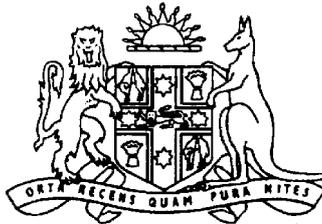


Passed by both Houses



New South Wales

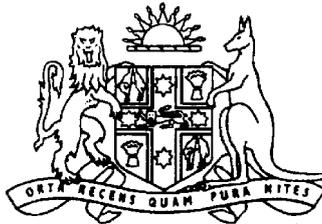
Statute Law (Miscellaneous Provisions) Bill (No 2) 2003

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

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2003*



New South Wales

Statute Law (Miscellaneous Provisions) Bill (No 2) 2003

Act No , 2003

An Act to repeal certain Acts and provisions of 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.

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

Chairman of Committees of the Legislative Assembly.

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

This Act is the *Statute Law (Miscellaneous Provisions) Act (No 2) 2003*.

2 Commencement

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

3 Amendments

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

4 Repeals

Each Act specified in Schedule 3 is, to the extent indicated in that Schedule, repealed.

5 General savings, transitional and other provisions

Schedule 4 has effect.

6 Explanatory notes

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

Schedule 1 Minor amendments

(Section 3)

1.1 Ambulance Services Act 1990 No 16

[1] Schedule 1 Provisions relating to the directors and procedure of the Ambulance Service Board

Omit the heading to clause 6. Insert instead:

6 Vacancy in office of director

[2] Schedule 1, clause 6 (a1) and (a2)

Insert after clause 6 (a):

- (a1) completes a term of office and is not re-appointed or re-elected, or
- (a2) resigns the office by instrument in writing addressed to the Minister, or

[3] Schedule 1, clause 6 (d)

Omit the paragraph. Insert instead:

- (d) becomes a mentally incapacitated person, or

Explanatory note

Legislation dealing with boards and similar bodies usually provides that a vacancy in the membership of the body occurs if (among other things) a member resigns the office or completes a term of office and is not re-appointed. (See, for example, Schedule 1 to the *Nurses Act 1991*, Schedule 5 to the *Health Services Act 1997* and Schedule 2 to the *Psychologists Act 2001*.)

The relevant provision (clause 6 of Schedule 1) of the *Ambulance Services Act 1990* (**the Act**) does not deal with those contingencies, although it does provide that certain other standard circumstances give rise to vacancies in the office of director of the Ambulance Service Board (**the Board**)—for example, the bankruptcy or death of a director.

Consequently, there is no mechanism in the Act to permit a director who wishes to resign from the Board to do so.

Item [2] of the proposed amendments inserts in the Act the standard provisions concerning completion of term of office as director of the Board and resignation from the Board. Item [1] makes a consequential amendment to the heading to clause 6.

Item [3] of the proposed amendments updates outdated terminology.

1.2 Animal Research Act 1985 No 123

Section 3 Definitions

Omit “swine” from paragraph (a) of the definition of *exempt animal* in section 3 (1).

Insert instead “pigs”.

Explanatory note

The proposed amendment replaces a term with its plain English equivalent. Similar amendments to certain other Acts are proposed to be made elsewhere in this Schedule.

1.3 Annual Reports (Departments) Act 1985 No 156

Section 17 Land register

Omit “Department of Conservation and Land Management” wherever occurring.

Insert instead “Department of Lands”.

Explanatory note

Section 17 of the *Annual Reports (Departments) Act 1985* provides for the keeping of a register of all land vested in or owned or occupied by, or subject to the control of, Ministers and Government Departments. The section provides that the register is to be kept by the “Director-General of the Department of Conservation and Land Management” and is to contain various details in relation to the land.

As the register is now kept by the Director-General of the Department of Lands, the proposed amendment updates the relevant references to the Department of Conservation and Land Management.

1.4 Annual Reports (Statutory Bodies) Act 1984 No 87

Section 14 Land register

Omit “Department of Conservation and Land Management” wherever occurring.

Insert instead “Department of Lands”.

Explanatory note

Section 14 of the *Annual Reports (Statutory Bodies) Act 1984* provides for the keeping of a register of all land owned or occupied by statutory bodies. The section provides that the register is to be kept by the “Director-General of the Department of Conservation and Land Management” and is to contain various details in relation to the land.

As the register is now kept by the Director-General of the Department of Lands, the proposed amendment updates the relevant references to the Department of Conservation and Land Management.

1.5 Child Protection (Prohibited Employment) Act 1998 No 147

Section 5 Prohibited persons

Omit “section 9” from section 5 (2). Insert instead “section 8A or 9”.

Explanatory note

Section 5 (1) of the *Child Protection (Prohibited Employment) Act 1998 (the Act)* defines **prohibited person** for the purposes of the Act to include a person convicted of a **serious sex offence** (as also defined in section 5). However, section 5 (2) provides that a person is not a prohibited person in respect of an offence if “an order in force under section 9” declares that the Act is not to apply to the person in respect of the offence.

Orders may be made under section 9 of the Act by the Industrial Relations Commission and the Administrative Decisions Tribunal, but only in the circumstances set out in that section.

The *Child Protection Legislation Amendment Act 2002* inserted section 8A in the Act. That section permits the Commission for Children and Young People to make an order of the same kind as an order under section 9, but only in the circumstances set out in section 8A (which include the Commission’s being satisfied that the person the subject of the proposed order does not pose a risk to the safety of children) and only after having taken into account the matters that must be taken into account under section 9.

However, the *Child Protection Legislation Amendment Act 2002* omitted to insert the necessary cross-reference to the new section 8A in section 5 (2) of the Act.

The proposed amendment repairs that omission.

1.6 Children and Young Persons (Care and Protection) Act 1998 No 157

[1] Section 27 Mandatory reporting

Insert after section 27 (2):

- (3) A person to whom this section applies satisfies his or her obligations under subsection (2) in relation to two or more children that constitute a particular class of children if the person reports that class of children to the Director-General together with:
 - (a) a description that is sufficient to identify all the children who constitute the class, and
 - (b) the grounds for suspecting that the children of that class are at risk of harm.

[2] Section 122 Mandatory reporting of child who lives away from home without parental permission

Omit “the person believes, on reasonable grounds”.

Insert instead “the person has reasonable grounds to suspect”.

[3] Section 122

Omit “immediately”. Insert instead “, as soon as practicable,”.

[4] Section 135 What is “out-of-home care”?

Insert after section 135 (2):

(2A) However, a child or young person who is in out-of-home care does not cease to be in that care merely because the child or young person becomes subject to any care or control that is prescribed under subsection (2).

[5] Section 135 (4) (a)

Insert “, or subject to an order of the Supreme Court in its *parens patriae* jurisdiction,” after “a ward of the Supreme Court”.

[6] Section 226 Removal of child from place of unlawful employment

Omit “Director-General” from section 226 (b).

Insert instead “Children’s Guardian”.

[7] Schedule 2 Provisions relating to employers’ authorities

Omit “Director-General” from clause 3 (1) wherever occurring.

Insert instead “Children’s Guardian”.

Commencement

Items [6] and [7] of the amendments to the *Children and Young Persons (Care and Protection) Act 1998* commence, or are taken to have commenced, on the commencement of the *Public Sector Employment and Management (Children’s Employment Unit) Order 2003*.

Explanatory note

Mandatory reporting

Sections 27 and 122 of the *Children and Young Persons (Care and Protection) Act 1998* (**the Act**) both provide for mandatory reporting of children to the Director-General of the Department of Community Services (**DOCS**) in certain circumstances.

Section 27 places the obligation to report on certain persons (such as teachers) who have “reasonable grounds to suspect” that a child is at risk of harm (being grounds that arise during the course of or from the person’s work). The report must be made “as soon as practicable”.

Section 122 requires a report from a person who provides residential accommodation for another person who “the person believes, on reasonable grounds” to be a child who is living away from home without parental permission. That report must be made “immediately”.

Items [2] and [3] of the proposed amendments amend section 122 so as to make it consistent with section 27.

Item [1] of the proposed amendments ensures that a person who is obliged to report under section 27 is not obliged to name or describe each individual child who forms part of a class of children that the person considers to be at risk of harm, as long as the person's report enables each child in that class to be identified.

Out-of-home care

Section 135 of the Act defines *out-of-home care* (essentially, foster care) for the purposes of the Act. Among other things, the definition provides that out-of-home care does not include any care or control of a child or young person that is prescribed by the regulations not to be out-of-home care. Currently, the regulations exclude from the definition such types of care as (for example) those provided by boarding schools and holiday camps.

Item [4] of the proposed amendments makes it clear that a child or young person who is otherwise in out-of-home care does not cease to be in that care merely because the child or young person becomes subject to care or control of a kind that is excluded from the definition of that term.

Section 135 (4) defines *protected person* for the purposes of section 135. Item [5] of the proposed amendments extends that definition to include a child or young person who is subject to an order of the Supreme Court in its "parent of the country" jurisdiction (and of whom the Minister administering the Act or the Director-General of DOCS has the custody or care pursuant to an order of that Court).

Children's Employment Unit

The *Public Sector Employment and Management (Children's Employment Unit) Order 2003* removes the Children's Employment Unit from DOCS and adds it to the Office of the Children's Guardian.

In consequence of that, items [6] and [7] of the proposed amendments replace references to the Director-General of DOCS with references to the Children's Guardian in provisions of the Act that are concerned with the employment of children.

1.7 Children (Care and Protection—Child Employment) Regulation 2001

[1] Clause 3 Definitions

Omit "Director-General" from paragraph (c) of the definition of *babycare professional*.

Insert instead "Children's Guardian".

[2] Clause 9 (1) (d) and Schedule 1, clause 2 (1)

Omit "Director-General" wherever occurring.

Insert instead "Children's Guardian".

Commencement

The amendments to the *Children (Care and Protection—Child Employment) Regulation 2001* commence, or are taken to have commenced, on the commencement of the *Public Sector Employment and Management (Children's Employment Unit) Order 2003*.

Explanatory note

The proposed amendments are consequential on the transfer of the Children's Employment Unit from the Department of Community Services to the Office of the Children's Guardian effected by the *Public Sector Employment and Management (Children's Employment Unit) Order 2003*.

1.8 Commission for Children and Young People Act 1998 No 146

Section 15A

Insert after section 15:

15A Use of information for purposes of report under section 24 of Children and Young Persons (Care and Protection) Act 1998

Any information obtained by the Commission in the course of exercising its functions (other than its functions under section 11 (k)) may be used for the purposes of making a report to the Director-General of the Department of Community Services under section 24 (Report concerning child or young person at risk of harm) of the *Children and Young Persons (Care and Protection) Act 1998*.

Explanatory note

Section 15 of the *Commission for Children and Young People Act 1998 (the Act)* permits the Commission for Children and Young People (**the Commission**) constituted by the Act to refer certain information obtained in the course of exercising its functions (other than a function under section 11 (k) of the Act) to various investigative agencies, including the Department of Community Services. The information concerned is information that relates to a possible criminal offence, or to grounds for possible disciplinary action, under any law. It may have been obtained, for example, in the course of employment screening in respect of child-related employment.

The proposed amendment extends this power so as to permit the Commission to use any information obtained in the course of exercising its functions (other than a function under section 11 (k) of the Act) for the purposes of making a report to the Director-General of the Department of Community Services under section 24 of the *Children and Young Persons (Care and Protection) Act 1998*.

Section 24 of the *Children and Young Persons (Care and Protection) Act 1998* provides as follows:

"A person who has reasonable grounds to suspect that a child or young person is, or that a class of children or young persons are, at risk of harm may make a report to the Director-General [of the Department of Community Services]".

Section 23 of that Act specifies the circumstances in which a child or young person is "at risk of harm" for the purposes of the relevant provisions of that Act.

The Commission's functions under section 11 (k) of the Act (the functions of supporting and assisting the Child Death Review Team in the exercise of its functions under Part 7A of the Act) are excluded from both section 15 and proposed section 15A because Part 7A (Child Death Review Team) contains provision for the release of information in certain circumstances—see section 45U of the Act.

1.9 Community Land Development Act 1989 No 201

Section 50 Notice of resumption

Omit section 50 (1). Insert instead:

- (1) A notice of resumption must state whether or not the land resumed is excluded from any related scheme.
- (1A) If action is taken in the Supreme Court to restructure a related scheme as a consequence of a resumption (whether because of a requirement of this Part or otherwise), the notice of resumption must include the plaintiff number for the action.

Explanatory note

At present, section 50 (1) of the *Community Land Development Act 1989 (the Act)*, which is in Part 6 (Resumptions) of that Act, requires a notice of resumption of land to which Part 6 applies to include "the plaintiff number for the action instituted in the Supreme Court to restructure [any related community scheme, precinct scheme, neighbourhood scheme or strata scheme] as a consequence of the resumption".

However, not all resumptions dealt with in Part 6 require the taking of such action.

The proposed amendment repeals and re-enacts section 50 (1) to reflect the fact that, in the case of some resumptions of land to which Part 6 applies, there may not be any action taken in the Supreme Court to restructure the relevant scheme.

1.10 Co-operatives Act 1992 No 18

Section 229 Application of Corporations Act provisions concerning officers of co-operatives

Omit "as if the reference to 23 June 1993 were omitted" from section 229 (c).

Insert instead "as if the reference to 23 June 1993 were a reference to 15 December 1995".

Explanatory note

Section 229 of the *Co-operatives Act 1992 (the Act)* applies certain provisions (including section 592) of the *Corporations Act 2001* of the Commonwealth (***the Commonwealth Act***) to co-operatives in New South Wales. Originally, section 229 provided (among other things) that section 592 applied in respect of debts incurred by an insolvent co-operative before 23 June 1993 (because the Commonwealth Act so provided and was not modified in that respect by section 229).

Section 592 was amended and substantially replaced by Part 5.7B of the Commonwealth Act. In consequence, the *Co-operatives Amendment Act 1995* inserted section 343B in the Act to apply that new Part to co-operatives, and modified the reference in section 592 so as to apply that section in respect of debts incurred by an insolvent co-operative in New South Wales before 15 December 1995 (the date of the commencement of section 343B and, therefore, the application of Part 5.7B).

The *Corporations (Consequential Amendments) Act 2001* repealed and re-enacted section 229 so as (among other things) to omit the reference in the Commonwealth Act to 23 June 1993 without replacing it with another date. The effect is that both section 592 and Part 5.7B of the Commonwealth Act apply in respect of all debts incurred by insolvent co-operatives in New South Wales.

The proposed amendment rectifies this situation by reinstating the reference to 15 December 1995 in section 592 as applied to co-operatives in New South Wales.

1.11 Crimes (Local Courts Appeal and Review) Act 2001 No 120

[1] Section 11 Appeals as of right

Omit section 11 (1). Insert instead:

- (1) Any person who has been convicted or sentenced by a Local Court may appeal to the District Court against the conviction or sentence.
- (1A) Subsection (1) does not apply in respect of a conviction if the person was convicted in the person's absence or following the person's plea of guilty.

[2] Section 31 Appeals as of right

Omit section 31 (1). Insert instead:

- (1) Any person who has been convicted or sentenced by a Local Court with respect to an environmental offence may appeal to the Land and Environment Court against the conviction or sentence.
- (1A) Subsection (1) does not apply in respect of a conviction if the person was convicted in the person's absence or following the person's plea of guilty.

Commencement

The amendments to the *Crimes (Local Courts Appeal and Review) Act 2001* are taken to have commenced on 7 July 2003.

Explanatory note

The *Crimes (Local Courts Appeal and Review) Act 2001* (**the Act**) was intended, among other things, to "restate the law with respect to appeals.....in relation to criminal proceedings in Local Courts" (long title to the Act).

In restating the provisions of sections 120 and 123 of the *Justices Act 1902*, the Act inadvertently included a provision requiring a person who was convicted in a Local Court in the person's absence, or after a plea of guilty, to obtain the leave of a higher Court (the District Court or the Land and Environment Court, depending on the nature of the offence of which the person was convicted) to appeal to the higher Court against the severity of the sentence imposed. Such a restriction did not apply under the relevant sections of the *Justices Act 1902*.

The proposed amendments reinstate, as from the commencement of the Act, the right of the person to appeal without first obtaining the leave of the higher Court.

1.12 Fair Trading Act 1987 No 68

[1] Section 40B Meaning of “direct commerce contract”

Insert after section 40B (2):

- (2A) The regulations may also exempt any direct commerce contract or class of direct commerce contracts from the operation of particular provisions of this Division.

[2] Section 40F Consequences of cancellation of direct commerce contract

Insert “and” at the end of section 40F (1) (a) (ii).

[3] Section 40J Other requirements in relation to dealers

Omit section 40J (4) (b). Insert instead:

- (b) produce to the person a document setting out:
- (i) the dealer’s full name, and
 - (ii) the supplier’s address (not being a post office box address) and, if the dealer is not the supplier, the supplier’s full name.

Commencement

Item [1] of the amendments to the *Fair Trading Act 1987* commences, or is taken to have commenced, on the commencement of so much of Schedule 1 [17] to the *Fair Trading Amendment Act 2003* as inserts section 40B in the *Fair Trading Act 1987*.

Item [2] of the amendments to the *Fair Trading Act 1987* commences, or is taken to have commenced, on the commencement of so much of Schedule 1 [17] to the *Fair Trading Amendment Act 2003* as inserts section 40F in the *Fair Trading Act 1987*.

Item [3] of the amendments to the *Fair Trading Act 1987* commences, or is taken to have commenced, on the commencement of so much of Schedule 1 [17] to the *Fair Trading Amendment Act 2003* as inserts section 40J in the *Fair Trading Act 1987*.

Explanatory note

Direct commerce

The *Fair Trading Amendment Act 2003* inserts, among other things, Division 3 of Part 4 (Direct commerce) in the *Fair Trading Act 1987* (**the Act**). Generally speaking, **direct commerce** is the practice under which persons (**dealers**) make unsolicited calls (either in person or by telephone) on other persons for the purpose of entering into negotiations for the making of contracts (**direct commerce contracts**) for the supply of goods or services to those other persons. Division 3 of Part 4 of the Act consists of sections 40A–40K.

Meaning of “direct commerce contract”

Section 40B defines **direct commerce contract** for the purposes of Division 3 of Part 4 of the Act. Section 40B (2) provides that a direct commerce contract “does not include any contract of a kind that is excluded from the operation of this Division by the regulations”.

Item [1] of the proposed amendments inserts a new subsection in section 40B of the Act so as to permit the regulations to exclude any direct commerce contract (or class of direct commerce contracts) from some only of the provisions of Division 3 of Part 4 while leaving them subject to the operation of the remainder of those provisions.

Identity cards of dealers

Among other things, section 40J (4) of the Act requires a dealer who calls in person on any person for the purpose of negotiating a direct commerce contract to produce to the other person an "identity card" setting out the dealer's full name and address and, if the dealer is not the supplier of the goods or services under the proposed contract, the full name and address of the supplier.

Item [3] of the proposed amendments alters this requirement in two respects. Firstly, it omits the requirement for an identity card, as dealers often write or rubber-stamp the requisite details on their brochures. Secondly, as most dealers operate from their homes rather than from a business address, the proposed amendment requires the dealer to disclose the address of the supplier only. However, the dealer's address must be disclosed if the dealer is also the supplier.

Statute law revision

Item [2] of the proposed amendments inserts missing matter.

1.13 First State Superannuation Act 1992 No 100

Schedule 1 Employers

Omit "Resource NSW".

Explanatory note

The proposed amendment is consequential on the dissolution of the statutory body Resource NSW proposed to be effected by the amendments to the *Waste Avoidance and Resource Recovery Act 2001* elsewhere in this Schedule.

1.14 Fisheries Management Act 1994 No 38

Schedule 7 Savings, transitional and other provisions

Omit "1 January 2004" from clause 19A (4).

Insert instead "1 January 2005".

Explanatory note

Section 230 of the *Fisheries Management Act 1994* (**the Act**) provides for the establishment of Management Advisory Committees (**MACs**) for share management fisheries and restricted fisheries (and any such proposed fishery).

Section 230 (2) (c) provides that the person appointed as chairperson of such a Committee must be a person "who is neither engaged in the administration of [the Act] nor engaged in commercial fishing in the [relevant] fishery".

Clause 19A of Schedule 7 (Savings, transitional and other provisions) to the Act was inserted as a savings and transitional provision in relation to MACs in consequence of amendments made by the *Fisheries Management and Environmental Assessment Legislation Amendment Act 2000*. Among other things, clause 19A provides that, despite section 230 (2), the chairperson of the MAC for the lobster fishery may, until 1 January 2004, be engaged in commercial fishing in that fishery.

The proposed amendment extends the operation of that exemption for a period of 12 months.

1.15 Impounding Act 1993 No 31

[1] Dictionary

Omit “in the case of an impounding officer appointed by the Water Board, any special area (as defined in the *Water Board Act 1987*)” from the definition of *area of operations*.

Insert instead “in the case of an impounding officer appointed by the Sydney Catchment Authority, any special area or controlled area (as defined in the *Sydney Water Catchment Management Act 1998*)”.

[2] Dictionary, definition of “impounding authority”

Omit “the Water Board”.

Insert instead “the Sydney Catchment Authority”.

Explanatory note

An authority defined as an *impounding authority* for the purposes of the *Impounding Act 1993* may appoint *impounding officers* to exercise certain functions under that Act in the impounding officers' areas of operations.

At present, *area of operations* is defined to include (among other things) “in the case of an impounding officer appointed by the Water Board, any special area (as defined in the *Water Board Act 1987*)”.

Effectively, the Sydney Catchment Authority constituted under the *Sydney Water Catchment Management Act 1998* has replaced the now-dissolved Water Board in relation to those special areas (which are taken to be declared under the latter Act—see clause 5 (1) of Schedule 6 to that Act).

Accordingly, the proposed amendments replace references to the Water Board in the definitions of *area of operations* and *impounding authority* in the *Impounding Act 1993* with references to the Sydney Catchment Authority. They also extend the area of operations of that Authority for the purposes of that Act so as to include controlled areas (within the meaning of the *Sydney Water Catchment Management Act 1998*).

1.16 Local Courts Act 1982 No 164

[1] Section 4 Definitions

Insert after section 4 (3):

- (4) Notes included in this Act do not form part of this Act.

[2] Section 24 Remuneration

Omit section 24 (1) (b).

Explanatory note

Statute law revision

Item [1] of the proposed amendments makes it clear that notes in the *Local Courts Act 1982* (**the Act**) do not form part of that Act.

Remuneration and allowances of Magistrates

At present, section 24 (1) of the Act provides that a Magistrate (other than a Magistrate with limited tenure, who is dealt with by section 24 (2)) is entitled to be paid:

- (a) remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975* (**the SOOR Act**), and
- (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the Magistrate.

Until recently, travelling and subsistence allowances were specifically excluded from the definition of **allowance** in section 10A of the SOOR Act (which is in the part of that Act that is relevant to the remuneration of Magistrates, among other office holders). However, section 10A has been amended so as to be inclusive of travelling and subsistence allowances for travel within Australia by the holder of an office specified in Schedule 1 to the SOOR Act (which includes Magistrates, other than Magistrates with limited tenure) who is:

- (a) a Judge or Acting Judge of a court, or
- (b) any other judicial officer (within the meaning of the *Judicial Officers Act 1986*) nominated by the Minister by notice in writing to the Statutory and Other Offices Remuneration Tribunal (**the Tribunal**) for the purposes of the definition.

Magistrates have been formally nominated to the Tribunal under section 10A (and the Tribunal has made a determination in respect of the allowances payable to those judicial officers).

In consequence of that nomination, item [2] of the proposed amendments repeals the now-redundant section 24 (1) (b) of the *Local Courts Act 1982*.

1.17 Local Government Act 1993 No 30

[1] Section 358 Restrictions on formation of corporations

Insert “and subject to such conditions, if any, as the Minister may specify” after “with the consent of the Minister” in section 358 (1) (a).

[2] Section 440 Code of conduct

Omit “prepare or adopt a code of conduct” from section 440 (1).

Insert instead “adopt a code of conduct (whether prepared by the council or by another person)”.

Commencement

Item [1] of the amendments to the *Local Government Act 1993* is taken to have commenced on 1 July 1993.

Explanatory note

Restrictions on formation of corporations

Section 358 (1) of the *Local Government Act 1993* (**the Act**) provides that a council must not form or participate in the formation of a corporation, or acquire a controlling interest in a corporation, except with the consent of the Minister or as otherwise provided by the Act.

Item [1] of the proposed amendments makes it explicit that any consent of the Minister under section 358 (1) may be given subject to conditions.

Code of conduct

At present, section 440 (1) of the Act requires every council to “prepare or adopt a code of conduct to be observed by councillors, members of staff of the council and delegates of the council”. The subsection is couched in these terms to give councils the option of preparing their own codes of conduct or adopting a code prepared by another person (such as the Minister, under section 440 (2), or another council). However, some councils are unclear as to whether they are required to “adopt” such a code formally.

As it is intended to resolve that confusion by requiring councils to adopt a code of conduct formally, item [2] of the proposed amendments recasts part of section 440 (1) so as to impose that obligation.

1.18 Marine Pilotage Licensing Regulations

[1] Regulation 25 Physical fitness of pilots

Omit “a Government Medical Officer” wherever occurring in Regulation 25 (2) (a) and (3) (a).

Insert instead “HealthQuest”.

[2] Regulation 25 (9)

Insert after Regulation 25 (8):

- (9) In this Regulation, *HealthQuest* means the statutory health corporation of that name constituted by the *Health Services Act 1997*.

Explanatory note

The functions of a Government Medical Officer under various Acts and Regulations are to be exercised by the statutory health corporation “HealthQuest”.

The proposed amendments replace references to “Government Medical Officer” with direct references to HealthQuest.

Similar amendments are proposed to be made elsewhere in this Schedule to the other Acts and Regulations concerned.

1.19 Motor Dealers Act 1974 No 52

Section 20F Reviews by Administrative Decisions Tribunal

Omit “section 13” from section 20F (1) (b). Insert instead “section 14”.

Explanatory note

The proposed amendment corrects an incorrect cross-reference.

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

[1] Section 6 Definitions

Insert in alphabetical order in section 6 (1):

Ministerial Council means a council, comprising one or more Ministers of the Commonwealth and Ministers of one or more of the States or Territories, that includes environmental protection in its functions.

minor variation, in relation to a national environment protection measure, means a decision made under section 22A (1) to vary a national environment protection measure.

[2] Section 13 Powers of the Council

Insert at the end of section 13 (g):

, and

- (h) direct the Service Corporation to provide assistance and support to other Ministerial Councils.

[3] Section 20 Variation or revocation of measures

Insert after section 20 (4):

- (5) Subsections (2)–(4) do not apply to a minor variation of a national environment protection measure under Division 2A.

[4] Part 3, Division 2A

Insert after section 22:

Division 2A Minor variation of national environment protection measures

22A Minor variation of measures

- (1) The Council may vary any national environment protection measure if:
 - (a) the variation is supported by a unanimous resolution of all of the members, and
 - (b) the resolution states that the variation does not involve a significant change in the effect of the national environment protection measure.

A variation under this section is a *minor variation*.

- (2) If the Council decides that a variation does not involve a significant change in the effect of the national environment protection measure, the Council must prepare:
 - (a) a draft of the proposed variation, and
 - (b) a statement relating to the variation that explains:
 - (i) the reasons for the proposed variation, and
 - (ii) the nature and effect of the proposed variation, and
 - (iii) the reasons why the Council is satisfied that the variation is a minor variation.

22B Public consultation for minor variation

- (1) Before making a minor variation to a national environment protection measure, the Council must publish a notice:
 - (a) stating how the draft of the proposed variation and the explanatory statement may be obtained, and
 - (b) inviting submissions to the Council on the proposed variation, or on the explanatory statement, within a specified period.
- (2) A notice must:
 - (a) be published in the Commonwealth of Australia Gazette, and

- (b) in each participating State or Territory concerned—also be published, on at least 1 day during the month when the Commonwealth of Australia Gazette notice is published, in a newspaper circulating in that State or Territory.
- (3) The period specified in each notice under subsection (1) must end not less than 1 month after the day on which subsection (2) (b) has been fully complied with in all participating jurisdictions.

22C Council to have regard to submissions etc

In making a minor variation to a national environment protection measure, the Council must have regard to:

- (a) any submissions it receives that relate to the proposed variation or the explanatory statement, and
- (b) whether the measure is consistent with section 3 of the Agreement, and
- (c) relevant international agreements to which Australia is a party, and
- (d) any regional environmental differences in Australia.

[5] Section 36 Functions of the Service Corporation

Insert after section 36 (a):

- (a1) to provide assistance and support to other Ministerial Councils as directed by the Council, and

[6] Section 36 (b)

Insert “or (a1)” after “paragraph (a)”.

[7] Section 64 Review of operation of Act

Insert “**Initial review after fifth anniversary of commencement of Act**” as the heading to section 64 (1).

[8] Section 64 (3) and (4)

Insert after section 64 (2):

(3) Subsequent 5 yearly reviews

As soon as possible after the end of every 5 year period following the review under subsection (1), the Council must cause a further review of the kind set out in subsection (1) to be undertaken.

(4) The report of each further review is to be tabled in each House of the Parliament of New South Wales within 12 months after the end of the period to which it relates.

Commencement

The amendments to the *National Environment Protection Council (New South Wales) Act 1995* commence, or are taken to have commenced, on the commencement of Schedule 1 to the *National Environment Protection Council Amendment Act 2002* of the Commonwealth.

Explanatory note

Acts in each Australian jurisdiction mirror the *National Environment Protection Council Act 1994* of the Commonwealth (**the Commonwealth Act**). The Acts make joint legislative provision for the establishment of a body (the National Environment Protection Council (**NEPC**)) to determine national environment protection measures. In New South Wales, the relevant Act is the *National Environment Protection Council (New South Wales) Act 1995* (**the State Act**).

In consequence of a statutory review of the Commonwealth Act, the Commonwealth enacted the *National Environment Protection Council Amendment Act 2002* (**the 2002 Act**). The proposed amendments to the State Act amend that Act so as to reflect the amendments made to the Commonwealth Act by the 2002 Act.

The proposed amendments:

- (a) enable the NEPC to direct the NEPC Service Corporation (effectively, the NEPC's secretariat) to provide support and assistance to other environment-related ministerial councils, and
- (b) provide a simplified process for making minor variations to national environment protection measures, and
- (c) require five-yearly reviews of the State Act.

1.21 Nurses and Midwives Act 1991 No 9

[1] Section 19 Qualifications for registration as a midwife

Insert “, and authorised to practise midwifery,” after “registered as a nurse” in section 19 (1) (d).

[2] Section 19 (1) (d)

Insert “and authorisation” after “registration” wherever occurring.

[3] Section 28 Qualifications for enrolment—List “B” of the Roll

Insert “in List “B” of the Roll” after “enrolled as a nurse” in section 28 (e).

Commencement

Items [1] and [2] of the amendments to the *Nurses and Midwives Act 1991* commence, or are taken to have commenced, on the commencement of Schedule 1 [41] to the *Nurses Amendment Act 2003*.

Item [3] of the amendments to the *Nurses and Midwives Act 1991* commences, or is taken to have commenced, on the commencement of Schedule 1 [73] to the *Nurses Amendment Act 2003*.

Explanatory note

The *Nurses and Midwives Act 1991* (**the Act**) provides for a Register of Nurses and a Roll of Nurses. The Roll is divided into List “A” (containing particulars of enrolled nurses) and List “B” (containing particulars of enrolled nurses (mothercraft)).

The *Nurses Amendment Act 2003* (**the amending Act**) made substantial changes to the Act (including changing the name of the Act from the *Nurses Act 1991*).

Previously, any person who was registered (or entitled to be registered) under the Act could apply for authorisation to practise midwifery. Among other things, the amending Act abolished authorisation to practise midwifery and provided, instead, for registration as a midwife. It also created a Register of Midwives.

Certain amendments made by the amending Act have the unintended consequences of allowing any person previously registered under the Act or the repealed *Nurses Registration Act 1953* to obtain registration as a midwife, and any person previously enrolled under either of those Acts to obtain enrolment as an enrolled nurse (mothercraft).

The proposed amendments rectify that situation by:

- (a) limiting the previously-registered persons who will automatically qualify for registration as a midwife to such of those previously-registered persons as were also authorised under the Act to practise midwifery (items [1] and [2] of the proposed amendments), and
- (b) limiting the previously-enrolled persons who will automatically qualify for enrolment as an enrolled nurse (mothercraft) to such of those previously-enrolled persons as were enrolled in List “B” of the Roll (item [3] of the proposed amendments).

1.22 Parliamentary Electorates and Elections Act 1912 No 41

Section 81A Death of candidate

Insert “6 pm on” before “polling day”.

Explanatory note

At present, section 81A of the *Parliamentary Electorates and Elections Act 1912* (**the Act**) provides that the death of a candidate for election to the Legislative Assembly after the declaration of nominations for a district and before polling day causes the election for the district concerned to fail. In that case, a new writ for an election for that district must issue.

Other provisions of the Act deal with the death of an elected candidate.

However, the Act is silent as to the position if a candidate dies on polling day.

The proposed amendment amends section 81A so as to provide that the election for the district concerned also fails if a candidate dies before 6 pm on polling day.

1.23 Pawnbrokers and Second-hand Dealers Act 1996 No 13

[1] Section 20 Inspection of goods

Insert after section 20 (2):

- (2A) For the purpose of inspecting goods kept at any premises referred to in subsection (1) or (2), an authorised officer may open any unlocked cupboard, drawer, container or other form of storage found at the premises, and may require a person apparently in charge of the premises to open any form of storage (including a safe) that is locked.

[2] Section 32F Notice of entitlement to goods

Omit “to an authorised officer” from section 32F (4) (a).

Insert instead “to a police officer”.

Commencement

The amendment to section 32F of the *Pawnbrokers and Second-hand Dealers Act 1996* commences, or is taken to have commenced, on the commencement of so much of Schedule 1 [31] to the *Pawnbrokers and Second-hand Dealers Amendment Act 2002* as inserts section 32F in the *Pawnbrokers and Second-hand Dealers Act 1996*.

Explanatory note

Inspection of goods

Section 20 (1) of the *Pawnbrokers and Second-hand Dealers Act 1996* (**the Act**) permits an **authorised officer** (defined in section 3 of the Act) to enter, at any reasonable time, any premises where a **licensed business** (that is, a business authorised by a licence under the Act—a business of a licensed pawnbroker or licensed second-hand dealer) is conducted, and inspect goods kept at the premises.

Section 20 (2) is a similar provision, empowering an authorised officer to enter storage premises used in connection with a licensed business and inspect any goods there. For the latter purpose, an authorised inspector may require a person apparently in charge of the storage premises to open them.

Section 20 does not expressly permit an authorised officer to open any form of storage in which goods on the premises concerned may be held. Item [1] of the proposed amendments inserts a new subsection in section 20 to make it clear that the power to inspect goods conferred by the section extends to a power to open (and require the opening of) any storage container in which the goods might be held.

Delivery of certain goods held by licensed pawnbroker or second-hand dealer

The *Pawnbrokers and Second-hand Dealers Amendment Act 2002* (**the amending Act**) inserts (among other things) Part 4A (Disputes as to ownership of goods and restoration of goods) in the Act. Part 4A consists of sections 32E–32M.

Section 32F establishes a process in relation to certain goods in the possession of a licensed pawnbroker or second-hand dealer (**a licensee**). A person (**a claimant**) may allege that the goods are the property of the claimant and have been unlawfully obtained from the claimant (or pawned or sold to the licensee without the claimant’s authority). Such an allegation may give rise to a **restoration notice**, which requires the licensee to deliver the goods to the claimant within a required period (unless certain

proceedings are commenced within that period). If the licensee cannot locate the claimant, or is prevented for some other reason from delivering the goods to the claimant, the licensee must, instead, deliver them within the required period to "an authorised officer".

Section 3 of the Act defines **authorised officer** as:

- (a) a police officer, or
- (b) the Director-General of the Department of Fair Trading [now the Commissioner for Fair Trading], or
- (c) an investigator appointed under section 18 of the *Fair Trading Act 1987*, or
- (d) a person authorised in writing by the Director-General of the Department of Fair Trading.

Item [2] of the proposed amendments amends section 32F so as to require a licensee to deliver goods under a restoration notice to a police officer (rather than to any authorised officer) if the licensee is unable to deliver the goods to the claimant.

1.24 Police Act 1990 No 47

[1] Section 216AA Special risk benefit where student of policing hurt while undergoing police education

Omit "the Government Medical Officer" from section 216AA (1) (b).

Insert instead "HealthQuest".

[2] Section 216AA (6)

Omit the definition of *Government Medical Officer*.

Insert in alphabetical order:

HealthQuest means the statutory health corporation of that name constituted by the *Health Services Act 1997*.

Explanatory note

The functions of a Government Medical Officer under various Acts and Regulations are to be exercised by the statutory health corporation "HealthQuest".

The proposed amendments replace references to "Government Medical Officer" with direct references to HealthQuest.

Similar amendments are proposed to be made elsewhere in this Schedule to the other Acts and Regulations concerned.

1.25 Property, Stock and Business Agents Act 2002 No 66

[1] Section 11 Registered salespersons and managers required to be employed and supervised by licensee

Insert after section 11 (2) (before the penalty provision):

- (3) The holder of a certificate of registration must not act as an auctioneer.

-
- (4) Despite subsection (3), the holder of a certificate of registration as a stock and station salesperson may auction livestock if the holder conducts the auction as an employee, and under the immediate and direct supervision, of the holder of the appropriate licence (as referred to in subsections (1) and (2)).

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

Omit section 55 (1) (a). Insert instead:

- (a) the services were performed pursuant to an agreement in writing (an *agency agreement*) signed by or on behalf of:
- (i) the person, and
 - (ii) the licensee, and

[3] Section 55 (1) (c)

Insert “or on behalf of” after “signed by” where firstly occurring.

Explanatory note

Persons who may conduct auctions

Among other things, the *Property, Stock and Business Agents Act 2002 (the Act)* permits certain defined salespersons (for example, *real estate salespersons*) who hold certificates of registration under the Act to exercise the functions of the relevant defined agents (*real estate agents* in the example given above) in certain circumstances. The salesperson may exercise the functions only as an employee, and under the supervision, of an agent:

- (a) who is licensed under the Act to exercise the functions without contravening the Act, and
- (b) who is the licensee in charge of the place of business at which the employee is employed.

The Act defines *real estate agent* and *stock and station agent* as persons who, among other things, carry on business as an auctioneer (of land other than rural land (usually) in the case of the former, and of rural land and livestock, in the case of the latter). Section 21 of the Act provides that it is a condition of every real estate agent's licence, and every stock and station agent's licence, that the licensee must not act as an auctioneer unless the licensee is accredited as an auctioneer under that section.

Item [1] of the proposed amendments makes it clear that a salesperson's authority to exercise the functions of the relevant agent in accordance with the Act does not extend to acting as an auctioneer. However, the proposed amendment permits stock and station salespersons to conduct auctions of livestock under the immediate and direct supervision of a licensed stock and station agent who is accredited under the Act as an auctioneer.

Agency agreements

Item [2] of the proposed amendments makes it clear that an agency agreement (as defined in the Act) need not be signed by the relevant agent personally but may be signed by someone else on the agent's behalf (just as the other party to the agreement is not required to sign personally). The proposed amendment is to the same effect as the relevant part of section 42AA of the repealed *Property, Stock and Business Agents Act 1941*.

Item [3] of the proposed amendments makes a consequential amendment.

1.26 Property, Stock and Business Agents Regulation 2003

[1] Clause 18 Conditions of sale by auction

Insert “(or under whose immediate and direct supervision the auction was conducted)” after “who conducted the auction” in clause 18 (3).

[2] Clause 19 Notification of auction conditions

Insert “, or a stock and station salesperson conducts an auction sale of livestock comprising more than one lot,” after “comprising more than one lot” in clause 19 (2).

[3] Clause 19 (2)

Insert “or salesperson concerned” after “the agent”.

[4] Clause 33 Signing of cheques or effecting electronic funds transfers—trust account

Omit “effect” from clause 33 (8). Insert instead “effects”.

[5] Schedule 6, clause 6 (1) (d) and Schedule 14, clause 1 (d)

Omit “tradespersons do” wherever occurring.

Insert instead “tradespersons to do”.

Explanatory note

Items [1]–[3] of the proposed amendments are consequential on the amendment proposed to be made to the *Property, Stock and Business Agents Act 2002* elsewhere in this Schedule in relation to the auctioning of livestock by stock and station salespersons.

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

Item [5] of the proposed amendments inserts missing words.

1.27 Protection of the Environment Administration Act 1991 No 60

Section 16 Functions of Board

Omit section 16 (b).

Explanatory note

The *Public Sector Employment and Management (Environment and Conservation) Order 2003 (the Order)* abolished, as Departments of the Public Service, the bodies known as the Environment Protection Authority (**EPA**), the National Parks and Wildlife Service, Resource NSW and the Royal Botanic Gardens and Domain Trust. The Order created the Department of Environment and Conservation (**the new Department**) and transferred all the staff of the abolished Departments to that Department.

In view of the integration of the EPA with the new Department, it is no longer appropriate for the Board of the EPA to exercise the function currently set out in section 16 (b) of the *Protection of the Environment Administration Act 1991* ("to oversee the effective, efficient and economical management of the [EPA]"). Accordingly, the proposed amendment repeals section 16 (b).

Other amendments consequential on the creation of the new Department and the transfer of staff are proposed to be made elsewhere in this Schedule.

1.28 Public Finance and Audit Act 1983 No 152

Schedule 2 Statutory bodies

Omit "Resource NSW".

Explanatory note

The proposed amendment is consequential on the dissolution of the statutory body Resource NSW proposed to be effected by the amendments to the *Waste Avoidance and Resource Recovery Act 2001* elsewhere in this Schedule.

1.29 Public Sector Employment and Management (General) Regulation 1996

[1] Clause 3 Definitions

Omit the definition of *Government Medical Officer* from clause 3 (1).

Insert in alphabetical order:

HealthQuest means the statutory health corporation of that name constituted by the *Health Services Act 1997*.

[2] Clauses 17, 86 and 87

Omit “the Government Medical Officer” wherever occurring.

Insert instead “HealthQuest”.

Explanatory note

The functions of a Government Medical Officer under various Acts and Regulations are to be exercised by the statutory health corporation “HealthQuest”.

The proposed amendments replace references to “Government Medical Officer” with direct references to HealthQuest.

Similar amendments are proposed to be made elsewhere in this Schedule to the other Acts and Regulations concerned.

1.30 Public Trustee Act 1913 No 19

[1] Section 4A Definitions

Insert in alphabetical order:

Member of staff means any person employed under Chapter 2 of the *Public Sector Employment and Management Act 2002* to assist the Public Trustee in the exercise of his or her functions under this Act, and includes a person appointed as a deputy Public Trustee as referred to in section 6.

[2] Section 5 Office of Public Trustee

Omit section 5 (1). Insert instead:

- (1) The Governor is to appoint a person to hold office as the Public Trustee.

[3] Section 5 (2) and (3)

Omit “officer” wherever occurring. Insert instead “person”.

[4] Section 5 (6)

Insert after section 5 (5):

- (6) The replacement of subsection (1) by the *Statute Law (Miscellaneous Provisions) Act (No 2) 2003* does not affect the appointment of a person as the Public Trustee if the appointment was in force immediately before the replacement of that subsection.

[5] Section 6 Deputy Public Trustees

Omit section 6 (4) (a). Insert instead:

- (a) any act, dealing or transaction by or with the Public Trustee or any deputy Public Trustee, or any other member of staff, or any agent of the Public Trustee, is or is not authorised, or

[6] Section 10 Appointment of agents

Omit “officer or employee on the staff of the Public Trustee”.

Insert instead “member of staff”.

[7] Section 34A Small estates

Omit “of the Public Trustee’s deputies, officers, servants or agents” from section 34A (3).

Insert instead “member of staff nor any agent of the Public Trustee”.

[8] Section 37 Liability of Consolidated Fund

Omit “of the Public Trustee’s officers” wherever occurring.

Insert instead “member of staff”.

[9] Section 38 Moneys in Public Trustee’s account to be Crown property

Omit “the deputy Public Trustee, or any officer, servant, or”.

Insert instead “a member of staff or any other”.

[10] Section 42 Payments to Public Trustee’s account

Omit “officer, servant,” wherever occurring in section 42 (2).

Insert instead “member of staff”.

[11] Section 44 Certain acts of Public Trustee taken to be bona fide

Omit “, the Public Trustee’s deputies, officers, servants, or agents”.

Insert instead “, a member of staff or an agent of the Public Trustee”.

[12] Section 44

Omit “or the Public Trustee’s deputies, officers, servants, or agents respectively”.

Insert instead “, the member of staff or the agent, respectively”.

[13] Section 45 Protection from personal liability for certain acts

Omit “Neither the Public Trustee nor any of the Public Trustee’s deputies, officers, servants, or agents shall be”.

Insert instead “The Public Trustee, or any member of staff or any agent of the Public Trustee, is not”.

[14] Section 46 Protection from personal liability in respect of certain goods

Omit “Neither the Public Trustee nor any of the Public Trustee’s deputies, officers, servants, or agents shall be”.

Insert instead “The Public Trustee, or any member of staff or any agent of the Public Trustee, is not”.

[15] Section 46

Omit “or any such deputy, officer, servant or agent”.

Insert instead “or by the member of staff or the agent”.

[16] Section 46

Omit “or the Public Trustee’s deputy, officer, servant, or agent”.

Insert instead “or member of staff or agent”.

[17] Section 47 Proceeds of sale of goods of third person

Omit “or the Public Trustee’s deputies, officers, servants, or agents”.

Insert instead “, or by a member of staff or an agent of the Public Trustee,”.

[18] Section 47

Omit “or any such deputy, officer, servant, or agent”.

Insert instead “or member of staff or agent”.

[19] Section 48 Remedy against Public Trustee

Omit “the deputy Public Trustee, or any officer, servant, or”.

Insert instead “a member of staff or any other”.

[20] Section 51 Service of orders on Public Trustee

Omit “or into the public trust office” from section 51 (a).

[21] Section 59 Regulations

Omit “public trust office” from section 59 (1) (a).

Insert instead “Public Trustee”.

[22] Section 59 (1) (b)

Omit “the officers, servants, and persons employed therein”.

Insert instead “members of staff”.

[23] Section 59 (1) (c)

Omit “therein”. Insert instead “with the Public Trustee”.

[24] Section 59 (1) (i)

Omit “Public Trust office”. Insert instead “Public Trustee”.

Explanatory note

The proposed amendments are consequential on recent administrative changes made under Chapter 4 of *the Public Sector Employment and Management Act 2002* in relation to the Public Trust Office. Those changes abolished the Public Trust Office as a separate Department and transferred the public service staff to the Attorney General's Department.

Consequential amendments are also made to the *Public Trustee Regulation 2001* elsewhere in this Schedule.

1.31 Public Trustee Regulation 2001

[1] Clause 7 Attendance fees

Omit “Public Trust Office” from clause 7 (c).

Insert instead “offices used by members of staff”.

[2] Clause 24 Search of records

Omit “in the Public Trust Office” from clause 24 (1).

Insert instead “held by the Public Trustee”.

[3] Clause 32

Omit the clause. Insert instead:

32 Duties and obligations of members of staff

Each member of staff:

- (a) is to perform such duties as are allotted to the member from time to time by the Public Trustee, and
- (b) is required to bind himself or herself by written promise of secrecy in relation to the affairs of any estate administered by the Public Trustee.

[4] Clause 35 Prescribed signatories

Omit “persons holding or acting in the office of Branch Manager in the Public Trust Office are prescribed persons” from clause 35 (1).

Insert instead “any member of staff holding or acting in the position of Branch Manager is a prescribed person”.

[5] Clause 35 (2)

Omit “persons holding or acting in the following offices in the Public Trust Office are prescribed persons”.

Insert instead “any member of staff holding or acting in any of the following positions is a prescribed person”.

Explanatory note

The proposed amendments are consequential on recent administrative changes made under Chapter 4 of *the Public Sector Employment and Management Act 2002* in relation to the Public Trust Office. Those changes abolished the Public Trust Office as a separate Department and transferred the public service staff to the Attorney General's Department.

Consequential amendments are also made to the *Public Trustee Act 1913* elsewhere in this Schedule.

1.32 Road Transport (General) Act 1999 No 18

[1] Schedule 1 Impounded and forfeited vehicles

Omit clause 5 (2). Insert instead:

- (2) The Commissioner may release the vehicle to the applicant if:
 - (a) the period for which the vehicle would be liable to be impounded under section 40 as a result of a conviction for the offence that gave rise to its impounding has expired and the prescribed fees for storage of the vehicle by the Commissioner have (except to the extent that the Commissioner has waived payment of those fees) been paid, or
 - (b) although that period has not expired, the Commissioner is satisfied, on such evidence as the Commissioner may reasonably require, that:
 - (i) the offence concerned was not committed with the consent of the applicant, and
 - (ii) the applicant did not know, and could not reasonably be expected to have known, that the vehicle would be used for the commission of the offence,

and if the Commissioner is satisfied, on such evidence as the Commissioner may reasonably require, that the applicant is lawfully entitled to possession of the vehicle.

[2] Schedule 2 Savings, transitional and other provisions

Omit “of the Authority” from clause 24 (1) (a) and (4) (a) wherever occurring.

[3] Schedule 2, clause 24 (2) (c) (i)

Omit “of the Authority under this Act or the regulations”.

Insert instead “under the road transport legislation”.

Explanatory note

Ranging of matter

Item [1] of the proposed amendments repeals and re-enacts clause 5 (2) of Schedule 1 to the *Road Transport (General) Act 1999* (**the Act**) so as to correct the incorrect placement of certain matter in that subclause.

The matter following clause 5 (2) (b) (ii) of Schedule 1 to the Act is currently located in a position (“ranged”) that has the effect of applying that paragraph to paragraph (b) only of clause 5 (2). It should apply to both paragraphs (a) and (b). The proposed amendment ensures that it does.

Provision for certain appeals to Local Court

Section 48 of the Act provides for applications to the Administrative Decisions Tribunal (*the ADT*) for reviews of certain decisions made under the *road transport legislation* (as defined in the Act). The decisions include certain decisions of police officers and others.

Clause 24 of Schedule 2 to the Act deals with interim appeals rights to the Local Court pending the exercise of jurisdiction by the ADT. The clause permits the making of regulations for or with respect to appeals against decisions of the Roads and Traffic Authority (*the Authority*) under the road transport legislation (instead of reviews by the ADT). In particular, clause 24 (2) (c) (i) enables the regulations to confer jurisdiction on a Local Court to hear and determine appeals against “specified decisions, or classes of decisions, of the Authority under this Act or the regulations”.

For consistency with section 48 of the Act, items [2] and [3] of the proposed amendments amend clause 24 by:

- (a) removing the references to decisions of the Authority (so as to extend the provision to all decisions under the road transport legislation that may be reviewed by the ADT), and
- (b) replacing the reference to “this Act or the regulations” in clause 24 (2) (c) (i) with a reference to the road transport legislation.

1.33 Royal Botanic Gardens and Domain Trust Act 1980 No 19

[1] Section 4 Definitions

Omit the definition of *Director* from section 4 (1).

[2] Section 4 (1)

Insert in alphabetical order:

Executive Director means the person employed as Executive Director of the Royal Botanic Gardens and Domain pursuant to section 12 (1) or a person acting as Executive Director of the Royal Botanic Gardens and Domain.

[3] Section 12 Officers and employees

Omit “a Director” from section 12 (1) (a).

Insert instead “an Executive Director”.

[4] Section 13 Executive Director

Insert “Executive” before “Director” wherever occurring.

[5] Section 13 (2)

Insert “Executive” before “Director’s”.

[6] Schedule 1 Provisions relating to trustees and procedure of the Trust

Insert “Executive” before “Director” wherever occurring in clause 11 (including where occurring in the heading to the clause).

[7] Schedule 3 Transitional and other provisions

Insert after clause 13:

14 References to Director

On and from the commencement of Schedule 1.33 to the *Statute Law (Miscellaneous Provisions) Act (No 2) 2003*, a reference in any document (other than this Act) to the Director of the Royal Botanic Gardens and Domain is taken to be a reference to the Executive Director.

Explanatory note

The *Public Sector Employment and Management (Environment and Conservation) Order 2003 (the Order)* abolished, as Departments of the Public Service, the bodies known as the Environment Protection Authority (*EPA*), the National Parks and Wildlife Service, Resource NSW and the Royal Botanic Gardens and Domain Trust. The Order created the Department of Environment and Conservation (*the new Department*) and transferred all the staff of the abolished Departments to that Department.

The Director of the Royal Botanic Gardens and Domain (*the Director*) had adopted the title “Director and Chief Executive” to distinguish the Director’s position from those of the Directors of the various branches of the Royal Botanic Gardens and Domain. As the Director now reports to the Director-General of the new Department, the proposed amendments alter the title of the Director’s position to “Executive Director”.

Other amendments consequential on the creation of the new Department and the transfer of staff are proposed to be made elsewhere in this Schedule.

1.34 Royal Botanic Gardens and Domain Trust Regulation 2002

Clauses 3 (definition of “ranger”), 22 and 23

Insert “Executive” before “Director” wherever occurring.

Explanatory note

The proposed amendment is consequential on the amendments to section 4 of the *Royal Botanic Gardens and Domain Trust Act 1980* proposed to be made elsewhere in this Schedule.

1.35 State Authorities Non-contributory Superannuation Act 1987 No 212

Schedule 1 Employers

Omit “Resource NSW” from Part 1.

Explanatory note

The proposed amendment is consequential on the dissolution of the statutory body Resource NSW proposed to be effected by the amendments to the *Waste Avoidance and Resource Recovery Act 2001* elsewhere in this Schedule.

1.36 State Authorities Superannuation Act 1987 No 211

Schedule 1 Employers

Omit “Resource NSW” from Part 1.

Explanatory note

The proposed amendment is consequential on the dissolution of the statutory body Resource NSW proposed to be effected by the amendments to the *Waste Avoidance and Resource Recovery Act 2001* elsewhere in this Schedule.

1.37 State Development and Industries Assistance Act 1966 No 10

Section 34E Ministerial Corporation to be Constructing Authority for purposes of section 81 of Public Works Act 1912

Omit the section.

Explanatory note

Section 34E of the *State Development and Industries Assistance Act 1966* provides that the Ministerial Corporation for Industry constituted under that Act is taken to be a Constructing Authority “[f]or the purposes of section 81 of the *Public Works Act 1912*”.

As section 81 has been repealed, section 34E no longer has any effect. Accordingly, the proposed amendment repeals section 34E.

1.38 Statutory and Other Offices Remuneration Act 1975 (1976 No 4)

Schedule 1 Public offices

Omit “or is the holder of a prescribed office” from the matter relating to “Magistrate”.

Explanatory note

Schedule 1 to the *Statutory and Other Offices Remuneration Act 1975* refers to a Magistrate who is the holder of a prescribed office “within the meaning of” the *Local Courts Act 1982*. However, the term “prescribed office” is no longer defined in that Act. Accordingly, the proposed amendment omits the outdated reference from Schedule 1.

1.39 Stock (Chemical Residues) Act 1975 No 26

Section 3 Definitions

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

- (a) cattle, sheep, goats and pigs, and

Explanatory note

At present, paragraph (a) of the definition of *stock* in section 3 of the *Stock (Chemical Residues) Act 1975* provides that the term means “bulls, oxen, steers, cows, heifers, calves, rams, ewes, wethers, lambs, goats, kids and swine”.

The proposed amendment recasts paragraph (a) in the interests of plain English. The new terminology is consistent with that of the *Stock Diseases Act 1923*.

1.40 Stock Diseases Act 1923 No 34

[1] Section 3 Definitions

Omit “swine” from the definition of *Stock* in section 3 (1).

Insert instead “pigs”.

[2] Section 3 (1), definition of “Swine”

Omit the definition.

Explanatory note

At present, section 3 of the *Stock Diseases Act 1923 (the Act)* defines *Swine* as including “boar, sow, barrow and pig of any age, sex or breed”. As the animals mentioned in the definition are all pigs, the proposed amendments, in the interests of plain English:

- (a) omit that definition, and
(b) amend another definition so as to refer to “pigs” rather than “swine”.

Consequential amendments to the *Stock Diseases (General) Regulation 1997* are proposed to be made elsewhere in this Schedule.

1.41 Stock Diseases (General) Regulation 1997

[1] Clauses 15 (b), 16 (4) (d) (i), (e) (i) and (j), 16C, 16E (2), 20B (1), 20G (1) (a) and 31 (1)

Omit “swine” wherever occurring. Insert instead “pigs”.

[2] Clause 31, heading

Omit “swine”. Insert instead “pigs”.

Explanatory note

The proposed amendments are consequential on the amendments proposed to be made to the *Stock Diseases Act 1923* elsewhere in this Schedule.

1.42 Superannuation Act 1916 No 28

[1] Section 3 Definitions

Omit the definition of *Government Medical Officer* from section 3 (1).

Insert in alphabetical order:

HealthQuest means the statutory health corporation of that name constituted by the *Health Services Act 1997*.

[2] Sections 10A, 10D, 22 and 50 and Schedule 17

Omit “the Government Medical Officer” wherever occurring.

Insert instead “HealthQuest”.

[3] Schedule 3 List of Employers

Omit “Resource NSW” from Part 1.

[4] Schedule 26

Omit “Public Trust Office” and “Resource NSW” from Part 1.

Explanatory note

Government Medical Officer

The functions of a Government Medical Officer under various Acts and Regulations are to be exercised by the statutory health corporation “HealthQuest”.

Item [1] of the proposed amendments omits the definition of Government Medical Officer from the *Superannuation Act 1916 (the Act)* and inserts a definition of *HealthQuest* for the purposes of the Act.

Item [2] of the proposed amendments replaces references to “Government Medical Officer” in the Act with direct references to HealthQuest.

Similar amendments are proposed to be made elsewhere in this Schedule to the other Acts and Regulations concerned.

Public Trust Office and Resource NSW

Item [3] and part of item [4] of the proposed amendments are consequential on the dissolution of the statutory body Resource NSW proposed to be effected by the amendments to the *Waste Avoidance and Resource Recovery Act 2001* elsewhere in this Schedule. The other part of item [4] is consequential on recent administrative changes made under Chapter 4 of the *Public Sector Employment and Management Act 2002* in relation to the Public Trust Office. Those changes abolished the Public Trust Office as a separate Department and transferred the public service staff to the Attorney General’s Department.

1.43 Sydney Water Catchment Management Act 1998 No 171

[1] Section 3 Definitions

Insert in alphabetical order:

Managing Director means the member of staff of the Authority holding the position of Managing Director of the Authority.

[2] Section 7 Board

Omit section 7 (2) (a). Insert instead:

(a) the Managing Director, and

[3] Schedule 1 Constitution and procedure of Board

Omit “Chief Executive” wherever occurring in clauses 1 (definition of *appointed member*) and 3 (1).

Insert instead “Managing Director”.

[4] Schedule 1, clause 12 (2)

Omit “If the Chief Executive is not the Chairperson, the Chief Executive”.

Insert instead “The Managing Director”.

Explanatory note

The proposed amendments amend the *Sydney Water Catchment Management Act 1998 (the Act)* so as:

- (a) to provide that the ex-officio position on the Board of the Sydney Catchment Authority (*the Authority*) currently held by the Chief Executive of the Authority is to be held, instead, by the Managing Director of the Authority (item [2]), and
- (b) to make consequential amendments to a Schedule to the Act that deals with the constitution and procedure of the Board (items [3] and [4]), and
- (c) to insert a definition of the term *Managing Director* in section 3 of the Act for the purposes of the Act (item [1]).

1.44 Waste Avoidance and Resource Recovery Act 2001 No 58

[1] The whole Act

Omit “Resource NSW” wherever occurring (except where occurring in the long title, sections 4 (1), 5, 6 (2) and (3), 7, 8, 9, 10, 11, 12 (1) and (4), 13, 14 (1), 19 (3), (4) (b) and (5) (b), 20 (1) and (2), 21, 22 (1), 24 (1) (except section 24 (1) (c)) and 25, Schedules 1, 3 and 4 and the headings to Part 2 and sections 20, 21, 22, 24 and 25).

Insert instead “the Director-General”.

[2] The whole Act

Omit “The EPA” and “the EPA” wherever occurring (except where occurring in sections 4 (1), 13 and 19 (4) (b) and Schedule 2).

Insert instead “The Director-General” and “the Director-General”, respectively.

[3] Long title

Omit “to establish Resource NSW;”.

[4] Section 4 Definitions

Omit the definitions of *Chief Executive of Resource NSW*, *EPA* and *Resource NSW* from section 4 (1).

[5] Section 4 (1)

Insert in alphabetical order:

Department means the Department of Environment and Conservation.

Director-General means the Director-General of the Department.

[6] Part 2, heading

Omit the heading. Insert instead:

Part 2 Functions of Director-General

[7] Sections 5, 7–10, 13, 25, 29 and 30

Omit the sections.

[8] Section 6 Functions of Director-General

Omit “conferred or imposed on it” from section 6 (1) (i).

Insert instead “conferred or imposed on the Director-General”.

[9] Sections 6 (2) and (3), 11 (1), 12 (1), 14 (1), 20 (1) and (2), 21, 22 (1) and 24 (1)

Omit “Resource NSW” wherever occurring (except where occurring in a heading and in section 24 (1) (c)).

Insert instead “The Director-General”.

[10] Sections 6 (3) and 11 (1)

Omit “its functions” wherever occurring.

Insert instead “the Director-General’s functions”.

[11] Section 11 (2)

Omit “Resource NSW”. Insert instead “the Department”.

[12] Section 12 (4)

Omit the subsection.

[13] Section 12 (5)

Omit “Subsequent”.

Insert instead “After the adoption of the first waste strategy, subsequent”.

[14] Section 12 (7) (b)

Omit “its offices”. Insert instead “the offices of the Department”.

[15] Sections 18 (1) and 21 (b)

Omit “it” wherever occurring. Insert instead “the Director-General”.

[16] Section 19 Waste Fund

Omit the second sentence of section 19 (3).

[17] Section 19 (4) (b)

Omit “the EPA or Resource NSW”. Insert instead “the Director-General”.

[18] Section 19 (5) (b)

Omit the paragraph. Insert instead:

- (b) any purpose for which it could lawfully have been applied by the corporation formerly constituted under section 5 and known as Resource NSW immediately before the dissolution of that corporation,

[19] Section 20 Provision by Director-General of financial assistance and guarantees

Omit “exercising its functions” from section 20 (1).

Insert instead “exercising the Director-General’s functions under this Act”.

[20] Sections 21 and 24, headings

Omit “Resource NSW” wherever occurring.

Insert instead “Director-General”.

[21] Section 22, heading

Omit the heading. Insert instead:

22 Acquisitions by Director-General

[22] Schedules 1, 2 and 3

Omit the Schedules.

[23] Schedule 4 Savings, transitional and other provisions

Omit the heading to Part 1. Insert instead:

Part 1 Preliminary

[24] Schedule 4, clause 1

Insert at the end of clause 1 (1):

Statute Law (Miscellaneous Provisions) Act (No 2) 2003, but only to the extent that it amends this Act

[25] Schedule 4, clause 1A

Insert after clause 1:

1A Definitions

In this Schedule:

assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.

liabilities means any liabilities, debts or obligations (whether present or future and whether vested or contingent).

rights means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent).

[26] Schedule 4, clause 2

Omit the definitions of *assets*, *liabilities* and *rights*.

[27] Schedule 4, Part 3

Insert after clause 12:

Part 3 Provisions consequent on enactment of the Statute Law (Miscellaneous Provisions) Act (No 2) 2003

13 Definitions

In this Part:

Board means the Board of Resource NSW referred to in section 8 as in force immediately before the repeal of that section by the *Statute Law (Miscellaneous Provisions) Act (No 2) 2003*.

Resource NSW means the corporation constituted under section 5 as in force immediately before the repeal of that section by the *Statute Law (Miscellaneous Provisions) Act (No 2) 2003*.

14 Dissolution of Resource NSW

- (1) Resource NSW is dissolved.
- (2) A reference in any document (other than this Act) to Resource NSW is taken to be a reference to the Director-General.
- (3) A person who, immediately before the dissolution of Resource NSW, held office as a member of the Board:
 - (a) ceases to hold that office, and
 - (b) is not entitled to any compensation because of the loss of that office.

15 Transfer of assets, rights and liabilities to the Crown

- (1) On the day on which Resource NSW is dissolved by this Act, the following provisions have effect:
 - (a) the assets of Resource NSW vest in the Crown by virtue of this clause without the need for any further conveyance, transfer, assignment or assurance,
 - (b) the rights and liabilities of Resource NSW become the rights and liabilities of the Crown,
 - (c) all proceedings commenced before that day by or against Resource NSW and pending immediately before that day are taken to be proceedings pending by or against the Crown,
 - (d) any act, matter or thing done or omitted to be done before that day by, to or in respect of Resource NSW is (to the extent that that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the Crown.
- (2) The operation of this clause is not to be regarded:
 - (a) as a breach of contract or confidence or otherwise as a civil wrong, or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
 - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.

-
- (3) The operation of this clause is not to be regarded as an event of default under any contract or other agreement.
 - (4) No attornment to the transferee by a lessee from Resource NSW is required.
 - (5) Duty under the *Duties Act 1997* is not chargeable for or in respect of:
 - (a) a transfer effected by this clause, or
 - (b) anything certified by the Minister as having been done in consequence of such a transfer (for example, the transfer or conveyance of an interest in land).

16 Financial statements and annual report of Resource NSW

- (1) The annual report of Resource NSW required under the *Annual Reports (Statutory Bodies) Act 1984* in respect of the portion of the financial year ending on the date of dissolution of Resource NSW is to be included in the annual report of the Department of Environment and Conservation for the relevant financial year.
- (2) In this clause, **financial year** has the same meaning as it has in the *Public Finance and Audit Act 1983*.

Note. An annual report referred to in clause 16 (1) must contain financial statements, prepared in accordance with Division 3 of Part 3 of the *Public Finance and Audit Act 1983* and audited under that Division.

Explanatory note

The *Public Sector Employment and Management (Environment and Conservation) Order 2003 (the Order)* abolished, as Departments of the Public Service, the bodies known as the Environment Protection Authority (**EPA**), the National Parks and Wildlife Service, Resource NSW and the Royal Botanic Gardens and Domain Trust. The Order created the Department of Environment and Conservation (**the new Department**) and transferred all the staff of the abolished Departments to that Department. The functions previously exercised by Resource NSW are to be exercised by the Director-General of the new Department.

In view of that amalgamation, it is not necessary to retain Resource NSW as a statutory corporation. Items [6] and [27] of the proposed amendments amend the *Waste Avoidance and Resource Recovery Act 2001 (the Act)* accordingly, confer Resource NSW's functions and power of delegation on the Director-General of the new Department and insert the necessary savings and transitional provisions. Items [23], [25] and [26] of the proposed amendments make consequential "housekeeping" amendments to Schedule 4 to the Act. Item [24] of the proposed amendments amends that Schedule so as to permit the making under the Act of regulations of a savings or transitional nature consequent on the amendments made to the Act by this Act.

Items [7] (in part), [12], [16] and [22] of the proposed amendments omit provisions that are spent.

The other proposed amendments are purely consequential.

Other amendments consequential on the creation of the new Department and the transfer of staff are proposed to be made elsewhere in this Schedule.

Schedule 2 Amendments by way of statute law revision

(Section 3)

2.1 Cancer Institute (NSW) Act 2003 No 14

Section 6 Guiding principles

Omit “mutli-disciplinary” from section 6 (d).

Insert instead “multi-disciplinary”.

Explanatory note

The proposed amendment corrects incorrect spelling.

2.2 Children and Young Persons (Care and Protection) Regulation 2000

Schedule 2 Code of Conduct for Authorised Carers

Transfer clause 5 (c) (iii) to the position of the current clause 5 (c) (ii), renumber the transferred subparagraph as clause 5 (c) (ii) and renumber the existing clause 5 (c) (ii) as clause 5 (c) (iii).

Explanatory note

The proposed amendment transposes two subparagraphs and renumbers those subparagraphs accordingly.

2.3 Classification (Publications, Films and Computer Games) Enforcement Act 1995 No 63

[1] Section 4 Definitions

Omit the definitions in the Note at the end of the section. Insert instead:

add-on means a computer program, data associated with a computer program or a computer program and any associated data referred to in subsection 5A (2).

adult means a person who is 18 or older.

advertisement for a publication, a film or a computer game means any form of advertising for the publication, film or game, and includes:

- (a) advertising, whether visual or audible, whether in the form of written or spoken words or other sounds and whether in a book, paper, magazine, poster,

photograph, sketch, program, film or slide or in any other form, and

- (b) advertising on a container or wrapping enclosing the publication, film or game, and
- (c) advertising on an item of clothing advertising the publication, film or game,

but does not include:

- (d) advertising for an exempt film or exempt computer game, or
- (e) advertising, in an imported publication, for a publication, film or computer game that has not been published in Australia, or
- (f) advertising, in an imported film or computer game that is in a form that cannot be modified, for a film or computer game that has not been published in Australia (the *advertised film or game*), whether or not the advertised film or game is later published in Australia.

Board means the Classification Board.

business day means a day other than a Saturday, Sunday or public holiday.

classification certificate means a certificate issued under section 25.

classified means classified under this Act.

Code means the National Classification Code set out in the Schedule, or that Code as amended in accordance with section 6.

computer generated image means an image (including an image in the form of text) produced by use of a computer on a computer monitor, television screen, liquid crystal display or similar medium from electronically recorded data.

contentious material, in relation to a film or computer game, means material that would be likely to cause it to be classified:

- (a) for a film—M or a higher classification, or
- (b) for a computer game—M (15+) or a higher classification.

Convenor means the Convenor of the Review Board.

decision means a decision of the Board:

- (a) to classify or refuse to classify a publication, film or computer game (including a decision of the Board under section 39 or 97A), or
- (b) to determine the consumer advice to apply to a publication, film or computer game, or
- (c) to approve or refuse to approve an advertisement for a publication, film or computer game (including a decision of the Board under section 39) or to impose conditions on such an approval, or
- (d) to grant a certificate of exemption for a film, or
- (e) to decline to deal with or to deal further with an application under this Act, or
- (f) to make or refuse to make a declaration under subsection 13 (3), or
- (g) to revoke such a declaration, or
- (h) to impose a condition under section 13A, or
- (i) to revoke the classification of a film or computer game under section 21A, or
- (j) to revoke the classification of, or consumer advice for, a publication, film or computer game under section 22B, or
- (k) to grant or refuse to grant a certificate under Division 6 of Part 2, or
- (l) to revoke such a certificate.

demonstrate includes exhibit, display, screen, play or make available for playing.

Deputy Director means the Deputy Director of the Board.

determined markings means markings determined by the Director under section 8.

Director means the Director of the Board.

enforcement application means an application that is made:

- (a) by the Commonwealth, a State or a Territory, or by an authority or agency of the Commonwealth, a State or a Territory, and

-
- (b) for the purpose of investigating or prosecuting an offence against a law of the Commonwealth, a State or a Territory.

exempt computer game has the meaning given by section 5B, and includes a game for which a certificate is in force under Division 6 of Part 2.

exempt film has the meaning given by section 5B, and includes a film for which a certificate is in force under Division 6 of Part 2.

film includes a cinematograph film, a slide, video tape and video disc and any other form of recording from which a visual image, including a computer generated image, can be produced (together with its sound track), but does not include:

- (a) a computer game, or
- (b) an advertisement for a publication, a film or a computer game.

interactive film means a film to which subsection 14 (4) applies.

interactive game means a game in which the way the game proceeds and the result achieved at various stages of the game is determined in response to the decisions, inputs and direct involvement of the player.

member means a member of the Board, and includes a temporary member.

minor means a person under 18.

participating Minister means a Minister of a State or Territory who is responsible for censorship matters where the State or Territory is a participant in the scheme referred to in section 3, but does not include such a Minister in relation to action to be taken under a provision of this Act if:

- (a) the action relates to publications, films or computer games, and
- (b) the State or Territory does not participate in the scheme in relation to publications, films or computer games, as the case may be.

publication means any written or pictorial matter, but does not include:

- (a) a film, or
- (b) a computer game, or
- (c) an advertisement for a publication, a film or a computer game.

publish includes sell, offer for sale, let on hire, exhibit, display, distribute and demonstrate.

Review Board means the Classification Review Board.

submittable publication means an unclassified publication that, having regard to the Code and the classification guidelines to the extent that they relate to publications, contains depictions or descriptions that:

- (a) are likely to cause the publication to be classified RC, or
- (b) are likely to cause offence to a reasonable adult to the extent that the publication should not be sold or displayed as an unrestricted publication, or
- (c) are unsuitable for a minor to see or read.

temporary member means a person appointed under section 50.

work means:

- (a) a cinematic composition that:
 - (i) appears to be self-contained, and
 - (ii) is produced for viewing as a discrete entity, or
- (b) a computer game that is produced for playing as a discrete entity,

but does not include an advertisement.

[2] Section 4, Note

Insert at the end of the definitions:

Section 5A of the Commonwealth Act provides the following definition of *computer game*:

- (1) A *computer game* is a computer program and any associated data capable of generating a display on a computer monitor, television screen, liquid crystal display or similar medium that allows the playing of an interactive game.
- (2) A computer program, data associated with a computer program or a computer program and any associated data that:
 - (a) is capable of generating new elements or additional levels into a game (the *original game*) that is a computer game under subsection (1), and
 - (b) is contained in a device separate from that containing the original game,is also a *computer game*.
- (3) However, a *computer game* does not include an advertisement for a publication, film or computer game.

[3] Note at the end of the Act (National Classification Code)

Omit from clause 1 (b) of the matter relating to Publications “a minor who is, or who appears to be, under 16 (whether the minor”.

Insert instead “a person who is, or who looks like, a child under 16 (whether the person”.

[4] Note at the end of the Act, clause 1 (b) of the matter relating to Films

Omit “a minor who is, or who appears to be, under 16 (whether or not”.

Insert instead “, a person who is, or who looks like, a child under 16 (whether the person is”.

[5] Note at the end of the Act, clause 2 (a) of the matter relating to Films

Omit the paragraph. Insert instead:

- (a) contain real depictions of actual sexual activity between consenting adults in which there is no violence, sexual violence, sexualised violence, coercion, sexually assaultive language, or fetishes or depictions which purposefully demean anyone involved in that activity for the enjoyment of viewers, in a way that is likely to cause offence to a reasonable adult, and

Explanatory note

The proposed amendments update certain Notes in the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* that set out the text of certain provisions of the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth. The amendments are made in consequence of amendments made to the Commonwealth Act.

2.4 Commercial Arbitration Act 1984 No 160

Section 65

Insert after section 64:

65 Saving

Section 5 of the *Commercial Arbitration (Amendment) Act 1990* continues in force despite the repeal of that Act by the *Statute Law (Miscellaneous Provisions) Act (No 2) 2003*.

Explanatory note

The proposed amendment is consequential on the repeal of the *Commercial Arbitration (Amendment) Act 1990* by Schedule 3. It ensures the continued operation of a savings and transitional provision of that Act.

2.5 Costs in Criminal Cases Act 1967 No 13

Section 3A Evidence of further relevant facts may be adduced

Omit “Justice or Justices” wherever occurring in section 3A (3).

Insert instead “Magistrate”.

Explanatory note

The proposed amendment updates outdated terminology.

2.6 Crimes Act 1900 No 40

[1] Section 517 Unlawful possession of trees, fences etc

Omit “fails to satisfy them”. Insert instead “fails to satisfy the Court”.

[2] Section 517

Omit “, before such Justices,”.

Explanatory note

Section 517 has been amended to refer to certain persons being taken or summoned before “a Local Court” rather than before “two Justices”. Item [1] of the proposed amendments makes a consequential amendment.

Item [2] of the proposed amendments omits unnecessary matter.

2.7 Crimes (Administration of Sentences) Act 1999 No 93

[1] Section 79 Regulations

Omit “Visiting Justice” from section 79 (v1).

Insert instead “Visiting Magistrate”.

[2] Schedule 5 Savings, transitional and other provisions

Renumber Part 5 and clauses 64–66 where secondly occurring as Part 6 and clauses 70–72, respectively.

Explanatory note

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

Item [2] of the proposed amendments corrects duplicated numbering.

2.8 Crimes (Administration of Sentences) Regulation 2001

Clauses 147 (1), 148 (4), 150 (1), 166 and 168 (2) and (3)

Omit “Visiting Justice” wherever occurring.

Insert instead “Visiting Magistrate”.

Explanatory note

The proposed amendments update outdated terminology.

2.9 Criminal Procedure Act 1986 No 209

[1] Section 15 Application of Part

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

[2] Section 20 Amendment of indictment

Omit “section 64” from section 20 (2). Insert instead “section 21”.

[3] Section 147 Exemption for matters disclosed in brief of evidence

Omit “section 25”. Insert instead “section 265”.

[4] Section 149 Miscellaneous provisions

Omit “Division 3” from section 149 (3). Insert instead “Division 4”.

[5] Section 149 (6)

Omit “Part 7”. Insert instead “Division 2 of Part 5 of Chapter 6”.

[6] Section 262 Procedure for dealing with offences if election made

Omit “that section” from section 262 (2). Insert instead “that Division”.

[7] Section 275 Definitions

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

[8] Section 320 Disposal of property after determination of proceedings

Omit “section 134” from section 320 (1). Insert instead “section 319”.

[9] Section 321 Application to Treasurer for recovery of money or proceeds of sale

Omit “section 135”. Insert instead “section 320”.

[10] Section 332 Definitions

Omit section 332 (2).

[11] Section 333 Police may issue penalty notices for certain offences

Omit “section 170 (3)” from the note to the section.

Insert instead “section 342 (3)”.

[12] Section 338 Effect of payment of penalty

Omit “sections 163 and 168” from section 338 (3).

Insert instead “sections 335 and 340”.

[13] Section 342 Effect of Part on other procedures and powers

Omit “section 166” from section 342 (1).

Insert instead “section 338”.

[14] Schedule 1 Indictable offences triable summarily

Omit “to this Part” from item 13 of Table 1.

Insert instead “to this Schedule”.

Explanatory note

Among other things, the *Criminal Procedure Amendment (Justices and Local Courts) Act 2001* reorganised and renumbered various provisions of the *Criminal Procedure Act 1986* (**the Act**). In that reorganisation:

- (a) certain provisions of Division 5 of Part 3 became Part 2 of Chapter 2, and
- (b) section 25 was renumbered as section 265, and
- (c) section 64 was renumbered as section 21, and
- (d) certain provisions of Parts 4 and 7 became Chapter 6, and
- (e) sections 134 and 135 were renumbered as sections 319 and 320, respectively.

The *Crimes Legislation Amendment (Penalty Notice Offences) Act 2002* inserted, among other things, Part 8 (sections 160–172) in the Act and then renumbered that Part as the last Part in Chapter 7 (which became sections 332–344).

Item [1] of the proposed amendments corrects internal references to the old Division 5 of Part 3.

Item [2] of the proposed amendments corrects a cross-reference to the old section 64.

Item [3] of the proposed amendments corrects a cross-reference to the old section 25.

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

Items [5] and [7] of the proposed amendments correct internal references to old Parts.

Items [6] and [14] of the proposed amendments correct incorrect terminology.

Item [8] of the proposed amendments corrects a cross-reference to the old section 134.

Item [9] of the proposed amendments corrects a cross-reference to the old section 135.

Item [10] of the proposed amendments omits an unnecessary provision (see section 3 (2)).

Item [11] of the proposed amendments corrects a cross-reference to the old section 170.

Item [12] of the proposed amendments corrects a cross-reference to the old sections 163 and 168.

Item [13] of the proposed amendments corrects a cross-reference to the old section 166.

2.10 Energy Services Corporations Act 1995 No 95

Schedule 3 Transfer of staff, assets, rights and liabilities

Omit “clauses 3, 7 and 12” from the matter immediately below the heading of the Schedule.

Insert instead “clauses 7, 12, 13A, 13D, 13F and 16”.

Explanatory note

The proposed amendment omits a reference to a clause that has been repealed and inserts references to new clauses to which Schedule 3 is relevant.

2.11 Fines Act 1996 No 99

[1] Section 90 Calculation of period of imprisonment under warrant

Omit “the *Periodic Detention of Prisoners Act 1981*” from section 90 (2).

Insert instead “the *Crimes (Administration of Sentences) Act 1999*”.

[2] Schedule 1 Statutory provisions under which penalty notices issued

Omit “section 29 or 29A” from the matter relating to the *Summary Offences Act 1988*.

Insert instead “section 29, 29A or 29B”.

Commencement

Item [2] of the amendments to the *Fines Act 1996* is taken to have commenced on 27 September 2002.

Explanatory note

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

Item [2] of the proposed amendments provides for the enforcement of penalty notices issued under section 29B of the *Summary Offences Act 1988* and is consequential on the insertion of that section, on 27 September 2002, by the *Pastoral and Agricultural Crimes Legislation Amendment Act 2002*.

2.12 Guardianship Act 1987 No 257

Section 46 Effect of consent

Omit “that carrying out” from section 46 (4).

Insert instead “the carrying out”.

Explanatory note

The proposed amendment corrects a typographical error.

2.13 Inebriates Act 1912 No 24

Section 13 Institutions for inebriates committed under section 11

Omit “visiting justice” wherever occurring in section 13 (2).

Insert instead “Visiting Magistrate”.

Explanatory note

The proposed amendment updates outdated terminology.

2.14 Kogarah Local Environmental Plan 1998

Schedule 2, heading

Omit the heading. Insert instead:

Schedule 2 Classification and reclassification of public land as operational land

Explanatory note

The proposed amendment renames a Schedule (currently named “Operational land”) to *Kogarah Local Environmental Plan 1998* to reflect the terminology of the clause of that plan to which it relates (clause 13).

2.15 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

[1] Section 16 Failure of passenger to disclose identity

Insert “driver or other” before “passenger” where secondly occurring in section 16 (2) (b).

[2] Section 197 Power to give reasonable directions in public places

Omit “in traffic” from section 197 (1) (a). Insert instead “or traffic”.

[3] Schedule 2 Search warrants under other Acts

Omit “*Food Act 1989*, section 18”.

Insert instead “*Food Act 2003*, section 39”.

Commencement

Item [3] of the amendments to the *Law Enforcement (Powers and Responsibilities) Act 2002* commences, or is taken to have commenced, on the commencement of section 142 of the *Food Act 2003*.

Explanatory note

Item [1] of the proposed amendments inserts missing words.

Item [2] of the proposed amendments makes a correction to reflect section 28F (1) of the *Summary Offences Act 1988*, which section 197 (1) of the *Law Enforcement (Powers and Responsibilities) Act 2002* re-enacts.

Item [3] of the proposed amendments updates a reference to an Act that is to be repealed.

2.16 Marine Pollution Regulation 2001

Schedule 5 Holding tanks—capacity and specification requirements

Renumber paragraph (b) where secondly occurring as paragraph (c).

Explanatory note

The proposed amendment corrects duplicated numbering.

2.17 Mental Health Act 1990 No 9

Sections 93 (4) and 111 (2)

Omit “the the Magistrate” wherever occurring.

Insert instead “the Magistrate”.

Explanatory note

The proposed amendment omits duplicated words.

2.18 Moratorium Act 1932 No 57

Section 5A

Insert after section 5:

5A Saving concerning application of Act

Section 2 of the *Moratorium (Amendment) Act 1968* continues in force despite the repeal of that Act by the *Statute Law (Miscellaneous Provisions) Act (No 2) 2003*.

Explanatory note

The proposed amendment is consequential on the repeal of the *Moratorium (Amendment) Act 1968* by Schedule 3. It ensures the continued operation of a provision of that Act concerning the operation of the *Moratorium Act 1932*.

2.19 National Parks and Wildlife Act 1974 No 80

Section 176 Proceedings for offences

Omit “makes or make an order the” from section 176 (3).

Insert instead “makes an order under the”.

Explanatory note

The proposed amendment omits unnecessary words (the section originally referred to “the magistrate or justices” and, therefore, required both a singular and a plural verb) and inserts a missing word.

2.20 Nurses Amendment Act 2003 No 45

Section 2 Commencement

Omit “Part 5 f the” from section 2 (2) (b). Insert instead “Part 5 of the”.

Commencement

The amendment to the *Nurses Amendment Act 2003* is taken to have commenced on 30 September 2003 (being the date of assent to that Act).

Explanatory note

The proposed amendment inserts a missing letter in a word.

2.21 Occupational Health and Safety Regulation 2001

Schedule 1 Standards covering design and manufacture of plant

Omit “Australlian Miniature” from the matter relating to Boilers and pressure vessels.

Insert instead “Australian Miniature”.

Explanatory note

The proposed amendment corrects a typographical error.

2.22 Pesticides Regulation 1995

Schedule 1, heading

Omit “and short descriptions” from the heading.

Explanatory note

The proposed amendment corrects the heading to a Schedule that no longer contains short descriptions of offences.

2.23 Poisons and Therapeutic Goods Act 1966 No 31

Section 17B Authorisation of possession, use, prescription or supply by optometrists

Omit “optometrist drug authority” from section 17B (2) (a) and (c) wherever occurring.

Insert instead “optometrists drug authority”.

Explanatory note

The proposed amendment corrects inconsistent terminology. Section 17B was inserted in the *Poisons and Therapeutic Goods Act 1966* by the *Optometrists Act 2002*. The latter Act, and the remainder of section 17B, refer to an “optometrists drug authority” rather than an “optometrist drug authority”.

2.24 Public Authorities (Financial Arrangements) Regulation 2000

Schedule 4 Authorities specifically included

Omit the matter relating to Pacific Power.

Explanatory note

The proposed amendment omits a reference to a body that has been dissolved.

2.25 Radiation Control Act 1990 No 13

Section 25 Proceedings for offences

Omit “constituted by a Magistrate” from section 25 (1) (a).

Explanatory note

The proposed amendment omits unnecessary words.

2.26 Radiation Control Regulation 2003

Schedule 2 Dose limits for exposure to ionising radiation

Omit “does” from Note 1 to the Schedule. Insert instead “dose”.

Explanatory note

The proposed amendment corrects a typographical error.

2.27 Research Involving Human Embryos (New South Wales) Act 2003 No 21

Section 4 Definitions

Renumber paragraphs (f) and (g) of the definition of *Commonwealth embryo laws* in section 4 (1) as paragraphs (a) and (b), respectively.

Explanatory note

The proposed amendment corrects numbering of paragraphs.

2.28 Search Warrants Act 1985 No 37

Section 8 Search and arrest of persons pursuant to warrant

Omit “a authorised officer” from section 8 (b).

Insert instead “an authorised officer”.

Explanatory note

The proposed amendment corrects a grammatical error.

2.29 State Environmental Planning Policy No 62—Sustainable Aquaculture

Schedule 1 Pond-based and tank-based aquaculture

Insert at the end of clause 4:

- (2) In this clause, a reference to *AHD* is a reference to Australian Height Datum within the meaning of the *Surveying Act 2002*.

Explanatory note

The proposed amendment gives effect to an amendment purporting to be made by Schedule 2.18 to the *Surveying Act 2002*. That amendment could not take effect because of an intervening amendment that had rendered it unincorporable.

2.30 State Environmental Planning Policy No 71—Coastal Protection

Schedule 2 Significant coastal development—specified development

Omit “*Mining Act 1962*” from the definition of *mining*.

Insert instead “*Mining Act 1992*”.

Explanatory note

The proposed amendment corrects an incorrect citation of an Act.

2.31 Treasury Corporation Act 1983 No 75

Section 14

Insert after section 13:

14 Saving

Section 5 of the *Treasury Corporation (Amendment) Act 1987* continues in force despite the repeal of that Act by the *Statute Law (Miscellaneous Provisions) Act (No 2) 2003*.

Explanatory note

The proposed amendment is consequential on the repeal of the *Treasury Corporation (Amendment) Act 1987* by Schedule 3. It ensures the continued operation of a savings and transitional provision of that Act.

2.32 Workers Compensation Regulation 2003

Clause 188 Purporting to be a PDA

Omit “subclauses (2) and (3)” from clause 188 (3).

Insert instead “subclauses (1) and (2)”.

Explanatory note

The proposed amendment corrects incorrect cross-references.

Schedule 3 Repeals

(Section 4)

Name of Act	Extent of repeal
<i>Public Trustee Act 1913</i> No 19	Section 60 ⁴
<i>Trustee (Amendment) Act 1929</i> No 60	Whole Act ²
<i>Farrer Memorial Research Scholarship Fund Act 1930</i> No 38	Section 11 ⁴
<i>Valuation of Land and Local Government (Further Amendment) Act 1961</i> No 67	Whole Act ²
<i>Local Government (Town and Country Planning) Amendment Act 1962</i> No 7	Parts 2 and 3 ⁵
<i>Companies (Mining Partnerships) Amendment Act 1967</i> No 37	Whole Act ²
<i>Administration of Justice Act 1968</i> No 3	Whole Act ²
<i>Moratorium (Amendment) Act 1968</i> No 25	Whole Act ³
<i>Water, Crown Lands and Other Acts (Amendment) Act 1970</i> No 5	Whole Act ²
<i>Companies (Amendment) Act 1972</i> No 24	Whole Act ²
<i>Crown Lands and Other Acts (Reserves) Amendment Act 1974</i> No 37	Whole Act ²
<i>Courts of Petty Sessions (Civil Claims) Amendment Act 1975</i> No 106	Whole Act ²
<i>Anglican Church of Australia Act 1976</i> No 21	Section 7 and Schedule 2 ⁴
<i>Small Businesses' Loans Guarantee Act 1977</i> No 34	Whole Act ⁶

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Schedule 3 Repeals

Name of Act	Extent of repeal
<i>Valuation of Land (Rating and Valuation) Amendment Act 1978 No 126</i>	Whole Act ²
<i>Valuation of Land (Amendment) Act 1978 No 137</i>	Whole Act ²
<i>Stamp Duties (Amendment) Act 1978 No 139</i>	Whole Act ²
<i>Supreme Court (Amendment) Act 1979 No 88</i>	Whole Act ²
<i>Courts of Petty Sessions (Civil Claims) Amendment Act 1980 No 61</i>	Whole Act ²
<i>Co-operation (Amendment) Act 1981 No 5</i>	Whole Act ²
<i>Crimes (Sexual Assault) Amendment Act 1981 No 42</i>	Whole Act ²
<i>Stamp Duties (Financial Institutions Duty) Amendment Act 1982 No 133</i>	Whole Act ²
<i>Local Government (Regulation of Flats) Amendment Act 1983 No 174</i>	Whole Act ²
<i>Supreme Court (Interest) Amendment Act 1983 No 201</i>	Whole Act ²
<i>Courts of Petty Sessions (Civil Claims) (Interest) Amendment Act 1983 No 203</i>	Whole Act ²
<i>Trustee (Investments) Amendment Act 1983 No 204</i>	Whole Act ²
<i>Valuation of Land (Rating and Valuation) Amendment Act 1983 No 205</i>	Whole Act ²
<i>District Court (Commercial Arbitration) Amendment Act 1984 No 162</i>	Whole Act ²

Name of Act	Extent of repeal
<i>Supreme Court (Commercial Arbitration) Amendment Act 1984</i> No 166	Whole Act ²
<i>Stamp Duties (Further Amendment) Act 1986</i> No 193	Whole Act ²
<i>Stamp Duties (Amendment) Act 1987</i> No 85	Whole Act ²
<i>Treasury Corporation (Amendment) Act 1987</i> No 225	Whole Act ³
<i>Australian Mutual Provident Society Act 1988</i> No 47	Section 14 ⁴
<i>Miscellaneous Acts (Public Sector Executives Employment) Amendment Act 1989</i> No 105	Whole Act ¹
<i>Higher Education (Amalgamation) Amendment Act 1989</i> No 129	Whole Act ¹
<i>Real Property (Boundary Determinations) Amendment Act 1989</i> No 171	Whole Act ¹
<i>Catchment Management Act 1989</i> No 235	Section 69 ⁴
<i>Bishop Tyrrell Trust (Amendment) Act 1990</i> No 2	Whole Act ¹
<i>Commercial Arbitration (Amendment) Act 1990</i> No 100	Whole Act ³
<i>National Rail Corporation (Agreement) Act 1991</i> No 82	Section 15 ⁴
<i>Public Finance and Audit (Auditor-General) Amendment Act 1991</i> No 88	Section 4 and Schedules 1, 2, 4 and 5 ⁵
<i>Fertilizers (Amendment) Act 1992</i> No 8	Schedule 3 ⁵

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Schedule 3 Repeals

Name of Act	Extent of repeal
<i>Jurisdiction of Courts (Cross-vesting) Amendment Act 1992</i> No 62	Whole Act ²
<i>Supreme Court (Video Link) Amendment Act 1992</i> No 69	Whole Act ²
<i>Conveyancing Legislation (Notice of Sale) Amendment Act 1992</i> No 92	Whole Act ²
<i>Health Care Complaints Act 1993</i> No 105	Schedule 3 (other than the heading to the Schedule and amendments to the <i>Coroners Act 1980</i>) ⁴
<i>University Legislation (Amendment) Act 1994</i> No 16	So much of Schedule 1 as amends the <i>Charles Sturt University Act 1989</i> , the <i>University of New England Act 1993</i> , the <i>University of New South Wales Act 1989</i> , the <i>University of Newcastle Act 1989</i> , the <i>University of Sydney Act 1989</i> , the <i>University of Technology, Sydney, Act 1989</i> and the <i>University of Wollongong Act 1989</i> ⁵
<i>Coal and Oil Shale Mine Workers (Superannuation) Further Amendment Act 1994</i> No 85	Whole Act ²
<i>Workers Compensation Legislation Amendment Act 1995</i> No 30	Sections 4–6 and Schedules 1, 2, 4, 5 and 7–15 ⁵
<i>Gas Supply Act 1996</i> No 38	Schedule 1.1–1.6, 1.7 [1]–[9] and [11]–[18] and 1.8–1.12 ⁴
<i>Crimes Amendment (Detention after Arrest) Act 1997</i> No 48	Section 3 and Schedule 1 ⁵
<i>Public Notaries Act 1997</i> No 98	Section 20 ⁴
<i>Snowy Hydro Corporatisation Act 1997</i> No 99	Section 55 and Schedule 3 ⁴

Name of Act	Extent of repeal
<i>Road and Rail Transport (Dangerous Goods) Act 1997</i> No 113	Section 53 ⁴
<i>South-west Tablelands Water Supply Administration (Repeal) Act 1997</i> No 114	Section 8 ⁴
<i>Road Transport (Vehicle Registration) Act 1997</i> No 119	Section 32 ⁴
<i>Co-operative Housing and Starr-Bowkett Societies Act 1998</i> No 11	Section 228 and Schedule 6 ⁴
<i>Saint Andrew's College Act 1998</i> No 15	Section 19 ⁴
<i>State Records Act 1998</i> No 17	Section 80 and Schedule 4 ⁴
<i>Building and Construction Industry Long Service Payments Amendment Act 1998</i> No 33	Section 4 and Schedules 1 [1]–[7], [9]–[23] and [25]–[56] and 2–4 ⁵
<i>Gas Pipelines Access (New South Wales) Act 1998</i> No 41	Schedule 1.2–1.6 ⁴
<i>Agricultural Industry Services Act 1998</i> No 45	Section 52 and Schedule 3 ⁴
<i>Aboriginal Housing Act 1998</i> No 47	Section 44 and Schedule 2 ⁴
<i>Premium Property Tax Act 1998</i> No 79	Section 13 and Schedule 2 ⁴
<i>Environmental Trust Act 1998</i> No 82	Section 28 and Schedule 2 ⁴
<i>Legal Profession Amendment (Costs Assessment) Act 1998</i> No 83	Schedule 1 [1], [2], [6]–[14] and [16]–[19] ⁵
<i>Companion Animals Act 1998</i> No 87	Section 99 and Schedule 4 ⁴
<i>Road Transport (Driver Licensing) Act 1998</i> No 99	Section 36 and Schedules 1 and 2 ⁴
<i>Tow Truck Industry Act 1998</i> No 111	Schedule 3.2–3.6 ⁴

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Schedule 3 Repeals

Name of Act	Extent of repeal
<i>Unlawful Gambling Act 1998</i> No 113	Section 59 and Schedule 2 ⁴
<i>Weapons Prohibition Act 1998</i> No 127	Section 53 and Schedule 3 ⁴
<i>Food Production (Safety) Act 1998</i> No 128	Section 71 and Schedules 3 and 4 ⁴
<i>Privacy and Personal Information Protection Act 1998</i> No 133	Section 72 and Schedule 3 ⁴
<i>Residential Parks Act 1998</i> No 142	Section 158 and Schedule 2 ⁴
<i>Rural Lands Protection Act 1998</i> No 143	Section 246 and Schedule 6 ⁴
<i>Commission for Children and Young People Act 1998</i> No 146	Section 52 and Schedule 2 ⁴
<i>Drug Court Act 1998</i> No 150	Section 33 and Schedule 1 ⁴
<i>Law Enforcement and National Security (Assumed Identities) Act 1998</i> No 154	Section 20 ⁴
<i>Consumer Claims Act 1998</i> No 162	Section 20 and Schedule 2 ⁴
<i>Forestry and National Park Estate Act 1998</i> No 163	Sections 43–46 and the Notes to those sections, section 47 and Schedules 8–12 ⁴
<i>Sydney Harbour Foreshore Authority Act 1998</i> No 170	Sections 47, 50 and 51 and Schedules 3 and 4 ⁴
<i>Sydney Water Catchment Management Act 1998</i> No 171	Section 71 and Schedules 4, 5.1–5.3 and 5.5 ⁴
<i>Crimes at Sea Act 1998</i> No 173	Section 9 and Schedule 2 ⁴
<i>Financial Sector Reform (New South Wales) Act 1999</i> No 1	Section 55 and Schedules 1 and 2 ⁴

Name of Act	Extent of repeal
<i>Motor Accidents Compensation Act 1999</i> No 41	Sections 229 and 230 and Schedules 3 and 4 ⁴
<i>Offshore Minerals Act 1999</i> No 42	Section 445 and Schedule 3 ⁴
<i>Building and Construction Industry Security of Payment Act 1999</i> No 46	Section 36 and Schedule 1 ⁴
<i>Price Exploitation Code (New South Wales) Act 1999</i> No 55	Section 36 and Schedule 1 ⁴
<i>Drug Summit Legislative Response Act 1999</i> No 67	Sections 3 and 4 and Schedules 1–3 ⁴
<i>Pesticides Act 1999</i> No 80	Section 123 and Schedule 3 ⁴
<i>Retirement Villages Act 1999</i> No 81	Sections 204 and 205 and Schedules 2 and 3 ⁴
<i>Access to Neighbouring Land Act 2000</i> No 2	Section 39 and Schedule 1 ⁴
<i>First Home Owner Grant Act 2000</i> No 21	Section 53 ⁴
<i>Environmental Planning and Assessment Amendment (Affordable Housing) Act 2000</i> No 29	Section 4 and Schedule 1 ⁵
<i>Occupational Health and Safety Act 2000</i> No 40	Section 140 and Schedule 2 ⁴
<i>Child Protection (Offenders Registration) Act 2000</i> No 42	Section 23 and Schedule 1 ⁴
<i>Intergovernmental Agreement Implementation (GST) Act 2000</i> No 44	Section 8 and Schedules 2–12 ⁴
<i>Dairy Industry Act 2000</i> No 54	Section 25 and Schedule 1 ⁴
<i>Crimes (Forensic Procedures) Act 2000</i> No 59	Section 119 and Schedule 1 ⁴

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Schedule 3 Repeals

Name of Act	Extent of repeal
<i>Smoke-free Environment Act 2000</i> No 69	Section 24 ⁴
<i>Adoption Act 2000</i> No 75	Section 211 and Schedule 2 ⁴
<i>Community Relations Commission and Principles of Multiculturalism Act 2000</i> No 77	Section 24 and Schedule 3 ⁴
<i>Road Transport (Safety and Traffic Management) Amendment (Blood Sampling) Act 2000</i> No 78	Section 5 and Schedule 3 ⁵
<i>Sydney 2000 Games Administration Act 2000</i> No 81	Sections 4 and 25 and Schedules 1 and 2 ⁴
<i>Fitness Services (Pre-paid Fees) Act 2000</i> No 95	Section 20 and Schedule 2 ⁴
<i>Law and Justice Foundation Act 2000</i> No 97	Section 21 and Schedule 4 ⁴
<i>Australian Inland Energy Water Infrastructure Act 2000</i> No 102	Whole Act ¹
<i>Local Government Amendment Act 2000</i> No 112	Whole Act ¹
<i>Criminal Procedure Amendment (Pre-trial Disclosure) Act 2001</i> No 7	Sections 3–5 and Schedules 1–3 ⁵
<i>Nature Conservation Trust Act 2001</i> No 10	Sections 48–50 and Schedules 3–5 ⁴
<i>Chiropractors Act 2001</i> No 15	Section 133 and Schedule 6 ⁴
<i>Osteopaths Act 2001</i> No 16	Section 133 and Schedule 6 ⁴
<i>Parramatta Park Trust Act 2001</i> No 17	Section 38 and Schedule 5 ⁴
<i>Corporations (Consequential Amendments) Act 2001</i> No 34	Section 3 and Schedules 1–6 ⁵

Name of Act	Extent of repeal
<i>Freight Rail Corporation (Sale) Act 2001</i> No 35	Section 53 and Schedule 3 ⁴
<i>Insurance Protection Tax Act 2001</i> No 40	Section 26 ⁴
<i>Health Care Liability Act 2001</i> No 42	Section 35 and Schedule 1 ⁴
<i>Betting Tax Act 2001</i> No 43	Section 22 and Schedules 1–3 ⁴
<i>Housing Act 2001</i> No 52	Section 77 and Schedule 1 ⁴
<i>Waste Recycling and Processing Corporation Act 2001</i> No 59	Section 19 and Schedule 3 ⁴
<i>Physiotherapists Act 2001</i> No 67	Section 134 and Schedule 6 ⁴
<i>Psychologists Act 2001</i> No 69	Section 133 and Schedule 6 ⁴
<i>Gaming Machine Tax Act 2001</i> No 72	Sections 28–30 and Schedules 3–5 ⁴
<i>Apprenticeship and Traineeship Act 2001</i> No 80	Section 83 and Schedule 3 ⁴
<i>Consumer, Trader and Tenancy Tribunal Act 2001</i> No 82	Section 90 and Schedule 7 ⁴
<i>Motor Trade Legislation Amendment Act 2001</i> No 86	Whole Act ¹
<i>Coal Industry Act 2001</i> No 107	Sections 55 and 56 and Schedules 6 and 7 ⁴
<i>Criminal Procedure Amendment (Justices and Local Courts) Act 2001</i> No 119	Whole Act ¹
<i>Justices Legislation Repeal and Amendment Act 2001</i> No 121	Whole Act ¹
<i>Gaming Machines Act 2001</i> No 127	Sections 212–215 and Schedules 2–5 ⁴

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Schedule 3 Repeals

Name of Act	Extent of repeal
<i>Landcom Corporation Act 2001</i> No 129	Section 20 and Schedule 3 ⁴
<i>Appropriation (Budget Variations) Act 2002</i> No 8	Whole Act ⁶
<i>AGL Corporate Conversion Act 2002</i> No 16	Sections 6 and 46 and Schedules 1 and 5 ⁴
<i>Greyhound Racing Act 2002</i> No 38	Section 61 and Schedule 5 ⁴
<i>Harness Racing Act 2002</i> No 39	Section 64 and Schedule 5 ⁴
<i>Public Sector Employment and Management Act 2002</i> No 43	Sections 167–169 and Schedules 5–7 ⁷
<i>Crimes Legislation Amendment (Penalty Notice Offences) Act 2002</i> No 46	Whole Act ¹
<i>Olympic Co-ordination Authority Dissolution Act 2002</i> No 55	Section 14 and Schedule 1 ⁴
<i>Appropriation Act 2002</i> No 57	Whole Act ⁶
<i>Appropriation (Parliament) Act 2002</i> No 58	Whole Act ⁶
<i>Appropriation (Special Offices) Act 2002</i> No 59	Whole Act ⁶
<i>General Government Liability Management Fund Act 2002</i> No 60	Section 14 and Schedule 1 ⁴
<i>Surveying Act 2002</i> No 83	Section 38 and Schedule 2 ⁴
<i>Holiday Parks (Long-term Casual Occupation) Act 2002</i> No 88	Section 52 and Schedule 2 ⁴
<i>Rail Safety Act 2002</i> No 96	Section 120 and Schedules 6 and 7 ⁴
<i>Courts Legislation Miscellaneous Amendments Act 2002</i> No 99	Whole Act ¹

Name of Act	Extent of repeal
<i>Crimes Legislation Amendment (Criminal Justice Interventions) Act 2002</i> No 100	Whole Act ¹
<i>Terrorism (Police Powers) Act 2002</i> No 115	Section 35 and Schedule 2 ⁴
<i>Pay-roll Tax Legislation Amendment (Avoidance) Act 2002</i> No 121	Whole Act ¹
<i>National Park Estate (Reservations) Act 2002</i> No 137	Section 15 and Schedule 9 ⁴
<i>Water Management Amendment Act 2002</i> No 138	Whole Act ¹
<i>Crimes Amendment (Sexual Offences) Act 2003</i> No 9	Whole Act ¹

Key

- 1 indicates repeal of an Act that contains only amendments or amendments and repeals
- 2 indicates repeal of an Act that contains only amendments and spent provisions (or other provisions that do not need to be preserved)
- 3 indicates repeal of an Act that contains only amendments and savings, transitional or other provisions that are being preserved by an amendment made by Schedule 2
- 4 indicates repeal of amending provisions in a Principal Act
- 5 indicates repeal of commenced amending provisions in an amending Act
- 6 indicates repeal of an Act that is spent or no longer of practical utility
- 7 indicates repeal of an Act or provisions that include one or more uncommenced provisions that are not to be commenced

Explanatory note

The repeals are explained in detail in the Explanatory note relating to this Act. In relation to the repeal of amending Acts, it should be noted that the Acts are repealed simply to rationalise the legislation in force and that the repeals have no substantive effect on the amendments made by the Acts or any associated provisions. The Acts that were amended by the Acts or provisions being repealed are up-to-date on the Legislation Database maintained by the Parliamentary Counsel's Office and are available electronically.

Section 30 (2) of the *Interpretation Act 1987* ensures that, when an Act is amended or repealed, no amendment made by the Act is affected. Section 30 (2) also ensures that the following matters are not affected:

- (a) the proof of any past act or thing,
- (b) any right, privilege, obligation or liability saved by the operation of the Act,
- (c) any amendment or validation made by the Act,
- (d) the operation of any savings or transitional provision contained in the Act.

Schedule 4 General savings, transitional and other provisions

(Section 5)

1 Effect of amendment of amending provisions

- (1) An amendment made by Schedule 1 or 2 to an amending provision contained in an Act is, if the amending provision has commenced before the date of assent to this Act, taken to have effect as from the commencement of the amending provision.

- (2) In this clause:

amending provision means a provision of an Act that makes a direct amendment to an Act by:

- (a) the repeal or omission of matter contained in the amended Act without the insertion of any matter instead of the repealed or omitted matter, or
- (b) the omission of matter contained in the amended Act and the insertion of matter instead of the omitted matter, or
- (c) the insertion into the amended Act of matter, not being matter inserted instead of matter omitted from the Act,

whether the provision was enacted before or after the commencement of the *Reprints Act 1972*.

Explanatory note

This clause ensures that certain amendments, including amendments correcting errors in technical provisions (for example, headings indicating the section to be amended or directions as to where a new section is to be inserted) and rectifying minor drafting errors (for example, corrections in numbering of provisions, correction or insertion of cross-references, omission of unnecessary matter or insertion of omitted matter), will commence on the date the amendments to which they relate commenced.

2 Effect of amendment or repeal on acts done or decisions made

Except where it is expressly provided to the contrary, if this Act:

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

any act done or decision made under the provision amended or repealed has effect after the amendment or repeal as if it had been done or made under the provision as so amended or repealed.

Explanatory note

This clause ensures that the amendment or repeal of a provision will not, unless expressly provided, vitiate any act done or decision made under the provision as in force before the amendment or repeal.

3 Application of Interpretation Act 1987 to amendments to statutory rules

Sections 39, 40 and 41 of the *Interpretation Act 1987* do not apply to any amendments to statutory rules made by this Act.

Explanatory note

This clause makes it clear that certain provisions concerning the making, tabling and disallowance of statutory rules do not apply to amendments to statutory rules made by the proposed Act.

4 Effect of amendment on regulations

Except where expressly provided to the contrary, any regulation made under an Act amended by this Act, that is in force immediately before the commencement of the amendment, is taken to have been made under the Act as amended.

Explanatory note

This clause ensures that, unless expressly provided, any regulation made under an Act amended by the proposed Act, and in force immediately before the commencement of the amendment, will be taken to have been made under the amended Act.

5 Effect of amendment on environmental planning instruments

The amendment of an environmental planning instrument by this Act does not prevent its later amendment or repeal by another environmental planning instrument.

Explanatory note

This clause ensures that the amendment of a local environmental plan or other environmental planning instrument does not prevent its amendment or repeal by an environmental planning instrument.

6 Effect of repeal of Small Businesses' Loans Guarantee Act 1977

The repeal of the *Small Businesses' Loans Guarantee Act 1977* does not affect any guarantee given pursuant to that Act.

Explanatory note

This clause ensures that the guarantees given pursuant to the *Small Businesses' Loans Guarantee Act 1977* are not affected by the repeal of that Act by Schedule 3.

7 Regulations

- (1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Explanatory note

This clause enables the making of regulations of a savings or transitional nature having a short term effect and relating to incidental matters arising out of the proposed Act with regard to which no specific, or sufficient, provision has been made in the Act.

Notes

Index of Acts and instruments amended by Schedules 1 and 2

- Ambulance Services Act 1990* No 16—Schedule 1
- Animal Research Act 1985* No 123—Schedule 1
- Annual Reports (Departments) Act 1985* No 156—Schedule 1
- Annual Reports (Statutory Bodies) Act 1984* No 87—Schedule 1
- Cancer Institute (NSW) Act 2003* No 14—Schedule 2
- Child Protection (Prohibited Employment) Act 1998* No 147—Schedule 1
- Children and Young Persons (Care and Protection) Act 1998* No 157—Schedule 1
- Children and Young Persons (Care and Protection) Regulation 2000*—Schedule 2
- Children (Care and Protection—Child Employment) Regulation 2001*—Schedule 1
- Classification (Publications, Films and Computer Games) Enforcement Act 1995* No 63—Schedule 2
- Commercial Arbitration Act 1984* No 160—Schedule 2
- Commission for Children and Young People Act 1998* No 146—Schedule 1
- Community Land Development Act 1989* No 201—Schedule 1
- Co-operatives Act 1992* No 18—Schedule 1
- Costs in Criminal Cases Act 1967* No 13—Schedule 2
- Crimes Act 1900* No 40—Schedule 2
- Crimes (Administration of Sentences) Act 1999* No 93—Schedule 2
- Crimes (Administration of Sentences) Regulation 2001*—Schedule 2
- Crimes (Local Courts Appeal and Review) Act 2001* No 120—Schedule 1
- Criminal Procedure Act 1986* No 209—Schedule 2
- Energy Services Corporations Act 1995* No 95—Schedule 2
- Fair Trading Act 1987* No 68—Schedule 1
- Fines Act 1996* No 99—Schedule 2
- First State Superannuation Act 1992* No 100—Schedule 1

Fisheries Management Act 1994 No 38—Schedule 1
Guardianship Act 1987 No 257—Schedule 2
Impounding Act 1993 No 31—Schedule 1
Inebriates Act 1912 No 24—Schedule 2
Kogarah Local Environmental Plan 1998—Schedule 2
Law Enforcement (Powers and Responsibilities) Act 2002 No 103—Schedule 2
Local Courts Act 1982 No 164—Schedule 1
Local Government Act 1993 No 30—Schedule 1
Marine Pilotage Licensing Regulations—Schedule 1
Marine Pollution Regulation 2001—Schedule 2
Mental Health Act 1990 No 9—Schedule 2
Moratorium Act 1932 No 57—Schedule 2
Motor Dealers Act 1974 No 52—Schedule 1
National Environment Protection Council (New South Wales) Act 1995 No 4—
Schedule 1
National Parks and Wildlife Act 1974 No 80—Schedule 2
Nurses Amendment Act 2003 No 45—Schedule 2
Nurses and Midwives Act 1991 No 9—Schedule 1
Occupational Health and Safety Regulation 2001—Schedule 2
Parliamentary Electorates and Elections Act 1912 No 41—Schedule 1
Pawnbrokers and Second-hand Dealers Act 1996 No 13—Schedule 1
Pesticides Regulation 1995—Schedule 2
Poisons and Therapeutic Goods Act 1966 No 31—Schedule 2
Police Act 1990 No 47—Schedule 1
Property, Stock and Business Agents Act 2002 No 66—Schedule 1
Property, Stock and Business Agents Regulation 2003—Schedule 1
Protection of the Environment Administration Act 1991 No 60—Schedule 1
Public Authorities (Financial Arrangements) Regulation 2000—Schedule 2
Public Finance and Audit Act 1983 No 152—Schedule 1

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Notes

Public Sector Employment and Management (General) Regulation 1996—
Schedule 1

Public Trustee Act 1913 No 19—Schedule 1

Public Trustee Regulation 2001—Schedule 1

Radiation Control Act 1990 No 13—Schedule 2

Radiation Control Regulation 2003—Schedule 2

Research Involving Human Embryos (New South Wales) Act 2003 No 21—
Schedule 2

Road Transport (General) Act 1999 No 18—Schedule 1

Royal Botanic Gardens and Domain Trust Act 1980 No 19—Schedule 1

Royal Botanic Gardens and Domain Trust Regulation 2002—Schedule 1

Search Warrants Act 1985 No 37—Schedule 2

State Authorities Non-contributory Superannuation Act 1987 No 212—
Schedule 1

State Authorities Superannuation Act 1987 No 211—Schedule 1

State Development and Industries Assistance Act 1966 No 10—Schedule 1

State Environmental Planning Policy No 62—Sustainable Aquaculture—
Schedule 2

State Environmental Planning Policy No 71—Coastal Protection—Schedule 2

Statutory and Other Offices Remuneration Act 1975 (1976 No 4)—Schedule 1

Stock (Chemical Residues) Act 1975 No 26—Schedule 1

Stock Diseases Act 1923 No 34—Schedule 1

Stock Diseases (General) Regulation 1997—Schedule 1

Superannuation Act 1916 No 28—Schedule 1

Sydney Water Catchment Management Act 1998 No 171—Schedule 1

Treasury Corporation Act 1983 No 75—Schedule 2

Waste Avoidance and Resource Recovery Act 2001 No 58—Schedule 1

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