedule 1 by the *Statute Law (Miscellaneous Provisions) Act 2009* does not affect the date on which the transfer of that lease was purported to occur.

#### **Explanatory note**

Schedule 1 to the *State Property Authority Act 2006 (the Act)* describes property for the purpose of effecting its transfer under the Act to the State Property Authority. Item [1] of the proposed amendments to the Act removes from that Schedule references to certain properties that do not meet the criteria specified in section 19 of the Act for inclusion in that Schedule.

Item [2] of the proposed amendments removes a reference to a property that was mistakenly included in Schedule 1 to the Act. Item [9] of the proposed amendments provides for the transfer of that property from the State Property Authority back to the government agency that held the property immediately before the property was listed in Schedule 1 to the Act. Items [7] and [8] of the proposed amendments make consequential amendments.

Items [3]–[6] of the proposed amendments correct dealing numbers in respect of certain leases.

Item [9] of the proposed amendments also makes it clear that the corrections made to Schedule 1 by items [3]–[6] do not affect the date on which the transfers concerned were purported to have occurred.

### **1.38 Strata Schemes Management Act 1996 No 138**

#### **Section 212 Functions of Director-General**

Omit section 212 (2) (a)–(c). Insert instead:

- (a) investigating and carrying out research into matters relating to or affecting strata schemes,
- (b) investigating and attempting to resolve complaints and disputes relating to strata schemes and taking such action as the Director-General thinks appropriate,
- (c) prosecuting any offence under this Act or the regulations,

**Explanatory note**

The proposed amendment to the *Strata Schemes Management Act 1996* (**the Act**) makes it clear that the Director-General may investigate and carry out research into matters relating to strata schemes, investigate complaints and disputes relating to strata schemes and prosecute any offence under the Act or the regulations made under the Act.

**1.39 Subordinate Legislation Act 1989 No 146**

**[1] Section 10 Staged repeal of statutory rules**

Omit section 10 (4) (a) and (c).

**[2] Section 10 (4A) and (4B)**

Insert after section 10 (4):

(4A) Despite the other provisions of this Part, the following regulations remain in force until 1 September 2010, unless sooner repealed:

- (a) the *Associations Incorporation Regulation 1999*,
- (b) the *Day Procedure Centres Regulation 1996*,
- (c) the *Motor Vehicle Repairs Regulation 1999*,
- (d) the *Private Hospitals Regulation 1996*.

(4B) Despite the other provisions of this Part, the *Occupational Health and Safety Regulation 2001* remains in force until 1 September 2012, unless sooner repealed.

**[3] Section 11 Postponement of repeal in specific cases**

Insert “, (4A) or (4B)” after “section 10 (4)” in section 11 (6).

**Explanatory note**

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 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 5 occasions.

The repeal of each of the *Associations Incorporation Regulation 1999*, the *Day Procedure Centres Regulation 1996*, the *Motor Vehicle Repairs Regulation 1999* and the *Private Hospitals Regulation 1996* has been postponed on 5 occasions. These Regulations are now due to be repealed on 1 September 2009. However, uncommenced legislative reforms involving the repeal and re-enactment of the *Associations Incorporation Act 1984* and the *Private Hospitals and Day Procedure Centres Act 1988* will have a substantial impact on the matters dealt with by the

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Regulations made under those Acts. Amendments to the *Motor Vehicle Repairs Act 1980* that may impact on the *Motor Vehicle Repairs Regulation 1999* are also likely as a result of a recent review of that Act by the Better Regulation Office.

The repeal of the *Occupational Health and Safety Regulation 2001* has been postponed on 3 occasions. The Regulation is now due to be repealed on 1 September 2009. However, national model occupational health and safety legislation is currently being developed, the implementation of which is likely to have a substantial impact on the content of State occupational health and safety legislation. Currently, the national timetable for the model legislation requires its implementation by December 2011.

Item [2] of the proposed amendments will keep the current regulatory schemes of the Regulations in place until such time as replacement provisions come into force under new or revised legislation. The *Associations Incorporation Regulation 1999*, the *Day Procedure Centres Regulation 1996*, the *Motor Vehicle Repairs Regulation 1999* and the *Private Hospitals Regulation 1996* will be kept in force for a further period of one year after the date on which they would otherwise be repealed by the Act and the *Occupational Health and Safety Regulation 2001* will be kept in force for a further period of 3 years after the date on which it would otherwise be repealed by the Act. However, any of the Regulations may be sooner repealed by other legislation.

Items [1] and [3] make consequential amendments.

## 1.40 Supreme Court Act 1970 No 52

### Section 29 Remuneration

Insert after section 29 (2):

- (3) However, a Judge is not entitled to the remuneration referred to in subsection (1) for any period for which the Judge is on leave without pay (being leave that is agreed to by the Judge).

#### Explanatory note

Section 29 of the *Supreme Court Act 1970* (**the Act**) provides that the remuneration referred to in that section that is payable to a Judge of the Supreme Court is to be paid so long as the Judge's commission continues in force. The proposed amendment to the Act clarifies that Judges are not entitled to such remuneration for any period for which they are on leave without pay (being leave that they have agreed to take).

## 1.41 Sydney Opera House Trust Act 1961 No 9

### [1] Section 6 Trustees

Omit "for 3 years" from section 6 (3).

Insert instead "for such period, not exceeding 3 years, as is specified in the trustee's instrument of appointment".

**[2] Schedule 2 Savings and transitional provisions**

Insert at the end of the Schedule:

**2 Provision consequent on enactment of Statute Law (Miscellaneous Provisions) Act 2009**

The amendment to section 6 (3) made by the *Statute Law (Miscellaneous Provisions) Act 2009* does not affect the term of office that a person holds as a trustee immediately before the amendment took effect.

**Explanatory note**

Currently, the *Sydney Opera House Trust Act 1961 (the Act)* provides that (subject to various provisions of the Act) a trustee of The Sydney Opera House Trust is to hold office for 3 years. Item [1] of the proposed amendments to the Act instead requires a trustee to hold office for such period, not exceeding 3 years, as is specified in the trustee's instrument of appointment. The amendment is consistent with provision made for the term of office of trustees under the *Art Gallery of New South Wales Act 1980* and the *Historic Houses Act 1980* and for the term of like offices under the *Film and Television Office Act 1988*.

Item [2] of the proposed amendments inserts a savings and transitional provision relating to the amendment proposed to be made by item [1].

**1.42 Threatened Species Conservation Act 1995 No 101**

**[1] Section 36B Publication of determination**

Omit section 36B (4).

**[2] Section 127H Variation of agreements**

Insert before section 127H (2) (a):

- (a1) if the land is subject to a residential tenancy agreement or other lease, the tenant or the lessee has consented in writing to the variation, and

**Explanatory note**

Item [1] of the proposed amendments to the *Threatened Species Conservation Act 1995 (the Act)* omits a redundant definition from section 36B of the Act.

Item [2] amends section 127H (2) of the Act to require the Minister administering the Act to obtain written consent from the tenant or lessee of any land that is subject to a biobanking agreement prior to agreeing to vary that agreement. This proposed amendment is consistent with the general requirements imposed on the Minister when agreeing to enter into a biobanking agreement under section 127F (1) of the Act.

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### 1.43 Water Act 1912 No 44

#### Section 4G Proceedings for offences

Omit section 4G (3). Insert instead:

- (3) If proceedings referred to in subsection (2) are taken before a Local Court, the maximum monetary penalty that may be imposed by the court is 200 penalty units or the maximum monetary penalty for the offence, whichever is the lesser.

#### Explanatory note

Currently, the maximum monetary penalty that may be imposed by a Local Court in proceedings for an offence under the *Water Act 1912 (the Act)* is 50 penalty units (\$5,500) for a corporation and 40 penalty units (\$4,400) for any other person.

The proposed amendment increases the maximum monetary penalty that may be imposed by a Local Court for an offence under the Act to 200 penalty units (\$22,000) or the maximum monetary penalty for the offence, whichever is the lesser amount. The proposed amendment will bring the maximum monetary penalty that a Local Court may impose into line with the maximum monetary penalty that a Local Court may impose under, for example, the *Protection of the Environment Operations Act 1997*.

### 1.44 Water Management Act 2000 No 92

#### [1] Section 59 Available water determinations

Omit “section 60 (2)” from section 59 (1) (b). Insert instead “section 49A (1)”.

#### [2] Section 60G Minister may charge for water illegally taken

Insert “may do either or both of the following” after “Minister” in section 60G (1).

#### [3] Section 60G (1)

Omit “and” from section 60G (1) (a) and omit “may” where firstly occurring in section 60G (1) (a) and (b).

#### [4] Section 71N Term transfers of entitlements under access licences

Omit section 71N (5) (e). Insert instead:

- (e) Division 1A of this Part,

#### [5] Section 85A Authorisation to take water from uncontrolled flows

Omit “section 323” from section 85A (7). Insert instead “section 324”.

#### [6] Section 91I Taking water when metering equipment not working

Insert “or is not operating” after “is not operating properly” wherever occurring in section 91I (1)–(3).

**[7] Sections 91K (5) and 326 (4)**

Insert “, skills and experience” after “qualifications” wherever occurring.

**[8] Section 326 Directions to install and maintain metering equipment**

Insert “to take specified measures” after “landholder or person” in section 326 (1).

**[9] Section 326 (2)**

Insert “take specified measures to” after “direction to”.

**[10] Sections 327 (2), 328 (2) and 329 (2)**

Insert “to take specified measures” after “direct the person” wherever occurring.

**[11] Section 327 Stop work order regarding unlawful construction or use of water management work**

Omit section 327 (3). Insert instead:

- (3) Without limiting subsection (2), the landholder on whose land the water management work is situated, or is proposed to be situated, is taken to have control and management of the work.

**[12] Section 328 Stop work order regarding unlawful controlled activity or aquifer interference activity**

Omit section 328 (3). Insert instead:

- (3) Without limiting subsection (2), the landholder on whose land a controlled activity or aquifer interference activity is being carried out, or is proposed to be carried out, is taken to be carrying out that activity.

**[13] Section 329 Removal of unlawful water management works**

Insert “work” before “approval” in section 329 (1).

**[14] Section 329 (2)**

Insert “, modify” after “remove”.

**[15] Section 330 Temporary stop work order to protect public interest**

Insert “or specified measures” after “restrictions” in section 330 (1).

**[16] Section 333 Directions to protect water sources**

Omit “the carrying out of” from section 333 (1) (b).

**[17] Section 333 (2) (b)**

Omit “carrying out”.

Insert instead “who has carried out, is carrying out or proposes to carry out”.

**[18] Section 333 (4)**

Omit the subsection. Insert instead:

(4) Without limiting subsection (2):

- (a) the person who, at the time of the construction or use of a water management work to which this section applies, was the landholder on whose land the work was situated is taken to have control and management of the work, and
- (b) the landholder on whose land a water management work is situated, or is proposed to be situated, is taken to have control and management of the work, and
- (c) the person who, at the time a controlled activity or aquifer interference activity to which this section applies, was the landholder on whose land the activity was carried out is taken to be carrying out the activity, and
- (d) the landholder on whose land a controlled activity or aquifer interference activity is carried out, or is proposed to be carried out, is taken to be carrying out the activity.

**[19] Sections 334 (1) and 339B (1) and (2) (j)**

Omit “Division” wherever occurring. Insert instead “Part”.

**[20] Section 345 Harm to aquifers and waterfront land**

Omit “Tier 1 offence” from section 345 (1).

Insert instead “Tier 1 penalty”.

**[21] Section 345 (2)**

Omit “Tier 2 offence”. Insert instead “Tier 2 penalty”.

**[22] Section 364 Proceedings for offences**

Omit section 364 (6) (a) (i). Insert instead:

- (i) 200 penalty units,

**[23] Schedule 10 Conversion of former entitlements to access licences and approvals**

Omit clauses 28–31.

**[24] Dictionary**

Omit “that is for the time being nominated under section 71W” from the definition of *nominated water supply work*.

Insert instead “nominated or specified in an access licence”.

**Explanatory notes**

**Updating references and omitting redundant provisions**

Items [1], [4] and [5] of the proposed amendments to the *Water Management Act 2000* (**the Act**) update references to repealed provisions.

Items [13], [20] and [21] of the proposed amendments correct incorrect references.

Item [23] of the proposed amendments omits redundant provisions.

**Water illegally taken**

Section 60G (1) of the Act empowers the Minister, if satisfied on the balance of probabilities that water has been unlawfully taken, to charge the offender with an amount of up to 5 times the value of the water so taken and, if the person holds an access licence, to debit water allocations from the account for that licence of up to 5 times the quantity of water so taken. Items [2] and [3] of the proposed amendments make it clear that the Minister may take either or both of the actions that the Act currently authorises the Minister to take in respect of a person who takes water illegally. This change will make section 60G of the Act consistent with the section of the Act that it replaced (former section 85B).

Section 91I of the Act makes it an offence to take water from certain water sources using metering equipment that is not operating properly and to intentionally or negligently fail to ascertain whether it is operating properly. Item [6] of the proposed amendments applies the offences contained in that provision to circumstances where the metering equipment is either not operating properly or is not operating.

**Requirements for qualified person in relation to metering equipment**

Item [7] of the proposed amendments enables regulations to prescribe the qualifications, skills and experience that are required for a person to be a duly qualified person to maintain, repair, replace or seal metering equipment.

**Minister’s power to direct a person to take specified measures**

**Specified measures** is defined in Part 1 of Chapter 7 of the Act to include measures that involve doing, or refraining from doing, any act. The Act also makes it clear that a power to direct a person to take specified measures includes a power to direct in what circumstances, in what order and in what manner those measures are to be taken. Items [8]–[10] and [15] of the proposed amendments ensure that the Minister’s power to make certain directions in relation to unlawful works and activities, and the installation and maintenance of metering equipment, includes the power to direct a person to take specified measures.

**Directions to landholders and other persons**

Currently, for the purposes of a stop work order under sections 327 and 328 of the Act or a direction to protect a water source under section 333 of the Act, the landholder on whose land a water management work is situated is taken to have control and management of the work and the landholder on whose land a controlled activity or aquifer interference activity is carried out is taken to be carrying out the activity. Item [11] of the proposed amendments makes it clear that, for the purposes of a stop work order, the landholder on whose land the water management work is proposed to be situated is taken to have control and management of the work. Item [12] of the proposed amendments makes it clear that the landholder on whose land a controlled activity or aquifer interference activity is proposed to be carried out is taken to be

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carrying out that activity. Item [18] of the proposed amendments makes it clear that, for the purposes of a direction to protect a water source, the person who at the relevant time was the owner of the land on which the water management work was situated, is taken to have control of that water management work, and the person who at the relevant time was the owner of the land on which the controlled activity or aquifer interference activity was carried out, is taken to be carrying out that activity. Item [18] of the proposed amendments also makes the amendments proposed in items [11] and [12] for the purposes of a direction to protect a water source.

Item [14] of the proposed amendments makes it clear that the Minister may direct a person to modify a water management work for which no water management approval is in force.

Section 333 of the Act provides that the Minister may make certain directions by order on a person if the Minister is of the opinion that an activity is having, has had, or is likely to have, an adverse effect on a water source or waterfront land. Items [16] and [17] of the proposed amendments make it clear that the Minister may serve an order on a person who has carried out, is carrying out or proposes to carry out a controlled activity or aquifer interference activity.

Item [19] of the proposed amendments makes it clear that a direction served on a person under Part 1 of Chapter 7 of the Act, rather than Division 5 of that Part, may require the preparation of reports and also ensures that an authorised officer may, at any premises lawfully entered, do anything that, in the opinion of the authorised officer, is necessary to be done for the purposes of Part 2 (Other enforcement powers) of Chapter 7 of the Act.

#### **Jurisdictional limit of Local Court**

Item [22] of the proposed amendments increases the maximum monetary penalty that a Local Court may impose in proceedings for an offence against the Act or the regulations from 100 penalty units (\$11,000) in the case of a corporation or 50 penalty units (\$5,500) in any other case to 200 penalty units (currently \$22,000) in both cases.

#### **Definition of “nominated water supply work”**

Currently, *nominated water supply work* is defined in the Dictionary to the Act as a water supply work, or group of water supply works, that is for the time being nominated under section 71W as a work, or group of works, by means of which water credited to an access licence may be taken from a particular water source. Item [24] of the proposed amendments extends that definition to a water supply work, or group of works, nominated or specified in an access licence.

## **Schedule 2 Amendments by way of statute law revision**

### **2.1 Baulkham Hills Local Environmental Plan 2005**

#### **Schedule 1, Part 2**

Omit “*leterophylla*” from the matter relating to Englart Place.

Insert instead “*heterophylla*”.

#### **Explanatory note**

The proposed amendment corrects a typographical error.

### **2.2 Camden Local Environmental Plan No 47**

#### **Clause 6 (3)**

Insert at the end of clause 6:

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

#### **Explanatory note**

The proposed amendment clarifies the status of notes.

### **2.3 Camden Local Environmental Plan No 74—Harrington Park**

#### **Clause 6 (3)**

Insert at the end of clause 6:

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

#### **Explanatory note**

The proposed amendment clarifies the status of notes.

### **2.4 Child Protection (Offenders Registration) Act 2000 No 42**

#### **Sections 3 (1), definitions of “forensic patient”, “government custody” and “sentence” and (2) (e) and 3G (1)**

Omit “*Mental Health (Criminal Procedure) Act 1990*” wherever occurring.

Insert instead “*Mental Health (Forensic Provisions) Act 1990*”.

#### **Explanatory note**

The proposed amendment updates references.

## **2.5 Coffs Harbour City Local Environmental Plan 2000**

### **Dictionary, definition of “investigation area”**

Omit the definition.

#### **Explanatory note**

The proposed amendment omits a redundant definition.

## **2.6 Constitution Amendment (Governor’s Salary) Act 2003 No 66**

### **Schedule 2 [3]**

Insert before proposed clause 3:

### **Part 3 Provisions consequent on enactment of Constitution Amendment (Governor’s Salary) Act 2003**

#### **Explanatory note**

The proposed amendment inserts a heading.

## **2.7 Cowra Local Environmental Plan 1990**

### **[1] Clause 5 (1)**

Omit “*coastal waters of the state*”.

Insert instead “*coastal waters of the State*”.

### **[2] Clause 5 (3)**

Insert at the end of clause 5:

(3) Notes in this plan do not form part of this plan.

### **[3] Schedule 3**

Re-number paragraph (b) where secondly occurring in subclause (2) of the matter relating to Fences on residential premises (other than swimming pool fences) as paragraph (c).

### **[4] Schedule 3**

Re-number paragraphs (b) (where secondly occurring) and (c) in subclause (3) of the matter relating to Poultry houses in rural areas as paragraphs (c) and (d), respectively.

**Explanatory note**

Items [1], [3] and [4] of the proposed amendments correct typographical errors.  
Item [2] of the proposed amendments clarifies the status of notes.

**2.8 Crimes (Administration of Sentences) Act 1999 No 93**

**Section 260 (a1)**

Insert “or” at the end of the paragraph.

**Explanatory note**

The proposed amendment clarifies the operation of a list.

**2.9 Crimes (Administration of Sentences) Regulation 2008**

**[1] Schedule 6, clause 2 (d)**

Insert “, 108A, 108B” after “108”.

**[2] Schedule 6, clause 2 (e)**

Omit “clause 108”. Insert instead “clauses 108 and 108A”.

**Explanatory note**

The proposed amendments update cross-references.

**2.10 Crimes (Criminal Organisations Control) Act 2009 No 6**

**Section 39 (5)**

Omit “Commissiонер”. Insert instead “Commissioner”.

**Explanatory note**

The proposed amendment corrects a typographical error.

**2.11 Criminal Procedure Act 1986 No 209**

**Section 283 (1) (b)**

Insert “clause” before “27 or 29”.

**Explanatory note**

The proposed amendment inserts a missing word.

**2.12 Defamation Act 2005 No 77**

**Schedule 1, clause 13**

Omit the clause.

**Explanatory note**

The proposed amendment is consequential on the repeal of an Act by Schedule 5.

## **2.13 Dungog Local Environmental Plan 2006**

### **Clause 26 (4)**

Omit “eco-systems”. Insert instead “ecosystems”.

#### **Explanatory note**

The proposed amendment corrects a typographical error.

## **2.14 Duties Act 1997 No 123**

### **Section 166 (3)**

Omit “referrable”. Insert instead “referable”.

#### **Explanatory note**

The proposed amendment corrects a typographical error.

## **2.15 Environmental Planning and Assessment Act 1979 No 203**

### **Section 34 (5) (b) and (5B)**

Omit “take effect” wherever occurring. Insert instead “commence”.

#### **Explanatory note**

The proposed amendment replaces references to “take effect” with references to “commence”, which is the expression used in connection with Acts.

## **2.16 Fisheries Management (General) Regulation 2002**

### **[1] Clause 14A, note**

Omit “prinicipally”. Insert instead “principally”.

### **[2] Schedule 2**

Omit “degress” from the matter relating to Budgewoi Lake—All Methods.

Insert instead “degrees”.

### **[3] Schedule 2**

Omit “33°48.016S, 151°17.933E” from the matter relating to Shelly Beach Headland.

Insert instead “33°48.016’S, 151°17.933’E”.

#### **Explanatory note**

The proposed amendments correct typographical errors.

## **2.17 Fisheries Management (Ocean Trawl Share Management Plan) Regulation 2006**

### **Appendix, Schedule 3**

Omit “(*ranina ranina*)”. Insert instead “(*Ranina ranina*)”.

#### **Explanatory note**

The proposed amendment corrects a typographical error.

## **2.18 Forestry Act 1916 No 55**

### **[1] Section 32A**

Omit “sections 32B and 32C”. Insert instead “section 32C”.

### **[2] Section 40 (1) (b)**

Omit the paragraph.

#### **Explanatory note**

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

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

## **2.19 Goulburn Mulwaree Local Environmental Plan 2009**

### **Schedule 5, Part 1, item No 212**

Omit “Nissan” from the second column. Insert instead “Nissen”.

#### **Explanatory note**

The proposed amendment corrects a typographical error.

## **2.20 Goulburn Mulwaree Local Environmental Plan 2009 (Amendment No 1)**

### **Schedule 1 [3]**

Omit “clause 4A (2) (d)”. Insert instead “clause 4.2A (2) (d)”.

#### **Commencement**

The amendment is taken to have commenced on 13 March 2009.

#### **Explanatory note**

The proposed amendment corrects an incorporation direction.

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## 2.21 Great Lakes Local Environmental Plan 1996

### Clause 6 (3)

Insert at the end of clause 6:

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

#### Explanatory note

The proposed amendment clarifies the status of notes.

## 2.22 Hawkesbury Local Environmental Plan 1989

### Clause 9C (3) (f)

Omit the paragraph. Insert instead:

- (f) is significantly contaminated land within the meaning of the *Contaminated Land Management Act 1997*, or

#### Commencement

The amendment commences, or is taken to have commenced, on the commencement of Schedule 1 [8] to the *Contaminated Land Management Amendment Act 2008*.

#### Explanatory note

The proposed amendment updates terminology.

## 2.23 Higher Education Act 2001 No 102

### Schedule 1, Part 1

Omit “Australian William E. Simon University”.

#### Explanatory note

The proposed amendment is consequential on the repeal of an Act by Schedule 5.

## 2.24 Home Building Act 1989 No 147

### Schedule 4, clause 81 (3)

Insert after clause 81 (2):

- (3) A reference in clause 73A of the *Home Building Regulation 2004* to section 93 (3) of the Act is taken for all purposes to have been a reference to section 99 (3) of the Act on and from the commencement of that clause.

#### Explanatory note

The proposed amendment corrects a cross-reference.

## 2.25 Interpretation Act 1987 No 15

**[1] Section 39 (1) (b)**

Omit “shall take effect”. Insert instead “commences”.

**[2] Section 39 (2A)**

Omit “to take effect”. Insert instead “to commence”.

**[3] Section 39 (2A)**

Omit “take effect from the day the statutory rule is published on the NSW legislation website, instead of from”.

Insert instead “commence on the day the statutory rule is published on the NSW legislation website, instead of on”.

**Explanatory note**

The proposed amendments replace references to “take effect” with references to “commence”, which is the expression used in connection with Acts.

## 2.26 Kempsey Local Environmental Plan 1987

**Clause 5 (3)**

Insert after clause 5 (2):

- (3) Notes in this plan are provided for guidance and do not form part of this plan.

**Explanatory note**

The proposed amendment clarifies the status of notes.

## 2.27 Lake Macquarie Local Environmental Plan 2004

**Schedule 1, clause 2 (1) (r)**

Omit the paragraph. Insert instead:

- (r) is significantly contaminated land within the meaning of the *Contaminated Land Management Act 1997*.

**Commencement**

The amendment commences, or is taken to have commenced, on the commencement of Schedule 1 [8] to the *Contaminated Land Management Amendment Act 2008*.

**Explanatory note**

The proposed amendment updates terminology.

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## **2.28 Law Enforcement (Powers and Responsibilities) Act 2002 No 103**

### **[1] Part 12, note**

Omit “*Road Transport (General) Act 1999*”.

Insert instead “*Road Transport (General) Act 2005*”.

### **[2] Schedule 2**

Omit the matter relating to the following:

*Physiotherapists Registration Act 1945*

*Revenue Laws (Reciprocal Powers) Act 1987*

#### **Explanatory note**

Item [1] of the proposed amendments updates a cross-reference.

Item [2] of the proposed amendments omits references to repealed Acts.

## **2.29 Leeton Local Environmental Plan No 4**

### **Clause 5 (1), definition of “item of the environmental heritage”**

Omit “clause 31 (1)” from paragraph (b) of the definition.

Insert instead “clause 32 (1)”.

#### **Explanatory note**

The proposed amendment corrects a cross-reference.

## **2.30 Legal Profession Act 2004 No 112**

### **Section 14 (2) (f)**

Omit the paragraph.

#### **Explanatory note**

The proposed amendment is consequential on the repeal of an Act by Schedule 5.

## **2.31 Legal Profession Regulation 2005**

### **Clause 5 (a)**

Omit “*Legal Profession Act 2004*”.

Insert instead “*Legal Profession Act 2007*”.

#### **Explanatory note**

The proposed amendment updates a reference.

## **2.32 Leichhardt Local Environmental Plan 2000**

### **Schedule 2, Table**

Omit “MSW&DB aquaduct” from the matter relating to Piper Street, Annandale.

Insert instead “MWS&DB aqueduct”.

#### **Explanatory note**

The proposed amendment corrects typographical errors.

## **2.33 Marine Safety (General) Regulation 2009**

### **Schedule 5, Part 1, Key**

Omit “s to be”. Insert instead “Is to be”.

#### **Explanatory note**

The proposed amendment corrects a typographical error.

## **2.34 Mental Health (Forensic Provisions) Act 1990 No 10**

### **Schedule 2**

Omit “Mental Health (Criminal Procedure) Act 1990”.

Insert instead “Mental Health (Forensic Provisions) Act 1990”.

#### **Explanatory note**

The proposed amendment updates a reference to an Act.

## **2.35 Mental Health Regulation 2007**

### **Clause 12**

Omit “Parkinsons Disease”. Insert instead “Parkinson’s disease”.

#### **Explanatory note**

The proposed amendment corrects typographical errors.

## **2.36 Miscellaneous Acts (Local Court) Amendment Act 2007 No 94**

### **[1] Schedule 1.43**

Omit the Subschedule.

### **[2] Schedule 2**

Omit the matter relating to the *Farm Produce Act 1983* and the *Land Agents Act 1927*.

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**Explanatory note**

The proposed amendments are consequential on the repeal of Acts by Schedule 5.

**2.37 Motor Dealers Regulation 2004**

**Clause 64**

Omit “the motor vehicle depreciation limit under section 57AF of the *Income Tax Assessment Act 1936* of the Commonwealth”.

Insert instead “the car limit under section 40–230 of the *Income Tax Assessment Act 1997* of the Commonwealth”.

**Explanatory note**

The proposed amendment updates terminology and a cross-reference.

**2.38 Muswellbrook Local Environmental Plan 2009**

**Schedule 1, clause 3 (1)**

Omit “Muswellbroook”. Insert instead “Muswellbrook”.

**Explanatory note**

The proposed amendment corrects a typographical error.

**2.39 National Parks and Wildlife Act 1974 No 80**

**[1] Section 69A (1), definition of “statutory authority”**

Omit paragraph (b).

**[2] Schedule 13, Part 1, Group 5**

Omit “spp.” wherever occurring in the matter relating to *Macrozamia pauli-guilielmi* and *Phebalium glandulosum*.

Insert instead “ssp.”.

**Explanatory note**

Item [1] of the proposed amendments omits a redundant provision.

Item [2] of the proposed amendments corrects abbreviations.

**2.40 Parliamentary Electorates and Elections Amendment Act 2006 No 68**

**[1] Schedule 19.4, heading**

Omit “**Banana Industry Regulation 2003**”.

Insert instead “**Banana Industry Regulation 2008**”.

**[2] Schedule 19.4 [1]**

Omit “5” wherever occurring. Insert instead “4”.

**[3] Schedule 19.4 [2]**

Omit “Clauses 15 (a) and 41 (a)”.

Insert instead “Clauses 14 (a) and 40 (a)”.

**[4] Schedule 19.4 [3]**

Omit “Clauses 21 (2) (a) and 48 (2) (a)”.

Insert instead “Clauses 20 (2) (a) and 47 (2) (a)”.

**[5] Schedule 19.7, 19.15, 19.18 and 19.19**

Omit the Subschedules.

**[6] Schedule 19.14, heading**

Omit “Nurses and Midwives Regulation 2003”.

Insert instead “Nurses and Midwives Regulation 2008”.

**[7] Schedule 19.14 [1]**

Omit “Clause 3 Definitions”.

Insert instead “Schedule 1 Election of Board members”.

**[8] Schedule 19.14 [1]**

Omit “clause 3 (1)”. Insert instead “clause 1”.

**[9] Schedule 19.14 [2] and [3]**

Omit the items.

**[10] Schedule 19.16**

Omit the Subschedule. Insert instead:

**19.16 Physiotherapists Regulation 2008**

**Schedule 1 Election of Board members**

Omit the definition of *returning officer* from clause 1. Insert instead:

*returning officer* means an accredited election service provider (referred to in Part 6A of the *Parliamentary Electorates and Elections Act 1912*) appointed by the Board for the purpose of exercising the functions of a returning officer at an election.

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**Explanatory note**

Items [1]–[4], [6]–[8] and [10] of the proposed amendments update cross-references to replaced instruments.

Items [5] and [9] of the proposed amendments omit redundant provisions.

## **2.41 Parliamentary Evidence Act 1901 No 43**

### **Section 11 (1)**

Omit “sergeant-at-arms”. Insert instead “serjeant-at-arms”.

**Explanatory note**

The proposed amendment corrects a reference to an office holder.

## **2.42 Plant Diseases Act 1924 No 38**

### **Section 18A (12)**

Omit the subsection. Insert instead:

- (12) Where a prescribed fee for the purposes of this section is paid by a person who is not the owner of the coverings or fruit or vegetables in respect of which the payment is made, an amount equal to the amount of that fee may be recovered from the owner by that person in any court of competent jurisdiction as a debt due and owing by the owner to the extent to which it has not been waived or remitted in accordance with subsection (13).

**Explanatory note**

The proposed amendment is consequential on the repeal of Acts by Schedule 5.

## **2.43 Port Macquarie–Hastings (Area 13 Thrumster) Local Environmental Plan 2008**

### **[1] Schedule 2**

Omit “in an exempt development code. The Policy will have State-wide application and commences on 27 February 2009” from Note 1 at the beginning of the Schedule.

Insert instead “. The Policy has State-wide application”.

### **[2] Schedule 2**

Omit “2Kw” from subclause (3) of the matter relating to Wind energy generating works.

Insert instead “2kW”.

**[3] Schedule 3, Part 1**

Omit “in a complying development code. The Policy will have State-wide application and commences on 27 February 2009” from the note at the beginning of the Part.

Insert instead “. The Policy has State-wide application.”.

**[4] Schedule 3, Part 1**

Omit “100w” and “150w” from subclause (4) (b) of the matter relating to Recreation facilities (swimming pools and spa pools).

Insert instead “100W” and “150W”, respectively.

**Explanatory note**

Items [1] and [3] of the proposed amendments update references.

Items [2] and [4] of the proposed amendments correct typographical errors.

## **2.44 Poultry Meat Industry Act 1986 No 101**

### **Section 13, definition of “inspector”**

Omit the definition. Insert instead:

*inspector* means a person authorised in writing by the Minister to exercise the functions of an inspector under this Part.

**Explanatory note**

The proposed amendment is consequential on the repeal of Acts by Schedule 5.

## **2.45 Poultry Meat Industry Regulation 2008**

### **Clause 2**

Omit “3 October”. Insert instead “9 October”.

**Explanatory note**

The proposed amendment corrects a commencement date.

## **2.46 Powers of Attorney Act 2003 No 53**

### **Section 19 (2)**

Omit “*Conveyancers Licensing Act 1995*”.

Insert instead “*Conveyancers Licensing Act 2003*”.

**Explanatory note**

The proposed amendment updates a cross-reference.

## **2.47 Probate and Administration Act 1898 No 13**

### **Section 3 (2)**

Insert at the end of section 3:

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

#### **Explanatory note**

The proposed amendment clarifies the status of notes.

## **2.48 Public Sector Employment and Management Act 2002 No 43**

### **Schedule 2, Part 3**

Omit “section 6 (1A)”. Insert instead “section 6B”.

#### **Explanatory note**

The proposed amendment corrects a cross-reference.

## **2.49 Rail Safety Act 2008 No 97**

### **Section 167 (7)**

Omit “statutory instruments”. Insert instead “statutory rules”.

#### **Explanatory note**

The proposed amendment corrects a reference.

## **2.50 Registered Clubs Act 1976 No 31**

### **Schedule 2, clause 34 (1)**

Omit “of the Regulation” where secondly occurring.

Insert instead “of the Regulation”.

#### **Explanatory note**

The proposed amendment corrects a typographical error.

## **2.51 Rice Marketing Act 1983 No 176**

### **Section 52 (2)**

Omit the subsection.

#### **Explanatory note**

The proposed amendment is consequential on the repeal of Acts by Schedule 5.

## **2.52 Road Transport (Driver Licensing) Act 1998 No 99**

### **[1] Section 25 (3), note**

Omit “Section 26 of the *Road Transport (General) Act 1999*”.

Insert instead “Section 189 of the *Road Transport (General) Act 2005*”.

### **[2] Section 25A (5)**

Omit “(3A) (a) (ii)”. Insert instead “(3A) (b) (i)”.

#### **Commencement**

Item [2] of the amendments is taken to have commenced on 9 March 2009.

#### **Explanatory note**

The proposed amendments correct cross-references.

## **2.53 Road Transport (Driver Licensing) Regulation 2008**

### **Clause 102 (2)**

Omit “(3A) (a) (ii)”. Insert instead “(3A) (b) (i)”.

#### **Commencement**

The amendment is taken to have commenced on 9 March 2009.

#### **Explanatory note**

The proposed amendment corrects a cross-reference.

## **2.54 Road Transport (General) Regulation 2005**

### **Clause 18 (3)**

Insert “clause” after “under”.

#### **Explanatory note**

The proposed amendment corrects a cross-reference.

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

### **Section 9, note**

Omit “Division 3 of Part 3 of the *Road Transport (General) Act 1999*”.

Insert instead “Division 1 of Part 5.4 of the *Road Transport (General) Act 2005*”.

#### **Explanatory note**

The proposed amendment corrects a cross-reference.

## **2.56 Roads Regulation 2008**

### **Clause 2**

Omit “1 June”. Insert instead “3 June”.

#### **Explanatory note**

The proposed amendment corrects a commencement date.

## **2.57 Security Industry Regulation 2007**

### **Clause 37 (1) (a)**

Omit “forceable”. Insert instead “forcible”.

#### **Explanatory note**

The proposed amendment corrects a typographical error.

## **2.58 Shellharbour Rural Local Environmental Plan 2004**

### **Clause 49 (1) (b)**

Omit “from that Director-General”.

#### **Explanatory note**

The proposed amendment removes a redundant reference.

## **2.59 Sporting Venues (Pitch Invasions) Regulation 2006**

### **Clause 3**

Omit “know”. Insert instead “known”.

#### **Explanatory note**

The proposed amendment corrects a typographical error.

## **2.60 Standard Instrument (Local Environmental Plans) Order 2006**

### **[1] Standard instrument, clause 5.4 (3)**

Omit “light industry”. Insert instead “home industry”.

### **[2] Standard instrument, Dictionary**

Omit paragraph (b) of the note to the definition of *place of public entertainment*.

Insert instead:

- (b) any premises the subject of a licence under the *Liquor Act 2007* that are used or intended to be used for the purpose of providing entertainment, including public

entertainment, but not including amusement by means of an approved gaming machine within the meaning of the *Gaming Machines Act 2001*, or

**Explanatory note**

Item [1] of the proposed amendments corrects a reference.

Item [2] of the proposed amendments updates a definition.

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

**Clause 4 (1)**

Omit “(*Western Parklands*)”.

Insert instead “(*Western Sydney Parklands*)”.

**Explanatory note**

The proposed amendment corrects a reference to an instrument.

**2.62 State Environmental Planning Policy (Exempt and Complying Development Codes) 2008**

**[1] Clause 3.10 (2)**

Renumber paragraphs (a) and (b) (both where secondly occurring) and (c)–(e) of the definition of *floor area* as paragraphs (c)–(g), respectively.

**[2] Clause 3.11 (3)**

Renumber paragraphs (a) and (b) (both where secondly occurring) and (c) of the definition of *floor area* as paragraphs (c)–(e), respectively.

**Explanatory note**

The proposed amendments correct duplicated paragraph numbering.

**2.63 State Environmental Planning Policy (Major Projects) 2005**

**[1] Schedule 3, Part 29, clause 14 (1)**

Omit “subdivison”. Insert instead “subdivision”.

**[2] Schedule 3, Part 29, clause 14 (2) (b)**

Omit “opporunity”. Insert instead “opportunity”.

**[3] Schedule 3, Part 34, clause 9 (2)**

Omit “environmental protection works;”.

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**Explanatory note**

Items [1] and [2] of the proposed amendments correct typographical errors.  
Item [3] of the proposed amendments omits duplicated words.

**2.64 State Environmental Planning Policy (Western Sydney Parklands) 2009**

**Clause 9 (1)**

Omit “Subsection”. Insert instead “Subclause”.

**Explanatory note**

The proposed amendment corrects a typographical error.

**2.65 Strata Schemes (Freehold Development) Act 1973 No 68**

**[1] Section 37A (6) (b)**

Omit “subdivision”. Insert instead “conversion”.

**[2] Section 91**

Omit the section.

**Explanatory note**

Item [1] of the proposed amendments corrects a typographical error.  
Item [2] of the proposed amendments omits a redundant provision.

**2.66 Strata Schemes (Leasehold Development) Act 1986 No 219**

**[1] Section 66A (6) (b)**

Omit “subdivision”. Insert instead “conversion”.

**[2] Section 123**

Omit the section.

**Explanatory note**

Item [1] of the proposed amendments corrects a typographical error.  
Item [2] of the proposed amendments omits a redundant provision.

**2.67 Strata Schemes (Leasehold Development) Regulation 2007**

**Schedule 2, clause 1 (2)**

Omit “a plan”. Insert instead “A plan”.

**Explanatory note**

The proposed amendment corrects a typographical error.

## 2.68 Subordinate Legislation Act 1989 No 146

**[1] Schedule 4, items 4, 7, 10, 13 and 30**

Omit the items.

**[2] Schedule 4, item 23**

Omit “*Banks*”. Insert instead “*Bank*”.

**Explanatory note**

Item [1] of the proposed amendments omits redundant provisions.

Item [2] of the proposed amendments corrects a cross-reference.

## 2.69 Supreme Court Rules 1970

**Schedule J, Part 1**

Renumber clause 5 (1) (d) (where secondly occurring) and (e) in the matter relating to the *Succession Act 2006* as paragraphs (e) and (f), respectively.

**Explanatory note**

The proposed amendment corrects duplicated numbering.

## 2.70 Sutherland Shire Local Environmental Plan 2006

**[1] Clause 57, table**

Omit the following from under the heading “**Trees**” where firstly occurring:

*Pinus radiata*

Radiata pine

**[2] Clause 57, table**

Omit the following from under the heading “**Trees**” where firstly occurring:

*Syagrus romanzoffiana*

Cocos Palm

**Explanatory note**

The proposed amendments omit duplicated provisions.

## 2.71 Sydney Regional Environmental Plan No 19—Rouse Hill Development Area

**Clause 3 (2) (a)**

Omit “clause 275”. Insert instead “clause 276”.

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**Explanatory note**

The proposed amendment corrects a cross-reference.

**2.72 Sydney Regional Environmental Plan No 24—Homebush Bay Area**

**[1] Clause 9A (2) (i)**

Omit the paragraph. Insert instead:

- (i) it relates to significantly contaminated land within the meaning of the *Contaminated Land Management Act 1997*, the development complies with the terms of an approved voluntary management proposal under that Act, and

**[2] Clause 9A (2) (j) and (k)**

Omit “if” wherever occurring.

**Commencement**

Item [1] of the amendments commences, or is taken to have commenced, on the commencement of Schedule 1 [8] to the *Contaminated Land Management Amendment Act 2008*.

**Explanatory note**

Item [1] of the proposed amendments updates terminology.

Item [2] of the proposed amendments omits a superfluous word.

**2.73 Trade Measurement Regulation 2007**

**[1] Clause 2 (1), definition of “paint”**

Omit “(other than in Part 2 and Schedules 1–3)”.

**[2] Clause 2 (2)**

Omit “Schedules 1–3”. Insert instead “Schedule 1”.

**[3] Clause 2 (3)**

Insert at the end of clause 2:

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

**Explanatory note**

Item [1] of the proposed amendments omits redundant words.

Item [2] of the proposed amendments updates cross-references.

Item [3] of the proposed amendments clarifies the status of notes.

## **2.74 Warringah Local Environmental Plan 2000**

**[1] Clause 48**

Insert “(1)” before “The consent authority”.

**[2] Clause 48**

Insert “(2)” before “Consent for development”.

**[3] Clause 48**

Omit “within an investigation area”.

Insert instead “specified in a preliminary investigation order under the *Contaminated Land Management Act 1997*”.

**[4] Clause 48 (2) (as renumbered by item [2])**

Omit “, and” wherever occurring.

**[5] Schedule 9, clause 2 (2) and Dictionary, definition of “category A remediation work”**

Omit “remediation order” wherever occurring.

Insert instead “management order”.

**[6] Dictionary, definitions of “investigation area” and “remediation site”**

Omit the definitions.

**Commencement**

Items [3], [5] and [6] commence, or are taken to have commenced, on the commencement of Schedule 1 [8] to the *Contaminated Land Management Amendment Act 2008*.

**Explanatory note**

Items [1] and [2] of the proposed amendments insert missing numbering.

Items [3] and [5] of the proposed amendments update terminology.

Item [4] of the proposed amendments omits incorrect conjunctions.

Item [6] of the proposed amendments omits redundant definitions.

## **2.75 Water Sharing Plan for the Bellinger River Area Unregulated and Alluvial Water Sources 2008**

**Schedule 4, paragraph (b)**

Omit the paragraph. Insert instead:

- (b) any significantly contaminated land within the meaning of the *Contaminated Land Management Act 1997*,

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**Commencement**

The amendment commences, or is taken to have commenced, on the commencement of Schedule 1 [8] to the *Contaminated Land Management Amendment Act 2008*.

**Explanatory note**

The proposed amendment updates terminology.

**2.76 Water Sharing Plan for the Coopers Creek Water Source 2003**

**[1] Clause 17 (2) (d)**

Omit “Class”. Insert instead “C Class”.

**[2] Clause 32 (2)**

Omit “clasue 19”. Insert instead “clause 19”.

**[3] Clause 47 (3)**

Renumber paragraphs (c) and (d) as paragraphs (a) and (b), respectively.

**Explanatory note**

Items [1] and [2] of the proposed amendments correct typographical errors.

Item [3] of the proposed amendments corrects incorrect numbering.

**2.77 Wilderness Act 1987 No 196**

**[1] Section 2 (1), definition of “statutory authority”**

Omit paragraph (b).

**[2] Section 8 (5)**

Omit “or section 59 of the *National Parks and Wildlife Act 1974* does not, except as otherwise provided by any agreement under this Act or that Act”.

Insert instead “does not, except as otherwise provided by any agreement under this Act”.

**Explanatory note**

Item [1] of the proposed amendments omits a redundant provision.

Item [2] of the proposed amendments omits a redundant cross-reference.

**2.78 Wyong Local Environmental Plan 1991**

**Clauses 2 (2) (j) (iii) and 28 (4) (b) (ii)**

Omit “eco-systems” wherever occurring. Insert instead “ecosystems”.

**Explanatory note**

The proposed amendment corrects typographical errors.

## Schedule 3 Amendments consequential on enactment of Legal Profession Act 2004

### Explanatory note

The *Legal Profession Act 2004* introduced new terms to distinguish between different types of lawyers. In particular, the Act introduced the concept of an **Australian lawyer** (a person who is admitted to the legal profession under the Act or a corresponding law) and an **Australian legal practitioner** (an Australian lawyer who holds a current local practising certificate or a current interstate practising certificate). Currently, the meanings of **Australian legal practitioner** and **Australian lawyer** are contained in the *Interpretation Act 1987* for ease of reference in other Acts.

### 3.1 Consumer Credit Administration Act 1995 No 69

#### Sections 30 (2), 36 (1), 38 (a), 39 (1) and 42 (3)

Omit “a legal practitioner” wherever occurring.

Insert instead “an Australian legal practitioner”.

#### Explanatory note

The proposed amendments provide that the existing references to a legal practitioner in those provisions of the *Consumer Credit Administration Act 1995* dealing with representation during an inquiry under that Act, or representation in any proceedings arising under the consumer credit legislation before a court or the Consumer, Trader and Tenancy Tribunal, are references to an Australian lawyer who holds a current practising certificate.

### 3.2 Conveyancing Act 1919 No 6

#### [1] Sections 66P (1) and 66Z (1)

Omit the definition of *barrister* wherever occurring. Insert instead:

*barrister* has the same meaning as it has in the *Legal Profession Act 2004*.

#### [2] Sections 66P (1) and 66Z (1)

Omit the definition of *solicitor* wherever occurring. Insert instead:

*solicitor* has the same meaning as it has in the *Legal Profession Act 2004*, and includes a licensed conveyancer.

#### Explanatory note

The proposed amendments update the current definitions of *barrister* and *solicitor* contained in the *Conveyancing Act 1919* by defining these terms with reference to the *Legal Profession Act 2004*.

### **3.3 Criminal Procedure Act 1986 No 209**

**[1] Sections 76 (4) (b) and note, 185, note and 306V (2) and (3) (b)**

Omit “lawyer” wherever occurring.

Insert instead “Australian legal practitioner”.

**[2] Section 306ZL Vulnerable persons have a right to alternative arrangements for giving evidence when accused is unrepresented**

Omit “a lawyer” from section 306ZL (1).

Insert instead “an Australian legal practitioner”.

**[3] Section 306ZL (7) (b)**

Omit “Australian lawyer”. Insert instead “Australian legal practitioner”.

**Explanatory note**

Items [1] and [2] of the proposed amendments provide that certain recorded evidence given by a child or a cognitively impaired person may be admitted or used as evidence in proceedings if the accused person and his or her Australian legal practitioner have been given a reasonable opportunity to listen to or view the recording.

Item [3] of the proposed amendments makes provision for a child or a cognitively impaired person to be examined by a person appointed by the court instead of by the accused or the defendant (in circumstances where the accused or defendant is not represented by an Australian legal practitioner).

Item [4] of the proposed amendments makes a consequential amendment.

### **3.4 Evidence on Commission Act 1995 No 26**

**Sections 7 (2) (b) and 21 (2) (b)**

Omit “the lawyer of” wherever occurring.

Insert instead “the Australian legal practitioner representing”.

**Explanatory note**

The proposed amendments make it clear that a superior court may, when making an order for taking evidence abroad or outside of the State under the *Evidence on Commission Act 1995*, include a request for the attendance of the Australian legal practitioner representing each party to a proceeding.

### **3.5 Law Enforcement (Powers and Responsibilities) Act 2002 No 103**

**[1] Section 117 Certain times to be disregarded in calculating investigation period**

Insert “Australian” before “legal practitioner” wherever occurring.

**[2] Sections 123 (1) (b), (5) and (8) and 127 (1) (a)**

Omit “a legal practitioner” wherever occurring.

Insert instead “an Australian legal practitioner”.

**[3] Section 123 Right to communicate with friend, relative, guardian or independent person and Australian legal practitioner**

Omit “that legal practitioner” from section 123 (1) (b).

Insert instead “that Australian legal practitioner”.

**[4] Section 123 (1) (b) (i), (5) and (6)**

Omit “the legal practitioner” wherever occurring.

Insert instead “the Australian legal practitioner”.

**[5] Section 123 (7) and (8)**

Omit “or legal practitioner” wherever occurring.

Insert instead “or Australian legal practitioner”.

**Explanatory note**

The proposed amendments provide that the existing references to a legal practitioner in those provisions of the *Law Enforcement (Powers and Responsibilities) Act 2002* dealing with the detention of persons after arrest for the purposes of questioning and the safeguards relating to those persons in custody are references to an Australian lawyer who holds a current practising certificate.

### **3.6 Loan Fund Companies Act 1976 No 94**

**[1] Section 51 Procedure with respect to holding of inquiry**

Omit “A duly qualified legal practitioner” from section 51 (4).

Insert instead “An Australian legal practitioner”.

**[2] Sections 52 (6) and 54**

Omit “a duly qualified legal practitioner” wherever occurring.

Insert instead “an Australian legal practitioner”.

**Explanatory note**

The proposed amendments provide that the existing references to a duly qualified legal practitioner in those provisions of the *Loan Fund Companies Act 1976* dealing with inquiries into the affairs and activities of loan fund companies are references to an Australian lawyer who holds a current practising certificate.

### **3.7 Occupational Health and Safety Act 2000 No 40**

#### **Sections 126 (1) and 127 (1)**

Omit “a legal practitioner” wherever occurring.

Insert instead “an Australian legal practitioner”.

#### **Explanatory note**

The proposed amendments make provision for an Australian legal practitioner to appear as a representative in proceedings under section 125 of the *Occupational Health and Safety Act 2000* on an application for a guideline judgment.

## **Schedule 4 On-line notification of the making of statutory instruments**

### **Explanatory note**

This Schedule contains amendments that relate to the official notification of the making of certain statutory instruments on the NSW legislation website that is maintained by the Parliamentary Counsel.

Generally, the amendments require that certain statutory instruments such as proclamations, orders and notices that directly amend Acts be published on the NSW legislation website instead of in the Gazette.

Subschedules 4.25 and 4.38 confirm that the rules of the Guardianship Tribunal and the Medical Tribunal are rules of court for the purposes of the *Interpretation Act 1987* and are therefore required to be published on the NSW legislation website rather than in the Gazette.

In addition, some amendments (Subschedules 4.2, 4.11, 4.14, 4.32–4.35, 4.50–4.53, 4.69, 4.71 and 4.74) confirm that court practice notes and certain other instruments, which apply the statutory rule provisions of the *Interpretation Act 1987* relating to parliamentary tabling and disallowance, continue to be required to be published in the Gazette.

### **4.1 Aboriginal Land Rights Act 1983 No 42**

#### **Section 93 Regions**

Omit “in the Gazette” from section 93 (2).

Insert instead “on the NSW legislation website”.

### **4.2 Administrative Decisions Tribunal Act 1997 No 76**

#### **Section 91A Practice notes**

Omit section 91A (2). Insert instead:

- (2) A practice note must be published in the Gazette.
- (3) Sections 40 and 41 of the *Interpretation Act 1987* apply to a practice note in the same way as they apply to a statutory rule.

### **4.3 AGL Corporate Conversion Act 2002 No 16**

#### **Section 34 Part 4 of Gas Industry Restructuring Act 1986 ceases to have effect on registration day**

Omit “in the Gazette” from section 34 (4).

Insert instead “on the NSW legislation website”.

#### **4.4 Apiaries Act 1985 No 16**

**[1] Section 48 Certain orders to be published in Gazette**

Insert “(other than an order made under section 51)” after “An order”.

**[2] Section 51 Amendment of Schedules 1, 2 and 3**

Omit “in the Gazette” from section 51 (1) and (2), wherever occurring.

Insert instead “on the NSW legislation website”.

#### **4.5 Bible Society NSW (Corporate Conversion) Act 2008 No 91**

**Section 7 Existing Society Act and rules cease to have effect on registration day**

Omit “in the Gazette” from section 7 (3).

Insert instead “on the NSW legislation website”.

#### **4.6 Botany Cemetery and Crematorium Act 1972 No 6**

**Section 16 Amendment of Schedules**

Omit “in the Gazette” from section 16 (1).

Insert instead “on the NSW legislation website”.

#### **4.7 Brigalow and Nandewar Community Conservation Area Act 2005 No 56**

**[1] Section 16 Future additions to zones of Community Conservation Area**

Insert “published on the NSW legislation website” after “proclamation” in section 16 (1).

**[2] Section 22 Adjustment of description of transferred land**

Omit “in the Gazette” from section 22 (3).

Insert instead “on the NSW legislation website”.

#### **4.8 Catchment Management Authorities Act 2003 No 104**

**Section 11 Abolition, establishment or change of name or area of operations of authorities**

Omit “in the Gazette” from section 11 (1).

Insert instead “on the NSW legislation website”.

#### **4.9 Central Coast Water Corporation Act 2006 No 105**

##### **Schedule 7.2 Water Management Act 2000 No 92**

Omit “in the Gazette” from proposed section 286 (6) in Schedule 7.2 [1].

Insert instead “on the NSW legislation website”.

#### **4.10 Chipping Norton Lake Authority Act 1977 No 38**

##### **Section 23 Extension or restriction of development area**

Omit “in the Gazette”. Insert instead “on the NSW legislation website”.

#### **4.11 Civil Procedure Act 2005 No 28**

##### **Section 15 Practice notes**

Omit section 15 (2). Insert instead:

- (2) A practice note must be published in the Gazette.
- (3) Sections 40 and 41 of the *Interpretation Act 1987* apply to a practice note in the same way as they apply to a statutory rule.

#### **4.12 Dams Safety Act 1978 No 96**

##### **Section 27 Amendment etc of Schedule 1**

Omit “in the Gazette” from section 27 (1) and (2), wherever occurring.

Insert instead “on the NSW legislation website”.

#### **4.13 Discharged Servicemen’s Badges Act 1964 No 49**

##### **Section 2 Interpretation**

Omit “in the Gazette” from section 2 (2).

Insert instead “on the NSW legislation website”.

#### **4.14 District Court Act 1973 No 9**

##### **[1] Section 161 Civil procedure rules**

Omit “is taken to be a statutory rule for the purposes of Part 6 of the *Interpretation Act 1987*. This subsection does not apply to a practice note issued before the commencement of this subsection” from section 161 (7).

Insert instead “must be published in the Gazette”.

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**[2] Section 161 (8)**

Insert after section 161 (7):

- (8) Sections 40 and 41 of the *Interpretation Act 1987* apply to a practice note in the same way as they apply to a statutory rule.

**[3] Section 188 References to District Court judges in existing instruments**

Omit “Sections 39,” from section 188 (4). Insert instead “Sections”.

**4.15 Drug and Alcohol Treatment Act 2007 No 7**

**Section 54 Amendment of Schedule 1 (Substances)**

Omit “in the Gazette”. Insert instead “on the NSW legislation website”.

**4.16 Dust Diseases Tribunal Act 1989 No 63**

**Section 35 Power to add diseases to Schedule 1**

Omit “in the Gazette” from section 35 (1) and (2), wherever occurring.

Insert instead “on the NSW legislation website”.

**4.17 Environmental Planning and Assessment Act 1979 No 203**

**[1] Sections 75R (3A), 94EG (1) and (3) and 118AA (11)**

Omit “in the Gazette”, wherever occurring.

Insert instead “on the NSW legislation website”.

**[2] Schedule 6 Savings, transitional and other provisions**

Omit “in the Gazette” from clause 91 (1).

Insert instead “on the NSW legislation website”.

**4.18 Fair Trading Act 1987 No 68**

**[1] Section 31 Order (other than interim order) prohibiting or restricting the supply of goods**

Insert after section 31 (1):

- (1A) An order made under this section must be published in the Gazette.

**[2] Section 31 (2)**

Omit “Sections 39,”. Insert instead “Sections”.

#### **4.19 Fire Brigades Act 1989 No 192**

##### **Section 55 Advance payment by insurance companies**

Omit “in the Gazette” from section 55 (5).

Insert instead “on the NSW legislation website”.

#### **4.20 First State Superannuation Act 1992 No 100**

##### **Section 7 Employers may be changed**

Omit “in the Gazette” from section 7 (1).

Insert instead “on the NSW legislation website”.

#### **4.21 Fisheries Management Act 1994 No 38**

##### **[1] Sections 7B (2) and 42 (2)**

Insert “published on the NSW legislation website” after “proclamation”, wherever occurring.

##### **[2] Section 220D Amendment of lists**

Omit “in the Gazette” from section 220D (1) and (2), wherever occurring.

Insert instead “on the NSW legislation website”.

#### **4.22 Forestry and National Park Estate Act 1998 No 163**

##### **Section 11 Adjustment of description of land transferred to national park estate**

Omit “in the Gazette” from section 11 (4).

Insert instead “on the NSW legislation website”.

#### **4.23 Government and Related Employees Appeal Tribunal Act 1980 No 39**

##### **Section 4 Definitions**

Omit “in the Gazette” from section 4 (6) and (9), wherever occurring.

Insert instead “on the NSW legislation website”.

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#### **4.24 Growth Centres (Development Corporations) Act 1974 No 49**

##### **Section 5 Amendment of Schedule 1 (Growth centres and development corporations)**

Omit “in the Gazette” from section 5 (1) and (7), wherever occurring.

Insert instead “on the NSW legislation website”.

#### **4.25 Guardianship Act 1987 No 257**

##### **Section 75 Rules**

Omit section 75 (2). Insert instead:

- (2) A rule made under this section is a rule of court for the purposes of the *Interpretation Act 1987*.

#### **4.26 Hawkesbury Racecourse Act 1996 No 74**

##### **Section 9 Repeals**

Omit “in the Gazette” from section 9 (1).

Insert instead “on the NSW legislation website”.

#### **4.27 Health Services Act 1997 No 154**

##### **Sections 19 (1), 20 (1) and (2), 42, 43 (1) and (2), 62 (2), 64 (1) and (3) and 131 (1) and (2)**

Omit “in the Gazette”, wherever occurring.

Insert instead “on the NSW legislation website”.

#### **4.28 Higher Education Act 2001 No 102**

##### **Section 4 Australian universities**

Omit “in the Gazette” from section 4 (1).

Insert instead “on the NSW legislation website”.

#### **4.29 Imperial Acts Application Act 1969 No 30**

##### **Section 11 Revival of repealed enactments**

Omit “in the Gazette” from section 11 (1).

Insert instead “on the NSW legislation website”.

## **4.30 Interpretation Act 1987 No 15**

### **Schedule 3 Savings and transitional provisions**

Insert after clause 9:

#### **10 Operation of applied parliamentary disallowance provisions for instruments published in Gazette**

Where section 40 (Notice of statutory rules to be tabled) is applied to an instrument that is required to be published in the Gazette, a reference in that section to the NSW legislation website is to be construed as a reference to the Gazette.

## **4.31 Lake Illawarra Authority Act 1987 No 285**

### **[1] Section 5 Interpretation**

Omit “in the Gazette” from section 5 (3).

### **[2] Section 24 Extension or restriction of development area**

Omit “in the Gazette”. Insert instead “on the NSW legislation website”.

## **4.32 Land and Environment Court Act 1979 No 204**

### **Section 76 Practice notes**

Omit section 76 (2). Insert instead:

- (2) A practice note must be published in the Gazette.
- (2A) Sections 40 and 41 of the *Interpretation Act 1987* apply to a practice note in the same way as they apply to a statutory rule.

## **4.33 Legal Profession Act 2004 No 112**

### **[1] Section 38 Admission rules**

Omit section 38 (4) and the note. Insert instead:

- (4) The rules must be published in the Gazette.
- (5) Sections 40 (Notice of statutory rules to be tabled) and 41 (Disallowance of statutory rules) of the *Interpretation Act 1987* apply to the rules in the same way as they apply to a statutory rule.

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**[2] Section 394 Rules of procedure for applications**

Omit section 394 (6) and the note. Insert instead:

- (6) The rules must be published in the Gazette.
- (7) Sections 40 (Notice of statutory rules to be tabled) and 41 (Disallowance of statutory rules) of the *Interpretation Act 1987* apply to the rules in the same way as they apply to a statutory rule.

**4.34 Local Court Act 2007 No 93**

**Section 27 Practice notes**

Omit section 27 (2). Insert instead:

- (2) A practice note must be published in the Gazette.
- (3) Sections 40 and 41 of the *Interpretation Act 1987* apply to a practice note in the same way as they apply to a statutory rule.

**4.35 Local Courts Act 1982 No 164**

**[1] Section 28B Tabling and disallowance of practice notes**

Omit “is taken to be a statutory rule for the purposes of Part 6 of the *Interpretation Act 1987*”.

Insert instead “must be published in the Gazette”.

**[2] Section 28B (2)**

Insert at the end of the section:

- (2) Sections 40 and 41 of the *Interpretation Act 1987* apply to a practice note in the same way as they apply to a statutory rule.

**4.36 Local Government Associations Incorporation Act 1974 No 20**

**[1] Schedule 1 Savings, transitional and other provisions**

Omit “in the Gazette” from clause 3 (1).

Insert instead “on the NSW legislation website”.

**[2] Schedule 1, clause 3 (3)**

Omit “in the Gazette”.

#### **4.37 Lord Howe Island Act 1953 No 39**

##### **Section 19A Lord Howe Island Permanent Park Preserve**

Omit “in the Gazette” from section 19A (2).

Insert instead “on the NSW legislation website”.

#### **4.38 Medical Practice Act 1992 No 94**

##### **Section 158 Rules of practice and procedure for the Tribunal**

Omit section 158 (2). Insert instead:

- (2) A rule made under this section is a rule of court for the purposes of the *Interpretation Act 1987*.

#### **4.39 Nation Building and Jobs Plan (State Infrastructure Delivery) Act 2009 No 1**

##### **Section 31 Repeal of Act**

Insert “published on the NSW legislation website” after “proclamation” in section 31 (3).

#### **4.40 National Park Estate (Lower Hunter Region Reservations) Act 2006 No 90**

##### **Section 10 Adjustment of description of land transferred to national park estate**

Omit “in the Gazette” from section 10 (3).

Insert instead “on the NSW legislation website”.

#### **4.41 National Park Estate (Reservations) Act 2002 No 137**

##### **Section 11 Adjustment of description of land transferred to national park estate**

Omit “in the Gazette” from section 11 (3).

Insert instead “on the NSW legislation website”.

#### **4.42 National Park Estate (Reservations) Act 2003 No 24**

##### **Section 9 Adjustment of description of land transferred to national park estate**

Omit “in the Gazette” from section 9 (3).

Insert instead “on the NSW legislation website”.

#### **4.43 National Park Estate (Reservations) Act 2005 No 84**

##### **Section 10 Adjustment of description of land transferred to national park estate**

Omit “in the Gazette” from section 10 (3).

Insert instead “on the NSW legislation website”.

#### **4.44 National Park Estate (Southern Region Reservations) Act 2000 No 103**

##### **Section 10 Adjustment of description of land transferred to national park estate**

Omit “in the Gazette” from section 10 (3).

Insert instead “on the NSW legislation website”.

#### **4.45 National Parks and Wildlife Act 1974 No 80**

##### **Sections 71U (3), (4) and (6), 93, 94 and 115 (1) and (2)**

Omit “in the Gazette”, wherever occurring.

Insert instead “on the NSW legislation website”.

#### **4.46 National Rail Corporation (Agreement) Act 1991 No 82**

##### **Section 3 Definitions**

Insert “published on the NSW legislation website” after “proclamation” in section 3 (2).

#### **4.47 New South Wales Retirement Benefits Act 1972 No 70**

##### **[1] Section 64 Amendment of Schedules 2 and 2A**

Omit “in the Gazette” from section 64 (1), (1A) and (2), wherever occurring.

Insert instead “on the NSW legislation website”.

**[2] Section 64 (2) and (5)**

Insert “or (1A)” after “subsection (1)”, wherever occurring.

**4.48 Ombudsman Act 1974 No 68**

**[1] Section 14 Amendment of Schedule**

Omit “in the Gazette” from section 14 (1).

Insert instead “on the NSW legislation website”.

**[2] Section 41 Definitions**

Insert “published on the NSW legislation website” after “proclamation” in section 41 (3).

**4.49 Parramatta Park Trust Act 2001 No 17**

**Section 8 Vesting of principal trust lands at Parramatta in the Trust**

Omit “in the Gazette” from section 8 (3) and (4), wherever occurring.

Insert instead “on the NSW legislation website”.

**4.50 Passenger Transport Act 1990 No 39**

**Section 15 Fees for applications for, and renewals of, accreditations and authorities**

Omit “Sections 39,” from section 15 (4). Insert instead “Sections”.

**4.51 Plant Diseases Act 1924 No 38**

**[1] Section 5A Treatment and eradication of diseases and pests**

Insert “published in the Gazette” after “by order” in section 5A (1).

**[2] Section 5A (3)**

Omit “Sections 39,”. Insert instead “Sections”.

**[3] Section 28A Orders**

Insert after section 28A (1):

(1A) An order under this section must be published in the Gazette.

**[4] Section 28A (4)**

Omit “section 31”. Insert instead “section 30”.

**[5] Section 28A (4)**

Omit “• section 39 (the making of statutory rules)”.

**4.52 Poisons and Therapeutic Goods Act 1966 No 31**

**[1] Section 8 Poisons List**

Insert “and published in the Gazette” after “Minister” in section 8 (6).

**[2] Section 37 Prohibition on supply etc of any poison, restricted substance or drug of addiction**

Insert “published in the Gazette” after “by order” in section 37 (1).

**[3] Section 46**

Omit the section. Insert instead:

**46 Tabling and disallowance of proclamations and orders**

Sections 40 and 41 of the *Interpretation Act 1987* apply to:

- (a) a proclamation made under section 8, and
  - (b) an order made under section 37,
- in the same way as they apply to a statutory rule.

**4.53 Professional Standards Act 1994 No 81**

**Section 13 Gazettal, tabling and disallowance of schemes**

Omit section 13 (2). Insert instead:

- (2) Sections 40 and 41 of the *Interpretation Act 1987* apply to a scheme published in the Gazette under this section in the same way as they apply to a statutory rule.

**4.54 Public Authorities Superannuation Act 1985 No 41**

**Section 52 Employers and employees**

Omit “in the Gazette” from section 52 (1).

Insert instead “on the NSW legislation website”.

**4.55 Public Finance and Audit Act 1983 No 152**

**Sections 40 (1) and 45B (1)**

Omit “in the Gazette”, wherever occurring.

Insert instead “on the NSW legislation website”.

#### **4.56 Public Notaries Act 1997 No 98**

##### **Section 9A**

Omit the section. Insert instead:

##### **9A Provisions applying to admission rules**

- (1) A rule made under section 9 must be published in the Gazette.
- (2) Sections 40 (Notice of statutory rules to be tabled) and 41 (Disallowance of statutory rules) of the *Interpretation Act 1987* apply to a rule made under section 9 in the same way as they apply to a statutory rule.

#### **4.57 Public Sector Employment and Management Act 2002 No 43**

##### **[1] Section 66 Amendment or substitution of Schedule 2**

Insert “, by order published on the NSW legislation website,” after “the Governor may” in section 66 (1) and (2), wherever occurring.

##### **[2] Schedule 4 Savings, transitional and other provisions**

Insert “published on the NSW legislation website” after “proclamation” in clause 16 (2).

#### **4.58 Redfern–Waterloo Authority Act 2004 No 107**

##### **Section 27 Redfern–Waterloo Plan**

Omit “in the Gazette” from section 27 (7) (b).

Insert instead “on the NSW legislation website”.

#### **4.59 Roman Catholic Church Communities’ Lands Act 1942 No 23**

##### **[1] Sections 2 (2) and 26**

Omit “in the Gazette”, wherever occurring.

Insert instead “on the NSW legislation website”.

##### **[2] Section 8 Vesting of Communities’ land**

Omit “gazettal” from section 8 (5), wherever occurring.

Insert instead “publication”.

#### **4.60 Royal Blind Society (Merger) Act 2005 No 87**

##### **Section 5 Repeal**

Omit “in the Gazette” from section 5 (1).

Insert instead “on the NSW legislation website”.

#### **4.61 Royal Botanic Gardens and Domain Trust Act 1980 No 19**

##### **Section 19 Vesting of certain land in Trust**

Omit “in the Gazette” from section 19 (1B).

Insert instead “on the NSW legislation website”.

#### **4.62 Rural Fires Act 1997 No 65**

##### **Section 112 Advance payment by insurance companies**

Omit “in the Gazette” from section 112 (5).

Insert instead “on the NSW legislation website”.

#### **4.63 Sporting Venues Authorities Act 2008 No 65**

##### **[1] Sections 16, 17 (1) and (2) and 24 (1)**

Omit “in the Gazette”, wherever occurring.

Insert instead “on the NSW legislation website”.

##### **[2] Section 22 Definitions**

Omit “in the Gazette” from paragraph (a) of the definition of *transfer date*.

Insert instead “on the NSW legislation website”.

#### **4.64 State Authorities Non-contributory Superannuation Act 1987 No 212**

##### **Section 27 Employers and employees**

Omit “in the Gazette” from section 27 (1).

Insert instead “on the NSW legislation website”.

#### **4.65 State Authorities Superannuation Act 1987 No 211**

##### **Sections 46AA (1) and 46 (1) and (1A)**

Omit “in the Gazette, wherever occurring.

Insert instead “on the NSW legislation website”.

#### **4.66 State Emergency Service Act 1989 No 164**

##### **Section 24M Advance payment by insurance companies**

Omit “in the Gazette” from section 24M (5).

Insert instead “on the NSW legislation website”.

#### **4.67 State Property Authority Act 2006 No 40**

##### **[1] Section 17 Definitions**

Omit “in the Gazette” from paragraph (a) of the definition of *transfer date*.

Insert instead “on the NSW legislation website”.

##### **[2] Section 19 Transfer of additional property to Authority—amendment of Schedule 1**

Omit “in the Gazette” from section 19 (1).

Insert instead “on the NSW legislation website”.

#### **4.68 State Public Service Superannuation Act 1985 No 45**

##### **Section 51 Employers and employees**

Omit “in the Gazette” from section 51 (1).

Insert instead “on the NSW legislation website”.

#### **4.69 Stock Diseases Act 1923 No 34**

##### **[1] Section 17A Orders to prevent spread of disease in artificial breeding material**

Insert “published in the Gazette” after “by order” in section 17A (1).

##### **[2] Section 17A (6)**

Omit “Sections 39,”. Insert instead “Sections”.

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#### **4.70 Superannuation Act 1916 No 28**

##### **Sections 20E (3), 62 (1) and 92 (1) and (1A)**

Omit “in the Gazette”, wherever occurring.

Insert instead “on the NSW legislation website”.

#### **4.71 Supreme Court Act 1970 No 52**

##### **[1] Section 24 Court to have powers of Judges etc**

Insert “published in the Gazette” after “direct by proclamation” in section 24 (7).

##### **[2] Section 24 (8)**

Omit “Sections 39,”. Insert instead “Sections”.

##### **[3] Section 124 Rule-making power**

Omit “is taken to be a statutory rule for the purposes of Part 6 of the *Interpretation Act 1987*. This subsection does not apply to a practice note issued before the commencement of this subsection, but extends to a practice note so issued if it commences on or after 19 November 1993 (whether or not published in the Gazette)” from section 124 (11).

Insert instead “must be published in the Gazette”.

##### **[4] Section 124 (12)**

Insert after section 124 (11):

- (12) Sections 40 and 41 of the *Interpretation Act 1987* apply to a practice note in the same way as they apply to a statutory rule.

#### **4.72 Sydney Hospital (Trust Property) Act 1984 No 133**

##### **Section 7 Transfer of property and amendment of Schedules 1 and 2 by proclamation**

Omit “in the Gazette” from section 7 (1).

Insert instead “on the NSW legislation website”.

#### **4.73 Sydney Water Act 1994 No 88**

##### **Section 67 Exemptions from service charges**

Omit “in the Gazette” from section 67 (2).

Insert instead “on the NSW legislation website”.

#### **4.74 Sydney Water Catchment Management Act 1998 No 171**

##### **Section 20 Area of operations**

Omit “Sections 39,” from section 20 (3). Insert instead “Sections”.

#### **4.75 Taxation Administration Act 1996 No 97**

##### **Section 80A Investigations for the purposes of recognised revenue laws**

Insert “published on the NSW legislation website” after “proclamation” in section 80A (6).

#### **4.76 Technical Education Trust Funds Act 1967 No 95**

##### **Section 4 Order specifying trust fund to be a Fund**

Omit “in the Gazette”. Insert instead “on the NSW legislation website”.

#### **4.77 Transport Employees Retirement Benefits Act 1967 No 96**

##### **Section 59 Extension of application of Act**

Omit “in the Gazette” from section 59 (2).

Insert instead “on the NSW legislation website”.

#### **4.78 Trustee Companies Act 1964 No 6**

##### **Section 36AA Extension of section 36A to other trustee companies**

Insert “published on the NSW legislation website” after “proclamation” in section 36AA (1).

#### **4.79 Water Act 1912 No 44**

##### **Section 187 Definitions**

Insert “published on the NSW legislation website” after “proclamation” in section 187 (2).

#### **4.80 Water Industry Competition Act 2006 No 104**

##### **Section 22 Part applies only to scheduled areas**

Omit “in the Gazette” from section 22 (2).

Insert instead “on the NSW legislation website”.

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#### **4.81 Water Management Act 2000 No 92**

**[1] Sections 121 (2) and (3) and 281 (2)**

Insert “published on the NSW legislation website” after “proclamation”, wherever occurring.

**[2] Sections 286 (1) and 287 (1)**

Omit “in the Gazette”, wherever occurring.

Insert instead “on the NSW legislation website”.

#### **4.82 Western Sydney Parklands Act 2006 No 92**

**[1] Section 33 Definitions**

Omit “in the Gazette” from paragraph (b) of the definition of *transfer date*.

Insert instead “on the NSW legislation website”.

**[2] Section 35 Transfer of additional land to Trust—amendment of Schedule 3**

Omit “in the Gazette” from section 35 (1).

Insert instead “on the NSW legislation website”.

#### **4.83 Wollongong Sportsground Act 1986 No 174**

**Section 8 Vesting and dedication of Brandon Park**

Omit “in the Gazette” from section 8 (2).

Insert instead “on the NSW legislation website”.

#### **4.84 Workmen’s Compensation (Lead Poisoning—Broken Hill) Act 1922 No 31**

**Section 16 Repeal of Act**

Omit “in the Gazette”. Insert instead “on the NSW legislation website”.

## Schedule 5 Repeals

### 1 Acts and instrument that are redundant

The following Acts and instrument are repealed:

*Australian William E. Simon University Act 1988* No 89  
*Cinematograph Films (Further Suspension) Act 1985* No 31  
*Farm Produce Act 1983* No 30  
*Farm Produce (Repeal) Act 1996* No 134  
*Justice Legislation Amendment (Non-association and Place Restriction) Act 2001* No 100  
*Land Agents Act 1927* No 3  
*Local Government (Savings and Transitional) Regulation 1993*  
*Poultry Meat Industry Amendment (Prevention of National Competition Policy Penalties) Act 2005* No 48  
*Statute Law (Miscellaneous Provisions) Act 2008* No 62

### 2 Redundant provisions of Acts

The following provisions of the following Acts are repealed:

<b>Act</b>	<b>Provisions repealed</b>
<i>Centennial Park and Moore Park Trust Act 1983</i> No 145	Section 28
<i>Graffiti Control Act 2008</i> No 100	Section 22 and Schedule 2
<i>Insurance Act 1902</i> No 49	Parts 2 and 3
<i>Public Sector Employment and Management Act 2002</i> No 43	Clause 17 (2) of Schedule 4
<i>Rice Marketing Act 1983</i> No 176	Section 161 and Schedule 1
<i>Wagga Wagga Racecourse Act 1993</i> No 109	Section 8

### 3 Provisions of Acts that contain only amendments that have commenced

The following provisions of the following Acts are repealed:

<b>Act</b>	<b>Provisions repealed</b>
<i>Adoption Amendment Act 2008</i> No 103	Schedule 1 [1]–[21] and [32]–[34]

<b>Act</b>	<b>Provisions repealed</b>
<i>Contaminated Land Management Amendment Act 2008</i> No 111	Schedule 1 [5], [10], [13], [27], [29]–[31], [34], [36], [37], [40], [42], [44], [45], [48]–[55] and [57]–[61]
<i>Courts and Crimes Legislation Further Amendment Act 2008</i> No 107	Schedules 1–3, 5, 6, 7 [1]–[10] and [12], 8–15, 18–23 and 25–29
<i>Crimes (Administration of Sentences) Amendment Act 2008</i> No 108	Schedules 1 [1]–[27] and [32]–[39] and 2
<i>Dangerous Goods (Road and Rail Transport) Act 2008</i> No 95	Sections 73 and 74 and Schedule 2
<i>Fines Further Amendment Act 2008</i> No 110	Schedules 1 [2], [9], [20], [24]–[28] and [34]–[36], 2.1, 2.2 [1]–[3] and [5]–[8], 2.3 and 2.4
<i>Fisheries Management and Planning Legislation Amendment (Shark Meshing) Act 2008</i> No 86	Section 4 and Schedules 1 [1]–[3] and [5] and 2
<i>Hemp Industry Act 2008</i> No 58	Section 49 and Schedule 2
<i>Rail Safety Act 2008</i> No 97	Section 178 and Schedule 4
<i>Rural Lands Protection Amendment Act 2008</i> No 112	Schedules 1–3, 4 [3], 5, 6.1 [2], [3] and [6], 6.2–6.18, 6.19 [3] and 6.20–6.34
<i>Security Industry Amendment Act 2008</i> No 113	Schedules 1 [4] and [11] and 2.2 [1] and [3]
<i>Tow Truck Industry Amendment Act 2008</i> No 83	Schedule 1 [1]–[6], [9], [12], [13] and [16]–[20]
<i>Vexatious Proceedings Act 2008</i> No 80	Section 21 and Schedule 2
<i>Water (Commonwealth Powers) Act 2008</i> No 69	Section 9 and Schedule 2
<i>Water Management Amendment Act 2008</i> No 73	Section 4 and Schedules 1–3 and 5–7

#### **4 Repeal of amending SEPPs that have commenced**

- (1) Each amending SEPP that was made before the commencement of this clause and that has fully commenced is repealed.
- (2) The repeal by this clause of an amending SEPP does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment or repeal made by the amending SEPP or the operation of any savings or transitional provision in the amending SEPP.

(3) In this clause:

**amending SEPP** means a State environmental planning policy (or deemed State environmental planning policy) that directly amends or repeals other environmental planning instruments and that contains no other provisions apart from ancillary provisions.

**ancillary provision** of an amending SEPP means any of the following:

- (a) a provision that specifies the name or citation of the amending SEPP,
- (b) a provision that provides for the commencement of the amending SEPP,
- (c) a provision that specifies the aims, objectives, objects, policies or strategies of the amending SEPP,
- (d) a provision that specifies the land to which the amending SEPP applies,
- (e) a provision that provides for the relationship between the amending SEPP and other environmental planning instruments,
- (f) a provision that declares that notes in the amending SEPP do not form part of the amending SEPP,
- (g) a provision that defines a word or expression used in the amending SEPP,
- (h) a savings or transitional provision consequent on the making of the amending SEPP,
- (i) a provision that amends or replaces maps adopted by another environmental planning instrument,
- (j) a provision that gives effect to or describes a schedule to the amending SEPP.

**Explanatory note**

Clause 1 repeals Acts and an instrument that are redundant.

Clause 2 repeals redundant provisions of Acts.

Clause 3 repeals provisions of Acts that contain only amendments to other Acts or instruments. All of the amendments have commenced.

Clause 4 repeals State environmental planning policies that contain only amendments and ancillary provisions.

In relation to the repeal of amending provisions, it should be noted that the provisions are repealed simply to rationalise the legislation in force and that the repeals have no substantive effect on the amendments made by the provisions, or any associated provisions. The Acts and instruments that were amended by the provisions being repealed are up-to-date on the NSW legislation website maintained by the Parliamentary Counsel's Office ([www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)).

Section 30 (2) of the *Interpretation Act 1987* ensures that the following matters are not affected when an Act or statutory rule is amended or repealed:

- (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.

Section 5 (6) of the *Interpretation Act 1987* provides that the provisions of section 30 that apply to a statutory rule also apply to an environmental planning instrument.

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## Schedule 6 General savings, transitional and other provisions

### 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 Schedule 1 or 2 amendment concerned, taken to have effect as from the commencement of the amending provision (whether or not the amending provision has been repealed).
- (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.

#### **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 be taken to have commenced 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.

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### 3 Effect of amendment on instruments

Except where expressly provided to the contrary, any instrument 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 instrument that is in force and made under a provision of an Act that is amended or substituted by the proposed Act will be taken to have been made under the Act as amended.

### 4 Revocation of repeal

- (1) The Governor may by proclamation published on the NSW legislation website revoke the repeal of any Act or instrument effected by the following:

this Act

*Statute Law (Miscellaneous Provisions) Act (No 2) 2007*

*Statute Law (Miscellaneous Provisions) Act 2008*

- (2) Any Act or instrument the subject of a proclamation under subclause (1) is taken not to be, and never to have been, repealed by any such Act.
- (3) Subclause (2) does not operate in respect of any Act or instrument 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 publication on the NSW legislation website of the proclamation under subclause (1) in respect of that Act or instrument, 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 publication of that proclamation.
- (4) A reference in this clause to an Act or instrument includes a reference to a provision of any Act or instrument.

#### **Explanatory note**

This clause enables the Governor, by proclamation, to revoke the repeal of any Act or instrument or the provision of any Act or instrument repealed by this Act or any of the other statute law revision Acts listed. The Act or instrument or provision of an Act or instrument the subject of the revocation of repeal is taken not to be, and never to have been, repealed.

### 5 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 on the NSW legislation website, 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 proposed Act.

## Notes

### Index of Acts and Instruments amended by Schedules 1–4

- Aboriginal Land Rights Act 1983* No 42—Schedule 4  
*Administrative Decisions Tribunal Act 1997* No 76—Schedule 4  
*Adoption Act 2000* No 75—Schedule 1  
*Adoption Amendment Act 2008* No 103—Schedule 1  
*AGL Corporate Conversion Act 2002* No 16—Schedule 4  
*Annual Reports (Departments) Regulation 2005*—Schedule 1  
*Annual Reports (Statutory Bodies) Regulation 2005*—Schedule 1  
*Apiaries Act 1985* No 16—Schedule 4  
*Australian Museum Trust Act 1975* No 95—Schedule 1  
*Baulkham Hills Local Environmental Plan 2005*—Schedule 2  
*Bible Society NSW (Corporate Conversion) Act 2008* No 91—Schedule 4  
*Botany Cemetery and Crematorium Act 1972* No 6—Schedule 4  
*Brigalow and Nandewar Community Conservation Area Act 2005* No 56—Schedule 4  
*Camden Local Environmental Plan No 47*—Schedule 2  
*Camden Local Environmental Plan No 74—Harrington Park*—Schedule 2  
*Catchment Management Authorities Act 2003* No 104—Schedule 4  
*Central Coast Water Corporation Act 2006* No 105—Schedule 4  
*Child Protection (Offenders Registration) Act 2000* No 42—Schedule 2  
*Chipping Norton Lake Authority Act 1977* No 38—Schedule 4  
*Civil Procedure Act 2005* No 28—Schedule 4  
*Coastal Protection Act 1979* No 13—Schedule 1  
*Coffs Harbour City Local Environmental Plan 2000*—Schedule 2  
*Community Land Management Act 1989* No 202—Schedule 1  
*Community Services (Complaints, Reviews and Monitoring) Act 1993* No 2—Schedule 1  
*Constitution Amendment (Governor's Salary) Act 2003* No 66—Schedule 2  
*Consumer Credit Administration Act 1995* No 69—Schedule 3  
*Conveyancing Act 1919* No 6—Schedule 3  
*Cowra Local Environmental Plan 1990*—Schedule 2  
*Crimes (Administration of Sentences) Act 1999* No 93—Schedule 2  
*Crimes (Administration of Sentences) Regulation 2008*—Schedule 2  
*Crimes (Criminal Organisations Control) Act 2009* No 6—Schedule 2  
*Crimes (Domestic and Personal Violence) Act 2007* No 80—Schedule 1

*Criminal Procedure Act 1986* No 209—Schedules 2 and 3  
*Dams Safety Act 1978* No 96—Schedule 4  
*Dangerous Goods (Road and Rail Transport) Act 2008* No 95—Schedule 1  
*Defamation Act 2005* No 77—Schedule 2  
*Discharged Servicemen's Badges Act 1964* No 49—Schedule 4  
*District Court Act 1973* No 9—Schedules 1 and 4  
*Drug and Alcohol Treatment Act 2007* No 7—Schedule 4  
*Dungog Local Environmental Plan 2006*—Schedule 2  
*Dust Diseases Tribunal Act 1989* No 63—Schedule 4  
*Duties Act 1997* No 123—Schedule 2  
*Electricity Supply Act 1995* No 94—Schedule 1  
*Environmental Planning and Assessment Act 1979* No 203—Schedules 1, 2 and 4  
*Environmental Planning and Assessment Amendment Act 2008* No 36—Schedule 1  
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