

Act No. 209

**STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL
(No. 2) 1987**

NEW SOUTH WALES



EXPLANATORY NOTE

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

The objects of this Bill are—

- (a) to make amendments to various Acts (Schedules 1–43);
- (b) to amend certain other Acts for the purpose of effecting statute law revision (Schedule 44);
- (c) to repeal certain Acts containing only—
 - (i) amendments to other Acts that have been incorporated in a reprint under the Reprints Act 1972;
 - (ii) spent or unnecessary provisions of a saving or transitional nature; or
 - (iii) validation provisions,(Schedule 45);
- (d) to repeal certain Acts which are no longer of public utility (section 4 and Schedule 45);
- (e) to repeal certain Acts containing uncommenced provisions the other provisions of which are of a kind described in paragraph (c) (Schedule 45); and
- (f) to make other provisions of a minor, consequential or ancillary nature.

Schedule 1 amends section 19 (d) of the Area Health Services Act 1986 to remove any implication that an area health service may control the provision of health services by the private and voluntary sectors.

Schedule 2 amends the Australian Mutual Provident Society's Officers' Provident Fund Trustees Act so that, if the deed of settlement governing the Fund is amended to increase the number of trustees of the Fund, the property of the Fund will (by the operation of the Act) automatically vest in any additional trustee appointed in accordance with the deed of settlement.

Schedule 3 amends the Bail Act 1978—

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- (a) to make it clear that if—
- (i) an appeal is pending in the Court of Criminal Appeal against a conviction on indictment or a sentence passed on conviction on indictment; or
 - (ii) an appeal from that Court is pending in the High Court in relation to such an appeal,
- the Act restricts the grant of bail by any court (not only the Court of Criminal Appeal) unless there are special or exceptional circumstances (Schedule 3 (2) and (3));
- (b) to enable the Land and Environment Court to review its decisions in relation to bail and to provide for decisions of the Court in relation to bail to be subject to review by the Supreme Court (so that power to review decisions of the Court will be the same as the power to review a decision of a justice, magistrate or the District Court) (Schedule 3 (5) and (6)); and
- (c) to make it clear that the Industrial Commission may grant bail where certain proceedings are pending in the Industrial Commission or before an industrial magistrate and to provide for review of those decisions (Schedule 3 (1), (5) and (6)).

Schedule 4 amends the Canned Fruits Marketing Act 1979—

- (a) to enable the Australian Canned Fruits Corporation to continue arrangements for the marketing of canned fruits for a further season (to end on 31 December 1988) Schedule 4 (1)); and
- (b) to remove the current limitation requiring the Corporation to restrict its corporate plan to the 3 years ending 31 December 1987 so that the Corporation may vary the plan (if appropriate) in the light of the circumstances expected to apply in 1988 and prepare an operational plan for that year (Schedule 4 (2)).

(The proposed amendments are complementary to those to be made to the equivalent Commonwealth Act by the Statute Law (Miscellaneous Provisions) Act 1987 of the Commonwealth).

Schedule 5 amends the Charitable Collections Act 1934—

- (a) to allow charities registered under the Act to deposit money received with certain building societies and other prescribed bodies and not only, as at present, with banks (Schedule 5 (1) and (3)–(5)); and
- (b) to facilitate administration of the Act by enabling the form of applications, certificates and registers made, given or kept under the Act to be approved by the Minister rather than to be prescribed by regulation (Schedule 5 (1) and (2)).

Clause 5 of Schedule 46 makes it clear that the amendment described in paragraph (b) will have the effect of repealing certain regulations made under the Act.

Schedule 6 amends the Commercial Agents and Private Inquiry Agents Act 1963 to repeal the requirement that the fee to be paid for the issue or renewal of a commercial agent's licence, private inquiry agent's licence or subagent's licence be refunded if the application is refused or withdrawn.

Schedule 7 amends the Criminal Procedure Act 1986 to specifically authorise a Deputy Director of Public Prosecutions to sign indictments for and on behalf of the Attorney General or the Director of Public Prosecutions (at present a Deputy may sign indictments only if authorised to do so by the Director).

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Schedule 8 amends the Damages (Infants and Persons of Unsound Mind) Act 1929 to provide that, in claiming damages in a Local Court, minors and persons of unsound mind will be protected in the same way as they are presently protected in making such claims in the Supreme Court or District Court.

Schedule 9 amends the Dangerous Goods Act 1975 to exempt persons carrying dangerous goods from the requirement that they be licensed under section 10 of the Act if the goods are being carried by a person to, from or between another State and New South Wales and the person is authorised to carry dangerous goods under the law of another State declared, by an order of the Governor, to correspond to the Act.

Schedule 10 amends the Director of Public Prosecutions Act 1986—

- (a) to make it clear that if, under section 9 of the Act, the Director takes over a prosecution or proceeding in respect of an offence the Director may decline to proceed further in the prosecution or to carry the proceeding further (Schedule 10 (1)); and
- (b) to enable the Director to give directions under section 16 of the Act requiring the referral to the Director of information so that the Director may consider instituting, carrying on or taking over proceedings for indictable offences and prescribed summary offences or other proceedings in connection with any functions conferred on the Director (at present such directions may only be given in relation to the prosecution of offences) (Schedule 10 (2)).

Schedule 11 amends the Electricity Act 1945—

- (a) to omit certain references to borrowing powers under the Local Government Act 1919 conferred on the Sydney County Council, as these matters are now regulated by the Public Authorities (Financial Arrangements) Act 1987 (Schedule 11 (1));
- (b) to enable regulations to be made prescribing a maximum charge which may be imposed where metered electricity is resupplied to a person (Schedule 11 (5)); and
- (c) to make amendments by way of statute law revision (Schedule 11 (2), (3) and (4)).

Schedule 12 amends the Factories, Shops and Industries Act 1962 to make it clear that the penalty provisions set out in Part XI of the Act bind the Crown in relation to offences under Part III of the Act.

Schedule 13 amends the Farm Produce Act 1983 to make it clear that the indemnity which a farm produce seller is required to obtain (in respect of certain losses and claims) may be obtained under a master policy of indemnity covering a number of sellers, including a master policy which places a limit on total claims by all the sellers covered.

Schedule 14 amends the Farm Water Supplies Act 1946 to facilitate efficient administration of the Act by enabling advice of the costs of carrying out certain work to be given by letter instead of certificate.

Schedule 15 amends the Forestry Act 1916—

- (a) to enable the Forestry Commission to join with any other person or persons in forming a corporation or partnership to promote safety and proficiency of forest operations or to carry out research into the management of forests and flora reserves (Schedule 15 (1) (a) and (b));
- (b) to enable the Forestry Commission to enter agreements for the control of certain land without (as at present) having to undertake its silvicultural management (Schedule 15 (1) (c) and (2));

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- (c) to increase from \$200,000 to \$250,000 the amount the Forestry Commission may expend on any work without having to obtain the particular approval of the Minister (Schedule 15 (3));
- (d) to remove the power of the Minister to revoke the dedication of land as flora reserve where the land is required for a public work or authorised work (within the meaning of the Public Works Act 1912) or for some public purpose under some other Act (Schedule 15 (4) and (5));
- (e) to update a reference to a definition in the Soil Conservation Act 1938 (Schedule 15 (6));
- (f) to expedite the assessment of amounts of compensation (if any) payable to landholders in respect of disturbance of land caused by the taking of timber or products on or from land by providing for assessment on completion of the operations to take the timber or products instead of on the expiration of the licence authorising the operations or at the end of specified periods of time which might occur some time after operations ceased (Schedule 15 (7));
- (g) to provide that objection against the assessment of compensation payable in respect of disturbance of land caused by the taking of timber or products on or from land must be made within 28 days after notice of the assessment is given (Schedule 15 (8)); and
- (h) to enable the Forestry Commission to suspend and cancel the operation of an authority issued or granted by it if the holder contravenes or fails to comply with any provision or condition of the authority, or with the Act or regulations, or if the authority is not being used for the purpose for which it was issued or granted (Schedule 15 (9)).

Schedule 16 amends the Government Insurance Act 1927—

- (a) to enable an additional 2 directors to be appointed to the Government Insurance Office of New South Wales Board if required (Schedule 16 (2));
- (b) to enable the Office to form or join in the formation of, and to purchase, hold, dispose of or deal in shares in, or subscribe to the issue of shares by, a company whether the company is incorporated in New South Wales or elsewhere (Schedule 16 (3));
- (c) to enable the appointment of a deputy chairman of the Board (Schedule 16 (4) (d)); and
- (d) to make other provisions of a minor or ancillary nature or by way of statute law revision.

Schedule 17 amends the Irrigation Act 1912 to enable the Water Administration Ministerial Corporation to recover the cost of making good damage to any bridge, culvert, canal, channel, drain or other work constructed or maintained by it across a public road caused otherwise than by ordinary wear and tear.

Schedule 18 amends the Land and Environment Court Act 1979—

- (a) to allocate the hearing of appeals by the Court under section 302 of the Local Government Act 1919 to its “Class 2” jurisdiction (local government and miscellaneous appeals) (Schedule 18 (1)); and
- (b) to provide for the automatic allocation to its “Class 5” jurisdiction (environmental planning and protection summary enforcement) of the jurisdiction vested in it under any other Acts to deal with proceedings for offences under those Acts (Schedule 18 (2)).

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Schedule 19 amends the Local Government Act 1919 so that the commencement of the period in each year for which members of councils are paid fees is linked to the fourth Saturday in September (that is, the day in the month on which ordinary elections for councils are held).

Schedules 20 and 21 amend the Medical Practitioners Act 1938 and the Medical Practitioners (Amendment) Act 1987 so that a person who is the holder of medical qualifications from an accredited medical school in an Australian university will be entitled to registration as a medical practitioner. The Schedule also includes ancillary amendments and amendments by way of statute law revision.

Schedule 22 amends the Motor Traffic Act 1909 to enable regulations to be made for or with respect to the refund, or partial refund, of fees for drivers' licences issued for any period (not only as at present for licences issued for more than one year) and of fees for registration of motor vehicles.

Schedule 23 amends the Motor Vehicles Taxation Management Act 1949 to include motor tricycles within the definition of "motor cycle" for the purposes of the taxing provisions of the Act. The amendment will correspond with amendments to the regulations made under the Motor Traffic Act 1909 to enable registration of motor tricycles.

Schedule 24 amends the New South Wales Film Corporation Act 1977 to increase from 65 to 70 years the age up to which a person may be appointed as, or to act in the office of, a part-time director of the Corporation.

Schedule 25 amends the New South Wales Investment Corporation Act 1986 to ensure that the Corporation has continued responsibility for financial assistance already granted in connection with the Western Sydney Business Development Fund, Wollongong Special Assistance Scheme, Small Business Development Fund and Small Businesses' Loans Guarantee Scheme.

Schedule 26 amends the Police Board Act 1983 to provide for consideration and approval by the Police Board of transfers within the police force at the rank of superintendent and higher ranks. (Currently the Police Board is only empowered to make a recommendation concerning such transfers).

Schedule 27 amends the Police Regulation Act 1899—

- (a) to require the approval of the Police Board under the Police Board Act 1983 before a transfer at the rank of superintendent and higher ranks can be made (currently the Police Board only has the power to make a recommendation in relation to such a transfer) (Schedule 27 (1)); and
- (b) to require the oath (or affirmation) of office taken by members of the police force to be taken only on appointment as constable, on first appointment to a commissioned officer rank and on appointment as Commissioner (currently the oath is taken on each occasion of an appointment to a different rank) (Schedule 27 (2)–(4)).

Oaths in force before the amendment are saved to obviate the need for all members of the police force to take a new oath and a validation provision is included to cover any situation in which the oath was previously not taken (Schedules 27 and 46).

Schedule 28 amends the Public Finance and Audit Act 1983 to enable funds in the Treasury Fire Risks Account to be used for the provision in Government owned or leased buildings of security devices for the prevention and detection of fires.

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Schedule 29 amends the Public Hospitals Act 1929 to protect directors of boards of hospitals and certain other persons from personal liability for anything done in good faith for the purpose of performing the duties of such boards.

Schedule 30 amends the Reprints Act 1972—

- (a) to enable Acts to be reprinted with the incorporation, in a distinctive way, of any uncommenced amending provisions (Schedule 30 (1)); and
- (b) to facilitate the reprinting of Acts in modern style (by enabling the omission of the enacting formula and unnecessary punctuation and the substitution of arabic for roman numbers) (Schedule 30 (2) and (3)).

Schedule 31 amends the Small Business Development Corporation Act 1984 to confirm the nomination of 19 June 1985 as the date of commencement of section 12 of the Act (relating to the establishment of the Small Business Development Corporation of New South Wales Account in Treasury) by a proclamation gazetted on 14 August 1987.

Schedule 32 amends the Soil Conservation Act 1938 to change the name of the Assistant Commissioner of the Soil Conservation Service to Deputy Commissioner of the Service.

Schedule 33 amends the State Development and Industries Assistance Act 1966 to rationalise financial arrangements under the Act by ensuring all money payable to the Ministerial Corporation under the Act is deposited in a single fund. As a result of the amendments money received by the Ministerial Corporation for land acquired for the purpose of any special industry or business undertaking referred to in section 34A (1) (c) of the Act will be paid into the Industries Assistance Fund instead of the account relating to the Special Industries Agency maintained under the State Bank Act 1981 and the latter account will be closed.

Schedule 34 amends the State Drug Crime Commission Act 1985 to enable the Minister to appoint an acting member to act for a member of the State Drug Crime Commission who has special legal qualifications during his or her absence or illness, but only for the purposes of a hearing before the Commission. The Schedule also effects a minor amendment by way of statute law revision.

Schedule 35 amends the Supreme Court Act 1970—

- (a) to enable the appointment of a Chief Judge of the Commercial Division (Schedule 35 (1) and (2)); and
- (b) to omit an inappropriate reference to the commercial list (Schedule 35 (3)).

Schedule 36 amends the Timber Marketing Act 1977—

- (a) to prohibit the use in the erection of a building of framing timber of which more than 50 per cent of a face or edge comprises lyctid susceptible sapwood (Schedule 36 (1));
- (b) to enable the Forestry Commission to suspend (for a period not exceeding 30 days) approval of a preservative treatment and the registration by the Commission of the brand to be used on timber treated by means of that preservative treatment if the person to whom the approval was given has contravened a provision of the Act or the regulations relating to the approval or the preservative treatment of timber (Schedule 36 (2)); and
- (c) to make it clear that persons authorised to carry out inspections and tests for the purposes of the Act may enter premises if of the opinion that timber or articles are being held or stored at those premises (Schedule 36 (3)).

Schedule 37 amends the Trustee Act 1925—

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- (a) to remove an inconsistency in the language used in sections 14A (2) (f) and (g) of the Act (Schedule 37 (1) (a));
- (b) to provide that debentures, promissory notes or other prescribed securities given a prescribed credit rating by a prescribed credit rating organisation (not only such securities issued by a company or body given such a credit rating) are securities authorised by the Act (Schedule 37 (1) (b)); and
- (c) to make it clear that the prohibition, restrictions and mandatory procedures contained in section 14D apply only with respect to the exercise of investment powers conferred under section 14A and have no application to powers conferred by the instrument which created the trust (Schedule 37 (2)).

Schedule 38 amends the Water Act 1912 to enable the Water Administration Ministerial Corporation to recover the cost of making good damage to any bridge, culvert, canal, channel, drain or other work constructed or maintained by it across a public road caused otherwise than by ordinary wear and tear.

Schedule 39 amends the Water Supply Authorities Act 1987—

- (a) to omit references in Schedule 3 to the Zinc Corporation Limited (which had previously merged with New Broken Hill Consolidated Limited) (Schedule 39 (3) (a) and (c) (i));
- (b) to omit from Schedule 3 to the Act obsolete references to Western New South Wales Electric Power Proprietary Limited (the company has ceased operations as a mining company) (Schedule 39 (3) (b), (c) (iii) and (d));
- (c) to amend references in Schedule 3 to New Broken Hill Consolidated Limited as a consequence of a change in the name of the corporation (Schedule 39 (3) (c) (ii));
- (d) to include A M and S Mining Limited within the companies entitled under Schedule 3 to nominate a panel of persons from whom part-time members of the Broken Hill Water Board are selected (Schedule 39 (3) (b)); and
- (e) to make amendments by way of statute law revision (Schedule 39 (1) and (2)).

Schedule 40 amends the Wild Dog Destruction Act 1921 to enable the Minister to reduce, waive or defer the payment of interest payable on arrears of rates due under the Act.

Schedule 41 amends the Workers Compensation Act 1987—

- (a) to amend section 72 by way of statute law revision so that the language of the section is consistent with the language used in the Table to Division 4 of Part 3 (the “Table of Maims”) (Schedule 41 (1)); and
- (b) to ensure that the compensation for permanent injuries under the Table of Maims in relation to the loss of an arm, hand or the fingers of a hand if the arm or hand is the dominant limb is the same if the left arm or hand is dominant as when the right arm or hand is dominant (Schedule 44 (2)).

Schedule 42 amends the Zoological Parks Board Act 1973 to preserve superannuation and other rights of certain employees of the Board who were previously employed in the Public Service or in a similar service, and will enable their return to that service on ceasing to be employees of the Board.

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Schedule 43 amends the Business Franchise Licences (Petroleum Products) Act 1987, the Business Franchise Licences (Tobacco) Act 1987, the Health Insurance Levies Act 1982, the Land Tax Management Act 1956, the Pay-roll Tax Act 1971, the Stamp Duties Act 1920 and the Revenue Laws (Reciprocal Powers) Act 1987 so as to permit the disclosure to the Ombudsman of information the disclosure of which would otherwise be prohibited by those Acts. The Schedule also includes an amendment to section 17 (2) of the Revenue Laws (Reciprocal Powers) Act 1987 to include a penalty (for making a false or misleading statement or misrepresentation in providing information in accordance with the Act) that was inadvertently omitted at the time the Act was passed. The penalty is the same as that under section 17 (1) of the Act for giving a false or misleading statement.

Schedule 44 amends certain other Acts for the purpose of effecting statute law revision. A number of amendments are made relating to formal drafting matters such as cross references within Acts, incorrect ranging and minor corrections. The Schedule also contains amendments for the following purposes:

To amend references to "the Minister" in unincorporable provisions of amending Acts so as to specify which Minister has been allocated the administration of the provision (Air Transport (Amendment) Act 1987, Co-operation (Amendment) Act 1986 and Historic Houses (Amendment) Act 1986).

To amend the Co-operation Act 1923 to make it clear that the power to make regulations adopting provisions of the Companies (New South Wales) Code concerning accounts and audit permits a regulation adopting any provision of Part VI (accounts and audit) of that Code, including a provision which confers jurisdiction on the Supreme Court.

To amend section 4 of the Local Government (Electricity) Amendment Act 1987 to make it clear that provisions of any Ordinance under the Local Government Act 1919 amended by the firstmentioned Act may be amended or repealed by Ordinance.

To amend the Public Health Act 1902 to clarify the effect the commencement on 1 January 1988 of section 7 (1) of the Public Health (Amendment) Act 1944 will have on sections 63A (1) and 63B (1) of the Act.

To amend the Strata Titles (Amendment) Act 1987 to remove any doubt that a by-law amending a by-law referred to in section 58 (7) of the Strata Titles Act 1973 requires the consent of any proprietors affected by it, in the same way as the original by-law requires such a consent.

To amend the Strata Titles (Leasehold) Amendment Act 1987 to remove any doubt that a by-law amending a by-law referred to in section 87 (7) of the Strata Titles (Leasehold) Act 1986 requires the consent of any lessees affected by it, in the same way as the original by-law requires such a consent.

Schedule 45 contains repeals of Acts.

Schedule 46 contains savings, transitional and other provisions. The Schedule includes provisions—

- (a) to validate decisions made in relation to Springwood Hospital by the Blue Mountains Area Health Service in the mistaken belief that the hospital was within the area for which the health service was constituted (the hospital has been transferred to the area health service by an order under section 21 of the Area Health Services Act 1986); and

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- (b) to revoke a repeal of an Act made by the Statute Law (Miscellaneous Provisions) Act (No. 2) 1986 that should not have been made because the Act contained uncommenced provisions.
-