

**STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL  
1989**

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 minor amendments to various Acts (Schedule 1); and
- (b) to amend certain other Acts for the purpose of effecting statute law revision (Schedule 2); 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 3); and
- (d) to repeal the Bursary Endowment Act 1912; and
- (e) to make other provisions of a consequential or ancillary nature (Schedule 4).

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**SCHEDULE 1—MINOR AMENDMENTS**

Schedule 1 makes amendments to the following Acts:

**Building and Construction Industry Long Service Payments Act 1986 No. 19**

The proposed amendments will enable workers engaged in the building and construction industry to apply to the Building and Construction Industry Long Service Payments Corporation after completion of 10 or more years' service as a worker instead of after 15 or more years' service. The amendments will make the Act consistent with the Long Service Leave Act 1955 in relation to the qualifying period for long service leave.

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**Children (Care and Protection) (Disability Services and Guardianship) Amendment Act 1987 No. 259**

The proposed amendments will enable items (3) and (4) of Schedule 1 to the Act to be commenced on a proclaimed day earlier than the commencement of Part 5 of the Disability Services and Guardianship Act 1987.

**Coal Mining Act 1973 No. 81**

The proposed amendments—

- (a) update certain references in section 21A of the Act as a consequence of the enactment of the Water Board Act 1987 and the Hunter Water Board Act 1988; and
- (b) update references to the Director of Environment and Planning in sections 82E, 82F, 87 and 88 of the Act; and
- (c) repeal a provision which enables the Minister to specify a cash payment to be made in relation to obtaining approval of certain transfers and instruments under section 104 of the Act.

**Compensation Court Act 1984 No. 89**

The proposed amendment enables a Judge of the Compensation Court to take evidence outside New South Wales from a witness who is outside New South Wales or who is otherwise unable to attend a hearing before the Court.

**Co-operation Act 1923 (1924 No. 1)**

The proposed repeal of section 17B of the Act will avoid any possible inconsistency between the Act and the Sex Discrimination Act 1984 of the Commonwealth that might arise by virtue of the section affecting mortgages and loan agreements entered into by married minors.

**Credit Union Act 1969 No. 8**

The proposed repeal of section 41 (3) and (4) of the Act will avoid any possible inconsistency between the Act and the Sex Discrimination Act 1984 of the Commonwealth that might arise by virtue of the section affecting mortgages and loan agreements entered into by married minors.

**Education and Public Instruction Act 1987 No. 62**

The proposed amendments to section 45 (Acquisition and disposal of land)—

- (a) enable the Minister to exchange, and grant easements and rights of way in respect of, land acquired under the section (proposed section 45 (5) (b) and (c)); and
- (b) ensure that land acquired before the commencement of the Education and Public Instruction Act 1987 under or for the purposes of the Public Instruction Act 1880, or held by the Crown in trust under that Act, will be treated as having been acquired under the section and may therefore be dealt with in the same way as land so acquired (proposed section 45 (7)).

The amendment described in paragraph (b) supersedes clause 5 of the Education and Public Instruction (Savings and Transitional Provisions) Regulation 1987. A repeal of the provision is included in Schedule 4.

**Farm Produce Act 1983 No. 30**

The proposed amendments—

- (a) enable proceedings for an offence against the Act or regulations to be commenced within 12 months of the time when the offence is alleged to have been committed (at present proceedings must be commenced within 6 months by virtue of section 56 of the Justices Act 1902); and

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- (b) update references consequent on the enactment of the Local Courts Act 1982.

**Fisheries and Oyster Farms Act 1935 No. 58**

The proposed amendments—

- (a) repeal the requirement under section 90 of the Act that sellers of oysters by wholesale or retail (other than lessees of leased areas) must hold oyster vendor's licences; and
- (b) enable proceedings for an offence against the Act or regulations to be commenced within 12 months of the time when the offence is alleged to have been committed (at present proceedings must be commenced within 6 months by virtue of section 56 of the Justices Act 1902).

**Government and Related Employees Appeal Tribunal Act 1980 No. 39**

The proposed amendment enables a Chairperson of the Tribunal to act in the office of the Senior Chairperson during any vacancy in the office of Senior Chairperson or any illness or absence of the Senior Chairperson. At present, a person can only act as Senior Chairperson if the person is a Supreme Court Judge or a member of the Industrial Commission.

**Industrial Arbitration Act 1940 No. 2**

The proposed amendments—

- (a) update references to the Australian Conciliation and Arbitration Commission and the Conciliation and Arbitration Act 1904 as a consequence of the repeal of that Act, and replacement of the Commission by the Australian Industrial Relations Commission, by the Industrial Relations Act 1988 of the Commonwealth; and
- (b) provide that certain joint proceedings and matters commenced under sections 38j and 38k of the Industrial Arbitration Act 1940 before the commencement of the Industrial Relations Act 1988 may be dealt with by members of the new Commission.

**Jury Act 1977 No. 18**

The proposed amendment specifically exempts members of the staff of the office of the Director of Public Prosecutions and their spouses or defacto partners from jury duty. The amendment is required as since the establishment of the Director of Public Prosecutions as an independent office those employees can no longer claim the exemption as employees of the Attorney General's Department.

**Local Courts Act 1982 No. 164**

The proposed amendments provide that the terms and conditions of service of Magistrates will be determined (after consultation with the Chief Magistrate) by the Attorney General. At present the terms and conditions are determined by regulation.

**Local Courts (Civil Claims) Act 1970 No. 11**

The proposed amendment will enable the rate of interest to be paid on judgment debts to continue to be prescribed under the Act instead of being calculated at the rate prescribed for the purposes of section 95 (1) of the Supreme Court Act 1970. (The rate was to be linked to the Supreme Court rate on the commencement, on 1 July 1989, of Schedule 2 to the Local Courts (Civil Claims) Amendment Act 1987.)

**Local Government Act 1919 No. 41**

The proposed amendments—

- (a) update references to Commonwealth legislation in sections 160AA, 160B and 503 (1) of the Act to take account of changes in the relevant provisions; and

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- (b) increase the amount that may be prescribed as the penalty payable under a penalty notice for a littering offence from a maximum of \$25 to the maximum amount which may be imposed by a court for such an offence.

**Marketing of Primary Products Act 1983 No. 176**

The proposed amendments—

- (a) enable the position of Director of Marketing in the Department of Agriculture and Fisheries to be filled by a person otherwise employed in the Department instead of a full-time appointee; and
- (b) enable boards constituted under the Act to fix the terms and conditions of payment under which a grade, class or description of a commodity may be sold by wholesale (the boards already have the power to set the prices of commodities).

**Meat Industry Act 1978 No. 54**

The proposed amendment will enable the Homebush Abattoir Corporation to impose a penalty not exceeding \$1,000 for an offence against the by-laws made by it under section 78 of the Act. At present a penalty not exceeding \$200, together with a daily penalty not exceeding \$20, may be imposed.

**Mining Act 1973 No. 42**

The proposed amendments—

- (a) repeal a provision which enables the Minister to specify a cash payment to be made in relation to obtaining approval of certain transfers and instruments under section 107 of the Act; and
- (b) update references to the Director of Environment and Planning in sections 111E, 111F and 113 of the Act.

**Miscellaneous Acts (Disability Services and Guardianship) Repeal and Amendment Act 1987 No. 262**

The proposed amendments will enable certain provisions of Part 9 of the Child Welfare Act 1939 to continue in operation until the commencement of the licensing provisions of the Disability Services and Guardianship Act 1987. The Miscellaneous Acts (Disability Services and Guardianship) Repeal and Amendment Act 1987 at present provides for the automatic repeal of those provisions on the commencement of Part 3 of the Disability Services and Guardianship Act 1987. The repeal will instead be done by proclamation under the Miscellaneous Acts (Community Welfare) Repeal and Amendment Act 1987.

**Miscellaneous Acts (Education and Public Instruction) Repeal and Amendment Act 1987 No. 63**

The proposed amendments extend by 12 months the period during which, under the transitional arrangements set out in clause 3 of Schedule 3 to the Act—

- (a) primary schools (certified under Part 3 of the Public Instruction (Amendment) Act 1916); and
- (b) secondary schools (so certified but not registered under the Education Act 1961),

may continue to conduct business before being required to be registered under the Education and Public Instruction Act 1987.

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

The proposed amendments—

- (a) include a definition of "egg" in section 5 of the Act to make it clear that the expression includes any part of an egg and the eggshell; and

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- (b) require a person to obtain a licence under section 127 of the Act to liberate animals (other than homing pigeons or captured animals native to New South Wales) anywhere in New South Wales (proposed section 109 (1)); and
- (c) require a person to obtain a licence under section 127 of the Act to liberate any animal native to New South Wales in a place other than that in which it was captured (proposed section 109 (2)); and
- (d) provide that a general licence can be issued under section 120 of the Act authorising a person to hold or to keep in possession or under control any protected fauna for the purposes for which a person may be licensed to take, kill or obtain protected fauna (for example, providing specimens of natural history for museums, carrying on scientific investigation or exhibiting the fauna); and
- (e) alter a reference to the National Parks Association of N.S.W. Incorporated in Schedule 7 (the Council) to reflect a change in the name of the Association; and
- (f) remove the present age restriction which prevents persons who are of or above the age of 70 years from being eligible to be appointed (or from being able to continue to hold office) as members of the National Parks and Wildlife Advisory Council, an advisory committee constituted under section 24 of the Act or the Marine Mammals Advisory Committee or as trustees of a state recreation area.

**Non-Indigenous Animals Act 1987 No. 166**

The proposed amendments will increase from 10 to 11 the number of members of the Non-Indigenous Animals Advisory Committee and provide for the additional member to be a member and nominee of the NSW Farmers' Association.

**Permanent Building Societies Act 1967 No. 18**

The proposed repeal of section 8 of the Act will avoid any possible inconsistency between the Act and the Sex Discrimination Act 1984 of the Commonwealth that might arise by virtue of the section affecting mortgages and loan agreements entered into by married minors.

**Poisons Act 1966 No. 31**

The proposed amendments—

- (a) enable the making of regulations providing for the suspension of licences under Part 3 (Poisons and restricted substances) of the Act; and
- (b) enable fees to be fixed for any licences issued or renewed under that Part; and
- (c) make it clear that regulations may provide for the suspension of licences and authorities under Part 4 (Drugs of addiction) of the Act.

**Police Regulation (Allegations of Misconduct) Act 1978 No. 84**

The proposed amendments—

- (a) enable the Chief Judge or a Judge of the District Court to be appointed President of the Police Tribunal; and
- (b) enable Assistant Commissioners of Police to exercise the functions of the Commissioner of Police under the Act (other than those under section 26, which deals with disclosure of information); and
- (c) ensure that only the Commissioner or a person acting as Commissioner may exercise functions under section 26.

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**Rivers and Foreshores Improvement Act 1948 No. 20**

The proposed amendments provide that water rates and charges, and certain costs and contributions associated with the construction of works, which are 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. The amendments will complement the amendments relating to receipt of water rates and charges made by Schedule 28 to the Statute Law (Miscellaneous Provisions) Act (No. 3) 1988.

**Road Obstructions (Special Provisions) Act 1979 No. 9 and Road Obstructions (Special Provisions) Revival and Amendment Act 1979 No. 144**

The proposed amendments will consolidate the Road Obstructions (Special Provisions) Act 1979 (the Principal Act) and the Road Obstructions (Special Provisions) Revival and Amendment Act 1979 (the Revival Act). The amendments will transfer to the Principal Act the mechanism for reviving the Principal Act contained in the Revival Act without changing the substantive effect of the provision. The amendments will enable the Revival Act to be repealed as part of the program of statute law revision which has gradually reduced the number of Acts in force.

**State Pollution Control Commission Act 1970 No. 95**

The proposed amendment to section 30c of the Act will permit prosecutions for offences against regulations made under the Act, the Clean Air Act 1961, the Clean Waters Act 1970, the Environmentally Hazardous Chemicals Act 1985 or the Noise Control Act 1975 to be conducted by certain persons in the name of the Commission. (Section 30c already permits prosecutions for offences against those Acts to be so conducted.)

**Stock Diseases Act 1923 No. 34**

The proposed amendments—

- (a) will clarify section 20 (1) (a1) of the Act to make it clear that it is an offence to contravene or fail to comply with any single provision of a proclamation, order or notification issued or made under the Act; and
- (b) will clarify section 20 (1) (j) of the Act to make it clear that it is an offence to transport, drive or remove any infected stock, or cause or permit them to be transported, driven or removed, to, upon or across any stock saleyard or travelling stock reserve unless in accordance with an order of an inspector.

**Supreme Court Act 1970 No. 52**

The proposed amendment enables an acting Judge of the Supreme Court to sit as an additional Judge of Appeal.

**Traffic Act 1909 No. 5**

The proposed amendment will facilitate the application of construction, design and equipment standards for motor vehicles by enabling publications (for example, the Australian Design Rules) as in force from time to time to be adopted by regulation. This will eliminate the need to amend the regulations each time the requirements of such publications are altered.

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**Transport Appeal Boards Act 1980 No. 104**

The proposed amendments provide that if a Transport Appeal Board modifies a decision of the State Rail Authority or the State Transit Authority in respect of disciplinary proceedings against an officer of such an Authority, the Board can only impose, as a substituted punishment, a fine or a suspension or further suspension without pay. The proposed amendments are designed to transfer to the Principal Act, and confirm, existing provisions in the Transport Authorities (Staff) Regulation 1980 (which is deemed to have been made under the Transport Administration Act 1988). The provisions have the result that a Transport Appeal Board is not authorised to dismiss an officer who appeals against a lesser punishment imposed by an Authority and is not authorised to place an officer who appeals against any punishment in a lower position.

**Water Board Act 1987 No. 141**

The proposed amendments—

- (a) make it clear that a public agency is required to give two different kinds of notice to the Water Board under section 23 (Exercise of certain functions in special areas)—one to enable representations to be made by the Board and another after the making of such representations if the agency intends to exercise functions contrary to the representations; and
- (b) enable regulations to be made under section 66 (Regulations) which apply, adopt or incorporate any publication, as in force from time to time.

**Water Legislation (Repeal, Amendment and Savings) Act 1987 No. 143**

The proposed amendment extends until 31 December 1989, instead of 3 July 1989, the operation of a "sunset" clause which is designed to enable regulations under a repealed Act (e.g. the Metropolitan Water, Sewerage, and Drainage Act 1924) to continue in force until regulations are made under the new Act (e.g. the Water Board Act 1987) which replaced the repealed Act.

**Wild Dog Destruction Act 1921 No. 17**

The proposed amendment will exempt conveyance of property to the Wild Dog Destruction Board from the payment of stamp duty.

**SCHEDULE 2—AMENDMENTS BY WAY OF STATUTE LAW REVISION**

Schedule 2 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 60 (Removal of children without warrant) of the Children (Care and Protection) Act 1987 to restate more fully the powers of authorised officers and members of the Police Force in taking action to protect children under that section.

To amend the Conveyancing Act 1919 to replace the expression "user of land" with the modern expression "use of land".

To amend the Criminal Procedure Act 1986 to relocate the regulation-making power (section 18) with the omission of matter that has been superseded by the Interpretation Act 1987 and to substitute a Part heading with one that, after that relocation, will more suitably describe the content of Part 5 of that Act. (The amendments will complement the amendments to be made by the proposed Criminal Procedure (Sentencing) Amendment Act 1989.)

To amend the Hunter Water Board Act 1988 to change an incorrect reference to the Employers Federation (Newcastle) to the Employers Federation of NSW.

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To repeal Schedule 19 of the Statute Law (Miscellaneous Provisions) Act (No. 3) 1988. The Schedule, if commenced, would omit the West Scholarships Trustees from Schedule 2 (statutory bodies) of the Public Finance and Audit Act 1983. The amendment has been made unnecessary by a regulation gazetted on 3 February 1989 which effects the omission.

**SCHEDULE 3—REPEALS**

Schedule 3 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 Bursary Endowment Act 1912. The Bursary Endowment Act 1912 is no longer of utility because the Bursary Endowment Fund has been closed. Administrative arrangements have been made for existing bursary holders to continue to receive payments from other funds.

**SCHEDULE 4—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS**

Schedule 4 contains savings, transitional and other provisions.

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