

**STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL
(No. 3) 1988**

NEW SOUTH WALES



EXPLANATORY NOTE

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

The objects of this Bill are—

- (a) to make amendments to various Acts (Schedules 1–28); and
- (b) to amend certain other Acts for the purpose of effecting statute law revision (Schedule 29); and
- (c) to repeal certain Acts containing only—
 - (i) amendments to other Acts that have been incorporated in a reprint under the Reprints Act 1972; or
 - (ii) spent or unnecessary provisions of a saving or transitional nature; or
 - (iii) validation provisions, (Schedule 30); and
- (d) to repeal the Nurses Education Board Act 1973 (Schedule 30); and
- (e) to make other provisions of a minor, consequential or ancillary nature (Schedule 31).

Schedule 1 amends section 23A (escorted absences) of the Children (Detention Centres) Act 1987 so that regulations may be made concerning orders of the Director-General of the Department of Family and Community Services authorising the absence of detainees from detention centres.

Schedule 2 substitutes section 17 (removal from register) of the Chiropractic Act 1978 to give the Chiropractors Registration Board a discretion as to the removal of the name of a chiropractor or osteopath from the Register of Chiropractors and Osteopaths of New South Wales at the request of the chiropractor or osteopath. The Board is unable to investigate complaints against persons unless they are registered as chiropractors and osteopaths and the present mandatory requirement to remove a name on request can be used to avoid investigation by the Board. The amendment will give the Board a similar discretion to that conferred on the New South Wales Medical Board under section 22 (4) of the Medical Practitioners Act 1938.

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Schedule 3 amends the Construction Safety Act 1912 so that proceedings for the recovery of penalties under the Act or regulations may be instituted only by an inspector or other person authorised by the Minister. At present proceedings may be instituted only by the Minister.

Schedule 4 substitutes section 9 of the Criminal Procedure Act 1986 so as to reduce the class of matters required to be listed for mention after the elapsing of the period prescribed under that section following committal for trial. At present under section 9 (a) of the Act a matter must be listed if the period has passed and the matter has not been brought before the Supreme Court or District Court. Proposed section 9 (a) will provide that the Criminal Listing Director need only list a matter if a notice of readiness in respect of the proceedings, accompanied by a draft indictment, has not been forwarded to the Director within the period.

Schedule 5 amends section 33 (proceedings for offences) of the Dangerous Goods Act 1975 to extend the class of persons who may institute proceedings for offences under the Act or regulations to include inspectors (Schedule 5 (4) (a)).

The Schedule also makes various amendments to the Act by way of statute law revision (for example, amendments consequent on the enactment of the Local Courts Act 1982 (Schedule 5 (2) and (4) (b)) and the Public Sector Management Act 1988 (Schedule 5 (3)) and on a change in the title of an Act (Schedule 5 (6))).

Schedule 6 amends the Disability Services and Guardianship Act 1987—

- (a) to expand the definition of “dental treatment” in section 33 of the Act so that it will include a dental procedure, operation or examination and so parallel the definition of “medical treatment” in that section (Schedule 6 (1)); and
- (b) so that a person who has transferred between the roll of barristers and the roll of solicitors, but has been on one or other of those rolls for a continuous period of 7 years, may be a member of the Guardianship Board under section 49 (constitution of the Board) of the Act (Schedule 6 (2)).

Schedule 7 amends sections 57 (determination of credits to funds) and 73 (By-election Constituency Fund) of the Election Funding Act 1981 so that the description of the date of the close of the rolls used in those sections will accord with that now used in section 35 of the Parliamentary Electorates and Elections Act 1912 (namely, the day that is 3 days after the date of issue of the writs). As the amounts to be credited to the Central Fund and Constituency Fund for a general election or by-election are calculated by reference to the number of electors enrolled for electoral districts at the close of the rolls the Acts should be consistent in this respect.

Schedule 8 amends the Exhibited Animals Protection Act 1986—

- (a) to ensure that the provisions of the Act apply to the exhibition of animals in enclosed areas of water (for example, a netted enclosure for seals in a bay) (Schedule 8 (1)); and
- (b) to ensure that the definition of “zoological park” in section 5 of the Act will include a zoological garden, aquarium or similar institution used for any purposes included in the definition of “exhibit” in that section (Schedule 8 (2)).

Schedule 9 amends the Factories, Shops and Industries Act 1962 so that inspectors may institute proceedings for offences under the Act or regulations without needing the authority of the Minister and so as to extend the class of persons who may institute such proceedings to include any other person acting with the authority of the Minister.

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Schedule 10 amends section 3 (Geographical Names Board) of the Geographical Names Act 1966 to enable the Deputy Surveyor-General to represent the Surveyor-General (who is a member of the Board by virtue of holding office as Surveyor-General) as a member of the Board when the Surveyor-General is unable to attend a meeting of the Board. At present section 3 enables a person to act as a member in the place of the Surveyor-General only if the person is at that time acting in the office of the Surveyor-General. The proposed amendment will enable a person to act as a member at short notice when the Surveyor-General is unable to attend a meeting in circumstances that do not necessitate that a person act in the office of Surveyor-General.

Schedule 11 amends the Industrial Arbitration Act 1940 so that payments required to be made in money under section 92 (recovery of wages etc.) of the Act may be made by payment into an account at a bank, permanent building society or credit union by electronic funds transfer or other means (Schedule 11 (2) and (3)).

The Schedule also makes a number of amendments by way of statute law revision. These include amendments to update references to the Under Secretary of the Department of Industrial Relations and Technology (now the Secretary of the Department of Industrial Relations and Employment), certain repealed Acts and the Amalgamated Metal Workers' and Shipwrights' Union (now the Amalgamated Metal Workers' Union) (Schedule 11 (1) and (4)–(9)).

Schedule 12 amends the Jury Act 1977—

- (a) to omit the requirement that the sheriff amend all certified copies of a jury roll for a district on each occasion the jury roll is amended (Schedule 12 (1)); and
- (b) to enable the pool officer (that is, the person appointed by the sheriff in charge of a jury pool) instead of the pool judge to determine the period of attendance of persons summoned to attend a jury pool and to discharge from attending a jury pool persons who have been summoned, but are not required (Schedule 12 (2)); and
- (c) so that peremptory challenges to jurors available to an accused person and the prosecution if both the prosecution and the defence agree to the challenge will be allowed even though all the peremptory challenges without restriction of any person prosecuted or the Crown have not been exhausted (Schedule 12 (3)); and
- (d) to make it clear that a juror is not entitled to be paid for attendance at a court, coronial inquest or jury pool if excused from jury service prior to the time specified in the jury summons for such attendance (Schedule 12 (4)).

Schedule 13 amends the Motor Traffic Act 1909—

- (a) so that the drivers of certain motor vehicles (for example, rescue vehicles) involved in the provision of emergency assistance to sick and injured persons will be exempt (in the same way as ambulance drivers are exempt) from compliance with speed limits (Schedule 13 (1)); and
- (b) to enable regulations to be made concerning the supervision of children crossing streets at children's footcrossings (Schedule 13 (2)).

Schedule 14 amends the Nurses Registration Act 1953 so that a nurse from another State or a Territory may, in certain circumstances, practise as a nurse in New South Wales without being registered as a nurse under the Act. The amendment will ensure that such nurses will not be in breach of the Act if, for example, assisting in donor operations or acting as escort nurses for a period not exceeding 24 hours.

Schedule 15 amends the Occupational Health and Safety Act 1983 so that inspectors appointed under the Factories, Shops and Industries Act 1962 may institute proceedings for an offence against the Occupational Health and Safety Act 1983 or the regulations made under it.

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Schedule 16 amends section 5A of the Periodic Detention of Prisoners Act 1981 so that a court may order that a term of imprisonment of less than 3 months that is imposed for an offence under the Summary Offences Act 1988 can be served by way of periodic detention. At present, a court may only make such an order in respect of a term of imprisonment of less than 3 months if it relates to a conviction for a domestic violence offence. The amendment will facilitate the application of section 80AB (restriction on imposing sentences of imprisonment) of the Justices Act 1902 (Schedule 16 (2)).

The Schedule also makes various amendments to the Act by way of statute law revision which are consequential on certain amendments (made by the Prisons (Amendment) Act 1988) relating to the corrective services administration (Schedule 16 (1) (a) and (b), (3)–(6) and (9)) and the enactment of the Local Courts Act 1982 (Schedule 16 (1) (c)) and section 56 (penalty units) of the Interpretation Act 1987 (Schedule 16 (7) and (8)).

Schedule 17 amends section 43B (powers of detention and search) of the Poisons Act 1966 to substitute for certain references to “prohibited substances” references to “prescribed restricted substances”. The definition of “prohibited substance” was omitted from the section by the Miscellaneous Acts (Drug Misuse and Trafficking) Amendment Act 1985 and replaced with a definition of “prescribed restricted substance”. The proposed Schedule will effect consequential amendments to the references to “prohibited substance”.

Schedule 18 amends the Prisons Act 1952—

- (a) to make it clear that under section 18 (private property) of the Act the governor of a prison may release property of a prisoner retained by the governor into the possession of the prisoner while the prisoner is in prison (Schedule 18 (3)); and
- (b) to amend sections 25 (Governor of prison may impose penalties for certain prison offences) and 26B (Imposition of penalty by Visiting Justice) to make it clear that Governors or Visiting Justices, respectively, may impose penalties of confinement to any cell not just to a prisoner’s own cell (Schedule 18 (4) and (5)).

The Schedule also makes various amendments to the Act by way of statute law revision which are consequent on the enactment of the Mental Health Act 1983 (Schedule 18 (1)), the Public Sector Management Act 1988 (Schedule 18 (2) and (10)), section 56 (penalty units) of the Interpretation Act 1987 (Schedule 18 (6)–(8)) and the Local Courts Act 1982 (Schedule 18 (9)).

Schedule 19 amends Schedule 2 (statutory bodies) of the Public Finance and Audit Act 1983 to omit the West Scholarships Trustees from the Schedule. The amendment will exclude the accounts and records of financial transactions of or relating to the Fund under the West Scholarships Act 1930 and the administration of the West Scholarship Scheme from the requirements of section 43 (inspection and audit of accounts of statutory bodies) of the Act (though it will not prevent the accounts from being subject to particular audit under section 45 of the Act if Division 4 of Part 3 is ever applied to the trustees). It also has the effect of excluding the trustees from the necessity to make annual reports under the Annual Reports (Statutory Bodies) Act 1984. The amendment is complementary to the amendment to the West Scholarships Act 1930 (Schedule 27).

Schedule 20 amends the Public Reserves Management Fund Act 1987 to provide for the payment of additional insurance premiums (for example, public liability insurance and voluntary workers’ personal accident insurance) out of the Fund. At present only the cost of premiums for fire insurance of improvements on public reserves may be paid out of the Fund.

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Schedule 21 amends section 13 (how indentures to be executed and attested) of the Seamen's Act 1898 to increase from 12 to 15 years the required age a person must be to enter an indenture of apprenticeship to sea service. The amendment will make the provision consistent with Article 2 of the International Labour Organisation Convention Fixing the Minimum Age for the Admission of Children to Employment at Sea (Convention No. 58).

Schedule 22 amends section 9 (occupiers etc. to give notice) of the Stock Diseases Act 1923 so that notice of diseased stock located on land consisting of a holding situated in more than one district need only be given to a ranger or veterinary inspector for the district in which the majority of the holding is situated. At present there may be unnecessary duplication of the required notice as notice must be given to a ranger or veterinary inspector for every district in which the holding is situated.

Schedule 23 amends section 70 of the Strata Titles Act 1973 so that a covenant chargee will be able (in the same way as a proprietor or mortgagee is at present) to obtain a certificate from the body corporate containing information in respect of a lot the subject of a strata scheme or to have the strata roll and certain other documents made available for inspection (Schedule 23 (3)). The Schedule also amends sections 39, 44 and 126 of the Act by way of statute law revision to update certain references to "restrictions on user" (Schedule 23 (1), (2) and (4)).

Schedule 24 amends section 100 of the Strata Titles (Leasehold) Act 1986 so that a covenant chargee will be able (in the same way as a lessee or mortgagee is at present) to obtain a certificate from the body corporate containing information in respect of a lot the subject of a leasehold strata scheme or to have the strata roll and certain other documents made available for inspection.

Schedule 25 amends section 14E (Advisory committee) of the Trustee Act 1925—

- (a) to enable the Attorney General to appoint to the Committee 2 persons with experience relevant to the function of the Committee (for example, persons from the private trustee, financial and banking sectors) (proposed section 14E (2) (d)); and
- (b) to confer on the Committee the power to seek advice in relation to its function (proposed section 14E (6)).

Schedule 26 amends section 11 (Constitution of Council) of the University of Technology, Sydney Act 1987 to ensure that the person holding office as presiding member of the Academic Board will be an official member of the Council of the University. At present, if the presiding member is a person other than the Vice-Chancellor of the University he or she is not an official member of the Council.

Schedule 27 amends the West Scholarships Act 1930 to enable the Minister to appoint a registered company auditor, instead of requesting the Auditor-General, to examine and audit the accounts relating to the Fund under that Act and the administration of the West Scholarship Scheme.

Schedule 28 amends the Hay Irrigation Act 1902, Irrigation Act 1912, State Bank Act 1981, Water Act 1912 and Wentworth Irrigation Act 1890 so that water rates and charges presently paid to the State Bank of New South Wales will be paid to the Water Administration Ministerial Corporation constituted by the Water Administration Act 1986. It is anticipated that under an agreement with the Department of Water Resources the State Bank will not, after 31 January 1989, be receiving money in respect of any agency for water rates and charges.

The Schedule includes an amendment to section 20 (recovery of charges etc. by Ministerial Corporation) of the Water Administration Act 1986 to facilitate proceedings for the recovery of water rates and charges.

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Schedule 29 amends certain other Acts for the purpose of effecting statute law revision. A number of amendments are made relating to formal drafting matters and minor corrections. The Schedule also contains amendments for the following purposes:

To amend section 660 (contracting out) of the Conveyancing Act 1919 so that the provisions of that Act relating to the passing of risk between vendor and purchaser will apply to the sale of a dwelling-house consisting of a lot under the Strata Titles (Leasehold) Act 1986 despite any stipulation to the contrary. The amendment was overlooked in the Miscellaneous Acts (Leasehold Strata Schemes) Amendment Act 1986.

To amend the Credit Act 1984, Credit (Administration) Act 1984, Credit (Finance Brokers) Act 1984 and Credit (Home Finance Contracts) Act 1984 to omit provisions relating to penalty units that have been superfluous since the enactment of section 56 (penalty units) of the Interpretation Act 1987.

To amend section 8 (The Council) of the University of New South Wales Act 1968 so it will reflect a change in the name of the Professorial Board of the University and the title of the presiding member.

To amend various Acts (for example, the Community Service Orders Act 1979 and the Probation and Parole Act 1983) as a consequence of amendments relating to the corrective services administration made by the Prisons (Amendment) Act 1988.

Schedule 30 repeals a number of Acts. Since the Statute Law (Miscellaneous Provisions) Act 1985 the number of Acts in force has been gradually reduced by repealing amending Acts once the amendments contained in the Acts have been incorporated in a reprint. The Schedule continues this process.

The Schedule also repeals the Nurses Education Board Act 1973. The Board was established to give advice as to the desirable objectives in nurse education and the measures necessary to achieve those objectives. It has largely fulfilled its charter with the transfer of nurse education from hospitals to colleges of advanced education in 1985.

Schedule 31 contains savings, transitional and other provisions. The Schedule also includes a provision to validate decisions made in relation to The Queen Victoria Memorial Hospital at Wentworth Falls 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).
