



New South Wales

# Interpretation Amendment Bill 2006

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Interpretation Act 1987* so as:

- (a) to confirm that statutory bodies that are declared by an Act to represent the Crown have the status, privileges and immunities of the Crown, and
- (b) to provide a statutory basis for the NSW legislation website maintained by the Parliamentary Counsel for the electronic publication of legislation, and
- (c) to provide for the official publication on that website of new statutory rules, proclamations that commence or amend legislation, and progressively other miscellaneous statutory instruments, to improve public access to those instruments (publication each Friday will be continued except in urgent cases and publication in the Gazette and in pamphlet form will follow to maintain public access to printed legislation).

The Bill also:

- (a) transfers the provisions relating to the paper reprinting of legislation from the *Reprints Act 1972* to the *Interpretation Act 1987* and repeals that Act as a consequence, and

- (b) makes other minor or consequential amendments to the *Interpretation Act 1987* and certain other legislation (including to the *Environmental Planning and Assessment Act 1979* to provide for the official on-line publication of new environmental planning instruments).

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent, except that the amendments providing for the official publication of statutory rules and other instruments on the NSW legislation website will commence on a date to be proclaimed by the Governor.

**Clause 3** is a formal provision giving effect to the amendments to the *Interpretation Act 1987* (the **Principal Act**) set out in Schedule 1.

**Clause 4** is a formal provision giving effect to the amendments to other Acts set out in Schedule 2.

**Clause 5** repeals the *Reprints Act 1972* (consequent on the transfer of its remaining operative provisions relating to paper reprints of legislation to the *Interpretation Act 1987*).

**Clause 6** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

## Schedule 1 Amendment of Interpretation Act 1987

### NSW Government agencies and statutory bodies representing the Crown

**Schedule 1 [1]** inserts section 13A into the Principal Act relating to NSW Government agencies and statutory bodies representing the Crown. Legislation establishing a statutory body with government functions ordinarily declares that the body is a statutory body representing the Crown. In *Wynyard Investments Pty Ltd v Commissioner for Railways (NSW)* [1955] HCA 72, the High Court confirmed that the declaration conferred on the statutory body the status, immunities and privileges of the Crown. However, in the recent case of *McNamara v CTTT & RTA* [2005] HCA 55, the High Court effectively reversed the Wynyard Investments decision. Proposed section 13A confirms the intention of declarations in previous statutes that a particular body represented the Crown by providing that such a declaration confers on the body the status, immunities and privileges of the Crown (including that of the State). The opportunity has also been taken to give the same status to a declaration in a future Act that a statutory body is a NSW Government agency.

**Schedule 1 [12]** inserts clause 7 into Schedule 3 to the Principal Act to make savings and transitional provisions in relation to proposed section 13A. In particular, it

declares that the section is taken always to have applied to the legislation of New South Wales. However, the section will not affect the decision of the High Court in the McNamara case in respect of the successful appellant in that case, including in respect of any future similar action by the Roads and Traffic Authority in relation to the premises and the appellant in that High Court case.

### **NSW legislation website**

**Schedule 1 [11]** inserts Part 6A into the Principal Act (proposed sections 45B–45E) relating to the electronic and other government publication of legislation. **Schedule 1 [2]** defines (for the purposes of Part 6A and other Acts), the *NSW legislation website* as [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au) or any other website used by the Parliamentary Counsel to provide public access to the legislation of NSW.

**Proposed section 45B** defines *legislation* so as to include NSW Acts, regulations or other instruments made under those Acts, laws of other jurisdictions that are applied in NSW and other publications adopted by NSW legislation.

**Proposed section 45C** provides a statutory basis for the NSW legislation website that is used by the Parliamentary Counsel for the electronic publication of legislation and other matter relating to legislation. The website provides public access to legislation as originally made and as amended. The proposed section will require the Parliamentary Counsel to compile and maintain a database of legislation published on the NSW legislation website and will enable the Parliamentary Counsel to certify the form of that legislation that is correct (thereby providing the same official status for electronic reprints of legislation as the *Reprints Act 1972* currently provides for paper reprints certified by the Parliamentary Counsel).

**Proposed section 45D** re-enacts (in simplified form) provisions of the *Reprints Act 1972* (sections 5–7, 12 and 13) relating to the official paper reprint program for the publication of legislation as amended and in force at the date of the reprint. About 10,000 pages of legislation are reprinted under the program each year (which is to be maintained, although comprehensive and current updates of legislation are available on the NSW legislation website, to meet residual public demand for the paper product). Provisions that permit the Parliamentary Counsel to directly amend legislation in the course of a reprint for statute law revision purposes have not been re-enacted since they have not been used in recent years (with statute law revision amendments being included instead in the Statute Law (Miscellaneous Provisions) Bills introduced into Parliament each Session).

**Proposed section 45E** re-enacts provisions of the *Reprints Act 1972* (sections 9D and 9F):

- (a) that enable legislation to be published with the omission of the enacting formula and other changes in format (but not substantive text) to reflect current styles in NSW, and
- (b) that enable roman numerals to be regarded as interchangeable with the corresponding arabic numerals and that enable colons to be regarded as interchangeable with dashes.

### **Official publication of new statutory instruments on NSW legislation website**

Currently, new regulations and other statutory instruments are required to be officially published in a paper version of the Government Gazette (which provides a historical record on a weekly basis of statutory instruments as originally made). In the Commonwealth and in some other States and Territories (such as the ACT and Tasmania) official publication of statutory instruments is now effected by publication on an official website maintained by Parliamentary Counsel.

**Schedule 1 [3], [4], [6], [7], [8], [9] and [10]** amend the Principal Act to provide for the official publication on the NSW legislation website of statutory rules and proclamations and other instruments that commence or amend legislation. **Schedule 2.1** amends the *Environmental Planning and Assessment Act 1979* to make similar provision with respect to the official publication of environmental planning instruments. Publication of the statutory rules and other instruments each Friday will be continued, except in urgent cases, and publication in the Gazette and in pamphlet form will follow to maintain public access to printed legislation. The statutory rules and instruments concerned are those that are generally drafted in the Parliamentary Counsel's Office. In future, other new miscellaneous statutory instruments of a legislative nature will be able to be officially published on the website by regulations made by the Governor under proposed section 44 (**Schedule 1 [9]**). In the meantime, some significant miscellaneous instruments that have been previously made will continue to be electronically captured and made publicly accessible on the legislation website (such as water sharing plans under the *Water Management Act 2000*).

Official electronic publication of new statutory instruments on the NSW legislation website:

- (a) will enable the publication of new statutory instruments to be fully integrated with the in force and historical versions of legislation on the website and with the weekly bulletin of legislative activity issued by the Parliamentary Counsel (including the facility to immediately access electronically the full text of instruments for browsing, searching and printing), and
- (b) will enable a broader range of miscellaneous statutory instruments to become more publicly accessible over time, and
- (c) will enable the inclusion and publication in statutory instruments (such as the standard environmental planning instruments) of maps and tables with colours, details and size that are currently not possible because of the limitation of publishing in an A4 black and white printed page of the Gazette, and
- (d) will enable the Parliamentary Counsel's Office to publish new instruments on behalf of government agencies in the same way as it currently arranges for their tabling in Parliament.

### **Other amendments**

**Schedule 1 [5]** inserts section 23 (4A) into the Principal Act to make it clear that a power to appoint different days for the commencement of an Act includes a power to appoint different days for the repeal of different provisions of a previous Act that is to be repealed on the commencement of the Act.

**Schedule 1 [12]** enacts savings and transitional provisions consequent on the enactment of the proposed Act.

## **Schedule 2      Amendment of other Acts**

**Schedule 2.1** contains amendments to the *Environmental Planning and Assessment Act 1979*. The amendments provide for the publication, on the NSW legislation website instead of the Gazette, of new environmental planning instruments and orders under that Act relating to standard instruments.

**Schedule 2.2** contains amendments to the *Public Sector Employment and Management Act 2002* to provide for the publication, on the NSW legislation website instead of the Gazette, of orders amending that Act with respect to Departmental and other administrative changes.

**Schedule 2.3** contains amendments to the *Subordinate Legislation Act 1989*. The amendments:

- (a) make consequential changes relating to the proposed publication of new statutory instruments on the NSW legislation website instead of the Gazette, and
- (b) provide for the publication, on the website instead of the Gazette, of orders under that Act that postpone the staged repeal of statutory rules.

Interpretation Amendment Bill 2006

Explanatory note

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First print



New South Wales

# Interpretation Amendment Bill 2006

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New South Wales

## Interpretation Amendment Bill 2006

No. , 2006

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### A Bill for

An Act to amend the *Interpretation Act 1987* with respect to statutory bodies representing the Crown, the electronic or other publication of legislation and other matters; to repeal the *Reprints Act 1972*; and to make consequential amendments to other Acts.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Interpretation Amendment Act 2006</i> .	3
<b>2 Commencement</b>	4
(1) This Act commences on the date of assent, except as provided by subsection (2).	5 6
(2) Section 4, Schedule 1 [3], [4], [6], [7], [8], [9] and [10] and Schedule 2 commence on a day or days to be appointed by proclamation.	7 8
<b>3 Amendment of Interpretation Act 1987 No 15</b>	9
The <i>Interpretation Act 1987</i> is amended as set out in Schedule 1.	10
<b>4 Amendment of other Acts</b>	11
The Acts specified in Schedule 2 are amended as set out in that Schedule.	12 13
<b>5 Repeal of Reprints Act 1972 No 48</b>	14
The <i>Reprints Act 1972</i> is repealed.	15
<b>6 Repeal of Act</b>	16
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	17 18
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	19 20

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<b>Schedule 1</b>	<b>Amendment of Interpretation Act 1987</b>	1
	(Section 3)	2
<b>[1] Section 13A</b>		3
	Insert after section 13:	4
<b>13A</b>	<b>NSW Government agencies and statutory bodies representing the Crown</b>	5 6
	(1) If an Act provides that a body is:	7
	(a) a NSW Government agency, or	8
	(b) a statutory body representing the Crown,	9
	the body has the status, privileges and immunities of the Crown.	10
	(2) If an Act provides that a body:	11
	(a) is not or does not represent the Crown, or	12
	(b) is not a NSW Government agency or a statutory body	13
	representing the Crown,	14
	the body does not have the status, privileges and immunities of	15
	the Crown.	16
	(3) This section extends (without limiting its operation):	17
	(a) to a provision that is expressed to be made for the purposes	18
	of any Act or more generally, and	19
	(b) to privileges and immunities conferred by law expressly or	20
	as a matter of construction.	21
	(4) In any Act or instrument:	22
	(a) a reference to a NSW Government agency includes a	23
	reference to a body that is declared to be a statutory body	24
	representing the Crown, or	25
	(b) a reference to a statutory body representing the Crown	26
	includes a reference to a body that is declared to be a NSW	27
	Government agency.	28
	(5) In this section, the <i>Crown</i> includes the State and the Government	29
	of the State.	30

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<b>[2] Section 21 Meanings of commonly used words and expressions</b>	1
Insert in alphabetical order in section 21 (1):	2
<i>NSW legislation website</i> means the website with the URL of www.legislation.nsw.gov.au, or any other website, used by the Parliamentary Counsel to provide public access to the legislation of New South Wales.	3 4 5 6
<b>[3] Section 21 (1)</b>	7
Omit the definition of <i>proclamation</i> . Insert instead:	8
<i>proclamation</i> means a proclamation of the Governor published in the Gazette or on the NSW legislation website.	9 10
<b>[4] Section 23 Commencement of Acts</b>	11
Omit “in the Gazette” wherever occurring.	12
<b>[5] Section 23 (4A)</b>	13
Insert after section 23 (4):	14
(4A) A power to appoint by proclamation different days for the commencement of different portions of an Act includes the power to appoint different days for the commencement of the repeal of different portions of any previous Act or instrument repealed by a provision of the Act.	15 16 17 18 19
<b>[6] Section 23 (8)</b>	20
Insert after section 23 (7):	21
(8) In this section, <i>published</i> means published in the Gazette or on the NSW legislation website.	22 23
<b>[7] Section 39 The making of statutory rules</b>	24
Omit “in the Gazette” wherever occurring.	25
Insert instead “on the NSW legislation website”.	26
<b>[8] Section 40 Notice of statutory rules to be tabled</b>	27
Omit section 40 (1) and (2). Insert instead:	28
(1) Written notice of the making of a statutory rule must be laid before each House of Parliament within 14 sitting days of that House after the day on which it is published on the NSW legislation website.	29 30 31 32
(2) A written notice is to identify the statutory rule to which it relates.	33

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<b>[9] Section 44</b>	1
Insert after section 43:	2
<b>44 Publication of certain miscellaneous statutory instruments on NSW legislation website</b>	3
(1) In this section, <i>miscellaneous statutory instrument</i> means an instrument of a legislative nature that is required by an Act or instrument to be published in the Gazette.	4
(2) The Governor may, by regulation, require miscellaneous statutory instruments of a specified kind or class to be published on the NSW legislation website instead of or in addition to the Gazette.	5
(3) The regulations may, for that purpose, make consequential amendments to the relevant Acts or instruments.	6
<b>[10] Section 45 Presumption of validity of certain instruments</b>	7
Insert “on the NSW legislation website or” after “published” in section 45 (2).	8
<b>[11] Part 6A</b>	9
Insert after Part 6:	10
<b>Part 6A Publication of legislation</b>	11
<b>45B Definitions</b>	12
In this Part:	13
<i>legislation</i> means:	14
(a) an Act or instrument of this jurisdiction, or	15
(b) a law of another jurisdiction that, under such an Act or instrument, applies as a law of New South Wales, or	16
(c) a publication applied, adopted or incorporated by such an Act or instrument by way of reference,	17
and includes a portion of any such legislation.	18
<i>NSW legislation website</i> has the meaning given by section 21.	19
<b>45C Publication on NSW legislation website</b>	20
(1) The Parliamentary Counsel may publish on the NSW legislation website under the authority of the Government:	21
(a) legislation (as originally made or as amended), and	22

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(b)	other matter (including information relating to legislation and any matter authorised by law to be published on the website).	1 2 3
(2)	Legislation or other matter is published on the NSW legislation website:	4 5
(a)	if it is made accessible in full on that website, or	6
(b)	if notice of its making, issue or other production is made accessible on that website and it is made accessible separately in full on that website or in any other identified location.	7 8 9 10
(3)	The date on which legislation or other matter is published on the NSW legislation website is the date notified by the Parliamentary Counsel as the date of its publication (being not earlier than the date on which it was first made so accessible).	11 12 13 14
(4)	If legislation or other matter cannot for technical or other reasons be published on the NSW legislation website at a particular time, the legislation or other matter may be published at that time in such other manner as the Parliamentary Counsel determines and published on that website as soon as practicable thereafter. In that case, it is taken to have been published on that website at that earlier time.	15 16 17 18 19 20 21
(5)	The Parliamentary Counsel is to compile and maintain a database of legislation published on the NSW legislation website, and may certify the form of that legislation that is correct.	22 23 24
<b>45D</b>	<b>Publication of paper reprints of legislation</b> (cf former ss 5–7, 12 and 13 of Reprints Act 1972)	25 26
(1)	This section applies to paper reprints of legislation, but does not apply to the publication of legislation, as amended, on the NSW legislation website.	27 28 29
(2)	The Parliamentary Counsel may authorise legislation that has been amended to be reprinted, as so amended, under the authority of the Government, in the form certified as correct by the Parliamentary Counsel as at the date of the reprint.	30 31 32 33
(3)	The Parliamentary Counsel may authorise legislation to be reprinted under this section:	34 35
(a)	with the omission of all or any of the provisions of the legislation that amend other legislation, and	36 37
(b)	with the inclusion (appropriately identified) of amendments to the legislation that have not been commenced as at the date of the reprint.	38 39 40

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(4)	Legislation that is reprinted under this section may include:	1
(a)	references where applicable to provisions by which the legislation has been amended, and	2 3
(b)	a note to the effect that the legislation is reprinted under this section, and	4 5
(c)	such other notes as the Parliamentary Counsel thinks fit.	6
(5)	In this section:	7
	<i>amendment</i> means a direct amendment that has commenced.	8
	<i>direct amendment</i> means an amendment that inserts, omits, varies or substitutes matter.	9 10
<b>45E</b>	<b>Style changes, roman numerals, colons and dashes</b> (cf former ss 9D and 9F of Reprints Act 1972)	11 12
(1)	Legislation may be published under this Part:	13
(a)	with the omission of the enacting formula, and	14
(b)	with the omission of any comma before or after the year in the short title or citation of the legislation (or in references to the short title or citation of legislation of this or any other jurisdiction), and	15 16 17 18
(c)	with the omission of inverted commas around the short title or citation of legislation, and	19 20
(d)	with other changes to the format (but not to the text) of legislation so as to conform to current styles in the State.	21 22
(2)	For the purposes of publication under this Part and for all other purposes:	23 24
(a)	roman numerals in legislation may be regarded as being interchangeable with the corresponding arabic numerals, and	25 26 27
(b)	colons in legislation may be regarded as being interchangeable with dashes.	28 29
<b>[12]</b>	<b>Schedule 3 Savings and transitional provisions</b>	30
	Insert at the end of the Schedule:	31
<b>7</b>	<b>Statutory bodies representing the Crown</b>	32
(1)	Section 13A, as inserted by the <i>Interpretation Amendment Act 2006</i> , is taken to have applied to any Act in force before the commencement of that section (and to have applied on and from the enactment of any such Act).	33 34 35 36

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- (2) Nothing in subclause (1) affects any judgment or other order of a court or tribunal given or made before the commencement of that section. 1  
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- (3) In particular, the Roads and Traffic Authority is bound by the *Landlord and Tenant (Amendment) Act 1948* in relation to the property located at 67 Cromwell Street, Croydon Park for so long as that property is leased by that Authority to Mrs Jill McNamara (being the appellant in the appeal to the High Court in *McNamara (McGrath) v Consumer Trader and Tenancy Tribunal* [2005] HCA 55 (29 September 2005)). 4  
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- 8 Repeal of Reprints Act 1972—saving of certificates certifying reprint as correct** 11  
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- A certificate given under section 5 of the *Reprints Act 1972* before the repeal of that Act by the *Interpretation Amendment Act 2006* is taken, after that repeal, to be a certificate given under section 45D of this Act. 13  
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- 9 Construction of references to publication in Gazette where instruments published on NSW legislation website** 17  
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- (1) This clause applies to statutory rules and other instruments that were required to be published in the Gazette, but that are required (by amendments made by the *Interpretation Amendment Act 2006*, by a regulation under section 44 or by any other Act) to be published instead on the NSW legislation website. 19  
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- (2) In any Act or instrument, a reference to the publication in the Gazette of a statutory rule or other instrument to which this clause applies includes a reference to its publication on the NSW legislation website instead of its publication in the Gazette. 24  
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<b>Schedule 2</b>	<b>Amendment of other Acts</b>	1
	(Section 4)	2
<b>2.1</b>	<b>Environmental Planning and Assessment Act 1979 No 203</b>	3
<b>[1]</b>	<b>Section 33A Standardisation of local and other environmental planning instruments</b>	4
	Omit “in the Gazette” from section 33A (1).	5
	Insert instead “on the NSW legislation website”.	6
<b>[2]</b>	<b>Section 33B Staged repeal and review of environmental planning instruments</b>	7
	Omit “in the Gazette” wherever occurring.	8
	Insert instead “on the NSW legislation website”.	9
<b>[3]</b>	<b>Section 34 Environmental planning instruments—making, operation and inspection</b>	10
	Omit “in the Gazette” wherever occurring.	11
	Insert instead “on the NSW legislation website”.	12
<b>[4]</b>	<b>Section 35 Validity of instruments</b>	13
	Omit “in the Gazette”. Insert instead “on the NSW legislation website”.	14
<b>[5]</b>	<b>Section 72C Consideration and making of plan</b>	15
	Omit “in the Gazette” wherever occurring.	16
	Insert instead “on the NSW legislation website”.	17
<b>[6]</b>	<b>Section 72F Making of local environmental plan following decision of Court</b>	18
	Omit “in the Gazette” wherever occurring.	19
	Insert instead “on the NSW legislation website”.	20
<b>[7]</b>	<b>Section 72G Date from which consent operates</b>	21
	Omit “in the Gazette”. Insert instead “on the NSW legislation website”.	22
<b>[8]</b>	<b>Section 154 Transfer or amalgamation of land to which an environmental planning instrument applies</b>	23
	Omit “in the Gazette” from section 154 (2) (b).	24
	Insert instead “on the NSW legislation website”.	25
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<b>[9] Schedule 6 Savings, transitional and other provisions</b>	1
Omit “in the Gazette” from clause 1 (3) in Part 1.	2
Insert instead “on the NSW legislation website”.	3
<b>2.2 Public Sector Employment and Management Act 2002 No 43</b>	4
<b>[1] Section 66 Amendment or substitution of Schedule 2</b>	5
Omit “, by order published in the Gazette,” wherever occurring.	6
<b>[2] Section 108 Orders to change references in Acts, section 110 Publication and commencement of orders, section 112 Operation of orders</b>	7 8 9
Omit “in the Gazette” wherever occurring.	10
Insert instead “on the NSW legislation website”.	11
<b>2.3 Subordinate Legislation Act 1989 No 146</b>	12
<b>[1] Section 5 Regulatory impact statements</b>	13
Omit “in the Gazette” from section 5 (4).	14
<b>[2] Section 8 Remaking of disallowed statutory rule</b>	15
Omit “in the Gazette” from section 8 (2).	16
Insert instead “on the NSW legislation website”.	17
<b>[3] Section 8 (3)</b>	18
Omit “in the Gazette”.	19
<b>[4] Section 11 Postponement of repeal in specific cases</b>	20
Omit “in the Gazette” from section 11 (1).	21
Insert instead “on the NSW legislation website”.	22

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**[5] Section 12 Machinery provisions regarding repeals**

Insert “on the NSW legislation website or” after “published” where firstly occurring in section 12 (1) (a).

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